

David McLauchlan – Publications 1972–2018

1. Books

The Parol Evidence Rule, Professional Publications Ltd, 1976, xi + 150 pp

The Contractual Remedies Act 1979, Sweet & Maxwell (NZ) Ltd, 1981, xxii + 217 pp
(With Francis Dawson)

2. Book Chapters

“The Legal Status of Heads of Agreement: Recent Developments” [2002] AMPLA Yearbook 518–557

“Expectation Damages—Mitigation, Compensating Advantages and Subsequent Events” in D Saidov and R Cunnington (eds), *Contract Damages: Domestic and International Perspectives* (Hart, Oxford, 2008) 349–388

“Reliance Damages for Breach of Contract” in Jeffrey Berryman and Rick Bigwood (eds), *The Law of Remedies: New Directions in the Common Law* (Irwin Law, 2010) 33–76

“Liability under *Hedley Byrne* for ‘Pre-Contract’ Negligent Misrepresentation: A New Zealand Perspective” in K Barker, R Grantham and W Swain (eds) *The Law of Misstatements: 50 Years on from Hedley Byrne v Heller* (Hart Studies in Private Law, 2015) 291–318

“The Many Versions of Rectification for Common Mistake” in Simone Degeling, James Edelman and James Goudkamp (eds), *Contract in Commercial Law* (Thomson Reuters, 2016) 193–229

“The Limitations on ‘Reliance’ Damages for Breach of Contract” in David Campbell and Roger Halson (eds), *Research Handbook on Remedies in Private Law* (Edward Elgar Publishing, forthcoming).

3. Articles, Notes, Reviews

“Automatic Crystallisation of a Floating Charge” [1972] NZLJ 330–335

“Section 108—Further Problems for the Commissioner” (1972) 5 NZULR 72–77

“Securities Over Future Goods: Part I” (1974) 7 VUWLR 122–150

“Securities Over Future Goods: Part II” (1974) 7 VUWLR 237–257

“The Admissibility of Parol Evidence to Interpret Written Contracts” (1974) 6 NZULR 121–139

“The Recovery of Extraordinary Losses on Breach of Contract” [1974] NZLJ 118–120

“Merger in the Conveyance and the Effect of Settlement” (1975) 7 VUWLR 412–425

Book Review: *The Law of Actionable Misrepresentation* by Spencer Bower and Turner (1975) 8 VUWLR 101–114

(With Professor EP Ellinger) *New Zealand Newsletters* in Australian Business Law Review, 1973, pp 94, 182, 360; 1974, pp 156, 234

“The Inconsistent Collateral Contract” (1976) 3 Dalhousie LJ 136–176

“The Concept of ‘Charge’ in the Law of Chattel Securities” (1976) 8 VUWLR 283–299

“Chattel Securities—A Note on Some Current Practices” [1976] NZLJ 195–196

“Rescission for Innocent Misrepresentation” [1976] NZLJ 252–253

“Negligent Misstatement—The Case of the Careless Clerk” [1976] NZLJ 323–326

“The Chattels Transfer Amendment Act 1974” (1976) 7 NZULR 83–91

“Collateral Contracts—The Requirement of Consistency” (1976) 7 NZULR 176–186

Book Review: *Cases and Materials on Contract* by McGarvie, Pannam and Hocker (1976) 7 NZULR 200–202

“Pre-Contract Negligent Misrepresentation” (1977) 4 Otago LR 23–55

“Chattels Transfer—The Security That Never Was” [1977] NZLJ 118–121

“Corporate Personal Property Secured Transactions—Companies Act, Chattels Transfer Act or Neither?” [1978] NZLJ 137–152

“Registration of Company Securities—More Misconceptions” [1978] NZLJ 444–447

Review Article: *Company Charges* by WJ Gough (1979) 4 Otago LR 396–408

“Priorities—Equitable Tracing Rights and Assignments of Book Debts” (1980) 96 LQR 90–100

“Contract Law Reform in New Zealand: The Contractual Remedies Act 1979” (1981) 1 OJLS 284–295

