

Week 1 - Introduction

What is commercial law? – it is the object of commerce to deal in merchandise and, if we adopt this criterion, commercial law can be refined as the special rules which apply to contracts for the sale of goods and to such contracts as are ancillary thereto, namely, contracts for the carriage and insurance of goods and contracts the main purpose of which is to finance the carrying out of contracts of sale – HC Gutteridge, Contract and Commercial law (1935) 51 LQR 117

Commercial law possesses four characteristics:

- It is based on transactions not institutions
- It is concerned primarily with dealings between merchants in the broad sense of professionals as opposed to consumers
- It is centred on contract and on the usages of the market
- It is concerned with a large mass of transactions in which each participant is a regular player, so that the transactions are typical and in large measure repetitive and lend themselves to a substantial measure of standardised treatment

The US Uniform Commercial Code (UCC)

- A negative definition – a commercial transaction is one of a mercantile character that does not involve a consumer as defined in the legislation

Important Legislation:

- Competition and Consumer Act 2010; ACL
- The Sale of Goods Acts of each State
- The Personal Property Securities Act, 2009 (Cth)
- The various IP statutes eg copyright, patents, trade marks
- The Insurance Contracts Act, 1984 (Cth)
- The Bankruptcy Act (1966) Cth

A Unified Body of Principle

- Is commercial law different from other areas of law
- Is party autonomy the ultimate goal or should the State intervene
- Private or public ordering
- The basis of the lex mercatoria

History of Commercial Law

- Early Characteristics of lex mercatoria
 - A clear distinction between the laws of real property and personal property
 - A balancing of the rights of two innocent parties, ie, the innocent owner of goods and a good faith purchaser
 - Recognition of the validity of informal oral agreements for the purchase and sale of movables
 - Etc
- Absorption of the Law Merchant into CL
 - The lex mercatoria is originally a language of interaction