

# PRINCIPLES OF BUSINESS LAW

## THE NATURE AND FUNCTION OF THE LAW

### LEGAL AND NON-LEGAL RULES

- Law
  - Rules of conduct or organisation that **are recognised, applied and enforced** by the power of the state
- Non-legal rules
  - Rules of conduct or organisation that are enforced by things such as pressure, a need for co-operation, feelings of goodwill or convenience
  - Non-legal rules work well enough in small groups or communities but become inadequate in larger groups

### THE ANATOMY OF LAW

| The Law   | Areas of law   | Concepts   | Principles   | Rules  | Meaning  |
|---|--|--|--|--|--|
| All the rules of organisation and conduct recognised and enforced by the government of a state.<br><br><b>Examples:</b><br>Australian Law<br>English law<br>Malaysian law | Categories of convenience used to group together the rules of law that are considered to be related in some way.<br><br><b>Examples:</b><br>Contract law<br>Property law<br>Tort law<br>Business law | The broad ideas which determine the nature and scope of an area of law and which, when organised appropriately, provide a coherent framework and sequence of ideas.<br><br><b>Example:</b><br>Contract formation<br>Consensus<br>Offer<br>Acceptance<br>Intention<br>Consideration<br>Contract obligations | The fundamental and non-negotiable components of concepts. Principles serve to demarcate concepts, and indicate their nature, scope and content.<br><br><b>Examples:</b><br>Contracts are created only when the parties to an agreement intend to be legally bound.<br><br>An intention to be legally bound is ascertained objectively rather than subjectively. | The detailed mechanisms designed to give effect to particular legal principles. Rules delimit and qualify principles in specific ways, and cater for specific situations that may fall under a particular principle. Rules can be changed without destroying the underlying principle.<br><br><b>Example:</b><br>An intention to be legally bound is to be inferred from the known circumstances at the time of agreement. | The sense in which concepts, principles, rules and words are to be understood. Meaning may be assisted by definition, interpretation and context.<br><br><b>Example:</b><br>The word 'consideration', when used in contract formation, means something given by one party in exchange for what is being promised by the other. |

## THE ORGANISATION OF LAW AND GOVERNMENT IN AUSTRALIA

### ORIGINS OF AUSTRALIA LAW

- Roman Law
  - 533 AD, Emperor Justinian decided that this vast body of law should be reorganised and collected in a Digest
  - Corpus Iuris Civilis (Compendium of the Civil Law) = the Digest + other collections of the law
  - Not long after the completion of Corpus Iuris Civilis, the western part of the Roman Empire was invaded by tribes from the north and in 476 AD, the Western Empire collapsed and Europe entered into the Dark Ages and Roman Law was forgotten for hundreds of years
  - 12<sup>th</sup> Century AD, copies of the Corpus Iuris Civilis were found in libraries in Italy and renewed interest in Corpus Iuris Civilis spread and was highly influential in the legal developments of emerging states in Europe
    - Eg. French Code Napoleon of 1804, Austrian Code of 1811, German Code of 1889, the Swiss codes of 1889 and 1907
- English Law
  - In the 12<sup>th</sup> Century, instead of adopting Roman Law as other European countries had done, England chose to develop its own local laws and customs
  - When England invaded and colonised various parts of the world, English Law was introduced to those colonies
    - Eg. Australia, USA, English speaking parts of Canada, parts of Africa and Asia
- In Australia, the received English law exists alongside indigenous custom and law

## THE ESTABLISHMENT OF AUSTRALIAN COMMONWEALTH, STATES, TERRITORIES

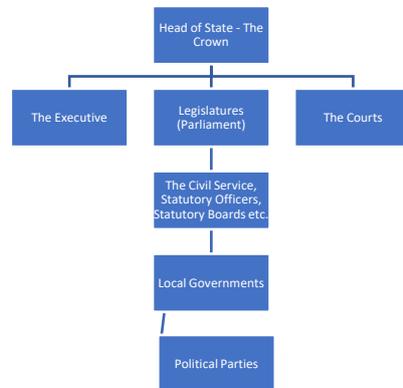
- Britain initially ruled Australian colonies
- But in 1800s, the colonies were allowed by Britain to become self-governing with general powers to administer, enforce and make new law
  - Specifically, each colony was given the general power **‘to make laws for the peace, welfare and good government of the colony’**
  - But had some restrictions
    - Could not make law that was inconsistent with laws made the British parliament
    - Could not generally make laws to operate outside their own borders
- Commonwealth
  - Formed in 1901
  - Established by the *Commonwealth of Australia Constitution Act 1900*, a law enacted by British parliament
- States and territories
  - As part of the process of Commonwealth of Australia, the colonies became ‘states’
    - States – NSW, QLD, SA, TAS, VIC, WA
  - The Commonwealth of Australia is a confederation of states rather than a unitary state
  - Each state retained the power to govern within its own borders, with responsibility for a wide range of matters but also agreed to give specified powers to a new federal government which would have responsibilities for national matters
  - There are also 10 territories – NT, ACT, Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Jervis Bay Territory, Heard Island, McDonald Island, Norfolk Island, Australian Antarctic Territory

