## CONTENTS

Preface \( v \)

Table of Cases \( xv \)

Table of Legislation \( xli \)

### 1 INTRODUCTION

INTRODUCTION \( 1 \)

Definition of a contract and the law of contract \( 2 \)

SOURCES OF CONTRACT LAW IN THE SOUTH PACIFIC REGION \( 2 \)

Common law and equity in the South Pacific region \( 3 \)

Statute law \( 6 \)

Customary law \( 12 \)

THE RELATIONSHIP BETWEEN CONTRACT LAW AND OTHER AREAS OF LAW \( 18 \)

CLASSIFICATION OF CONTRACTS \( 21 \)

Simple contracts and contracts under seal \( 22 \)

Bilateral and unilateral contracts \( 22 \)

Executed and executory contracts \( 23 \)

Unenforceable, void, voidable, and illegal contracts \( 24 \)

### 2 FORMATION OF AN AGREEMENT

INTRODUCTION \( 25 \)

AGREEMENT \( 25 \)

THE OFFER \( 27 \)

Definition \( 27 \)

Distinction between an offer and other dealings \( 28 \)

Communication of the offer \( 34 \)

Prescription of the mode of acceptance \( 35 \)

Termination of the offer \( 36 \)

ACCEPTANCE \( 40 \)

Definition \( 40 \)

Who can accept an offer? \( 41 \)

Fact of acceptance \( 42 \)

Communication of acceptance \( 44 \)

Revocation of acceptance \( 49 \)

### 3 UNCERTAIN AND INCOMPLETE AGREEMENTS

INTRODUCTION \( 51 \)

VAGUE OR AMBIGUOUS AGREEMENTS \( 51 \)

Severance of a meaningless clause \( 52 \)

INCOMPLETE AGREEMENTS \( 53 \)

Missing terms as to price \( 54 \)

An agreement to agree in the future \( 56 \)

SUMMARY \( 60 \)
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>4</strong></td>
<td>INTENTION TO CREATE LEGAL RELATIONS</td>
<td>61</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>DOMESTIC AND SOCIAL AGREEMENTS</td>
<td>61</td>
<td></td>
</tr>
<tr>
<td>COMMERCIAL AGREEMENTS</td>
<td>63</td>
<td></td>
</tr>
<tr>
<td>REBUTTING THE PRESUMPTIONS</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td>Honour clauses</td>
<td>65</td>
<td></td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>CONSIDERATION</td>
<td>67</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Definition of consideration</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>PRINCIPLES OF CONSIDERATION</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Consideration must move from the promisee</td>
<td>68</td>
<td></td>
</tr>
<tr>
<td>Consideration must not be past consideration</td>
<td>70</td>
<td></td>
</tr>
<tr>
<td>Consideration must be bargained for</td>
<td>73</td>
<td></td>
</tr>
<tr>
<td>Consideration need not be adequate, but must be sufficient</td>
<td>73</td>
<td></td>
</tr>
<tr>
<td>Estoppel</td>
<td>79</td>
<td></td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>ESTOPPEL</td>
<td>81</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>Definition</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>THE DEVELOPMENT OF THE PRINCIPLE OF ESTOPPEL</td>
<td>81</td>
<td></td>
</tr>
<tr>
<td>OBJECTIONS TO THE PRINCIPLE OF ESTOPPEL</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>Promissory estoppel and consideration</td>
<td>83</td>
<td></td>
</tr>
<tr>
<td>Promissory estoppel and the rule in <em>Pinnel's Case</em></td>
<td>87</td>
<td></td>
</tr>
<tr>
<td>FURTHER RESTRICTIONS ON THE PRINCIPLE OF ESTOPPEL</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>Estoppel cannot restrict a statutory discretion</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>CAN A CUSTOMARY SETTLEMENT CREATE AN ESTOPPEL?</td>
<td>88</td>
<td></td>
</tr>
<tr>
<td>CONCLUSION</td>
<td>89</td>
<td></td>
</tr>
<tr>
<td><strong>7</strong></td>
<td>PRIVITY OF CONTRACT</td>
<td>91</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>91</td>
<td></td>
</tr>
<tr>
<td>LIMITS AND EXCEPTIONS</td>
<td>93</td>
<td></td>
</tr>
<tr>
<td>Exceptions which allow a third party to take a benefit</td>
<td>94</td>
<td></td>
</tr>
<tr>
<td>Exceptions which allow liability to be placed on a third party</td>
<td>99</td>
<td></td>
</tr>
<tr>
<td>THE POSITION BETWEEN THE ORIGINAL PROMISOR AND PROMISSEE</td>
<td>100</td>
<td></td>
</tr>
<tr>
<td>SHOULD THE PRINCIPLE BE ABANDONED?</td>
<td>102</td>
<td></td>
</tr>
<tr>
<td><strong>8</strong></td>
<td>TERMS</td>
<td>105</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>EXPRESS TERMS</td>
<td>105</td>
<td></td>
</tr>
<tr>
<td>Terms or representations</td>
<td>105</td>
<td></td>
</tr>
</tbody>
</table>
### 11 MISREPRESENTATION

