CONTRACT LAW STUDY NOTES

INTRODUCTION

Contract Law Theories

- Contract law is concerned with obligations between parties, and is a facet of commercial law. Theory is helpful in providing context and rationale behind laws. 5 major theories exist.
- Classical Contract Theory views contracts as the will of the party, emphasises the existence of freedom and autonomy, views contracts as a set of self-imposed regulations, emphasises the notion of a bargain, and views contracts from an objective stance.
- However, it is criticised for assuming that both parties have equal bargaining power.
- Reliance/Promise Theory has a moral framework which states that reliance on a promise should render the promise binding. It highlights the risk for the promisee when they act in trust of the promisor's statements. Thus, reliance is crucial to maintaining an ordered legal/commercial system.
- Relational Theory recognises that contracts may be a one-off, or an ongoing relationship between parties. It recognises both the economic imperatives and sociological nature of contract law.
- Economic Theory judges the law by the economic standard of efficiency, and aspects of this correlate with contract law.
- However, this theory is also criticised for neglecting other considerations within the law.
- Contract Property Theory states that contracts are a property interest, thus the property lies with the promisor's future actions.

FORMATION

What is a Contract?

- A contract is a legally binding agreement between two parties, containing obligations and duties and generally involves an exchange between parties.
- Generally, both parties hold obligations to the other. A promises x to B if B builds a house. Contracts ensure that these promises are legally binding.
- In order for a contract to exist, there must be [1]an offer, [2]an acceptance, [3]consideration between the parties, [4]an intent to enter into legal relations, [5]the capacity of both parties to enter into legal relations, and a [6]certain and complete agreement.

Offer and Acceptance

Agreement and Formation

- Classical Contract Theory states that there are two parties to a contract, one makes an offer and the other accepts. The contract itself and mutually binding obligations are formed when acceptance is communicated between parties. This explains the offer and acceptance doctrines.
- However, this assumes equality between parties, which is not always the case. The existence of vitiating factors and laws regarding duress, influence and unconscionable conduct undermine this assumption.
- Secondly, various basic transactions do not fit the idea of two parties explicitly reaching a bargain. These include buying a train ticket, iTunes purchases, and parking tickets.
- Clickwrap CD licenses present an interesting challenge for the law (Pro CD v Zeidenberg).
- The entire correspondence between parties must be analysed to determine whether or not a contract is present (Gibson v Manchester City Council) (Integrated Computer Services v Digital Equipment).
- Identifying a precise offer or acceptance is unnecessary to determine whether a contract exists (Mushroom Composters v IS & DE Robertson).
- However, offer and acceptance hasn't been abandoned, as it remains useful in standard cases (Magill v Magill).
- In many instances, the outlook of a reasonable person is used to determine existence.

Defining an Offer

- An offer is a statement that if accepted will create a binding contractual relationship between parties. It is a statement of terms that parties are prepared to be bound by.
- It must be promisory – the offeror must intend for acceptance to convert the promise into a legally binding obligation. Must have a quid pro quo – 'something for something'.
- A sufficient level of precision and clarity must exist. If this is not achieved, the contract will be rendered unenforceable (Mildura Office Equipment v Canon Finance Australia).