

Law of Contract A

Lecture 1

Contracts:

- **Based on enforcement**
 - Enforce a promise made through remedies
- **Two main types of remedies:**
 - Coercive (performance)
 - Specific performance/injunction
 - Compensatory (money)
- Self-assumed promissory obligation

Two types of contracts

- **Simple contracts**
- **Deeds**
 - Contracts but the ceremony to achieve deed status is different
 - Must be witnessed by at least 1 person whereas simple contracts don't
 - Follow a prescribed statutory formula – Part 6 (1) Property Law Act

Simple contract formation

- **How do parties assume the status of contracting parties?**
 - Contracts are usually assumed
- **What must be satisfied for something to become a legal contract:**
 - Contractual capacity
 - A minor cannot enter into a contract – void by they want to cancel it, but it becomes fully enforceable once they are an adult
 - If the minor receives benefits from the contract and chooses not to honour it, they must retribute
 - Mentally disabled cannot enter into a contract – cannot understand the consequences of the contract
 - No legal capacity – only voided if the other party knew about the impairment
- **Steps:**
 - Agreement
 - Through offers and acceptances
 - What the two parties have agreed upon must be certain and complete
 - Two parties
 - Price
 - Subject matter
 - Principles
 - Intention to enter legal relations
 - Consideration
 - Concept of bargain – contracts involve an exchange
 - Agreed to pay something in return for a promise to do something/receive something

- **Common law doesn't require contracts to be in writing**
 - May be oral only (though judges may not believe you)
 - Makes sense to write things down so parties have proof
 - Enforceable if it's written down
 - Merely a formality
 - Exception in certain types of contract – required in statute (Statute of Frauds)

Agreement:

- Victim must show he was in agreement so as to enforce the contract
- *Consensus ad idem*
- **Making of an offer and acceptance constitutes an agreement in most cases**
 - Sometimes courts will identify agreement otherwise i.e. global approach
- **Objective approach:**
 - Gauges agreement/intention by external signs:
 - Language
 - Conduct
 - Circumstances
 - *Tamplin v James*
 - Facts:
 - Plaintiff put property for sale with description – explicitly stated the land for sale, which did not include the gardens
 - Defendant purchases the property under the assumption that the gardens were being sold – “*known the property from a boy*”
 - Defendant purchased the property but declined to complete the purchase unless the gardens were conveyed to him
 - Plaintiff sued for specific performance of the contract that the defendant had signed
 - Defendant chose to rely on his impressions of what was being sold
 - Thought he was buying land twice the area of what was specified
 - Defendant's defence – claimed he had made a mistake and wanted to back out of the contract
 - Failed since the defendant was bound by his conduct (signing the dotted line) and to allow the defence would open the floodgates to possible fraud
 - No intention to mislead from the plaintiff
- **Offers and acceptances**
 - Must prove an offer was made (by either parties)
 - What is an offer?
 - Expression of willingness to be legally bound by certain terms upon acceptance without further negotiation
 - Determine objectively if it's an offer
 - Creates a capacity in the offeree to alter the legal status by agreeing
 - Offeror becomes vulnerable to the unilateral decision making of the other party

- Must state what legal tests have been applied to determine its an offer and can it be drawn from the facts
- *Harvey v Facey*
 - Facts:
 - Appellant asked two questions: “will you sell us...” and “telegraph lowest cash price” to which the defendant replied “lowest price....”
 - Appellant replied with a telegram agreeing to buy
 - Was there an offer and from whom was the offer offered by?
 - Argued that Facey offered in his telegram, but the court determined there was no offer made by Facey
 - First telegram by Harvey asked a clear question and the second asked for the price where Facey only replied to the second question
 - Harvey asked the court to imply that from giving the price, they are offering to sell the price and the court disagreed
 - If anything, the third telegram by Harvey was an offer which was never agreed upon
- *Gibson v Manchester City Council*
 - Facts:
 - Plaintiff relied on two documents – standard forms used by council in dealing with applications from tenants of council houses to purchase the freehold of their homes under a government scheme which was then abandoned
 - Once the scheme was abandoned it was decided that no more council houses should be sold unless a legally binding contract of sale had already been concluded
 - Emphasized the attention the court paid to the language used in correspondence to determine if there was an offer/agreement
 - Defendant claimed they never made an offer to sell
 - “may be prepared to sell” – not language that suggests commitment
 - Courts claimed Defendant hadn’t made an offer, but rather an invitation to treat
 - Invitation to treat – a communication that amounts to a solicitation to receive offers
 - Lack promissory commitment that defines an offer
 - Law assumes most things are invitation to treat i.e. ads, discounts etc.
 - Only look for an offer during tests
 - Newspaper ads can be offers if they satisfy the test