## STRUCTURE OF GOVERNMENT

- Government
  - Institutions or ‘organs’ that have been created within the Australian states and territories. These institutions provide formal structures of government and allow for the division of governmental power. Includes the Crown, the executive, the courts and legislatures
  - Can also refer to the elected representatives, appointees and employees who, at any particular time, occupy positions within the institutions of government and exercise the day-to-day powers of governing
- Constitutions
  - Definition – the rules by which a state is formed and governed
  - The Commonwealth and each state has its own constitutions
  - For historical reasons, the constitutional arrangements in Australia closely resemble the British model of government → known as the ‘Westminster’ system
  - To change provisions in the constitution requires obtaining the consent of Australian voters in a national referendum
  - Relevant government can change **state** constitutions without the need for a special referendum
  - Australia is also a **constitutional monarchy** as the head of the Commonwealth of Australia is not a democratically elected by a hereditary monarch
- Local government
  - Responsible for a region or district within a state or territory
  - Exist in the form of municipal council, regional councils or district councils
  - Typically, responsible for looking after the social, economic and environmental needs of their particular area
  - They have limited power to make laws, which are known as ‘local laws’ or ‘by-laws’

## INSTITUTIONS AND POWERS OF GOVERNMENT

Following the English model, Australian governmental power is separated between various branches that have different functions and responsibilities: this is known as the doctrine of 'separation of powers'



- The Crown
  - Supreme authority in government
  - In Australia, most powers of government are exercised by organs of government other than the Crown, or by following the advice of other organs of government
  - However, the Crown, is considered to retain any powers that have not been given to other organs of government
    - These remaining powers are referred to as the Crown's 'reserve' powers and exercised at the discretion of the Crown
  - In Australia, the Queen acts through appointed representatives
    - Federal level – Governor-General
    - State level – Governor
  - As the Queen's representatives, they have specified powers in Australian constitutional law:
    - Formal heads of the Commonwealth and the six states
    - Exercise certain executive powers on the advice of govt including appointing people to particular offices, signing treaties, granting licenses and permits
    - Exercise some legislative powers including giving royal assent
    - Commission judges who are appointed by the government of the day to preside over the courts
- The Executive
  - Consists of the Crown, the chief minister and other ministers of government, statutory bodies and offices
  - Chief minister (called Prime Minister at the federal level and Premier at the state level) is elected by the political party forming the government
  - Chief Ministers appoints other ministers and allocates them responsibility for specified departments of government
  - 'the cabinet' – an executive body formed by the chief minister and other senior ministers from government and together they decide the policies of the government of the day at any particular point in time
- Legislatures
  - A legislature is a body with authority to make law
  - The Commonwealth and state legislatures can be called 'parliaments', but this term is not used for territory legislatures
  - The persons who make up the legislatures are elected by winning the support of majority voters at an election → 'representative democracy'

# SAMPLE CHEATSHEET

## CASE STUDIES

**ACCC v Coles Supermarkets Pty Limited (2013) 317 ALR 73** (ACL, misleading or deceptive conduct, misleading representation)

*Facts:* Coles had signs saying "baked today, sold today" etc. + all in store bread labelled with "baked on" date but method used – dough made elsewhere, frozen and then thawed then rest of baking process completed in stores.

*Ratio:* Coles was misleading – contravened both s18(1), s33, s29(1a) of ACL

**ACCC v TPF Internet Pty Ltd (2013) 250 CLR 640** (ACL, misleading or deceptive conduct, dominate message in advertisement)

*Facts:* TPG promoted offer that unlimited data for \$29.99 but offer qualified with less obvious condition that it is only avail when bundled w/ fixed line telephone service of \$30 per month + set up + deposit. ACCC bought misleading/deceptive conduct charges contrary to s 18 of ACL

*Ratio:* headline/dominant message had tendency to direct into error members of public, ad deliberately sought to present info selectively + target audience may consist of people unfamiliar w/ broadband services

**Alcatel Australia Ltd v Scarcella (1998) 44 NSWEL 349** (contract, universal terms, duty of good faith, pursuit of universal interests)

*Facts:* A leased building from S and lease required A to maintain building/pay for any work to be required. S asked local authority to inspect building for fire safety, local authority ordered stairwell be insulated against fire. A argued that S by asking local authority to inspect had caused unreasonable safety requirements.

