

# Journal of Contract Law (JCL)

## Volume 36 Part 3

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From Automation to Autonomy: Some Non-existent  
Problems in Contract Law

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The progressive automation of the contracting process has led to a revival of theories that question the validity of contracts formed with the assistance of computers. Purportedly, once statements are not only transmitted but also generated by computers, the latter 'deserve' legal personhood and the transaction resulting from such statements must be attributed to them. Instead of diverting the reader's attention with incomprehensible technical terms and acronyms, this paper focuses on the core principles of contract law and demonstrates not only their continuing validity but also their nearly infinite resistance to technological change. The analytical point of departure is the assumption that no degree of technological sophistication warrants the 'emancipation' of the computer and that all theories built around the ill-defined and decontextualised concept of 'autonomy' must be discarded. Somewhat stubbornly — and with no attempts at legal sensationalism that frequently accompanies technological progress — this paper contends that the deployment of highly advanced computers in the transacting process does not raise any doctrinal problems in contract law, at least when it comes to the process of contract formation.

Squeezing out the Market for Lemons: The Case for Extending  
Unfair Contract Terms Regulation in the Commercial Context

— *Vicki Waye and Jeremy Coggins*

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Freedom of contract has stood as a bastion against extending the mandate for curbing the use of unfair terms beyond consumers, small businesses or for a limited category of exclusion clauses. We explore whether there is a case for extending the ability to review unfair terms in a general business-to-business setting. Our exploration takes the form of a case study that examines the use of terms that cumulatively transfer high levels of project risk from principals to contractors and then to subcontractors in the Australian construction industry. The exploration draws upon the results of a survey administered to construction firms, quantity surveyors and lawyers advising construction firms.

When it comes to risk transfer in the Australian construction industry the survey demonstrates that there may be a 'market for lemons'.

**Unenforceable, Unformed and Invalid Oral Land Sale Contracts:  
A Comparative Analysis of the Chinese 'Statute of Frauds'  
and the Equivalent Legislation in Common Law Jurisdictions**  
— *Wei Wen*

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This article investigates and compares the legal consequences for failure to comply with the statutory requirement of writing for oral land sale contracts across England, the United States, Australia and China. Among those jurisdictions, the legal consequences can be divided into two categories, that is, oral land sale contracts are procedurally defective (unenforceable) or substantively defective (not formed or invalid). In each jurisdiction the consequences are decided by the particular legal nature of the writing requirement. The article aims to provide a more informed understanding of the statutory requirement of writing for contracts, draw a clear line between contractual formation and validity, and justify the remedies that address oral land sale contracts across the jurisdictions. The article also identifies two problems of China's Contract Law (the most important contract statute) and recommends a legal reform. This could be included in China's future uniform civil code that is currently being reviewed by China's supreme legislature.

**'Plain Sailing'?: Damages for Distress under the ACL and  
the Performance Interest in Contract**  
— *Elise Bant, Katy Barnett and Jeannie Marie Paterson*

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The Civil Liability Act 2002 (NSW) (CLA) provides that damages for non-economic loss for 'personal injury' are limited to cases where the severity of the loss is at least 15 per cent of a most extreme case. In *Moore v Scenic Tours Pty Ltd* the High Court of Australia held unanimously that damages for disappointment and distress arising from failure to deliver the promised benefits of a holiday cruise tour contract are not precluded as damages for 'personal injury' by the CLA. In this respect, the decision represents a welcome clarification of the law. However, as this article explains, the case raises other, important issues of remedy, including the appropriate treatment of a powerful and novel statutory remedial regime, remoteness principles and the elusive performance interest in contract.

## **Book Reviews**

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