


# CLAW1001 BUSINESS LAW

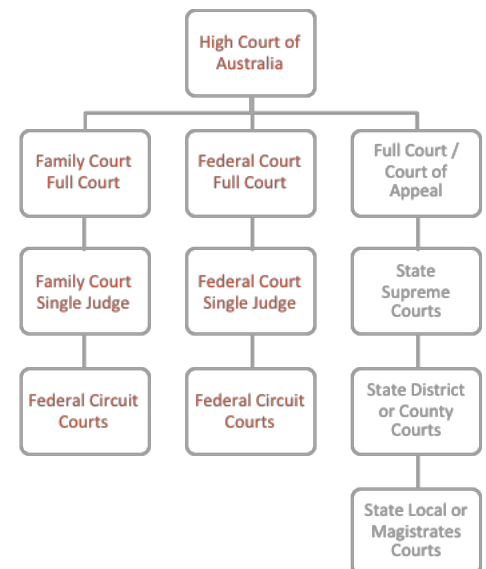


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## The Court System (hierarchy)

- Jurisdiction
  - Most courts processes both original jurisdiction and appellate jurisdiction
  - **Original Jurisdiction** - where the court is acting in "first instance" to determine a matter for the first time
  - **Appellate Jurisdiction** - where the court hears and determines an appeal from a lower court's decision
- Appeals
  - Parties usually have rights to appeal
  - Most appeals are restricted to re-examining questions of law rather than questions of fact
  - Appeals are usually heard by three justices



## FEDERAL COURTS

- **High Court of Australia**
  - The highest judicial tribunal in Australia
  - Its original jurisdiction is set out in the Australian Constitution
  - Appellate Jurisdiction: as the Full Court of the High Court it hears appeals from a single Justice of the HC, any Federal court and the Supreme Court of any state
  - Any appeal to the High Court requires **special leave**
- **Family Court** (family court single judge)
  - **Family Law Act 1975 (Cth)**
  - Original Jurisdiction: the divorce process and ancillary matters such as property, maintenance and custody of children
  - Appellate Jurisdiction: As the Full Family Court, hear appeals from:
    - A single judge of the Family Court
    - A state magistrate exercising jurisdiction under the **Family Law Act**
- **Federal Court** (federal court single judge)
  - **Federal Court of Australia Act 1976 (Cth)**
  - Original Jurisdiction:
    - General division: bankruptcy, appeals from the AAT, matters arising under Federal Acts
    - Industrial division: compliance with the **Industrial Relations Act 1988 (Cth)** and related matters
  - Appellate Jurisdiction: As the Full Court, hears appeals from single Federal Court judges, territorial Supreme Courts, and State Supreme Courts in Federal matters.
- **Federal Circuit Courts**
  - The FCC (formerly the **Federal Magistrates Court**) was established in 2000
  - Provides a cheaper, faster and more efficient method of dealing with less complex civil and family law matters (federal or family matters)

## STATE COURTS

- **High Court of Australia**
- **Superior Courts** (Full Court / Court of Appeal / State Supreme Court)
  - Original jurisdiction: unlimited as to amount (civil matters) and type of crime (criminal matters) under State law
  - Appellate jurisdiction: the court hears appeals from lower courts and from a single supreme court judge
- **Intermediate Courts** (State District Courts (NSW), Country Courts (VIC))
  - Original jurisdiction: up to certain amount (civil matters) and offences punishable by less than 14 years imprisonment (criminal matters)
  - Appellate jurisdiction: the court sometimes hears appeals from the lower courts
- **Lower Courts** (State Local Courts, Magistrate's Court)
  - Original jurisdiction: up to certain amount (civil matters) and committal hearings and minor criminal offences (criminal matters)
  - The Court has no Appellate jurisdiction

## Intention to create legal relations

- Objectively determined with the assistance of the following presumptions:

BUSINESS AGREEMENTS	SOCIAL AGREEMENTS
Presumption that parties DID intend to create a legally enforceable agreement	Presumption that parties DID NOT intend to create a legally enforceable agreement
BOTH presumptions may be rebutted (i.e. challenged and disproved)	
The onus of proving a contrary intention rests with the party seeking to rebut - consider: <ul style="list-style-type: none"> <li>- The circumstances in which the agreement was reached; and/or</li> <li>- The express terms of the agreement</li> </ul>	

Case Example:

**Ashton v Pratt [2015] NSWCA 12**

- Incomplete agreement and uncertain terms

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

- Married couple: no intention

**Ermogenous v Green Orthodox Community of SA Inc [2002] HCA 8**

- Contract of Employment: church (offer accepted)
- Arrangement in between a sum of money, in exchange for set of activities

**Wakeling v Ripley (1951) 51 SR (NSW) 183**

- Family members: intention

**McKeand v Thomas [2006] NSWSC 1028**

- Neighbours: intention

**Jones v Vernon Pools Ltd [1938] 2 All ER 626**

- Business: 'honour clause'
- Clear statement that no intention to create legal relations (not legally bound - conduct of parties)

(Note the focus in the case examples on how precise and complete or otherwise the arrangements were.)

## Consideration

"An act or forbearance or promise thereof."

- ACT: to do something
- FORBEARANCE: to not do something
- OR PROMISE THEREOF: when you promise to do something, when are you going to do it? at some point in the future.

"As the price for which the promise of the other is brought."