*Ratio:* seeking fire safety inspection not unreasonable exercise of Scarcella's power hence no breach of the duty **Alcard v Skinner (1887) 35 CH D 145** (vitating circumstances, undue influence, presumption of undue influence, effect in seeking relief)

*Facts:* A joined religious order and took vow of poverty – gave away all her property to order. A left order 5 years after, she wanted to retrieve her property. Claimed gift was result of undue influence

*Ratio:* presumptive relationship (of undue influence) – devotee and religious adviser but A took too long after leaving order to get property back. If she had sought to recover gift/shortly after leaving, presumption would have applied

**Associated Newspaper Ltd v Banks (1951) 83 CLR 322** (contracts, terms, conditions/warranties, remedies, termination of performance)

*Facts:* AN agreed to pay Banks salary and publish his drawings on front page but instead it appeared on page 3. Banks protested but AN ignored, decided to terminate further performance of contract

*Ratio:* term was an essential one if Banks justified in terminating

**Australia Knitting Mill Ltd v Grant (1933) 50 CLR 387** (contracts, terms implied by legislation, sale of goods, implied condition requiring delivery of goods of merchantable quality)

*Facts:* G purchased underwear, developed rash which became acute general dermatitis caused by sulphur in the wool

*Ratio:* underwear was merchantable quality b/c same underwear containing sulphur sold in market were not affected

**Australia & NZ Bank Ltd v Ateliers de Constructions Electriques de Charleroi (1966) 1 NSWLR 19** (agency, grant of authority, implied authority, duties of an agent, duty to keep principal's funds separate)

*Facts:* ACEC was Belgian company, appointed Aus company called Helios as its agent giving Helios express powers to sell equipment on its behalf. ACEC had no bank acc in Aus, Helios paid cheque into own acc w/ Aus & NZ Bank then forwarded payment to ACEC. Not all money paid to ACEC before H fell into financial difficulty and liquidated

*Ratio:* although H had no express authority, due to circumstances the authority could do so could be implied from the necessity make contract commercially workable → implied authority was necessary to give business efficacy

**Balfour v Balfour (1919) 2 KB 571**

*Facts:* husband promised to pay wife £30 per month while she stayed in England on doctor's advice, husband returned to Ceylon where he worked. Parties later separated and divorced

*Ratio:* agreement reached on amicable terms. When married persons enter into domestic agreements, reasonably assume do not attend such agreements to be legally binding. But this ratio only persuasive in Aus court (since from English Court of Appeal)

**Baldry v Marshall (1926) 1 KB 260** (contract, terms implied by legislation, implied condition requiring delivery of goods suitable for buyer's purpose, sale by trade name)

*Facts:* M asked B for Bugatti (trade name) BUT also explained purpose – fast, easily managed, comfortable etc. M claimed car not suited for stated purpose, B argued not obliged to deliver goods suitable b/c had been bought under trade name

*Ratio:* clear that the facts that the buyer had relied on the seller to supply SUITABLE goods/fit for purpose regardless of use of trade name

**Baltic Shipping Co v Dillon (1933) 176 CLR 344** (remedies for breach, damages, distress, disappointment)

*Facts:* D booked 14 day cruise which sank. Apart from physical/psychological trauma, D also sued for suffering disappointment and distress that her planned holiday ended in catastrophe

*Ratio:* damages awarded – shows exception to general rule that plaintiff cannot claim damages for disappointment/distress/injured feelings b/c defaulting party expressly/impliedly agreed to provide pleasure/relaxation/entertainment etc.

**Barton v Armstrong (1973) 2 NSWLR 598; (1975) 2 All ER 465** (vitating circumstances, duress, threats of physical harm)

*Facts:* B bought shares. B then tried to avoid contract saying he had been threatened, proved alleged threats had been made but also B had business reasons for buying shares

*Ratio:* on appeal, Privy Council held that the threats had contributed to B's decision to enter contract – sufficient for the contract to be set aside as void

**Bertram, Armstrong & Co v Godfrey (1830) 12 ER 364** (agency, duties of the agent, duty to follow instructions)

*Facts:* G instructed BA&Co to purchase stock and sell when market price reached "85% or above that price). When stock reached that price BA&Co did not sell immediately, thinking it would rise further but unfortunately two days after it dropped and stayed low. G thus sued to recover loss.

