1. Alcatel Australia Ltd v Scarcella (duty of good faith)
Fact: The rental lease stipulated that Alcatel should pay for any work on the building required by order of the local government authority. Scarcella asked the local authority to inspect the building and it ordered that the stairwell be insulated. Alcatel refuse to pay costs of complying this order because Scarcella had caused the local authority to impose unreasonable safety requirements
Decision: A duty of good faith may be implied by law to prevent a contractual power being exercised in a capricious or arbitrary manner or for an extraneous purpose. However, seeking a fire safety inspection was a reasonable exercise and there was no breach of duty.

2. Allcard v Skinner (undue influence)
Fact: 5 years after Allcard left the religious order, she wanted to get back the property she gave away when she joined the order. She claimed that she gave away the property as a result of undue influence.
Decision: By failing to avoid the transaction within a reasonable time, Allcard had affirmed the transaction after to be under that influence and could not recover her property.

3. Associated Newspapers Ltd v Bancks (conditions and warranties)
Fact: Associated Newspapers agreed to publish Bancks' drawing on the front page of the newspaper's comic section. Bancks decided to terminate the contract because his drawing appeared on page 3.
Decision: The term was a condition and Bancks was justified in terminating further performance of the contract.

4. Australian Knitting Mills Ltd v Grant (implied condition requiring delivery of goods of merchantable quality)
Facts: After wearing Australian Knitting Mills Ltd's underwear, Grant developed an itchy rash because of the sulphur in the wool. Grant claimed goods sold were not of merchantable quality.
Decision: The same underwear was being sold in the market to people who were not affected by the sulphur. Despite the 'defect', the good were merchantable as underwear.

5. ANZ Bank Ltd v Ateliers de Constructions Electriques de Charleroi (ACEC) (implied authority)
Fact: ACEC had no bank account in Australia, Helios (the agent) paid the cheque into its own account with ANZ and forwarded payment to ACEC, who received it without objection. Not all of the money received was forwarded to ACEC before Helios went into liquidation.
Decision: Although Helios had no express authority, they were authorzed to do so could be implied from the necessity to make the contract commercially workable. ANZ is not liable to refund the amounts that had not yet been forwarded to ACEC.

6. Baldry v Marshall (sale by trade name)
Fact: Marshall asked Baldry for information about 'the eight cylinder Bugatti' and said his purpose then bought the car. When the car delivered, Marshall claimed that it was not suitable for his purpose, Baldry argued that the car had been bought under its trade name.
Decision: The mere fact that goods are described by trade name does not necessarily exclude the implied term regarding suitability of purpose. The buyer had relied on the seller to supply suitable goods regardless of the use of the trade name to describe it.

7. Balfour v Balfour (intention to be legally bound)
Fact: Mr Balfour promised to pay Ms Balfour each month during the time she stayed in hospital in England. Later they get divorced.
Decision: Ms Balfour can't enforce the payment of the promised maintenance because the parties didn't intend to be legally bound.

8. Baltic Shipping Company v Dillon (distress and disappointment)
Fact: Dillon sued Baltic Shipping to compensate for her disappointment and distress when the ship sunk during her cruise holiday.
Decision: The damages should be awarded because the defaulting party has expressly or impliedly agreed to provide pleasure, relaxation and entertainment, or to prevent molestation or vexation.

9. Barton v Armstrong (duress)
Fact: Barton tried to avoid the contract of purchasing shares in a company from Armstrong saying that Armstrong had threatened the life and safety of himself and his family. The court found that Barton was threated but also had business reasons for buying the shares.
Decision: The court found that even though there were other reasons for agreeing to buy the shares, Armstrong had been unable to show that his threats had not contributed to Barton's decision. This was sufficient for the contract to be set aside as void.

10. Bertram, Armstrong & Co v Godfray (duty to follow instructions)
Fact: Godfray instructed Bertram, Armstrong & Co, who were mercantile agents, to sell the stock when its market price reached 85% or above that price. Bertram, Armstrong & Co didn't sell immediately when the price of the stock reached 85%, because they expected the price rise further. Unfortunately, the price dropped again and stayed low. Godfray sued to recover the consequent loss.
Decision: The instruction given by Godfray was specific, and that accordingly the agent had no discretion to wait for a higher price so they are liable for the loss caused by their failure to do so.

11. Bettini v Gye (conditions and warranties)
Fact: A term of the contract (Bettini sing at various events over 15 weeks) is that Bettini arrive 6 days before the first engagement and attend rehearsals. Bettini arrived late and missed 4 days of rehearsals. Gye wanted to terminated the contract because of this breach.
Decision: Bettini had been engaged to sing over a long period. The term of attending rehearsals was a warranty, not a condition, and Gye was not entitled to the contract in response to Bettini's breach.

12. BP Refinery Pty Ltd v Hastings Shire Council (terms implied ad hoc)
Fact: The Shire of Hasting charged BP Refinery at a lower than normal municipal rate on the refinery site. BP Refinery restructured and transferred the site to a subsidiary called BP Australia. The Shire of Hasting charged BP Australia the full municipal rates on the site.
Decision: The term that the preferential rating agreement would be payable only while BP Refinery itself occupied the refinery site wasn't implied ad hoc into the contract. The suggested term wasn't needed to give business efficacy to the contract; nor was it fair and equitable; nor could it be inferred from the circumstances that the parties obviously intended to include any such term.

