CONTRACT

EXAM NOTES
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WHAT IS A CONTRACT?
A promise or set of promises that is legally binding — An ‘agreement that a court will enforce’.

What does it mean to be legally binding? — the law will compel the person making the promise (‘the promisor’) to perform, or to pay damages to compensate the person to whom it was made (‘the promisee’) for non-performance.

When is a promise legally binding? — For a promise to give rise to a contract it must in substance amount to an undertaking by the promisor that is proffered in exchange for something sought in return from the promisee (e.g. promise by A to let B have her car if B pays A $10,000)

COMPOSITION OF CONTRACT LAW
1. Judicial decisions on contract law
   - ‘Judge made’ law
   - The common law
   - Equity

2. Statute
   - Legislation
     - e.g. The Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth)

THE NATURE OF CONTRACT LAW
- contract law is largely judge-made law, although statutes are increasingly being passed with regulate, or have an impact on, substantial areas of contract law
- contractual obligations are self-imposed, with people being able to decide;
  - whether or not to enter into a contract
  - what the nature and content their respective rights and obligations will be; and
  - what the consequences will be of those obligations not being honoured, or rights infringed
  - however, there are limits to this freedom* (below)
- the law of contract, not contracts
  - applies equally to all types of agreements — i.e. sale of goods, insurance, consumer credit, carriage of goods, building and construction, etc
- relationship with other branches of law* (below)

Limits to contractual freedom
- illegality
- misleading conduct
- fraud
- unconscionable dealing
statutory restrictions
- consumer protection
- implied terms, prohibition of unfair terms
- anti-discrimination legislation
- bargaining power

Within such limits, contract law provides a framework for the parties to create their own law.

Relationship with other areas of law
- Contract and other branches of the law are not mutually exclusive
- A particular event may give rise to rights or obligations under more than one regime
  - beware of compartmentalising the law

THE IMPORTANCE OF CONTRACT LAW
- underpins our society — without it, life as we know it could not exist
  - e.g. all transactions, good and services, etc wouldn’t occur
- Contract forms the basis for…
  - commercial transactions
  - consumer transactions; and
  - the delivery of public services
- From the point of view of…
  - businesses
  - consumers
  - governments

CONTRACT THEORY
- neoclassical contract law
  - the will theory
  - the bargain theory
  - the promise theory
  - the reasonable expectations theory
  - the reliance theory
  - miscellaneous

Freedom of Contract — the freedom to enter into a contract whenever/with whoever
Sanctity of Contract — Having to honour the contract once it has been entered into - gives element of certainty