*Ratio:* instruction given by G was specific hence agent had no discretion to wait for higher price

**Bettini v Gye (1876) 1 QBD 183** (contract, contents, terms, conditions, warranties)

*Facts:* B supposed to sing over 15 week period, term of contract to arrive 6 days earlier for rehearsal. B fell sick, missed 4 days of rehearsal b/c of this G wanted to terminate further performance

*Ratio:* term was a warranty, not condition – G not entitled to further breach b/c B had been engaged to sing at no. of events over long period and requirement of attending rehearsals did not "go to the root" of the contract b/c in view of the no. of performances over long period, initial rehearsal would not affect whole contract

**BP Refinery (Westmeport) Pty Ltd v Hastings Shire Council (1977) 180 CLR 266** (contract, terms implied ad hoc)

*Facts:* HSC agreed lower rates @ refinery site, BP Refinery restructured, BP charged new company (BP AU) full rates.

*Ratio:* court held that no such terms (that lower rates would be payable ONLY to the original BP) was ad hoc. Suggested terms of lower rates only to BP failed all implied and ad hoc term tests (efficacy, reasonable, officious bystander) → BP AU did not have to pay full rates (could pay lower rates)

**Brinkion Ltd v Sthahwharenhandels-gesellschaft (1983) 2 AC 34** (contract formation, agreement, acceptance by telefax)

*Facts:* B sent via telefax to S which constituted the acceptance of an offer from S → was contract for purchase of steel made in England or Austria?

*Ratio:* Acceptance took effect when tel received by S in Vienna hence contract made in Vienna.

**Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592** (vitating circumstances, misleading conduct)

*Facts:* B relied on info by L from two page brochure (which included disclaimer – cannot guarantee accuracy of info). B did not check and then later realised survey diagram was inaccurate – claimed breach of s52

*Ratio:* L not engaged of breach b/c disclaimer

**Bucknara v Hawthorn Football Club Ltd (1988) VR 39** (remedies for breach, injunction to prevent threatened contract)

*Facts:* B promised not to play for competing football club. When it seemed B intended to play for competing club, H sought injunction.

*Ratio:* court issued injunction. Court prepared to issue the injunction b/c preventing B from playing for competing clubs would not indirectly force him to play for Hawthorn – could make living some other way if necessary.

**Burger King Corp v Hungry Jack's Pty Ltd (2001) 69 NSWLR 558** (universal terms, duty of good faith, dishonest use of contractual power)

*Facts:* BK wanted to force HJ to sell out its franchising rights. To do so, BK exercised certain contractual powers preventing HJ to perform franchise obligations (open new sub-franchise outlet every year).

*Ratio:* duty of good faith implied by law into this contract and had been breached by the refusal to approve the sub-franchise outlets

**Causar v Browne (1952) VLR 1** (bailment, deposit of goods for cleaning, liability of bailee, unsuccessful attempt to include express terms)

*Facts:* drycleaner B included "docket" with small print "no responsibility accepted for loss or injury to articles through any cause whatsoever". C did not read what was written and statement not specifically drawn to attention. Dress damaged, C sued but B defended claim saying that statement printed on docket excluded his liability

*Ratio:* statement had not become term of contract b/c reasonable for Causar to assume that doc was only identifying docket – could not be inferred that C was agreeing to exempt B for liability of negligence → result would have been diff had C's attention been drawn to fact that the docket contained contractual terms

**Carill v Carbolic Smoke Ball Co (1893) 1 QB 256** (contract, formation, intention to be legally bound)

*Facts:* company marketed smoke balls offering £100 to anyone who purchased smoke balls, used them but caught influenza → "to demonstrate seriousness of their offer, company deposited £1,000 in bank from which to pay rewards". Carill got influenza, wanted to claim but company refused to pay denying enforceable contract *Ratio:* b/c ad had stated £1,000 to "demonstrate seriousness", promise was intended to be legally binding. Act of buying/using the smoke ball provided necessary consideration to make promise to pay the reward enforceable. Usually offers made to specific persons/groups but no reason they should not be addressed to "the world at large" if that is what the offeror intends + specific group ish??? → people who buy and use the smoke ball as directed but still get influenza

**Cehave NV v Bremer Handelsselschaft Mhb (1976) QB 44; (1975) 3 ALL ER 739** (breach of contract, innominate terms, remedies, termination of performance)

*Facts:* citrus pellets sold, not shipped in good condition but could still use. C wanted to reject pellets delivered *Ratio:* C no right to reject delivery, breach was an innominate/intermediate term, could only claim damages

**Codelfa Construction Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337** (contract, terms implied ad hoc, discharge by frustration)

*Facts:* noise complaints meant that Codelfa could not work 24 hours a day as planned. Work took longer thus costing Codelfa extra money, wanted payment from State Rail

*Ratio:* no such term was implied b/c BOTH parties had believed when contracting that nothing could prevent construction 24 hours a day and could not be inferred that they intended to include term regarding extra costs caused by limited work hours.

