

## The Courts and the Common Law

### *Common Law and Equity:*

- 1066 - English monarch sent travelling judges to administer royal justice around the country, where local customs were applied. Earlier decisions then began to apply and gradually became consistent
- Statutes: apply general to particular.
- Cases: operate from particular to the general
- Equity – court of equity was originally created as a court of conscience where cases were decided according to the Chancellor's ideas of equity and good conscience
  - Equity courts then developed to supplement common law courts; they assumed the existence of the common law and simply provided a remedy where the common law gave no remedy or offered an inadequate remedy
  - Contributions to the law: trust (where one person (legal owner) holds property on behalf of and for the benefit of another person (equitable owner)), treatment of fraud (gave relief when there had been a breach of an obligation enforced by a 'court of conscience')

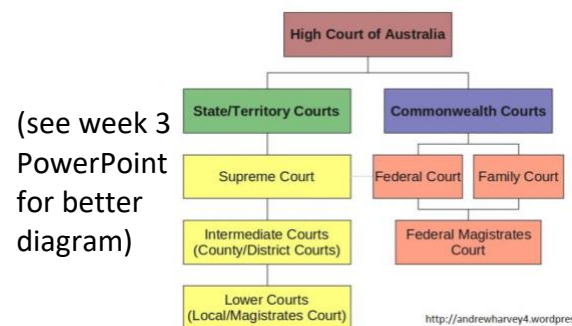
### *Doctrine of Binding Precedent:*

- Res judicata – result is decided, may be appealed if they want to, after first appeal that's the end of the case. The decision, however, has a life beyond as it acts as a precedent which is binding on lower courts
- Stare decisis (doctrine of binding precedent) – court must follow the previous decisions of courts higher than itself in the same hierarchy of courts in the same jurisdiction. It includes
  - Certainty – law is clear to all individuals and they can act in ways in which they know the consequences
  - Equality – treating like cases alike
  - Efficiency – if one court has decided upon an issue, previous courts can just look at the decisions rather than go through the whole process themselves
  - Appearance of justice – creating impartial and reasonable rules that aren't dependent on the personal views/bias from judges
- Ratio decidendi – reason/underlying principles of the decision and the part of the decision which is binding and precedent (material facts + decision on material facts)
- Case Study: *Donoghue vs. Stevenson* [1932] AC 562
  - Ginger beer was sold from manufacturer (Stevenson) to Café to friend to Mrs Donoghue → decomposed snail found in opaque bottle → Mrs Donoghue suffered stomach illness and nervous shock and died → no contract so who's to blame? → found the manufacturer was liable to plaintiff in negligence (3-2 majority)
  - Ratio decidendi of case
    - Narrow liability principle regarding ginger beer/snails
    - Wider manufacturer liability principle ("owes a duty to take reasonable care")
    - Even wider neighbourhood principle for general duty of care in negligence ("must take reasonable care to avoid acts or omissions that could reasonably be foresee as likely to injure one's neighbour")
- Obiter dicta – other legal arguments/statements of principle found in judgements that can be persuasive but aren't binding (everything that isn't the ratio)

- Judicial hierarchy - decisions of courts made outside a particular hierarchy may be persuasive but aren't binding. A previous decision of a court on the same level is usually not binding but the results will normally be the same unless the previous decision was wrong
  - Persuasive authorities – previous decision isn't binding but may be followed cause its persuasive
  - E.g. NSW court can look at what Vic/NZ/UK court did and may be persuaded by it
- Distinguishing – judge finding a significant difference in material facts between the two cases so the earlier decision is not binding → means that earlier precedent can basically be abolished
- Rejecting prior authority – appeal court may decide existing common law is wrong by overruling or reversing it

#### *The Court System:*

- Original jurisdiction – court is acting in the first instance to decide on a matter for the first time
- Appellate jurisdiction – court hears an appeal from a lower court and determines the result
  - Parties usually have the right to appeal however most appeals are restricted to re-examining questions of law (rather than facts) and are heard by ≤ 7 justices (usually 3)



#### **Federal Courts**

<i>HCA (1)</i>	<i>Federal Court (2)</i>	<i>Family Court (4)</i>	<i>Federal Circuit Court (3)</i>
Has highest jurisdiction is Aus and its original powers are set out in the Constitution.	Federal Court of Australia Act 1976 (Cth)	Family Law Act 1975 (Cth)	Formerly the Federal Magistrates Court and was established in 1999. Is a cheaper and faster method of dealing with less complex civil/family matters, eases pressure off Family Court
<u>Original jurisdiction:</u> Derived from the Constitution, stated in s 76	<u>Original jurisdiction:</u> General Division – bankruptcy, appeals from the AAT and matters arising under Federal Acts Industrial Division –	<u>Original jurisdiction:</u> Divorce process and supporting matters like property, maintenance and custody of children, stated in s 51	Encourages use of conciliation, counselling, arbitration and mediation

	stuff related to Industrial Relations Act 1988 (Cth) and related matters		
<u>Appellate jurisdiction:</u> s73 hears appeals from a single Justice of the High Court, any Federal court and the Supreme Court of any State (final court of appeal). Any appeal requires special leave	<u>Appellate jurisdiction:</u> hears appeals from single Federal Court judges, territorial Supreme Courts and single judges from State Supreme Courts in federal matters (income tax)	<u>Appellate jurisdiction:</u> hears appeals from a single judge of the Family Court and a State magistrate exercising jurisdiction under the <i>Family Law Act</i>	

