

Com Law Notes

Topic List:

Topic 1 – An Introduction to Law

Topic 2 – Law of Contract: Offer and Acceptance

Topic 3 – Law of Contract: Intension, Consideration, Formalities, Capacity and Consent

Topic 4 – Law of Contract: Express and Implied Terms

Topic 5 – Law of Contract: Termination and Remedies

Topic 6 – Consumer Protection: Overview

Topic 7 – Consumer Protection: Unfair Contract Terms & Consumer Guarantees

Topic 8 – Law of Torts: Introduction

Topic 9 – Law of Torts: Breach of Duty

Topic 10 – Business Relationship and the Law: Partnerships

Topic 11 – Business Relationship and the Law: Corporations

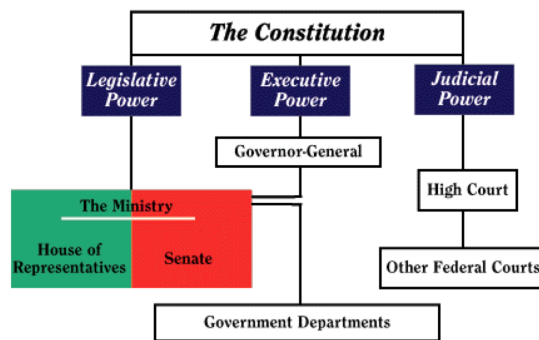
Also Includes:

- Relevant Cases Summary
- Relevant Sections Summary

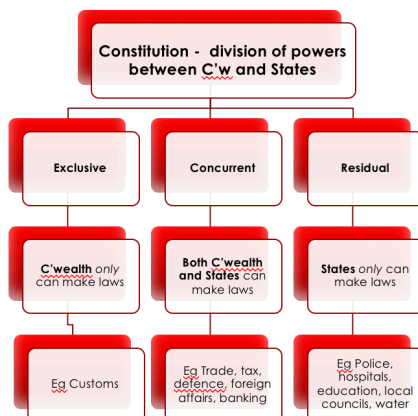
Com Law Notes

Week 1 – An Introduction to Law

- The Nature of Law
 - o Law is all pervasive. It affects:
 - Personal and domestic lives
 - Business lives
 - National and international affairs
 - News and broader media
- Basic Definition of Law
 - o Law is a system of rules of conduct made by parliaments and/or the courts that regulates or controls the behaviour or relations between individuals or groups.
- The Five Functions of Law
 - o Promotes resolution of disputes
 - o Reflects social values
 - o Ensures commercial stability
 - o Maintains social cohesion
 - o Prevents abuse of power
- The Constitution and the Separation of Powers: The Three Branches of Government



- The Constitution and the Division of Powers



- Sources of Law
 - Statute of Law
 - Law made by parliament
 - Legislation
 - Acts
 - Statutes
 - Common Law
 - Law made by judges in deciding cases
 - Case law
 - Precedent
 - Judge-made law
- Sovereignty
 - Parliament can make or unmake any law (provided it acts within Constitutional power)
 - It can:
 - Make new law at any time
 - Repeal or amend old laws
 - Codify judge made law (put common law into legislation)
- The Interpretation of Statutes
 - A dispute may arise
 - The Act will be applied and its meaning interpreted by the court
 - Acts Interpretation Act (CACL 1.350)
 - Basic object of court when interpretation legislation is to:
 - Give effect to the intention of the parliament
 - A Purposive Construction (CACL 1.360)
 - If there are two or meanings courts are directed to use a purposive construction.
 - Courts must come to a decision that proves the purpose of the Act
 - Job of the Courts = How to decide purpose or intention of the parliament (CACL 1.360-1.370)
- Common Law (CACL 1.430-1.450)
 - Refers to a source of law
 - Refers to a system of law
 - Refers to historical law
 - The Doctrine of Precedent (CACL 1.540)
 - Need a hierarchy of courts and a law reporting system
 - Ratio and Obiter
 - Ratio = Reason or underlying principle

