

## Week 1 –

### Contract Law Framework

#### Elements of Formation

- Offer & acceptance
- Consideration
- Certainty
- Intention

#### Matters Affecting Formation

- Privity
- Formalities
- Capacity

#### Contract Terms

- Express & implied
- Exclusion clauses

### Classical View of Contracts

- Is an expression of joint will
- Voluntary obligations, not imposed by courts
- Terms considered respected, however court will reluctantly interfere
- Values:
  - Reliance
  - Free will over government intervention
  - Laissez-faire style approach

### What is a contract?

- A legally enforceable promise or agreement which reflects mutual promises
- Must be supported by consideration → one party must give up something for the contract
- Agreement is the starting point for the contract
- Promise represents the agreement between two parties
- **not** required to be recorded in writing for common law
- can be oral, written, or partly oral and partly written (generally all such contracts are enforceable)
- formal writing requirements imposed by legislation for particular types of contracts such as sale of land contracts, sale of motor vehicles, residential tenancies

### Why do we have contract laws?

- To guarantee certainty and outcomes
- To provide order (to business transactions)
- Enables enforcement of agreements
- For each party to know what their rights and obligations are

### What is “Private Law”?

- The law of obligations → that is the obligations owed by persons to one another: contract and tort (unjust enrichment, certain equitable principles etc.)
- Law of obligations relates to obligations placed on particular persons – cf. law of property which applies to all members of society in relation to ‘things’
- “Legal Personality” – includes bodies corporate

### **Contract & Other Private Law**

- Contractual obligations are willingly self-imposed, while other private law obligations are imposed by law

### **Contract v Tort**

- Contractual obligations are “self-imposed” – duties are owed to the other party/parties (and are determined by those parties in the contract)
- Tort: duties to avoid committing torts are owed to everyone (universal duty, to the world at large, don’t need a contract with them, can be more general)
- Contract – strict liability (breach not about intention, if it happens, you are responsible and that is all that matters)

### **Statute**

- A number of statutes impose obligations that affect the formation, performance and enforcement of contracts. Some statutes also regulate the content of contract terms
  - o E.g. Australian Consumer Law (ACL – formerly TPA): prohibits misleading and unconscionable conduct and makes void unfair consumer contract provisions
  - o Sale of Land Act
- Imposed by statute on contracting parties

### **International Influences**

- Internationalisation is a significant force
- Australia has ratified the Vienna Convention – establishing standards for international contracts for the sale of goods (a set of uniform rules)
- *UNIDROIT* Principles of International Commercial Contracts 2010 (UPICC) – a code of principles governing international commercial contracts 0 intended to provide balanced and compressive rules that are ideal for international commercial transactions

### **Features of Australian Contract Law**

- Australian social and cultural ‘distinctiveness’ (has its own flavour)
- Importance of English decisions
  - o London as centre for commercial litigation
  - o Relationship with Europe (not apparent in AUS)
- Leading Australian cases influenced by English decisions
  - o Not binding on Australian courts
- US decisions are state by state, so they are not binding in AUS

### **Classification of Contracts**

- Contracts can be categorised according to:
  - o Form of contract: simple and formal contracts

- Formal contracts are deeds which need to be signed, sealed and delivered but don't require consideration
  - Whether one or both parties are bound: unilateral or bilateral
- Effect of contract
  - Void: contract has no effect
  - Voidable: valid, but one party has the option to rescind the contract
  - Unenforceable: valid, but cannot be enforced
- Status of contract
  - Executed
  - Executory → parties enter into the contract now but the obligations arise in the future, there is no obligation to perform yet