

CONTRACT

EXAM NOTES

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PART 1 — INTRODUCTION TO CONTRACT LAW

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

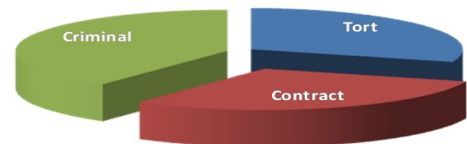
- illegality
- misleading conduct
- fraud
- unconscionable dealing

- 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



Example: a contract in which John promises to pay Bill \$100 to assault Sam may be considered under the law of contract as well as the criminal law and in tort

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