Week 7 – Consumer Protection

- Unfair contract terms (CAACL 13.290)
 - Unfair terms in a standard form consumer contract is void: s23(1)
 - If contract can operate without the unfair term, it will not be void: s23(2)
 - Meaning of ‘consumer’ contract: s23(3)
 - Contract for supply of goods and services or sale of land to person who acquires them wholly or predominantly for personal or household use
 - Meaning of ‘unfair’: s24(1)
 - Three elements (CAACL 13.300). Term:
 - Creates a significant imbalance in party’s rights and obligations
 - Is not reasonably necessary to protect legitimate interests of stronger party
 - Causes detriment to another
 - Applying s24(1) court must consider:
 - The extent to which term is ‘transparent’
 - Contract as a whole
 - Legislative examples: s25 (CAACL 13.310)
 - Meaning of ‘standard form’ contracts: s27(2)
 - See 6 relevant factors s27(2)(a)-(f)
 - Case examples
 - **ACCC v Chrisco Hampers Australia Pty Ltd (CAACL 13.315)**
 - ‘After final instalment paid, customer’s bank account would continue to be debited in anticipation of a future order’...
 - **NRM Corporation Pty Ltd v ACCC (CAACL 13.317)**
 - ‘Customer required to give 30 days written notice in order to terminate contract and, then, became liable to pay a termination fee’
 - **Office of Fair Trading v Ashbourne Management Services Ltd (CAACL 13.316)** – UK e.g.
 - ‘Fixed membership for one year plus termination fee. Gym could terminate at will’
 - The small business amendments came into effect in Nov 2016
 - Small business contract = one (or more) parties to the contract is a business that employs fewer than 20 persons

CASES NOTES

Mere Puff

Carlill v Carbolic Smoke Ball Co (3.40) – More than a puff

- Advertisement in newspaper claimed to prevent onset of influenza
- Offered to pay 100 pounds to anyone who used it who caught influenza
- They deposited 1,000 pounds in bank to show sincerity – this was evidence of seriousness
- Issue was whether ad was an offer or a mere puff (no reasonable person would regard as binding promise)
- It was more than a mere puff, but a serious offer, as evidence from deposit

Leonard v Pepsi (CACL 3.60) – Mere puff

- Ad campaign encouraging consumers to collect 'pepsi points'
- TV ad showed series of products and pepsi points necessary to collect them
- In final scene, boy flies harrier jet and words say "Harrier Fighter 7,000,000 pepsi points"
- Leonard attempted to buy the 7,000,000 points for \$700,000 after seeing the ad
- Pepsi rejected the purchase and returned the cheque
- Court found it a mere puff, it was not clear, definite and explicit and clearly comical

Invitation to Treat

Gibson v Manchester City Council (CACL 3.80) – Invitation to treat/Statement supplying information

- Council sent Gibson letter with application to buy a council house
- Gibson completed form but Council changed policy before contracts were signed
- Gibson argued that council's letter was an offer and that he accepted that offer
- Letter was an invitation to treat because they said "may be prepared to sell" and had an invitation to "make a formal application to buy"
- It is a statement that provides information but doesn't indicate that they intended to make an offer

Harvey v Facey (CACL 3.90) – Invitation to Treat

- Harvey sent telegraph "will you sell us property? Telegraph lowest price"
- Facey replied "lowest price 900 pound"
- Harvey replied "We agree to buy for 900 pounds you requested"
- Harvey sued for breach of contract when Facey refused to sell
- There was no contract, his 'acceptance' was in fact an offer to buy

Pharmaceutical Society of GB v Boots CC (CACL 3.110) – Shop display

- Boots chemist displayed pharmaceutical supplies on shelves in shop for customers to choose and take to counter where qualified pharmacist was in attendance

Sections ACL

- **Sec 29** (false/misleading representations in relation to promotion and supply goods/services)
- **Sec 23** (unfair contract terms)
- **Sec 18** Misleading or deceptive conduct
- **Sec18-39** Nine consumer guarantees apply to goods supplied to consumer
 - o **Sec 51** Title (S has right to dispose of goods)
 - o **Sec 52** Undisturbed possession
 - o **Sec 54** Guarantee as to acceptable quality
 - o **Sec 55** Guarantee as to fitness for any disclosed purpose
 - o **Sec 56** Correspondence with description
 - o **Sec 57** Must comply with sample or demo model
 - o **Sec 58** Repair and spare parts
 - o **Sec 59** Must comply with express warranties
- **Sec 60-64** Four consumer guarantees apply to services supplied to consumer
 - o **Sec 60** Services rendered with due care and skill
 - o **Sec 61(1)** Reasonably fit for disclosed purpose, **(2)** and such state/quality that it would be able to achieve that result, **(3)** but doesn't apply where it would be unreasonable to rely on supplier's skill/judgement
 - o **Sec 62** Reasonable time for supply
- **Sec 236** Remedies

Sections of Wrongs Act

- **Sec 48(1)** The risk of injury was reasonably foreseeable
 - o **Sec 48(1)(c)** D only in breach of duty for failure to respond if risk of harm is not insignificant
- **Sec 48(2)** How would a reasonable person have responded (if risk was foreseeable)
- **Sec 51(1)(a)** Causation/'But for test'