

Preface

The text has been thoroughly revised line by line in the interest of accuracy, brevity and clarity. In view of the lapse of time I have omitted the Appendix on the historical developments leading up to *Hedley Byrne* and most of the Report of the Law Reform Committee which lead to the Misrepresentation Act 1967.

There have been considerable developments in the law relating to the effect of bribery, the measure of damages in deceit and under the MA 1967, and generally in the action for negligent misrepresentation. Some questions have been authoritatively settled by the decisions referred to above. Others appear settled by decisions of the High Court or Court of Appeal such as the effect of post-contractual fraud, and the effect on later underwriters of misrepresentations to the lead underwriter. Others remain unsettled and there are new ones. These include whether damages in deceit are those which flow from the transaction or the inducement, the measure of damages under the MA 1967, the availability of the defence of contributory negligence in such an action, the causative relevance of misrepresentations which are a minor or confirming cause, the efficacy of exemption clauses in commercial contracts covering misrepresentation, the requirements for imputed election, liability for paternity fraud, and any requirement for proof of diligence in actions to set aside a judgment for fraud.

In 1815 Savigny wrote (118 LQR at 151) that the purpose of legal scholarship was the adaptation and rejuvenation of inherited legal materials, creating an indissoluble community with the past, and fostering organic legal development. I believe that this is still true today. In *Rowling v Takaro Properties Ltd* [1988] AC 473, 501 Lord Keith wrote:

‘ . . . it is necessary, before concluding that a duty of care should be imposed, to consider all the relevant circumstances . . . Their Lordships consider that question to be of an intensely pragmatic character, well suited for gradual development but requiring most careful analysis. It is one upon which all common law jurisdictions can learn much from each other; because, apart from exceptional cases, no sensible distinction can be drawn . . . between the various countries and the social conditions existing in them. It is incumbent upon the courts in different jurisdictions to be sensitive to each other’s reactions . . . ’

On a similar note Lord Goff, writing extra judicially in ‘The Future of the Common Law’ (1997) 46 ICLQ 745, 748 said: ‘Comparative law may have been the hobby of yesterday, but it is destined to become the science of tomorrow.’ If this is true of comparative civil law, comparative common law should be an a fortiori case. This edition, like its predecessor, attempts to facilitate these objectives.

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25 February 2014

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Key to abbreviations

For ease of reading, case names are frequently referred to in abbreviated form. For those cases where the abbreviation is not taken from the first word in the name, the list below will assist readers in finding the complete reference in the table of cases. The underlined word is the preferred abbreviation.

Western Bank of Scotland v Addie
Commercial Bank of Australia Ltd v Amadio
County NatWest Bank Ltd v Barton
National Commercial Banking Corp of Australia Ltd v Batty
Pacific Associates Inc v Baxter
Barclays Bank plc v Boulter
Smith v Eric S Bush and Harris v Wyre Forest DC
TSB Bank plc v Camfield
Solo Industries UK Ltd v Canara Bank
The Chevron North America
New Brunswick and Canada Rly and Land Co v Conybeare
Australian Steel & Mining Pty Ltd v Corben
Mutual Life & Citizens Assurance Co Ltd v Evatt
Re Metropolitan Coal Consumers' Association, Karberg's Case
Central Rly Co of Venezuela v Kisch
West London Commercial Bank v Kitson
R Lowe Lippmann Figdor & Franck v AGC Ltd
Rich (Marc) & Co AG v Bishop Rock Marine Co Ltd
Bristol and West Building Society v Mothew
Barclays Bank plc v O'Brien
Uxbridge Permanent Benefit Building Society v Pickard
Re Reese River Silver Mining Co
Law Society v Sephton & Co
R Leslie Ltd v Sheill
William Sindell plc v Cambridgeshire CC