Contract Law Week 1

Introduction to Contract Law

- Contract forms the basis for commercial transactions, consumer transactions and delivery of public services
- Underpins our society
- Voluntary undertakings
- Needed for banking, credit sales, employment, houses, insurance etc.
- Includes remedies for breaches, orders for breaching party to perform or damages to pay
- Ensures no party has their rights infringed
- Two justifications for contract: economic and utilitarian. Law makers are influenced by both aspects

Economic

- Most exchanges cannot be performed simultaneously
- Thus one party has the confidence the other will perform
- Sense of morality
- Risk of non-perform would discourage people from entering beneficial contracts
- Society's interests over the individual

Utilitarian

- Mutually beneficial exchange
- Promotes overall society welfare and social wealth
- Two parties freely agree to contract involving a simple exchange to be better off
- Best use of resources
- Individual's views over society's

Where is contract law found

- We consider business, consumer and government view
- Balance of freedom and certainty for business
- Purchasing goods & services for consumer law
- Government power under statute and constitution – contract law can be limited (different laws to consumer and business)
- Contract law is mainly found by judicial decisions: Also in statute (legislation, , Good Acts 1958 VIC, Electronic Transactions (Victoria) Act 2000)

Judicial Decisions

- judge made law
- common law
- equity

Statue (Legislation)

- Australian consumer law schedule 2 of the competition and consumer act 2010
- Credit (Commonwealth Powers) Act 2010 (VIC)
- Goods Act (1958) VIC
- Electronic Transactions (Victoria) Act 2000
- Australia Consumer Law and Fair Trading's Act 2012 (VIC)

What is a contract?

- A contract is a promise or set of promises that are legally binding
- Agreement the court will enforce – different to a normal agreement
- There is an exchange (reciprocal)
- Parties are free to decide if they enter a contract, the obligations (terms) are and consequences for a breach which contrasts with other area of law
- **Two pillars of contract law: freedom and sanctity**
- Limits to contractual freedom: illegality, misleading conduct, fraud, unconscionable dealing, statutory restrictions, consumer protections, implied terms (prohibition of unfair terms), anti-discrimination legislation, bargaining power
- Contract law and other areas are not mutually exclusive – do not discuss other areas in contract despite cross-overs
- Analysed on a case to case basis
- Largely derived from England, thus English cases are frequently referred to
- Statutes are focusing on developing Australia law
- Elements of a contract: offer – acceptance – consideration (price for the promise) – intention to create legal relation – compliance with formalities; capacity (not technically elements but may impact enforceability) = contract

Classifications of Contract

- How many parties are bound
- If the contract is under the seal
- If terms are express or implied
- Subject matter
- Effectiveness
- According to the parties

How many parties are bound

- Most involve two parties being bound (bilateral)
- Some involve only one party being bound (unilateral)

Under the seal

- Written and sealed – formal or specialty contract

- All others (majority of contracts) – simple or informal

Express or Implied terms

- Express – articulate all or most of the key terms
- Implied – no terms expressed but found to exist through their conduct

Subject Matter

- Any subject matter provided it is not illegal at common law or under statute
- Special rules developed in relation to certain subjects
- E.g. sales of goods (ACL), sales of land (must be recorded in writing)

Effectiveness

- If a defect exists wholly or partly may impact its enforceability
- If it cannot be enforced is deemed 'void' and is totally ineffective
- 'voidable' means it is operative until it is set aside by the party who, based on the specific defect, has the power to do so
- 'unenforceable' means parties choose to ignore its unenforceability – obligations from the contract cannot be enforced by the courts
- Most common cause for not being enforceable is non-compliance with statutory formality

Parties

- Either consumer or commercial
- Consumer – protected by Australian Consumer Law (ACL)
- Defined in section 23(3) as a contract for the supply of a good or service 'to an individual whose acquisition of the goods, services or interest is wholly or predominantly for personal, domestic or household use or consumption'
- Commercial or business contracts are made by businesses seeking property or services for the purpose of resupply

FORMATION

Agreement

- Nature of the agreement
- Process for offering and accepting
- Must involve meeting of the minds and at least one promise
- Whether an agreement has been reached is determined objectively not subjectively
- Based on commercial necessity