

**Alcatel Australia Ltd v Scarcella (1998)**

Legal issues: contract; contents; universal terms; duty of good faith; pursuit of legitimate interests

Facts: Alcatel leased building from Scarcella. The lease stipulated that Alcatel maintain the building and pay for any work required. Scarcella got an inspection done and it was ordered that the stairwell be insulated from fire. Alcatel argued that it was not obliged to meet the costs of complying with this order.

Decision: There was no breach of the duty of good faith so Alcatel was required to pay.

Reason: The duty of good faith prevents a contractual power being exercised in a 'capricious or arbitrary manner or for an extraneous purpose'. In the circumstances Scarcella had the right to ensure his building was properly protected against fire

**Allcard v Skinner (1887)**

Legal issues: contract, vitiating circumstances, undue influence, presumption of undue influence, effect of delay in seeking relief

Facts: Allcard joined a religious order. She was required to give away all her property and chose to give it to the order she had joined. She later left the order, and 5 years after leaving decided she wanted her property back. She claimed that she had given it away because of undue influence by the order and therefore the contract should be set aside.

Decision: Allcard was unable to void the contract.

Reason: Even though the relationship between Allcard and the order was one that gives rise to the presumption of undue influence. The fact that Allcard had waited 5 years to reclaim her property meant that she had in effect affirmed the agreement without undue influence. If she had reclaimed the property within a reasonable time, then the contract could have been avoided on grounds of undue influence.

**Associated Newspapers Ltd v Bancks**

Legal issues: contract, contents, terms, conditions and warranties, breach of contract, termination of performance

Facts: A cartoonist agreed to draw a comic for a newspaper and the newspaper agreed to pay a salary and publish the comic on the front page. For 3 weeks the comic was on the third page, when Bancks complained he was ignored so he terminated the contract.

Decision: He had the right to terminate the contract.

Reason: The term was an essential one. It was stated that Banks would not have entered into a contract without the front page condition, so performance of this was vital. As it wasn't performed the newspaper had breached the contract giving Bancks the ability to make it void.

**Australia & New Zealand Bank Ltd v Ateliers de Constructions Electriques de Charleroi**

Legal issues: Agency; grant of authority; implied authority; duties of an agent; duty to keep principal's funds separate

Facts: ACEC was a Belgian manufacturer of electrical equipment. ACEC appointed an Australian company called Helios as its agent in Australia, giving Helios certain express powers to sell equipment on its behalf. After a first payment to Helios, a cheque was sent to him, made payable to ACEC. Because ACEC had no bank account in Australia, Helios paid the cheque into his own account with ANZ. Further cheques were forwarded this way. Unfortunately, not all of the money was forwarded to ACEC before Helios fell into financial difficulty and went into liquidation.

Decision: The court held that although Helios had no express authority to pay the cheques into its own account, in the circumstances the authority to do so could be implied from the

necessity to make the contract commercially workable.

Reason: Implied authority was needed to give business efficacy to the transactions

**Australian Knitting Mills Ltd v Grant (1933)**

Legal issues: contract, contents, terms implied by legislation, sale of goods, implied condition required delivery of goods of merchantable quality

Facts: Grant bought woollen underwear made by the Australian Knitting Mill. Grant developed acute general dermatitis which was caused by small particles of sulphur in the underwear. Grant sued for breach of the term implied by s 14 (2) of the Sales of Goods Act SA which required goods to be of merchantable quality.

Decision: There was no breach as the goods were of merchantable quality.

Reason: All woollen underwear contained sulphur particles, which was being sold as underwear in large quantities and other people were not affected by the sulphur particles, therefore, the underwear is merchantable.

Dixon J said, "The condition that goods are merchantable quality requires that they should be in such an actual state that a buyer fully acquainted with the facts, and therefore, knowing what hidden defects exist and not being limited to their apparent condition would buy them without abatement of the price obtainable for such goods if in reasonable sound order and condition and without special terms.

**Baldry v Marshall [1926] 1KB 260**

Legal issues: contract, contents, terms implied by legislation, sale of goods, implied conditions requiring delivery of goods suitable for buyer's purpose, sale by trade name

Facts: Marshall bought an 'eight cylinder Bugatti' from Baldry but stated his purpose for needing it. The car turned out to be defective and was therefore unsuitable for Marshall's purposes. Baldry argued as it was bought under the trade name he was not required to provide a car suitable for his purposes.