13. Brinkibon Ltd v Stahag Stahl und Stahlwarendelsgesellschaft mbH (acceptance by telex)
Fact: One telex sent by Brinkibon (London) to Stahag (Vienna), constituted the acceptance of an offer from Stahag.
Decision: The contract was made in Vienna because the acceptance took effect when received by Stahag.

14. Buckenara v Hawthorn Football Club Ltd (injunction to prevent threatened breach)
Fact: Buckenara contracted to play for the Hawthorn and not to play for competing club while contracted. Hawthorn sought an injunction when it seemed that Buckenara intended to play for a competing club.
Decision: The court issued an injunction because preventing Buckenara from playing for competing clubs would not indirectly force him to actually play football for Hawthorn.

15. Burger King Corp v Hungry Jack's Pty Ltd (duty of good faith)
Fact: Hungry Jack's (HJ) was an Australian franchisee of Burger King Corp (BK). BK decided to force HJ to sell out of its franchising rights by making it impossible for HJ to perform its franchise obligations (e.g. disapproval of new sub-franchise outlets).
Decision: A duty of good faith was implied by law into this contract and had been breached by the refusal to approve the sub-franchise outlet.

16. Butcher v Lachlan Elder Reality Pty Ltd (misleading conduct)
Fact: Lachlan Elder (agent) published a brochure with a statement in small print said all information cannot be guaranteed its accuracy. Butcher purchase the property based on the information on the brochure and didn't check it. He wanted to avoid the contract when he found the inaccurate diagram seriously affected how he could develop the property.
Decision: The disclaimer was printed in small writing but it was clear and legible so the court held that Lachlan Elder had not engaged in conduct that amounted to a breach.

17. Campomar Sociedad Ltd v Nike International Ltd (misleading conduct)
Fact: The word 'Nike' was registered as a trade mark both by Campomar manufacturing perfumes and by Nike manufacturing sportswear. Compomar's perfume called 'Nike Sport Fragrance' was displayed next to perfumes manufactured by Adidas.
Decision: Placing the perfume in the same area of pharmacies with other sports fragrance was likely to mislead or deceive the ordinary or reasonable member in the classes of prospective purchaser in to thinking that it was in some way promoted by Nike.

18. Carlill v Carbolic Smoke Ball Co (consideration; offer and acceptance)
Facts: Carbolic Smoke Ball Co published an ad in a newspaper, offering to pay a reward of £ 100 to anyone purchased and used the smoke balls but who never caught influenza. The company deposited £ 1000 in a bank account to pay the rewards. Elizabeth Carlill bought and used a smoke ball and didn't catch the influenza. When she wanted to claim the reward, the company refused to pay her.
Decision: The promise was intended to be legally bound because the fact stated that £ 1000 had been deposited the company expressly for the purpose of making the promised payments. An offer made to 'the world at large' is capable of acceptance by any member of the public who learns it. Carlill had accepted the company's offer by doing the acts of buying and using the smoke ball. This is an executed consideration. It makes the promise to pay the reward enforceable.

19. Causer v Browne (unsuccessful attempt to include express terms)
Fact: The statement on the docket that excluded Browne's liability was not specifically drawn to Causer's attention. Causer claimed damages from Browne to compensate for the ruined dress. Browne would normally be liable for damage caused to the goods.
Decision: The statement hadn't become a term of the contract. It was reasonable for Causer to assume that the document was only an identifying docket and it couldn't be inferred that Causer was agreeing to exempt Browne from liability for negligence.

20. Cehave NV v Bremer Handelsgesells chaft mbH (innominate terms)
Fact: Bremer shipped pellets that were not in good condition as required but were still good enough to use for Cehave's intention. Cehave wanted to reject the pellets.
Decision: Although it was a breach of contract, the breach didn't deprive the non-defaulting party of the benefit for which they entered the contract. Cehave would only have a claim for damages.

21. Codelfa Construction Pty Ltd v State Rail Authority of NSW (terms implied ad hoc; frustration)
Fact: Both parties believed the construction could continue 24 hours a day when contracting. Local residents managed to obtain an injunction placing limits on Codelfa's working hours because of noise. Codelfa claimed extra payment because they have to do the work more slowly and cost extra money.
Decision: The term that obliging the State Rail Authority to pay Codelfa for extra costs associated with limited construction hours was not implied into the contract because it couldn't be inferred that they intended to include such a term since they believed nothing could prevent the construction from continuing 24 hours a day when contracting. The court held that performance as originally agreed had become frustrated because of the unforeseen injunction. Codelfa was not obliged to do the work for payment as originally agreed and it was open to the parties to negotiate a new agreement.

22. Cohen v Cohen (intention to be legally bound)
Fact: In 1918, Mr Cohen promised to pay Ms Cohen £ 100 per year as dress allowance. When they get divorced, Ms Cohen claimed Mr Cohen owned her £ 278 of unpaid promised dress allowance.
Decision: Ms Cohen can't enforce the payment of the promised maintenance because the parties didn't intend to be legally bound.

