**Topic 4A: Certainty and Completeness**

**Completeness:**
- at the very minimum an agreement must contain all essential terms
- i.e. in the contract for the sale of land the essential terms include, those that identify the parties of the contract, the land in subject and the purchase price
- If an agreement has been executed the courts are less likely to find it incomplete or uncertain: *G Percy v Archital*
  - Incompleteness can be overcome if there is agreement on some mechanism for determining one or more terms of the contract, leading case: *Booker Industries v Wilson Parking*
    - parties entered into a lease with an option for a further term to the tenant at the end of the initial term
    - option term had the exception of rent which was to be mutually agreed by the parties
    - parties could not agree on the new rent
    - Landlord claimed that the option was thus void on grounds of incompleteness as to an essential term, namely, the rent
    - High Court held that the option was not incomplete because of the mechanism to determine the rent that had been agreed upon by the parties
    - the option was valid because the outstanding term, the rent, could be determined without the need for any further agreement by the parties

**Certainty:**
- one terms are established, then determined to be uncertain – if they are uncertain then the agreement is void
- the fact that the term may be ambiguous does not mean it is uncertain: *McDermott v Black*
- *Palmer v Bank of NSW:*
  - Smith (S) verbally promised Palmers (P) that if they took up residence in his house and cared for him the remainder of his life his property would be left to them
  - P cared for S until his death
  - Before his death they had converted the verbal promise into a written agreement which also stated that they were to pay all normal expenses on the property except for rent
  - In consideration S agreed upon his death the property would be turned over to P with no encumbrance
  - trial judge held that the original agreement was without legal effect – on the basis that the terms to look after him and live in his home was too uncertain to be treated as a promise in law
  - this decision was overturned by the Court of Appeal and considering the circumstances of the case it was held that ‘It is a contract to render services of a sufficiently definite character as to constitute a legal obligation’
- if there is uncertainty as to some incidental or non-essential matter the court can sever the relevant provision and let the remainder of the contract stand
- *Whitlock v Brew:*
  - contract entered into for the sale of land that included a petrol station
  - a special condition of the contract stipulated that the purchaser would grant a lease of the petrol station to an oil company ‘on such reasonable terms as commonly govern such a lease’
- High Court held that the condition was uncertain because there was no evidence of such commonly used ‘reasonable terms’
- furthermore this condition could not be severed with the result that the contract was void for uncertainty

**Agreements subject to contract:**

- in cases where parties have reach an informal agreement issues arise as to whether an enforceable contract is created by the earlier informal agreement or only by the execution of the formal contract
- **Masters v Cameron:**
  - where parties who have been in negotiation reach agreement upon terms of a contractual nature and also agree that the matter of their negotiation shall be dealt with by a formal contract, the case may belong to any of three classes:
    1. parties intend to be legally bound to performance of the terms in final agreement, but at the same time propose to have the terms restated in a form that is more precise
    2. may be a case in which the parties have agreed upon all terms and intend no departure from or addition to that which their agreed terms express or imply but nevertheless a conditional term exists upon execution of a formal document
    3. the intention of the parties is not to make a concluded bargain at all unless and until they execute a formal contract
- **Masters Case** was in the third category were parties signed a memorandum relating to the sale of a land that was subject to ‘the preparation of a formal contract of sale’ M then paid a deposit and made some minor structural alterations to the property. High Court held that the memorandum did not create an immediately enforceable contract the words of the term creates a ‘prima facie overriding condition’.
- fourth category added where ‘recognition by the parties that the existing terms are to be binding “immediately and exclusively” thus if the court finds that not all the terms of the initial agreement are settles there is no agreement within the fourth category

**Topic 4 b: Requirement of Writing p.140**

- At common law there is no requirement for any contract to be in writing
- Difficulties of proving existence of an oral contract *Commonwealth Bank of Australia v Serobian:* court must feel an actual persuasion of its occurrence or its existence …any consensus reached was capable of forming a binding contract and was intended by the parties to be legally binding.’
- *Agricultural and Rural Finance v Gardiner:* statutory provisions that require the contract to be evidenced in writing are enforceable to any subsequent agreement to vary the contract. Therefore a later oral contract varying an enforceable contract for the sale of land is ineffective, original contract remains enforceable.

**Contracts of Land:**

- **Rationale:**
  - *Actionstrength Limited v International Glass Engineering:* purpose of the statute was precisely to avoid the need to decide which side was telling the truth about whether or not an oral promise had been made
Contracts covered by legislation:
- Legislation refers to the sale or disposition of land.
- Upjohn J in Robshaw Brother Ltd v Mayer: stated that the contract for the sale of land was ‘a sale or purchase in consideration of money’
- In Law of Property Act 1884 (SA) s7 defines ‘disposition’ as including ‘a conveyance and also a devise, bequest or an appointment of property contained in a will.