Decision: Baldry was required to provide a car suitable to Marshall's needs

Reason: As Marshall had stated his purpose for the car he was relying on the seller to provide suitable goods. The fact that the goods are described by trade name does not necessarily mean that the implied term of suitability for purpose is excluded. It only applies if the buyer does not rely on seller to determine whether the goods are suitable for his purpose.

**Balfour v Balfour [1919] 2 KB 571**

Legal issues: contract, formation, intention to be legally bound, agreement between spouses

Facts: While they were Mr Balfour promised to pay Ms Balfour £30 a month until she re-joined him. They later divorced and Ms Balfour wants to enforce the promised payment.

Decision: The agreement was not legally enforceable because in the circumstances it was not intended to be legally binding.

Reason: Domestic arrangements between spouses are not legally enforceable because it is assumed by law when agreements are made the parties do not intend to be bound by law.

**Baltic Shipping Co v Dillon (1993)**

Legal issues: contract, remedies for breach, distress and disappointment

Facts: Dillon went on a 14-day cruise; the ship sank after 8 days. Dillon suffered from disappointment and distress as a result. She sued Baltic Shipping for damages for this.

Decision: Dillon was entitled to damages for distress and disappointment

Reason: Normally one cannot sue for distress, disappointment or injured feelings. However, in this case Baltic Shipping had implied Dillon would have an enjoyable time on the cruise. The sinking of the ship breached this term

allowing her to sue.

**Barton v Armstrong [1973]**

Legal issues: contract, vitiating circumstances, duress, threats of physical harm

Facts: Barton purchased shares for Armstrong. He later claimed his life had been threatened by Armstrong. It was later proved that the threats had been made, but the court found Barton also had business reasons for buying the shares.

Decision: Council held that the threats had contributed to Barton's decision to enter into the contract. This was sufficient for the contract to be set aside as void.

Reason: Once Barton had proved that Armstrong had made the threats, the onus was upon Armstrong to show that the threats had not contributed to Barton's decision to enter into the contract. Armstrong was unable to show that his threats had not contributed to Barton's decision.

**Bertram, Armstrong & Co v Godfray (1830)**

Legal issues: Agency; duties of the agent; duty to follow instructions

Facts: Godfray purchase Buenos Ayres stock through Bertram, Armstrong & Co, who were mercantile agents. Sometime later, Godfray instructed B, A & Co to sell that stock when its market price reached 85% or above that price. B, A & Co accepted this instruction, however when the price of the stock reached 85%, B, A & Co did not sell immediately, because they expected the price to rise further.

Unfortunately, after two days, the price dropped again and stayed low. When Godfray discovered this, he sued to recover the consequent loss.

Decision: The court held that the instruction given by Godfray was specific and that accordingly, the agents had no discretion to wait for a higher price.

Reason: As agents, B, A & Co were required to carry out the instructions, given to them by their principal. They were liable for the loss caused by their failure to do so.

**Bettini v Gye (1876) 1 QBD 183**

Legal issues: contracts, contents, terms and warranties, breach of contract, remedies, damages

Facts: Bettini made an agreement with Gye to perform over a 15-week period. A term of the contract was that Bettini would go to rehearsals 6 days before the first performance. Bettini was sick so she missed 4 days of rehearsal. Gye tried to terminate the contract because of this.

Decision: Gye could not terminate the contract.

Reason: The term was a warranty not a condition. As the contract was for an extended period of time the absence of Bettini in the 5 days would not cause a major effect to the contract.

**BP Refinery Pty Ltd v Hastings Shire Council**

Legal issues: Contract; contents; terms implied ad hoc

Facts: Agreement between parties for development of oil refinery within Shire of Hastings. BP was granted right to pay lower than normal municipal rates - this was intended to reduce costs. Later, the refinery was transferred to a different company. Council charged the new company full municipal rates, arguing that the original rates would come to an end if BP Refinery ceased to occupy itself.

Decision: Privy council held that no such term was implied ad hoc into the contract

Reason: Suggested term was not needed to give business efficacy, nor was it fair and equitable, or could it be inferred from the circumstances that the parties obviously intended to include such a term.