23. Commercial Bank of Australia Ltd v Amadio (unconscionable dealing)
Fact: The Commercial Bank of Australia agreed to give Amadio an overdraft of $270,000 if his parents would guarantee his debts by mortgaging their property. His parent believed facts that was untrue. The bank manager didn't explain the document and check whether his parent fully understood their risk and liability. The bank sought to enforce the mortgage when Amadio's company became insolvent.
Decision: Amadio's parents were in a position of special disadvantage. The bank knew enough about these circumstances and should have taken steps to ensure they understand the risk before entering into the agreement. The mortgage should be set aside.

24. Concrete Constructions (NSW) Pty Ltd v Nelson (meaning of "in trade or commerce")
Fact: Nelson fell down the shaft and was injured because of the wrong information provided by the foreman of the Concrete Construction. Nelson argued that the company had engaged in misleading conduct in trade or commerce and wished to claim damages.
Decision: It was not part of the company's commercial or trading activities. It was only something incidental to those activities. Accordingly, the conduct didn't take place 'in trade or commerce'

25. Connor v Stainton (substantial performance)
Fact: Connor contracted with Stainton to erect fence with posts 12 feet apart. When the fence was erected, they were up to 18 feet apart. Stainton claimed by adding 'droppers' between posts, the fence would be as effective as if they were 12 feet apart. Connor refuse to pay.
Decision: It is not sufficient to do something that is materially different, even if it can be argued that what was done is just as goods what was promised. Stainton had not substantially performed the contract and was not entitled to claim the payment.

26. Coulls v Bagot's Executor & Trustee Co Ltd (privity)
Fact: Mr Coulls gave O'Neil the right to dig up and remove stone from his property. O'Neil pay the royalities to Mrs Coulls. After Mr Coulls died, the executor of Mr Coulls's estate wondered if Mrs Coulls had a contractual right to receive royalties.
Decision: O'Neil owed no contractual obligations to Mrs Coulls because she was not a party to the contract. The royalties should be paid to Mr Coulls's estate and distributed to his beneficiaries.

27. Donoghue v Stevenson (manufacturer's duty to consumer)
Fact: Donoghue consumed a ginger beer contained a decomposed snail. Although she didn't purchase it but she was the consumer of that food. Donoghue sued Stevenson for damages.
Decision: Stevenson owed Donoghue a duty of care.

28. Dougan v Ley (orders of specific performance)
Fact: Dougan sold a taxi cab and its operating license to Ley but later Dougan changed his mind and refused to perform the contract.
Decision: Taxi licenses were not readily available on the market so Ley was entitled to an order of specific performance.

29. Ermogenous v Greek Orthodox Community of SA Inc (intention to be legally bound)
Fact: Ermogenous accepted the Greek Orthodox Community of SA's offer and came to Australia where he served as archbishop for 23 years. He was paid a salary. At the end of his appointment, the Community refuse to pay him for the accumulated leave that Ermogenous would have under a binding contract of employment.
Decision: The agreement was intended to be legally binding and Ermogenous was entitled to payment for accumulated leave.

30. Esso Petroleum Co Ltd v Commissioners of Customs and Excise (commercial agreements)
Fact: Esso Petroleum produced a set of commemorative coins and promised to motorists a 'free' coin with every 4 gallons of Esso petrol purchased. The Commissioners of Customs and Excise argued that the 'free' coin were 'produced in quantity for general sale' and were subject to a purchase tax.
Decision: The offer of coin was a commercial promotion as a gift to its customers. It was a promise made with an intention to be legally bound in commercial circumstances, so it was subjected to a purchase tax.

31. Expo Aluminium (NSW) Pty Ltd v Pateman Pty Ltd (duty to deliver goods suitable for buyer's purpose)
Facts: Expo Aluminium ordered window frames from WR Patemean and told the manufacturer that the house would be fully exposed to strong winds and rain. When the windows were installed, they were found to leak.
Decision: The buyer had sufficiently indicated the purpose for the goods required. An implied term in the contract is that the goods would be suitable for the buyer's purpose. This implied term had been breached by supplying windows that leaked.

32. Finch Motors Ltd v Quin (hidden defects)
Fact: Quin bought a car that she wanted to use to tow a boat. She took the car after inspection and lately she discovered that a defective radiator had caused the car to overheat when towing the boat. She stopped payment and returned the car.
Decision: The defect was a serious one that made the car unsuitable for towing. The defect was hidden and was not discoverable merely by looking or driving it without towing so Quin was entitled to reject the car.

33. Fitzgerald v FJ Leonhardt Pty Ltd (illegal contracts)
Fact: Fitzgerald was supposed to obtain the permit of drilling any borehole before Leonhardt began his work, but failed to do so. When Leonhardt finished his work, Fitzgerald refused to pay, arguing that the contract was performed illegally.
Decision: The contract was enforceable despite the lack of permits because although the Water Act penalized such conduct, it did not prohibit it.

