

# BOOK REVIEW

*TEACHING CONTRACT: MY WAY*

(THOMSON REUTERS, 2024) VOL 1, ISBN 9781990018640, 519 PP + XV; VOL 2, ISBN 9781991304391, 610 PP + XIII.

BY DAVID McLAUHLAN

The first thing I looked for when cracking the spine on my pristine copy of David McLauchlan's *Teaching Contract: My Way* (the first volume, that is) was a trigger warning. For I sensed a substantial risk that generations of David's former students of contract law — myself included<sup>1</sup> — might be re-traumatised by what could lie in the pages that constitute this impressive two-volume, 53-chapter, 1100-page work. Indeed, one thing that does inhabit those pages is a pellucid reminder of what a genuinely 'Socratic' style of legal education looks like. It is a style of legal education that many, if not most, of us who studied undergraduate law in New Zealand in the 1970s, 1980s or 1990s (and perhaps, to diminishing extent, beyond) will recall only too well. Reading the chapters of this impressive collection of lectures was, at least for me, like falling back into (or out of) a scene from Jay Osborn's/James Bridges' *The Paper Chase*, and David McLauchlan is New Zealand's very own incarnation<sup>2</sup> of Professor Charles W Kingsfield, played in the film by the acclaimed British-American actor John Houseman.

I write in jest, of course, about a 'trigger warning' being necessary. Those who read these two volumes — especially former students of David — will surely be rewarded. I loved them. It is, in my experience, rare for a highly experienced and successful legal academic to pen a retrospective on their approach to teaching. Legacy typically resides in the discipline scholarship that one leaves behind, and one's efforts and achievements in the classroom tend to be remembered only by students who experienced them for the window of time they happened to be enrolled in one's courses during law school. These volumes are, in my opinion, very welcome and substantial additions to the bodies of both discipline knowledge and pedagogy. Not only is David an internationally renowned scholar of contract and commercial law, his research always fed directly into his teaching — something that is patent for any reader of these fine

---

<sup>1</sup> My brief 'Victim Impact Statement' is available for reading here: Rick Bigwood, 'Ill-Gotten Contracts in New Zealand: Parting Thoughts on Duress, Undue Influence and Unconscionable Dealing — Kiwi-Style?' (2011) 42(1) *Victoria University of Wellington Law Review* 83, 83–4. This is in a special issue of the *Review* published in honour of David.

<sup>2</sup> A much friendlier incarnation, I hasten to add.

volumes to see.<sup>3</sup> The fact that David's lectures, and these books, are presented in the style of Christopher St Germain's 16<sup>th</sup>-century work, *Doctor and Student: Or, Dialogues between a Doctor of Divinity and a Student in the Laws of England*, is testament to David's commitment to the dialogic nature of legal education, and a permanent reminder to us all of what it was like to sit in his classroom.<sup>4</sup> While perhaps terrifying at the time — although, like most of us, he probably softened with age — there would be no former student of David alive who does not appreciate the deep-learning experience that defined his contract-law lectures.<sup>5</sup> While the conversations between professor and student in these volumes are detailed, thorough and rigorous, there is often a light-hearted tone to the exchange, commensurate with the interpersonal rapport that one would hope characterises a genuine learning partnership.

*Teaching Contract: My Way* functions on a number of levels: as a memoir, as a teaching manual (resource) for those new (and indeed old) to law teaching (including beyond the immediate field of contract), and as a substantial body of contract-law learning and scholarship in its own right. In the Preface to Volume 1, David explains that, through this work, he 'seeks to explain and illustrate [his] approach to teaching the law of contract', primarily by 'reproducing the text of a selection of classes [he has] conducted over 50 years of teaching [contract law]'.<sup>6</sup> The classes (or lectures) comprising each of the chapters serve not only to educate students in the substantive principles of contract law, but also — just as important — to infuse them with the analytical and critical-reasoning skills that are part and parcel of excellent lawyering. But the audience for these lectures is not restricted to the undergraduate law student. On the contrary, the blurb on the back of each volume describes the work's readership as broad: 'from students early in their legal development to members of the profession who need a refreshed reference to the law of contract'. I would personally commend these volumes most highly to academics new to law teaching — especially, but not

---

<sup>3</sup> This is, no doubt, a self-conscious strategy on David's part. In his Foreword, Sir Stephen Kós refers to the display, next to David's office door, of Harold J Berman's observation capturing perfectly the 'teaching-research nexus' of higher education: '[I]f a scholar is not a teacher, his scholarship will be sterile; ... if a teacher is not a scholar, his teaching will be superficial'. See Sir Stephen Kós, 'Foreword' in David McLauchlan, *Teaching Contract: My Way* (Thomson Reuters, 2024) vol 1, ix, citing Harold J Berman, *Faith and Order: The Reconciliation of Law and Religion* (Wm B Eerdmans, 2000) 323.

<sup>4</sup> The professor in the dialogue is clearly David; the hypothetical student, I suspect, is idealised and fictive — certainly like none I have ever encountered in my own classroom (although, to be fair, a handful have approximated him or her). I know for a fact that David did not model his student on me!

<sup>5</sup> David has always aimed for an in-depth knowledge of select (core) areas of subject knowledge — supported by a selection of unedited core readings — rather than a superficial coverage of the whole. Whether this approach would satisfy the legal practitioner admission boards of some states or territories of Australia is an open question.