Requirements of Legislation:
- Contract to be enforceable is to be recorded in a written contract or ‘note or memorandum’ doesn’t have to be a customary can be a simple letter passing between the parties: Thirkell v Cambi can also be a receipt
- If there are many documents the signed document was make reference to other documents involved Thomas v McInnes by Griffith CJ

Required terms:
- The contract must contain all three essential terms (1) there must be a description of the parties involved (2) contract must set out the price or consideration for the land or interest in land [court will not imply a term to set a reasonable price in the absence of a stipulated price] (3) contract must describe the land or interest in land: Hall v Busst
- Specific terms that may also be additionally essential:
  1. date for the completion of contract
  2. payment of the purchase price is to be by instalments
  3. chattels are included as well as land for an all-inclusive price
  4. party’s obligation to be guaranteed by a third party

Acknowledgement of the contract:
- English Court of Appeal held in Triverton Estates v Wearwell there must be acknowledgment of agreement in writing.
- Australian cases Pirie v Saunders: acknowledgement can be expressed or implied and courts have been easily satisfied that acknowledgement exists.

Signature:
- Signature must be that of the party ‘to be charged’
- Most common method of signing is by the person’s usual hand-written signature: Firstpost Homes v Johnson
- Welsh v Gatchell: Miller J states ‘a person may sign by using his or her full name, or last name prefixed by initials, or initials only …need not be handwritten; stamped name is sufficient.
- J Pereira Fernandes SA v Mehta: in relation to emails it was held that the insertion of the person’s e-mail address by an internet service provider after the document has been transmitted, absent evidence to the contrary, is not a signature’
- Golden Ocean v Salgaocar Mining: contrastingly if the email begins with the senders name then it is regarded as signed
- Welsh v Gatchell ‘cannot qualify as a signature because it was not affixed to the particular writing with the intention that by adding their name the sender would adopt its content’
- There is no need for the both parties to sign the document
- The legislation only requires the person against whom enforcement action is sought to have signed the document for example, a purchaser who has not signed any document can enforce a contract against a vendor who has signed
given that there was clear intention that they both didn’t have to sign the contract. **Neil v Hewens**

- In the contract for the sale of land from X to Y, the making of the contract only gives rise to an interest in land in favour of Y that is recognised and protected in equity.

**Enforcement in equity of contracts unenforceable at law:**

- Equitable principles recognise two situations in which a contract that does not comply with the statutory writing requirement will, nevertheless, be enforced by an order for specific performance
  - (1) if the reason for non-compliance is fraud on the part of the defendant, the contract will be specifically enforceable
  - (2) if the elements of the doctrine of part performance are established
- **Fraudulent:**
  - A defendant, to an action of enforcement of an oral contract involving land will not be able to raise the absence of writing as a defence if the consequences of such a defence would be to perpetuate fraud on the plaintiff
  - **McCormick v Grogan** ‘an Act of Parliament shall not be used as an instrument of fraud’.
- **Doctrine of part performance:**
  - **Actionstrength v International Glass:** held that an unenforceable contract could become enforceable depending on what the plaintiff did afterwards based on two reasons (1) estoppel – if one party allows the other to prove on the faith of the agreement that it is valid then the first party can’t go back and assert that the contract is unenforceable (2) actions by plaintiff – proves the existence of the contract in a way that would substitute for the note or memorandum.
  - In order to grant equitable relief based upon the doctrine of part performance a court will need to be satisfied that the ‘acts of part performance are circumstances that make it unconscientious for a defendant to rely upon the statutory defence of lack of writing’: **Masterton Homes v Palm Assets**
  - For the doctrine to apply three matters must be established:
    1. **First**, the acts done must be done by the party seeking to rely on the doctrine, or his or her authorised agents: **McBride v Sandland**
    2. **Second**, Must be shown that these acts done by the plaintiff were permitted, not necessarily required, to be done by the oral agreement: **Regent v Millett**
    3. **Khoury v Khouri, Bryson JA,** ‘Acts of part performance have been almost universally related to possession and use or tenure of the land itself …They have not necessarily been acts which the contract requires to be done.’
    4. **Third**, the acts done must be unequivocal, and in their own nature referable to a contract of the general nature of the alleged oral agreement: **McBride v Sandland**, look at the acts then judge the terms of the agreement.
  - A payment of money cannot be an act of performance simply because the payment of money is not referable to any particular type of contract, unless the payment of money is combined with other factors
  - **Steadman v Steadman Lord Salmon** states ‘nevertheless the circumstances surrounding a payment may be such that the payment becomes evidence not only of the existence of the contract under which it was made but also of the nature of the contract’. It is matter of fact not law.