34. Freeman & Lockyer v Buckhurst Park Properties (Mangal) (apparent authority)
Fact: Kapoor was not appointed but took it upon himself to carry out managerial acts and employed Freeman & Lockyer to work for the company. When Freeman & Lockyer claimed payment, a dispute arose over whether Kapoor had the authority to engage Freeman & Lockyer on behalf of the company.
Decision: The court held that Kapoor had no actual authority to bind the company but he had apparent authority. The company should not be allowed to deny liability to third persons who dealt in good faith with Kapoor while relying on his apparent authority to act as an agent of the company.

35. Garcia v National Australia Bank Ltd (unconscionable dealing)
Fact: Garcia asked his wife to provide the security by executing a mortgage and assured that there was no real risk. The bank didn't explain the transaction or he liability. Ms Garcia appeared as 'a capable and presentable professional'. The bank wished to enforce the mortgage when Garcia's business failed.
Decision: The relationship between spouses is one of trust and confidence. If a spouse giving a guarantee didn't understand its effect and gained no financial benefit and the creditor failed to ensure the transaction had been properly explained and understood, then the transaction will be set aside as void.

36. Garry Rogers Motors (Aust) Pty Ltd v Subaru (Aust) Pty Ltd (unconscionable conduct)
Fact: Garry Rogers Motors (GRM) was appointed under a franchise agreement with Subaru as an authorized dealer. Subaru decided to terminate GRM's appointment when GRM indicated an unwillingness to comply with new requirements imposed by Subaru. Subaru refused to change its mind even if GRM agreed.
Decision: Failure to comply with an industry code of conduct is a factor which may indicate unconscionable conduct. Despite the reasons for termination not being put into writing, they were well known to the parties. This was insufficient in the circumstances to amount to unconscionable conduct by Subaru.

37. Government of Newfoundland v The Newfoundland Railway Co (divisible contracts)
Fact: The government would grant the company 25,000 acres of land on the completion of each 5-mile section of railway. The project end after just 7 sections.
Decision: The company was entitled to the grants of land for each of the 7 completed sections because it was clear that the grants of land were dependent only on the completion of each 5-mile section of the railway not the entire railway.

38. Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd (mistake)
Fact: Tsavliris contracted with the owners of the Great because he and its owners think it was the closest available ship. Then Tsavliris discovered it was further away so he tried to cancel the contract.
Decision: Great Peace was close enough to perform the task it was engaged to do even if it was further than expected. The contract wasn't void in common law or voidable in equity despite the error.

39. Hadley v Baxendale (consequential loss)
Fact: Baxendale carelessly delayed the delivery of shaft which caused Hadley's mill stood idle. Hadley claimed damages for the loss of profits caused by the delay.
Decision: The loss of profits was not direct loss because it would be expected that a mill would have a spare shaft. The lost profits could not be claimed as consequential loss because B hadn't been told that the mill would remain completely out of operation.

40. Handbury v Nolan (representations and terms)
Fact: The auctioneer announced the cow was pregnant and the buyer bid $3200. However, the cow was infertile.
Decision: The auctioneer's statement was an express term of the contract. If the statement was made, higher prices would be paid. The statement was made just before bids were invited. So the statement was intended to be a legally binding promise.

41. Hawkins v Clayton (liability of professionals)
Fact: Clayton prepared a will for Mrs Brasier to named Hawkins as principal beneficiary of her estate. Clayton knew of Mrs Brasier's death but didn't contact Hawkins until 6 years later. By that time, the house was worth much less than it had been.
Decision: Clayton was liable in Negligence because he failed in his duty to inform Hawkins without delay. Hawkins was entitled to recover damages to compensate for his economic loss.

42. Henthorn v Fraser (acceptance by post)
Fact: Henthorn accepted Henthorn's offer by post. After the letter had been posted, but before it was received by Fraser, Fraser attempted to withdraw his offer to Henthorn.
Decision: Acceptance of the offer was effective as soon as the letter of acceptance was posted, and this took place before Fraser's attempt to withdraw so Fraser can't withdraw the offer.

43. Hochster v De la Tour (anticipatory breach)
Fact: De la Tour engaged Hochster as a courier. 3 weeks before that the day commencing work, De la Tour informed Hochster that he no longer required a courier.
Decision: There had been an anticipatory breach of contract and the non-defaulting party is entitled to accept this repudiation of the contract and sue immediately for damages on grounds of anticipatory breach.

44. Hoening v Isaacs (substantial performance)
Fact: Hoening contracted to paint Isaacs's apartment, and supply some furniture, for £ 750. The work had been badly done and it cost £ 55 to rectify the defects. Isaacs paid only £ 400. Hoeing sued Isaacs for the balance of the agreed price.
Decision: Hoening had performed substantially. The failure will be treated as a breach of a warranty. Isaacs was not obliged to pay the full price, but was only entitled to £ 55.

45. Hole v Hocking (liability for physical harm caused)
Fact: The plaintiff suffered a brain haemorrhage in an accident caused by the defendant. The medical evidence suggested that the haemorrhage was going to occur at some point anyway.
Decision: The driver couldn't be held responsible for sth. that would have occurred even without his negligent. The plaintiff was entitled to damages which the haemorrhage was accelerated.