“Recovery of Deposits by Defaulting Purchasers under the Contractual Remedies Act 1979” [1981] NZLJ 486–490

- “*Gallagher v Young: The Contractual Remedies Act 1979*” (1982) 10 NZULR 47–55
- “Mistake of Identity after the Contractual Mistakes Act 1977” (1983) 10 NZULR 199–231
- “Contract and Commercial Law Reform in New Zealand” (1984) 11 NZULR 36–65 (Inaugural Lecture)
- “*Jolly v Palmer: Wrongful Repudiation or Valid Cancellation?*” (1985) 11 NZULR 272–275
- “Damages for Pre-Contract Expenditure” (1985) 11 NZULR 346–361
- “Mistake as to Contractual Terms under the Contractual Mistakes Act 1977” (1986) 12 NZULR 123–159
- “Cheques in Full Satisfaction: Accord Despite Discord?” (1987) 12 NZULR 259–296
- “Assessment of Damages for Misrepresentation” (1987) 6 Otago LR 370–419
- “Merger and Acknowledgment Clauses under the Contractual Remedies Act 1979” (1988) 18 VUWLR 313–327
- “Offer and Acceptance in the Privy Council” [1989] NZLJ 136–145
- “Motor Vehicle Securities: The Quagmire Deepens” [1989] NZLJ 211–217
- (With Charles Rickett) “Contractual Mistakes and the Law of Restitution” [1989] NZ Rec L Rev 277–291
- Book Review: *Unconscionable Bargains* by M Chen-Wishart [1989] NZLJ 372
- Book Review: *Misrepresentation and the Fair Trading Act* by L Trotman (1989) 19 VUWLR 93–95
- “Cheques in Full Satisfaction: An Update” [1989] NZ Rec L Rev 399–409
- “Materiality and Intention to Induce—Are they Requirements for Actionable Misrepresentation?” [1990] NZ Rec L Rev 271–277
- “The Demise of *Conlon v Ozolins*: ‘Mistake in Interpretation’ or Another Case of Mistaken Interpretation?” (1991) 14 NZULR 229–253
- “Unfair Contracts—The Law Commission’s Draft Scheme” [1991] NZ Rec L Rev 311–336
- “The ‘New’ Law of Contract in New Zealand” [1992] NZ Rec L Rev 436–461

“Informal Agreements for the Sale or Lease of Land—When are they Contracts?” [1993] NZ Rec L Rev 442–460

“Motor Vehicle Securities: Shifting Dealer Financing Losses to the Fidelity Fund” [1994] NZLJ 59–63

(With Charles Rickett) “Mistake and Ignorance under the New Zealand Contractual Mistakes Act 1977” (1995) 8 JCL 193–208

“Agreements to Buy One’s Own Goods—Implied Preceding Sale or Sham?” (1995) 1 NZBLQ 21–41

“The Plain Meaning Rule of Contract Interpretation” (1995) 2 NZBLQ 80–103

(With Charles Rickett) “Undue Influence and Third Parties: A Doctrine in Transition or the Emergence of a New Doctrine?” [1995] NZ Rec L Rev 328–350

“Actual Consensus Ad Idem in Contract—Unnecessary but Surely Sufficient?” [1995] NZLJ 45–46

“Subsequent Conduct as an Aid to Interpretation” (1996) 2 NZBLQ 237–260

“A Contract with its Own Meaning?” [1996] NZLJ 439–444

“‘We have a Deal’—Mere Consensus or Concluded Bargain?” (1996) 2 NZBLQ 205–208

“A Damages Dilemma” (1997) 12 JCL 114–144

“Common Assumptions and Contract Interpretation” (1997) 113 LQR 237–245

“Mental Distress Damages for Breach of Commercial Contracts” (1997) 3 NZBLQ 130–143

“Subsequent Conduct and Contract Interpretation—An Update” (1997) 3 NZBLQ 147–153