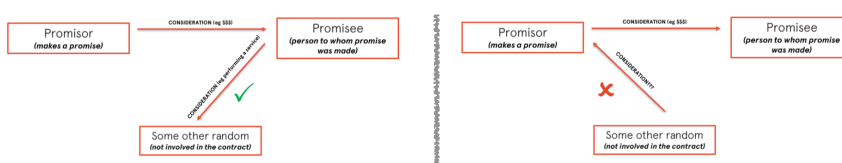
- EACH PARTY must provide a promise to the contract.

- In order for there to be consideration, each party to a contract must have an obligation to do (or not do) something, either now or in the future.

SOME RULES ABOUT CONSIDERATION. (you cant get something for nothing.)

Consideration:

- ✦ Can be an act, promise or forbearance
- ✦ Must move from the promisee (not necessarily move to the promisor); further discussed under 'privity of contract'.



- Must not be past (cant have occurred before the agreement)
- Must be sufficient (can't be illusory but does not need to be adequate)
- It isn't required formal contracts

## RECALL TWO TYPES OF CONTRACTS.

### 1. Simple Contracts

- Require consideration to be enforceable
- Reflects the type (as distinct from 'formal contract') not the content. (could be complex)

### 2. Formal Contracts (deeds/contracts under seal)

- Specific form: "signed, sealed and delivered"
- Can be enforced w/o consideration (exception to the requirement of consideration)

Consideration must be sufficient, not adequate.

**Chappell & Co v Nestle Co LTD [1960] AC 87**

- Chappell owes copy right in 'Rockin' Shoes song
- Nestle manufactures confectionery
- Nestle offers the public 'records' of the song in exchange for one shilling and sixpence and the wrappers from 3 bars of Nestle's chocolate
- The wrappers were part of the consideration because Nestle had stipulated so
- That the 3 wrappers were considered to be of no value to Nestle was irrelevant - contracting party can stipulate whatever consideration it chooses

Consideration must be sufficient, not illusory.

**White v Bluett (1853) 23 LJ Ex 36**

- A son had given to his father a promise to 'stop complaining' as consideration for the father's forgiveness of debt
- Held: the son's promise to 'stop complaining' was not consideration for the father's promise because it was too vague

**Dunton v Dunton (1892) 18 VLR 114**

- Promise to behave 'with sobriety, and in a respectable, orderly and virtuous manner'
- Held enforceable

Consideration cannot be past.

- Cannot enforce promises made after contract complete: **Roscorla v Thomas (1842)**
- Note 'exception': where past acts or forbearance are done at the request of the promisor when there is an understanding between the parties that the services would be paid for: **Re Casey's Patents [1892] 1 Ch 104** then the recipient of the benefit of the services may come under an obligation to make restitution

Consideration must be sufficient.

Consideration requires you to promise something more than you are already obligated to do:

- Performance of a public duty/existing legal duty: contra **Glasbrook Bros Ltd Glamorgan County Council [1925] AC 270**: police going beyond the public duty to serve and protect.
- Performance of an existing contractual duty:
  - ♦ **Stilk v Myrick [1809]**: crew performing existing duty - no consideration
  - ♦ **Hartly v Ponsonby [1857]**: where crew got paid more because journey was dangerous and thus different to initial agreement - valid consideration
  - ♦ **Wigan v Edwards (1973)** can't threaten to break an existing obligation to get more out of the other side - no consideration
  - ♦ **Musumeci v Winadell (1994)** where continuing to do what you are obligated to provides a commercial benefit to the other side such as remaining as a tenant by them paying reduced rent - valid consideration

Part Payment of a debt is not good consideration.

- **Pinnel's Case [1602] 5 Co. Rep 117a** - full payment required
- **Foakes v Beer (1884) 9 App Cas 605** - consideration required for a promise to accept part payment (something in addition to existing payment obligations)
- **D&C Builders Ltd v Rees [1965] EWCA Civ 3**: example of the rule in action where outstanding balance was recoverable

## Promissory Estoppel

Definition (google): Even if made without formal consideration, when a promisor has made a promise to a promisee who relies on that promise to his subsequent detriment.

ESTOPPEL. (law of equity)

- Stops a party enforcing their strict contractual rights
- In essence, a part is not allowed to break their promise.
- The doctrine of promissory estoppel is important where:
  - No consideration exists, or
  - The formalities of making a contract have not been satisfied and estoppel will prevent unconscionable conduct
- Although we study estoppel alongside the doctrine of consideration, estoppel is an equitable remedy and is not only applicable to cases where there is no consideration.

ELEMENTS OF ESTOPPEL (text 6.1230)

1. The promisee, on reasonable grounds, assumed that a particular legal relationship existed or would exist between the parties (the assumption)
2. The promisor either induced the assumption or, being aware that the promisee had made the assumption deliberately remained silent in circumstances where the promisor could reasonably have been expected to speak (promisor responsible for the assumption)
3. The promisee acted or refrained from acting on the faith of the assumption (the reliance)
4. The promisee will suffer a detriment if the promisor is permitted to renege on the promise (the detriment)
5. The assumption can be either one of fact or law.

### Case Examples

**Central London Property Trust Ltd v High Trees House Ltd [1947] KB 130**

- Party estopped from reneging on promise
- Need to identify just what that promise was

**Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387**

- Party estopped from denying a contract existed
- Need to identify just what the detriment is

**Legion v Lately (1983)**

- Need to identify what is being relied on
- In this case - too vague.

**Je Maintiendrai Pty Ltd v Quaglia (1980) 26 SASR 101**

- Representation made of a discount
- Landlord tried to claim full amount later - no detriment
- Contra High Trees where there was a detriment