Summary: L agent for Y's purchase of music shop from Treasureway. Y relied on inaccurate financial info, suffered loss, sued.
Ratio: If conduct misleads, even if a corporation has acted honestly and reasonably, they are liable for damages. L could disclaim to avoid responsibility.
Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592 *(vitiating factors, misleading conduct)*
Summary: LE disclaimed information from sources "believed to be reliable". B bought house, found info inaccurate, sued.
Ratio: Disclaimer would have been noticed by anyone who carefully read the brochure. Majority decision, no breach.
Concrete Constructions (NSW) Pty Ltd v Nelson (1990) 169 CLR 594 *(misleading conduct, meaning of "in trade or commerce")*
Summary: N received wrong information from CC foreman, injured + claimed damages for misleading conduct in trade or commerce.
Ratio: Info was incidental, not part of trading or commercial activities therefore no breach of s52.
Garry Rogers Motors v Subaru (Australia) (1999) ATPR 41-703 *(vitiating circumstances, unconscionable conduct)*
Summary: GRM S's franchise partner, unwilling to accept S's new requirements ? terminated, GRM willing to comply, S not changing mind.
Ratio: s51AC lists failure to comply w/industry code of conduct; although S didn't provide written, termination reasons well-known by both parties therefore no unconscionable conduct by Subaru.

Week 10: The scope of tort law

Donoghue v Stevenson (1932) AC 562 *(tort, negligence, duty of care, manufacture's duty to customer, product liability)*
Summary: D found snail in ginger beer.
Ratio: Manufacturers owe consumers duty of care.
Perre v Apand Pty Ltd (1999) HCA 36; (1999) 198 CLR 180 *(duty of care, establishing a duty of care in cases of purely economic harm, "vulnerability")*
Summary: Sparnon grew infected potatoes from A, infecting P's potatoes & economic loss.
Ratio: A aware of risk, P dependent on A acting responsibly, part of limited group of persons therefore owed duty of care against purely economic loss.
Woolcock Street Investments Pty Ltd v CDG Pty Ltd (2004) 216 CLR 515 *(same as above)*
Summary: W bought warehouse, original owner didn't do CDG soil tests, W sought damages from CDG.
Ratio: Vulnerability is reference to plaintiff's inability to protect self from consequences of defendant's want of reasonable care, doesn't owe duty of care.
Shaddock & Associates Pty Ltd v Parramatta City Council (No 1) (1981) 150 CLR 225 *(liability for misstatements causing purely economic harm)*
Summary: PCC issued cert; no proposal to widen roads. S developed property, PCC widened roads.
Ratio: S acted on and relied on the certificate. Therefore PCC was liable.
Waverly Council v Ferreira (2005) NSWCA 418 *(tort, negligence, breach of duty of care, standard of care, statutory criteria)*
Summary: F's son climbed onto roof, fell, died, F? council ought to have foreseen parents' mental harm if park unsafe hence duty of care.
Ratio: A reasonable person would have prevented the risk of foreseeable harm,
Rogers v Whitaker (1992) 175 CLR 479 *(tort, negligence, duty of care, breach of duty of care, relevance of defendant's special skills)*
Summary: W blind in one eye, R surgeon performed procedure but failed to advise risks, W blind in both eyes.
Ratio: The standard of reasonable care and skill required is that of the ordinary skilled person exercising and professing to have that special skill.
Hawkins v Clayton (1988) 164 CLR 539 *(tort...care, liability of professionals)*
Summary: C knew of B's death, contacted H years after B's death and house became H's asset.
Ratio: C failed in duty, H entitled to recover damages.
Hole v Hocking (1962) SASR 128 *(tort, negligence, liability for physical harm caused, acceleration of harm)*
Summary: Hole suffered head injuries in car accident w/Hocking, accelerated brain haemorrhage.
Ratio: Plaintiff can only claim damaged for harm not suffered w/o driver's Hocking's negligence.
Imbree v McNeilly (2008) 236 CLR 510 *(tort, negligence, breach of duty of care, determining standard of care)*
Summary: M (16yo) allowed to drive I's car, crash. I injured, sued M in negligence.
Ratio: 1. Is Imbree owed a duty of care by the driver? Yes. Regardless of license, McNeilly owes a duty of care to Imbree.
2. Was there a breach? Yes, should have slowed down.
3. Causation: Imbree has brought this upon himself to some degree. Imbree 30% responsible, McNeilly 70% responsible, as Imbree was partly to blame.