“Analysing Mistake” (1997) 3 NZBLQ 194–205

“Negligent Valuer Liability—The Paradox Remains?” (1997) 113 LQR 421–424

“Accord and Satisfaction: An Opportunity Lost” [1998] NZLJ 311–313

“Excluding Liability for Misrepresentation: A Not So Plain Exclusion?” (1998) 4 NZBLQ 59–63

“Rethinking Agreements to Agree” (1998) 18 NZULR 77–98

“Cheques in Full Satisfaction—A Simple Case of Offer and Acceptance?” (1998) 4 NZBLQ 119–124

“Some Comments on the Credit (Repossession) Act 1997” (1998) 4 NZBLQ 156–160

“Unperfected Securities under the PPSA” [1999] NZLJ 55–56

“It *Wasn't* a Simple Case of Offer and Acceptance!” (1999) 5 NZBLQ 4–7

“Fixed Charges over Book Debts: *New Bullas* in New Zealand” (1999) 115 LQR 365–368

“A Contract Contradiction” (1999) 30 VUWLR 175–195

“Rectification for Unilateral Mistake” (1999) 18 NZULR 360–377

“Damages for Misrepresentation under the Fair Trading Act—Expectation or Reliance?” (1999) 5 NZBLQ 133–148

“Contributory Negligence and the *SAAMCO* Principle” [1999] LMCLQ 355–360

(With Charles Rickett) “*SAAMCO* in the High Court of Australia” (2000) 116 LQR 1–7

“*New Bullas* in New Zealand—Round Two” (2000) 116 LQR 211–216

“Fundamentals of the PPSA—An Introduction” (2000) 6 NZBLQ 166–173

“The New Law of Contract Interpretation” (2000) 19 NZULR 147–176

“Intention to Induce: Should it be a Requirement for Actionable Misrepresentation?” (2001) 7 NZBLQ 43–48

“Some Further Thoughts on Agreements to Agree” (2001) 7 NZBLQ 156–166

“Contractual Mistakes: The Troubles Continue” (2001) 7 NZBLQ 261–265

“Forfeiture of Deposits: Punishing the Contract Breaker” [2002] NZ Law Rev 1–18

“Forfeiture of Deposits: A Reply” [2002] NZ Law Rev 33–47

“Damages for Misrepresentation under the Fair Trading Act: The Aftermath of *Cox & Coxon*” (2002) 8 NZBLQ 14–25

“Recovery of Lost Profits for ‘Reasonable Grounds’ Misrepresentations” (2002) 8 NZBLQ 110–118

“The Contractual Mistakes ‘Code’: A Polite Response to Mr Dugdale” (2002) 8 NZBLQ 132–138

“The FCE/ECNZ Heads of Agreement: Progress Report or Binding Contract?” (2002) 8 NZBLQ 192–216

“Intention, Incompleteness and Uncertainty in the New Zealand Court of Appeal” (2002) 18 JCL 153–179

“Fair Trading Act Damages: Clarification or Misapprehension Compounded?” (2002) 8 NZBLQ 250–257

“Contract Damages for Wasted Expenditure” (2003) 9 NZBLQ 3–9

“More on the Contractual Mistakes ‘Code’” (2003) 9 NZBLQ 51–65

“An Obvious Case of Offer and Acceptance?” (2003) 9 NZBLQ 109–115

“The Justiciability of An Agreement to Negotiate in Good Faith” (2003) 20 NZULR 265–298

“The Contractual Mistakes ‘Code’: Professor Sutton’s Solutions” (2003) 9 NZBLQ 261–277

“Contract Interpretation—A Return to Judicial Conservatism?” (2004) 10 NZBLQ 66–84

“A Contract Conundrum?” (2004) 10 NZBLQ 189–202

“Interpretation and Necessary Implications” (2004) 21 NZULR 331–337

“Mistake of Identity and Contract Formation” (2005) 21 JCL 1–50

“Parol Evidence and Contract Formation” (2005) 121 LQR 9–16

“Defying Common Sense in Contract” [2005] NZLJ 300–302

“The Agreement to Negotiate in Good Faith: A Non-Justiciable Contract?” (2005) 11 NZBLQ 454–478

