

## Preface

This text comprises six chapters.

Chapter 1 compares the two competing contentions as to the meaning of an order of specific performance. Chapter 2 examines the requirements for the making of an order for specific performance. In particular, Chapter 2 discusses the continuing and profound impact, on relevant subsequent judicial pronouncements in Australia, of the intricate but recondite judgment of Dixon CJ in *Peter Turnbull and Company Proprietary Limited v Mundus Trading Company (Australasia) Proprietary Limited*, being a judgment of controlling influence in Australia, albeit not in England (as manifested in the speech of Lord Ackner in *Fercometal SARL v Mediterranean Shipping Co SA*).

Chapter 3 investigates examples of contracts of which courts, in the exercise of their equitable jurisdiction, would refuse to order to be specifically performed. In the context of the injunctive enforcement of express negative stipulations in contracts of personal service, it is noted that Lord St Leonards LC's quaquaversal stance in *Lumley v Wagner* has spawned a host of conflicting judicial attitudes on that slippery terrain.

Chapter 4 deals with the doctrine of part performance. It appears that, not infrequently, the courts, in explicating the doctrine of part performance, have incongruously used the terminology appropriate only to the enunciation of the doctrine of proprietary estoppel. Furthermore, the decision of Holland J in *Ogilvie v Ryan* rather suggests that the doctrine of proprietary estoppel may have superseded the doctrine of part performance.

Chapter 5 examines the alternative remedies of specific performance and common law damages. Chapter 6 deals with the elusive (and sometimes illusory) defence of hardship to actions for the specific performance of contracts.

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My use of masculine pronouns in this text, which is not the general policy of the publisher, is made solely as a matter of convenience.

The law stated in this text is based on materials accessible to me as at 1 May 2013.

Denis SK Ong  
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