Week 11: The law of agency

Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd (1964) 2 QB 480 *(agency, grant of authority, apparent authority)*
Summary: Kapoor acted as manager, employed F&L, didn't pay them.
Ratio: K had relied on apparent authority to act as an agent therefore BPP liable.
ANZ Ltd v Ateliers de Constructions Electriques de Charleroi (1966) 1 NSWR 19 (1967) 1 AC 86 *(agency, grant of authority, implied authority, agent duty to keep funds separate)*
Summary: ACEC had Helios partner. Received cheques for ACEC, stored in own ANZ account-ACEC had none in Au. Helios liquidated w/ACEC money.
Ratio: Implied authority (pay cheque into own account) necessary for business efficacy.
Keighley, Maxted & Co v Durant (1901) AC 240 *(unauthorised acts by agent, ratification, undisclosed principal)*
Summary: Agent Roberts for KMC purchased higher price wheat from D under own name, later revealed for KMC. Durant not paid, pursued KMC.
Ratio: R never told D he was acting for KMC. Undisclosed principal = stranger to contract therefore they cannot become party by ratification.
Bertram, Armstrong & Co v Godfray (1830) 12 ER 364 *(agency, duties of agent, duty to follow instructions)*
Summary: G instructed B,A&c sell shares at price x, didn't sell as wanted to make more profit, shares crashed.
Ratio: Agents are liable for loss caused by failing to follow principal's instructions.
Lintrose Nominees Pty Ltd v King (1995) 1 VR 574 *(duties of agent, good faith, conflict of interest)*
Summary: Hopkins agent for both LN & K; w/o disclosing agency status for LN, sold house to K.
Ratio: Agent is not allowed to put his duty as agent in conflict with his own interest.
Yorke v Treasureway Stores Pty Ltd (1983) ATPR 40-336 *(vitiating factors, s52 Trade Practices act, misleading conduct, liability of principal & agent)*
Summary: Lucas was agent for Y's purchase of music shop from Treasureway. Y relied on inaccurate financial info, suffered loss, sued.
Ratio: Treasureway and Ross Lucas were liable for breach; both agent and principal may be liable for misleading or deceptive conduct.

The nature and function of law

2 types of rules:
1) Non-legal e.g. moral/philosophical beliefs, religious beliefs, social values, etc. These have no bearing in BLAW. ?Often a source of origin for many laws.
2) Legal rules or laws, are recognised and applied by the state.

Non-legal rules become inadequate in larger groups; hence, rules are enforced by the state (government and any of its departments).
Sources of law/groups w/law-making powers:
1. Legislatures (parliaments); exist on national, state, local level (council). Comprised of politicians who draft & publish legislation(acts) or amend codified laws. Proactive.
2. Courts ? judges. Listen carefully & give judgement. Ratio decidendi recorded, forms law. Future judges obligated to follow approach of previous judges. Hence indirect influence.

The purpose of law:
- Allows planning for the future with reasonable certainty
- Lays down rights, duties, and powers of different groups
- Permits/encourages/punishes/discourages particular activities
- Controls the use of force and unauthorised violence through enforcement
- Creates rights and duties which may be **enforced by an individual** in court.

The objective of all these rules is **justice** - achieving outcomes which are considered fair and good by the community. This is, however, an objective, and hence sometimes unjust laws may exist.
Law aims to be consistent for **predictability** and **equity.**

Legislation as a source of law

Common law: England. Civil law: Rome. In Aus, we have combination; only taken British enforcement system.

Commonwealth	State & territory legislatures	Councils
-Nation wide -Less power; specific legislation	-Limited - More power to legislate	-Pass by-laws -invalid if clash w/ ↔

-Commonwealth legislature > state & territory only in sections commonwealth allowed to legislate

Legislatures in AUS	Lower house	Upper House
Commonwealth	House of Representatives	Senate
SA	Legislative Assembly	Legislative Council
VIC	Legislative Assembly	Legislative Council
NSW	Legislative Assembly	Legislative Council
ACT	Legislative Assembly	*
QLD	Legislative Assembly	*
NT	Legislative Assembly	*
WA	Legislative Assembly	Legislative Council
TAS	House of Assembly	Legislative Council
Norfolk Island	Legislative Assembly	*

The legislative process:
1. Proposals for new legislation ?need for new law, politicians decide (not vote) to introduce new proposals, Bill drafted.
2. Procedure in House of Origin ?Initiation, 1st Bill reading (title read, no debate), 2nd reading (title read 2nd time if voted minister explains, debate), members of house form committee & examine Bill in detail, 3rd reading (house votes to approve bill).
3. Procedure in House of Review ?Same as House of Origin. Pass w/no amendments, Bill returns to House of Origin and begins next stage. If amendments, House of Origin may accept/reject; if no agreement, Government dissolves & general election called.
4. Final stages before operation ? Royal assent (Queen or Gov. General approves, governor @ state level), publication (in Government Gazette to inform people), commencement (28 days later if unspecified date)

Interpreting legislation:
- Literal approach: words have natural, ordinary meaning.
- Golden rule: if literal = absurd/repugnant/inconsistent w/act, modify literal meaning to avoid the absurdity
- Purpose approach: if literal does not give clear and unambiguous meaning, ascertain meaning of words w/regard to Parliament's purpose when the Act was passed.
  Evidence for the purpose: Intrinsic (object sections, structure of act, etc) & Extrinsic (parliamentary papers, background documents, etc)

The role of courts in law-making

Civil trial process (case law = general law, NOT common law?specific type of case law):
1. Exchange of pleadings to define nature & extent of dispute.
2. Trial; evidence led from witnesses or documents to establish facts relied on by plaintiff/defendant.
3. Each side presents argument as to relevant laws + their application.
4. Court decides which facts are proven, what law. Case decided by law, order made by judge.