(MORE CASES INCLUDED)

## THE NATURE AND FUNCTION OF THE LAW

-commonwealth formed in 1901 with 6 states + 10 territories → each state retained power to govern within its own borders + specified powers to federal govt (confederation of states rather than unitary state)

Legal – rules of conduct or organisation that are recognised, applied and enforced by the power of state

Non-legal – rules of conduct or organisation that are enforced by pressure/feelings of goodwill/convenience → work in small groups/communities but inadequate in larger groups

Origins of Law

Roman Law – Corpus Iuris Civilis = the Digest + other collections of law → found years later, renewed interest in 12<sup>th</sup> century and spread/highly influential in legal developments of Europe

English Law – England developed their own law, introduced to colonies

Sources of law

-legislatures (parliaments: exist on national, state, local level → comprised of politicians who draft & publish legislation (acts)/amend codified laws – proactive

-courts/judges: give judgement, ratio decidendi recorded, forms law – future judges obliged to follow hence indirect influence

Institutions & Powers of Govt

-separation of powers

-the Crown: supreme authority, Crown retains any powers not given to other organs of govt.

\*Queen acts through appointed representatives – governor-general (federal level), state level (governor)

\*powers incl. formal heads of Cth + 6 states, executive powers such as appointing people to particular offices, signing treaties, granting licenses, royal asset

-the Executive: consists of the Crown, chief minister, other ministers, statutory bodies etc.

-the Cabinet: an executive body formed by chief minister/senior ministers and decide policies of govt of the day at any particular point in time

-Legislatures: body w/ authority to make law → known as parliaments (term used only in states, not territory)

-sometimes overlap/conflicts b/w law making powers → if Cth legislation conflict w/ state legislation, federal govt has **concurrent power** rather than exclusive power to legislate

\*if provisions of Cth legislation conflict w/ state legislation over same matter, s19 of federal constitution can be but excised/severed w/o remainder of the Act being affects → act continues to be valid

\*if existing conflicts with the sections, entire Act will be invalidated

Courts

|   |  |
|---|--|
| 1 | The High Court of Australia                |
| 2 | Federal, State & Territory Supreme Court   |
| 3 | Federal, State & Territory Inferior Courts |

-jurisdiction to hear/decide cases based on location, seriousness of dispute or crime and whether case being heard for first time original hearing)

-The High Court: highest court, 7 judges appointed by the PM on the advice of the High Court

-Superior Courts:

\*Cth → Federal Court (+ special superior court known as Family Court), federal judges appointed by Gov Gen

\*state/territories → Supreme Court, judges appointed by state general

\*Superior courts have **original jurisdiction** (i.e. power to hear cases at first, presided by a single judge) + can sit as **court of appeal**, presided by **3 or 5 judges known as 'full court'**

-inferior courts (intermediate or lower):

\*intermediate federal → Federal Circuit Court, presided by judges appointed by Cth govt

\*intermediate state → county or districts, presided by judges appointed by state govt, original jurisdiction for amounts less than \$200,000, **limited power to hear appeals from lower courts** (i.e. magistrates)

\*territories do not have intermediate courts

-lower courts: in state + territories, called magistrates/local courts/court of petty sessions, presided by magistrates or Justices of Peace (most senior called Chief Magistrate) → not judges but judicial officers of lower rank than judges, restricted power, can only hear particular disputes + amount less than \$40,000-\$60,000, **no power to hear appeals**

## COURT PROCEDURE

-adversarial legal system: parties dispute compete against each other, argue their case (used in Aus)

-inquisitorial: court officials responsible for investigating/examining evidence to establish truth (more common in legal system based on Roman law)

-purpose of trial

-exchange of pleadings

-proving the facts

-ascertaining the law: each side given opportunity to address court, suggest what rules of law are relevant/what they mean/how should be applied

-deciding the case

-legislation usually overrides case law

-courts will usually consider common law before accounting for equity