“In Defence of the Fourth Category of Preliminary Agreements: Or are there only Two?” (2005) 21 JCL 286–305

“Objectivity in Contract” (2005) 24 UQLJ 479–497

“In Defence of A Role for Subsequent Conduct in Contract Interpretation” (2006) 12 NZBLQ 30–49

“A Reliance Interest in Contract Damages?” [2006] NZLJ 254–256

“Contract Formation, Contract Interpretation, and Subsequent Conduct” (2006) 25 UQLJ 77–110

“Reliance Damages for Breach of Contract” [2007] NZ Law Rev 417–457

“Some Issues in the Assessment of Expectation Damages” [2007] NZ Law Rev 563–629

“Timely Payment but No Settlement: A Necessary Requirement of Notification?” (2008) 14 NZBLQ 37–44

(With Nick Hegan) “Contract Damages: Fundamental Principle, Fundamental Disagreement” (2008) 46 Can Bus LJ 89–95

“The ‘Drastic’ Remedy of Rectification for Unilateral Mistake” (2008) 124 LQR 608–640

“Contract Interpretation: What Is It About?” (2009) 31 Syd L Rev 5–51

“Plain Meaning and Commercial Construction: Has Australia Adopted the *ICS* Principles?” (2009) 25 JCL 7–38

“Contract Interpretation and Subsequent Conduct” [2009] NZLJ 125–127

“Interpretation and Rectification: Lord Hoffmann’s Last Stand” [2009] NZ L Rev 431–453

“Remoteness Re-invented?” (2009) 9 OUCLJ 109–139

“Commonsense Principles of Interpretation and Rectification?” (2010) 126 LQR 8–14

“Contract Interpretation in the Supreme Court — Easy Case, Hard Law?” (2010) 16 NZBLQ 229–267

“Deleted Words, Prior Negotiations and Contract Interpretation” (2010) 24 NZULR 277–301

“The Redundant Reliance Interest in Contract Damages” (2011) 127 LQR 23–27

“Common Intention and Contract Interpretation” [2011] LMCLQ 30–50

(With Rick Bigwood) “Lapse of Offers Due to Changed Circumstances: A Contract Conversation” (2011) 27 JCL 222–246

“A Construction Conundrum?” [2011] LMCLQ 428–448

(With Matthew Lees) “Construction Controversy” (2011) 28 JCL 101–121

“The Contract that Neither Party Intends” (2012) 29 JCL 26–46

“The Entire Agreement Clause: Conclusive or A Question of Weight?” (2012) 128 LQR 521–541

(With Matthew Lees) “More Construction Controversy” (2012) 29 JCL 97–119

“The Uncertain Basis of the Postal Acceptance Rule?” (2013) 30 JCL 33–51

“More on Implied Terms” [2013] NZLJ 346–349

(With L Brazier) “A Failure To Perform: But Was It A Breach?” (2013) NZULR 1107–1121

“‘Frustration’ in the Court of Appeal” (2013) 44 VUWLR 593–608

“Refining Rectification” (2014) 130 LQR 83–111

“Construction and Implication: In defence of *Belize Telecom*” [2014] LMCLQ 203–240

“The Lingering Confusion and Uncertainty in the Law of Contract Interpretation” [2015] LMCLQ 406–438

“Repudiatory Breach, Prospective Inability, and *The Golden Victory*” [2015] JBL 530–550

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“Contract Formation and Subjective Intention” (2017) 34 JCL 41–49

“Continuity, Not Change, in Contract Interpretation?” (2017) 133 LQR 546–550

“Some Fallacies Concerning the Law of Contract Interpretation” [2017] LMCLQ 506–536

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“Misrepresentation? Or was it a case for relief on the ground of common mistake?” [2018] NZLJ 13–15

(With Andrew Summers) “Mitigation and Causation of Benefits” [2018] LMCLQ 171–184

“Contract Interpretation and Deleted Words: A Not So Pleasant Diversity of Authority” (2018) 35 JCL (forthcoming)

“Form and Substance in Contract Damages” (forthcoming)

“The Minimum Performance Rule in Contract Damages” (forthcoming)