A judge's power to make law: usually, judges find established law & apply. If no laws/similar cases; can declare a new rule of law to apply to new circumstances, or examine the meaning of a pre-existing rule, or extend and established rule of law to a new situation.
In Aus, judges can access principles of both common law (usually strict, legalistic) and equity (notions of justice and fairness). Jointly referred to as case-law or general law.
stare decisis(Latin term for the doctrine of precedent) = let the decision stand. Decisions of superior courts must be followed unless material facts of new case are sufficiently different to justify applying different rules.
Ratio decidendi: only part of superior court's previous judgement that binds future judges; contain judge's instructions of principles for judgement.
Court hierarchy:
Judges only bound by superior judges in own hierarchies.

High Court of Australia (highest court in all jurisdictions) 7 judges

CTH	NSW	VIC	QLD	SA	TAS	WA	ACT	NT	NI
Full Court of Federal Court	Court of Appeal	Court of Appeal	Court of Appeal	Full Court of the Supreme Court	Full Court of the Supreme Court	Court of Appeal	Court of Appeal	Court of Appeal	Federal Court of Australia
	Court of Criminal Appeal							Court of Criminal Appeal	
Federal Court of Aus	Supreme Court	Supreme Court	Supreme Court	Supreme Court	Supreme Court	Supreme Court	Supreme Court	Supreme Court	Supreme Court
	District Court	County Court	District Court	District Court		District Court			
Magistrates Court	Local Court	Magistrates Court	Magistrates Courts	Magistrates Courts	Magistrates Courts	Magistrates Courts	Magistrates Courts	Magistrates Courts	Court of Petty Sessions

Law reports:
Judge name abbreviations (Lynch v Lynch example, part A): CJ = chief justice, purpose is to foster a collegiate atmosphere amongst judges. JA = justice of appeal; an appeal judge who sits above the supreme court in NSW. AJA = acting justice of appeal.
Appellant/plaintiff: the person who appeals the case.
Respondent/defendant: the other person in the case after an appeal.

Contract formation

Concept of contract: legally enforceable agreement between parties w/ legal obligations.
Capacity to contract: 18+, sound mind (lucid), minors?necessities/things that give benefit only
Privity: only parties to the contract have right to bring action & enforce it.
Elements of formation: 1) intent to be legally bound - judged objectively. Affected by domestic/social/commercial/business arrangements. 2)sufficient agreement - on essential terms for workable transaction; offer (promissory, sufficiently complete, intended to result in contract, addressed to someone) + acceptance (same terms as offer, not subject to condition, made while offer exists & to recipient of offer, in acceptable form ?instantaneous (talking)=once received, fax/telex = once received by offeree, post = acceptance letter posted, email = specified method, once email reaches inbox, unspecified method, email opened by offeror. 3)formal execution/consideration (thing, promise to do/not to do, money; cannot be something previously done (past), may be an act w/expected counter-performance (executed))

Terms of a contract

Proving terms: wholly oral (evidence from witnesses), oral/written (both types of evidence), written (parol evidence rule?not applied when evidence in support of rectification, written contract is only part of agreement, uncertainty in written doc)
Statements that aren't terms: puffs (excite), opinions (create no liability), representations (statement of fact-term ONLY IF intended to be binding promise?can be reasonably inferred from circumstances). Misrepresentations cannot give rise to actions of breach; should be tort or ACL.
Terms: conditions (major), warranties (minor; contract still exists if warranties do not), innominate terms. May be 1. expressly agreed (actually spoken or written) 2. implied ad hoc (officious bystander test+reasonable/clear&ambiguous/not contradict express terms/give business efficacy (help contract to function)) 3. Put in by law (universal; to cooperate & act in good faith & generic: Goods acts)
Goods acts:
S18: goods must match if sold by description.
S19a:buyer makes purpose known & shows reliance on seller & seller's business supplies goods, must supply goods reasonably fit for purpose. Not applicable when buying under patent or name (no reliance on seller).
S19b: buying by description & seller deals with goods of that description?merchantable quality UNLESS buyer has examined goods in way which revealed defects.
S20: sale by sample, bulk must match sample & free of unmerchantable defects, buyer has reasonable opportunity to inspect.
Exclusion of liability: must be clear & precise, properly brought to attention of other party, if ambiguous exclusion term treated contra **preferentem** (against interest of preferred party). Goods act may be excluded.

Breaches of contract

Excusing performance: 1. Initial impossibility - sale of non-existent goods
2. Supervening impossibility/frustration - initially possible (if parties assumed risk of changed conditions, must pay damaged for non-performance). **FRUSTRATION TEST**: a) parties' assumed change in circumstance not inferable AND b) party seeking relief is not responsible for change AND c)unjust to enforce in new situation. In common law, contract discharged & parties carry own damages. ACL & Fair trading act (2012) allows recovery of all moneys paid before frustration + compensation for partial performance before frustration, ↑fairness.
Types of breach: a)*non-performance* (either done, or bears no resemblance) b) *partial performance* (of condition?can terminate + claim damaged, of warranty?damages only) c) *substantial performance* (small breach of condition, plaintiff gets expected benefit, treated as breach of warranty) d) *late performance* (amounts to breach of condition?termination + reject future performance, warranty?damages) e) *anticipatory breach* (performance no longer achievable or INDICATION OF INTENTION NOT TO PERFORM i.e. **repudiation**; if contract/condition repudiated, non-defaulting party may accept repudiation, terminate performance & sue for damages. Risky as if not real repudiation, termination is an act of repudiation) f) *breach of innominate term* (assess effect of breach; if serious breach, treat as breach of condition, if not serious, warranty ? different remedies) g)*breach of divisible contract*(breach of one does not affect others).