**INTRODUCTION**  
177

**THE ELEMENTS OF ACTIONABLE MISREPRESENTATION**  
177
- A false statement of existing or past fact  
- The representation must induce the contract  

**THE DIFFERENT TYPES OF MISREPRESENTATION**  
183
- Fraudulent misrepresentation  
- Negligent misrepresentation  
- Innocent misrepresentation  

**REMEDIES FOR MISREPRESENTATION**  
186
- Rescission  
- Damages  
- Summary of available remedies  

**EXEMPTION FROM LIABILITY FOR MISREPRESENTATION**  
191

**FAIR TRADING LEGISLATION**  
191
- The Fair Trading Decree  
- Marshall Islands Consumer Protection Act  
- Solomon Islands Consumer Protection Act  

### 12 DURESS, UNDUE INFLUENCE AND UNCONSCIONABILITY

**INTRODUCTION**  
195

**THE COMMON LAW DOCTRINE OF DURESS**  
195
- What will constitute sufficient pressure?  
- What will constitute illegitimate pressure?  
- Remedies  

**THE EQUITABLE RULES OF UNDUE INFLUENCE**  
200
- Presumed undue influence  
- Actual undue influence  
- Remedies  

**UNCONSCIONABILITY**  
205
- Remedies  

**STATUTORY PROTECTION**  
207
- Cook Islands  
- Niue  
- Fiji Islands  
- Papua New Guinea  

### 13 MISTAKE

**INTRODUCTION**  
211

**THE MEANING OF ‘MISTAKE’**  
211

**MISTAKE AT COMMON LAW**  
211
- Common mistake  
- Mutual mistake  
- Unilateral mistake  

16 DISCHARGE BY AGREEMENT
INTRODUCTION 249
CONTRACTUAL DISCHARGE 249
Bilateral discharge 249
Unilateral discharge 250
Variation 250
Formalities 251
NON-CONTRACTUAL DISCHARGE 252
Estoppel 252
Waiver 252

17 DISCHARGE BY PERFORMANCE
INTRODUCTION 255
PERFORMANCE MUST BE EXACT 255
Entire contracts 256
Time for performance 257
EXCEPTIONS TO THE GENERAL RULE 257
Divisible or severable contracts 257
Substantial performance 258
Tender of performance 259
Acceptance of partial performance 260

18 TERMINATION FOR BREACH
INTRODUCTION 261
FORMS OF BREACH 261
TERMINATION FOR BREACH 262
FORMS OF REPUDIATION 263
Actual breach 263
Anticipatory breach 264
THE EFFECT OF BREACH 265
The manner of election 266
Election to treat the contract as discharged 266
Failure to elect 267
Election to affirm the contract 267

19 REMEDIES
INTRODUCTION 271
LIMITATION 271
Disability 273
Cause of action concealed 273
Acknowledgment or part payment 274