State Courts			
<i>HCA (1)</i>	<i>Superior Courts (2)</i>	<i>Intermediate Courts (3)</i>	<i>Lower Courts (4)</i>
See above	Supreme Court and is separated into divisions	E.g. District Courts (NSW), County Courts (VIC)	E.g. Local Courts, Magistrate's Courts
	<u>Original jurisdiction:</u> Exercised by a single judge Unlimited civil jurisdiction (any amount) and most serious criminal matters under State law	<u>Original jurisdiction:</u> NSW Up to \$750000 (civil matters) and offences punishable by < 14 years imprisonment (criminal matters)	<u>Original jurisdiction:</u> up to certain amount (civil matters) and committal proceedings (decide if person should face full trial) and minor criminal offences (criminal matters)
See above	<u>Appellate jurisdiction:</u> hears appeals from lower courts and from a single Supreme Court judge	<u>Appellate jurisdiction:</u> sometimes hears appeals from lower courts	<u>Appellate jurisdiction:</u> N/A

- Jurisdictional Conflicts – Federal legislation may talk about authority of State courts in relation to certain matters (s71 and s77)
  - Cross-vesting – the jurisdiction each court has, and that the one above has power over the other (e.g. the Supreme Court has jurisdiction over the federal court over matters that they both have power over)

## Contract Law

- Contract – an agreement between 2+ legal persons which the courts will enforce
  - Law of contract exists primarily to determine the question of when promises will be enforced by the courts (answers lie in common law)
  - Private law
  - Basis of all business relationships (even in non-business environments)
  - Main way that commercial players can define and regulate their business obligations and expectations with other businesses/customers
  - Primary function is to provide the mechanism for certainty and predictability on which commerce depends
  - Product of common law with developments from the 18<sup>th</sup> and 19<sup>th</sup> centuries (industrial age, rugged individualism, testing the limits, etc.)

- Main limits – imposed by statute and focus on consumer protection and engaging in conscionable business (moral/ethical standard of behaviour)
  - Australian Consumer Law (ACL) which is under the Competition and Consumer Law Act 2010 (Cth)
    - s 18 – prohibition of misleading/deceptive conduct
    - s 21 – prohibition of unconscionable conduct
- Types of Contracts
  - Bilateral (where both parties have obligations to fulfil) or unilateral (only one party has an obligation to fulfil)
  - Simple (doesn't have to be in writing but must have consideration) or formal (deed – don't need consideration but need special words like signed, sealed and delivered)
    - Only refers to form used and has nothing to do with content of contract
  - Oral, written (subjects of significant matter) or oral and written
  - Negotiated and Standard Form (written by stronger party leaving little-no opportunity for negotiation. Bad cause they're rarely read and understood E.g. banking/insurance contracts)
  - Consumer and Commercial
- **7 elements every contract must have:**
  - 1. Agreement (offer + acceptance)**
  - 2. Intention to create legal relations**
  - 3. Consideration**
  - 4. Genuine Consent**
  - 5. Legal Capacity**
  - 6. Legality**
  - 7. Specific Formal Requirements**

**NB: If one or more element is missing, there is *no contract* but there may be another legal outcome (e.g. agreement, understanding or arrangement)**

*Agreement (Offer + Acceptance of the offer)*

#### Offer

- Objectively clear statement of the terms on which an offeror is prepared to be contractually bound without further negotiation
- Requirements
  - Must be able to answer yes to it
  - Must be communicated to the offeree(s)
  - Can be made to one person, a group of people or the whole world
  - Must be distinguished from an 'invitation to treat' and a supply of information
  - Can be revoked before it has been accepted
- What isn't an offer?
  - Supply of information
    - **Example Case: Harvey v. Facey [1893] → Facey's reply telegram was a response to Harvey's question about the price of the pen**
  - Invitation to Treat (invitation to trade or negotiate so person who responds to invitation becomes the offeror)
    - E.g. advertisements, self-service, vending machines, auctions, tenders

- Example Case: Granger & Sons v. Gough [1896] → price lists, catalogues and circulars are invitations to treat (wine merchant distributed a circular that listed prices of wines he had in stock but he was not guilty)
  - Example Case: Fisher v. Bell [1961] → g/s displayed in shops are invitations to treat (defendant displayed a flick knife in shop window with a price tag but wasn't guilty)
- Termination of an offer can be done by:
  - Revocation by the offeror – revocation (formal withdrawal of the offer by the offeror)
    - Must occur in the same manner as the offer