Remedies for breach

Suing party entitled to specify desired remedy. Nature of performance affects available remedies. Aside from statutory remedies (ACL/Sale of goods legislation) & agreed (agreed terms of the contract regarding remedies).
Common law remedies:
Damages: compensatory, aim to put plaintiff in same position as if the contract had been performed. Can compensate for direct loss or consequential (reasonably supposed by both parties as the probable result of breach at the time of contracting)?loss must be mitigated (minimised) by plaintiff.
Termination: must prove either less than substantial performance of condition OR serious breach of innominate term. Termination allows rejection of performance & cease future specific performance?terminates defendant's right to perform. Outstanding obligations paid as damages.
Election to terminate: must choose (decision is final), communicated to defaulting party, decision is unambiguous; may be special procedures (Holland v Wiltshire). Termination for breach of Sales of Goods legislation: if goods initially rejected, can claim damages - if goods accepted, treat as breach of warranty .
Equitable (NOT awarded if damages are adequate) remedies:
Specific performance: won't be ordered if a) damages give adequate relief OR b)performance involves close relationship/goodwill OR c)continuous supervision is necessary.
Injunctions: telling a person to stop doing something (prevent threatened breach of contract).

Vitiating factors

Vitiated = made void, void ab intio = attempt of creation has no legal effect.
Duress: threatens or uses unlawful force or harm (physical, economic, illegal action. Contract voided if person who was forced acts within reasonable time.
Undue influence: one party places confidence & trust in other. Must act reasonably soon.
Presumptive controlling influence: parent/child, doctor/patient, solicitor/client, religious adviser/believer. Stronger party must prove no undue influence exercised. General controlling influence: husband/wife, principal/agent, accountant/client, banker/customer, dentist/patient, employer/employee. Stronger party must prove no undue influence exercised IN RELATION to contract questioned. If general does not exist, weaker party may prove stronger party used improper controlling action to bring about particular transaction.
Mistake: mutual (prevents parties from reaching sufficient consensus), if objective agreement exists then look at bilateral (both parties mistaken; if agreement was conditional on truth of assumption, contract voidable in common law. If mistake about quality, contract is made void only if the error "makes the thing contracted for essentially different from the thing it was believed to be") or unilateral (one party mistaken; if agreement despite error, contract valid in common law. But equity makes voidable if other party takes advantage of error).
Unconscionable dealing: a)weaker party has incapacity b)stronger party aware of disadvantage c)exploitation.
Misrepresentation: if deliberately or negligently, give rise to tort action. "innocent misrepresentation" only may give rise to liability for misleading conduct under ACL.
Illegality: transaction may be invalid, unenforceable, or subject to penalty.

Consumer protection

ACL protects consumers; **different to Goods Acts, cannot be contracted out of! NTS: carefully read legislation!** Protects against unconscionable (s20-22)/misleading conduct (s18), unfair terms (s24)/business practices(s29,32-36,39,40,50,44,45,54-59), guarantees in consumer contracts (if not a major failure, consumer can ask supplier to remedy the failure. If not done, consumer can get someone else to remedy & seek costs from original supplier OR reject on grounds of failure. If major failure; can reject, keep goods & seek compensation & claim ongoing loss e.g. defective toothbrush, dental costs can be claimed. May be rejected only within time which failure to comply would become apparent) , unsolicited consumer agreements (telemarketers etc. s73-75, 78,82) & safety standards (ACL prohibits offering or supplying goods which do not meet safety standards). ACL enforced by actions brought against suppliers by customers or imposition of fines & penalties.

Tort law

Negligence: failure to take reasonable care to prevent damage or loss that was foreseeable and should have been prevented. Negligent conduct: positive acts, failure to act, giving advice. Harm: physical, damage to property, economic loss.
To establish liability for negligence: a) duty of care owed AND b) duty of care breached AND c) injury or loss suffered as a result of breach.
Establishing duty of care: 1. reasonably foreseeable that injury or some kind of harm would occur resulting from defendant's conduct. 2. Plaintiff must be someone who it was foreseeable to suffer harm as a result of conduct. 3. Recognised duty of care relationship ?occupiers of property/persons entering the property, statutory authorities/public, road users/other road users, agents/principals, parties in contractual relationship, manufacturers/consumers.
Purely economic harm: must be shown plaintiff vulnerable/dependent/powerless, defendant in position of power. If giving of wrong advice causes loss, duty of care exists if speaker is aware that they are being relied on & reasonable for other party to act on advice given.