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Articles

Agreed Writing Requirements for Contract Variation

— *J W Carter, John Eldridge and Elisabeth Peden*

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A major disagreement has recently emerged concerning the most common boilerplate provision in commercial contracts. According to the Supreme Court of the United Kingdom in *MWB Business Exchange Centres Ltd v Rock Advertising Ltd*, compliance with a clause that requires writing for variation of the contract is mandatory. A non-compliant agreement is ineffective. This is a departure from the conventional view that the parties may vary the contract without complying with the clause. This paper contends that clauses which regulate the form of contracts by way of 'variation' state agreed rules, rather than mandatory rules, and that matters such as the scope and operation of such clauses are issues of intention which must be resolved by construction.

Rectification Rectified?

— *David McLauchlan*

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This article discusses some issues arising out of the English Court of Appeal's reconsideration of the requirements for rectification of written contracts on the ground of common mistake in *FSHC Group Ltd v Glas Trust Corporation Ltd* [2019] EWCA Civ 1361 in the course of which the court refused to follow Lord Hoffmann's views on the subject in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] AC 1101. The issues to be discussed relate to: the ruling that 'common intention', while usually referring to the parties' actual intention, is to be determined objectively where the written contract sought to be rectified was preceded by a binding contract; the new explanation of the court's well-known decision in *Rose v Pim*; the reinterpretation of the contentious requirement for an 'outward expression of accord'; whether the mere fact that the parties' intentions were identical at the time of the contract is insufficient for there to be a 'common intention'; and whether the rationale for rectification on the ground of common mistake differs from that for rectification on the ground of unilateral mistake.

Towards a Dynamic Construct of the Remoteness Rule in Contract Law

— *Moshood Abdussalam and Charles Rickett*

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This paper argues for an adoption of a dynamic construct of the remoteness rule in contract law. It explains that prevailing models of the remoteness rule need improvement. This is because they superimpose transactional expectations on contractual parties and as such have a propensity to codify commercial practice in ways that neglect the need to understand the joint expectations imputable to contractual parties. This paper identifies three major problems inherent in the prevailing models of the rule as the likelihood of: stifling judicial thought through path dependence; unjustifiably favouring one transactional party over the other; and ignoring the third party effects of the rule.

The Significance of *Adams v Lindsell*

— *Nick Sage*

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The 1818 case of *Adams v Lindsell* states a paradox concerning the formation of contractual agreements. On one existing view the paradox is designed to show that, in a special context such as postal contracting, a full-blown ‘consensus ad idem’ or ‘meeting of the minds’ theory of agreement is impracticable. This article advances an alternative view, on which the *Adams* paradox strikes at a form of methodological individualism in our thinking about agreement that is problematic regardless of whether we seek a ‘meeting of the minds’. Reflection on this version of the paradox requires us to revise our understanding, not just of contracting in the postal context, but of contractual agreement generally.

Book Reviews

Illegality After *Patel v Mirza*

— *Michael Furmston*

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**Reliance in the Breaking-Off of Contractual Negotiations:
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— *David Fung*

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