<sup>6</sup> David McLauchlan, *Teaching Contract: My Way* (Thomson Reuters, 2024) vol 1, xiii ('Volume 1').

exclusively, in the field of contract law.<sup>7</sup> Not only do the chapters model David's outstanding scholarship and pedagogy — something to which all great teacher-scholars should aspire — each also concludes with a useful bank of tutorial exercises that show how the material discussed in the lectures might be used by the teacher to test and develop understanding, to practice critical reasoning skills, to otherwise facilitate productive engagement in tutorials or seminars, or indeed to fashion challenging examination questions come assessment time.

Turning to structure and coverage, the intellectual division of labour across the dual volumes of *Teaching Contract: My Way* is that the first volume comprises select lectures falling mainly in the area of 'contract formation', while the second volume covers — again, in a select fashion — the rest of the prescribed syllabus for contract law: misrepresentation and breach of contract, contract interpretation, contractual mistake (including rectification), incapacity and unconscionability, and damages for breach of contract. As might well be expected, given the nature and purposes of the work, in Chapter 1 ('Introduction'), David sets the scene by explaining his basic approach to the teaching of contract law — his educational philosophy and aligned practices, if you like. He presents a general 'overview' of the law of contract that he delivers to his students at the outset of the course, which overview then frames or contextualises the 'Socratic' style of learning that follows as subsequent lectures burrow deeper into the detail of the materials that have been set as advance readings. He also contextualises his overview of the subject matter by explaining the 'evolution' of modern contract law: from its roots in the political, economic and social fashions of the Victorian era, to the evolution of the more 'tort-like', justice-oriented impositions that characterise many aspects of, or operations within, the modern contract law of the past 50 years (or so), especially outside the purely commercial or business sphere of human existence and interchange.

In terms of the 'detail' that then follows, I found myself familiar with virtually all of the cases that David selected for inclusion as chapters (lectures) in his dual volumes, although some of them perhaps — well, doubtless — not to the same depth as we see revealed in the chapter(s) that have been dedicated to each. He discloses *Jones v Padavatton*<sup>8</sup> (vol 1, ch 14) to be one of his favourite cases to teach, and so we at least share that in common. For I agree with David that that is a case that 'not only provides an excellent vehicle for introducing students to several core principles of the law of contract and other legal concepts but also for developing careful reading skills, skills of factual and legal analysis, as well as techniques of legal argument and judicial reasoning'.<sup>9</sup> And in those respects the chapter embodies a masterclass, delivered, the reader is told, over a full three

---

<sup>7</sup> I respectfully agree, therefore, with Sir Stephen Kós's observation in his Foreword that '[t]he work's influence on a generation of teachers of law should be profound': *ibid* xi.

<sup>8</sup> [1969] 1 WLR 328.

<sup>9</sup> *Volume 1* (n 6) 239.

weeks of nine one-hour classes. This is nothing if not a deep-learning experience for the students in those classes, most of whom, one would hope as a result, managed ultimately to prevail in their ‘unequal struggle against the [examiner, David]’!<sup>10</sup>

Another great case in the contract-law teacher’s arsenal is *Pao On v Lau Yiu Long*,<sup>11</sup> to which David dedicates Chapter 17 of Volume 1. I taught this case myself for many years, as it so richly covers multiple aspects of contract formation, variation and vitiation, but I eventually gave up after just one too many students complained that the case was ‘too hard’. Perhaps I was just ‘too lousy’ at teaching it, but reading David’s chapter (lecture) — as an informed witness to a conversation about the case between David’s professor and the professor’s gifted and diligent student — has made me question the wisdom of my surrender. David manages so masterfully to milk the authority for all its educational worth, as well as weaving in modern developments in the field of economic duress (*Times Travel (UK) Ltd v Pakistan International Airline Corp*)<sup>12</sup>. The chapter reinforces the reality that those who read deeply and carefully are rewarded appropriately. I could say that about all of the chapters in these weighty volumes.

As will be apparent to the reader of this book review by now, I am a fan of *Teaching Contract: My Way*. It is a unique and valuable resource to students and teachers of the law alike. I might end, however, on a slightly pessimistic note. As much as one might yearn for the educational past captured by what is described throughout this collection of lectures, those of us who are still teaching struggle daily with realities that now challenge the kind of teaching approach that David brought to his own classroom for over 50 years. I am thinking here of such threats to genuine learning (as a biological process) as: the attention-span crisis evident among many, if not most, of our law students; the diminishing attendance at classes by students who can rely instead upon university-mandated recordings of lectures (not to mention the imperative that most students face nowadays of having to balance attendance at university with paid employment to make living possible); the failure by many, if not most, law students to do the assigned readings; and, of course, and relatedly, the performance of essential learning tasks by Gen AI rather than the student. The prevailing universities are not, in my experience, environments where the conditions that make deep learning possible can readily be coerced against the student’s will or secondary-school-shaped predispositions, preferences or habits. But students can, it seems to me, be incentivised to maximise the opportunities afforded to them by a modern legal education, and part of that incentivisation requires that they be persuaded to see the long-range benefits to them of a rigorous pedagogical experience such as that portrayed in the pages of *Teaching Contract: My Way*. In my view, the subject work

---

<sup>10</sup> This is a phrase taken from Salmon LJ’s judgment in *Jones v Padavatton* itself: (n 8) 334.

<sup>11</sup> [1980] AC 614.

<sup>12</sup> [2023] AC 101.

travels an impressive distance in putting that persuasive case before the modern undergraduate law student, and of course before their teachers as well.

*Professor Rick Bigwood  
Academic Dean and Head of School  
Sir Gerard Brennan Chair in Law  
TC Beirne School of Law  
The University of Queensland*