

Gault on Commercial Law

12/6/15 Update Summary

DEATH OF JUSTICE SIR THOMAS GAULT

Thomson Reuters notes with sadness the death of Justice Sir Thomas Gault on 19 May 2015 aged 76 years. Sir Thomas was a distinguished commercial lawyer and Judge. He was also the consulting editor of this publication from its inception in 1994.

Those wishing to read about Sir Thomas are referred to the item "Sir Thomas Gault, 1938 - 2015" (22 May 2015) on the my.lawsociety website (<http://my.lawsociety.org.nz>). In that article there is also a link to an obituary written by Geoff Adlam of the Law Society.

COMMENTARY

INTRODUCTION TO COMMERCIAL CONTRACTS

In this discursive chapter the sections on frustration and damages have been reviewed which has resulted in the following paragraphs being updated:

- 1A.12.02, 1A.13.01(2)(a),(d),(g), 1A.13.02, 1A.13.03(1),(1)(d), 1A.13.04(2),(3).

COMMERCE ACT 1986

Commentary dealing with the Commerce Commission's Mergers and Acquisitions Guidelines (July 2013) and its Authorisation Guidelines (July 2013) has been written. Accordingly, the following new paragraphs have been inserted:

- CA3A.01, CA3A.03, CA58.03, CA60.01A, CA61.01A, CA66.05, CA67.01A.

Commentary has also been updated at the following locations:

- CAPt3.Intro.03, CA47.11(1),(2A),(4),(5), CA47.12, CA58.02.

FAIR TRADING ACT 1986

Commentary has been updated at the following locations:

- FT2.08(3), FT9.06(5), FT9.30, FT14.10(4), FT43.02, FT43.02(15)(g), FT43.04(2), FT43.05(3)(f), FT43.05(3)(g), FT43A.01(7).

CASES

The above commentary has involved discussion or mention of the following cases:

INTRODUCTION TO COMMERCIAL CONTRACTS

- *Cockburn v CS Developments No 2 Ltd* [2013] NZCA 78, [2013] 2 NZLR 413: 1A.13.03(1)(d).
- *Garratt v Ikeda* [2002] 1 NZLR 577 (CA): 1A.13.02.
- *Marlborough District Council v Altimarloch Joint Venture Ltd* [2012] NZSC 11, [2012] 2 NZLR 726: 1A.13.01(2)(a).
- *Planet Kids Ltd v Auckland Council* [2013] NZSC 147, [2014] 1 NZLR 149: 1A.12.02.
- *Property Ventures Investments Ltd v Regalwood Holdings Ltd* [2010] NZSC 47, [2010] 3 NZLR 231: 1A.13.03(1).
- *Quattro Trustees Ltd v Marjo* [2014] NZHC 3396, [2015] NZAR 186: 1A.13.04(3).
- *The Mamola Challenger* [2010] EWHC 2026, [2011] 1 Lloyd's Rep 47 (QB): 1A.13.01(2)(a).
- *Wagner v Gill* [2014] NZCA 336: 1A.13.01(2)(d).
- *Waihopai Valley Vineyards Ltd v Savvy Vineyards 3550 Ltd* [2014] NZHC 1708: 1A.13.04(3).
- *Westpac New Zealand Ltd v MAP & Associates Ltd* [2010] NZCA 404, [2011] 2 NZLR 90: 1A.13.01(2)(g).

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- *Air New Zealand v Commerce Commission (No 6)* (2004)11 TCLR 347 (HC): CA3A.01.
- *Godfrey Hirst NZ Ltd v Commerce Commission* (2011) 9 NZBLC 103,396 (HC): CA3A.01.
- *Re Atlas Copco South Pacific Holdings Pty Ltd and Lancaster Group Ltd* [2014] NZCC 20: CA66.05(9).

FAIR TRADING ACT 1986

- *Barbalich v Leaders Real Estate (1987) Ltd* [2014] NZHC 3383: FT2.08(3), FT43.05(3)(g).
- *Houghton v Saunders* [2014] NZHC 2229, [2015] 2 NZLR 74: FT43.02(15)(g), FT43A.01(7).
- *Maketu Estates Ltd v Robb* [2014] NZHC 2664: FT43.02, FT43.04(2).
- *Overton Holdings Ltd v APN New Zealand Ltd* [2014] NZHC 1966: FT14.10(4).
- *Red Eagle Corp Ltd v Ellis* [2010] NZSC 20, [2010] 2 NZLR 492, (2010) 12 TCLR 526: FT43.02.
- *Spooner Commercial Ltd v A1 Commercial Services Ltd* [2014] NZHC 2911: FT43.05(3)(f).
- *Wellington City Council v Dallas* [2014] NZCA 631: FT9.06(5), FT9.30, FT43.05(3)(f).

LEGISLATION

The following legislation has been dealt with in the update:

CREDIT CONTRACTS AND CONSUMER FINANCE ACT 2003

This Act was amended, as from 6 June 2015, by the Credit Contracts and Consumer Finance Amendment Act 2014 (2014 No 33). Apart from numerous other amendments the latter amendment Act inserted into the principal Act new Pt 1A (lender responsibilities) and new Pt 3A (repossession of goods under consumer contract). Section 9H as inserted provides for the Responsible Lending Code to come into force by notice in the *Gazette*. It was gazetted on 19 March 2015 with an in force date of 6 June 2015.

CREDIT (REPOSSESSION) ACT 1997

This Act was repealed, as from 6 June 2015, by s 82 of the Credit Contracts and Consumer Finance Amendment Act 2014 (2014 No 33).

CREDIT CONTRACTS AND CONSUMER FINANCE REGULATIONS 2004

These regulations were amended, as from 6 June 2015, by the Credit Contracts and Consumer Finance Amendment Regulations 2015 (LI 2015/57) and by the Credit Contracts and Consumer Finance Amendment Regulations (No 2) 2015 (LI 2015/82).

- The former prescribes matters necessary to the operation of new obligations and responsibilities introduced by amendments to the Credit Contracts and Consumer Finance Act 2003 made by the Credit Contracts and Consumer Finance Amendment Act 2014. (See new regs 4A–4D, 4E, 7A, 7B, 18 and the replaced Sch 2.)
- The latter inserts new regs 19–21 relating to circumstances where s 26A of the Act will not apply.

CREDIT CONTRACTS AND CONSUMER FINANCE (INFRINGEMENT OFFENCES) REGULATIONS 2015

These regulations (LI 2015/83), which came into force on 6 June 2015, prescribe the infringement fee for an infringement offence under the Credit Contracts and

Consumer Finance Act 2003. They also prescribe the form of infringement notices and reminder notices for infringement offences.

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