**Topic 4 c: Capacity p.156**
Minor:

- Age of majority by legislation is 18 years *Minors (Property and Contracts) Act 1970 (NSW)*
- *Life Insurance Act 1995 (Cth)*: ages 10-16 enter into policy at age 16 has the same capacity of 18 year olds.
- *s 28B Property law Act (Vic)* explains what contracts are valid to minors and binds them legally; any reason under this legislation can only be set aside by misrepresentation, duress, mistake, unconscionability or undue influence at common law or pursuant to statute.
- Under NSW legislation if a contract is made with a minor it is then voidable at the minor’s option unless it is a contract for *necessaries* or a beneficial contract of service in which case the contract is valid

Necessaries:

- Includes those things necessary to the maintenance of the minor such as things necessary to sustain the minor’s life i.e. food, clothing, shelter. *Bojczuk v Gregorcewicz [1961]*
- With respect to sales of goods *Sales of Goods Act 1923 (NSW)* s7: ‘goods suitable to the condition in life of the minor …and his actual requirements at the time of the sale and delivery’
- *Bojczuk v Gregorcewicz [1961]:*
  - Defendant under the age of majority living in Poland
  - Plaintiff lent money to defendant to live in Australia; defendant never repaid the loan
  - Plaintiff sued for recovery, defendant pleaded infancy
  - Court held that this was not a contract of ‘necessaries’ because the defendant already and accommodations and employment in Poland so no need to go to Australia
  - Ross J: ‘did not come to Australia for the purpose of providing herself with the means of self-support’
- Receiving tuition or instruction have been seen as necessary contracts that a minor is bound by *Roberts v Gray* p.158

Employment agreements with Minors:

- At common law minors bound to employment contracts where they are to minor’s advantage and or benefit as long as the contract does not contain any prejudicial clauses outweighing the benefits: *Roberts v Gray* if not beneficial = not binding + voidable
- *De Francesco v Barnum*
  - Minor contract with plaintiff as an apprentice for seven years
  - No obligation on the plaintiff to provide employment
  - Plaintiff had the right to terminate but not minor
  - Minor left with defendant, plaintiff sued defendant for tort of inducing breach of contract
  - Court held in favour of the defendant *Fry J* that the contract was one-sided and unreasonable and cannot therefore not be considered valid.
- *(COMPARED WITH)* *Hamilton v Lethbridge:*
  - High Court found that a contract of employment was binding upon a minor notwithstanding the presence of a restraint of trade clause within the agreement
  - L (minor) entered into employment contract with H (solicitor) for a clerkship
• Minor was not allowed to practice as a solicitor within 50 miles of where H practiced
• Minor graduated and commenced practiced within the stipulated area
• H applied for an injunction against L
• High court in plaintiff’s favour, the contract was binding upon the minor with the restraint of trade

**Contracts acquisition/disposition of property**

- not specifically enforceable if there is a lack of mutuality (under Specific Performance 31.77)

**Minors (Property and Contracts) Act 1970 (NSW):**

- definitions s6
- s18 lack of necessary understanding of the minor does not make the civil act legally binding
- s19 minor bound to civil act that is beneficial to minor (defined beneficial at common law)
- s20 acquisition of property
- s21 minor makes reasonable gifts
- s23 investment in government securities
- s26 (1) gives the court the authority to grant minor the power to participate in a civil act and the court can rescind or vary an order (beneficial to the minor) that has been made under this section
  - granted under s26 the civil act is binding upon the minor rescission or variation will not affect the validity of this contract

**Mental Disability**

- Mental Health Act 1990 (NSW): contract with a person legally declared insane is void
- Contracts for the purchase of necessaries maybe binding under Sale of Goods Act 1923 (NSW) ‘necessaries’ sold and delivered to person who because of mental incapacity/drunkenness can’t make the contract the person must pay a reasonable price for those ‘necessaries’ (defined as goods suitable to the requirement and position in life of that person and to actual requirements at the time of the sale and delivery)
  - The court will not enforce a contract against a party who ‘lacks such soundness of mind as to be capable of understanding the general nature of what [he]’ and the other party knows of this lack of mental capacity: *Gibbons v Wright*
    - Imperial Loan Co Ltd v Stone: the defendant who seeks to avoid a contract on the ground of his insanity must (1) plead/prove his mental incapacity and (2) the plaintiff had knowledge of that incapacity upon making of the contract
    - *Crago v McIntyre*: the mental incapacity must be such to deprive its victim of an understanding of what he is signing so that his mind cannot go with his signature
  - (Contract unfair or unreasonable does not allow party to escape contractual obligations on the grounds of mental incapacity) *Hart v O’Connor:*
    - Aged farmer sold farm to defendant on unfair terms.
    - Farmer died beneficiaries sought to rescind
    - Defendant did not know of the farmer’s lack of mental capacity
On the issue of unfairness the court held that the party had to establish 'unconscionable behaviour': a contract is not voidable just based on 'unfairness' even if not of sound mind unless the plaintiff proves that such unfairness amount to equitable fraud.