

Week 1: Formation

- The nature and importance of contract law
- Agreement (offer & acceptance)

Week 2: Formation

- Certainty
- Conditional contracts
- Consideration

Week 3: Formation

- Intention
- Capacity
- Formalities

Week 4: Scope & Content

- Terms
- Express terms
- Implied terms

Week 5: Scope & Content

- Construction of terms
- Classification of terms
- Exclusion clauses

Week 6: Avoidance, performance & termination

- Avoidance
- Misleading & deceptive conduct
- Misrepresentation at common law

Week 7: Avoidance

- Duress
- Undue Influence

Week 8: Abvoidance

- Unconscionable conduct
- Unfair terms
- Illegality

Week 9: Performance & Termination

- Performance & termination
- Performance
- Discharge by agreement

Week 10: Performance & Termination

- Discharge for breach
- Discharge for frustration

Week 11: Remedies

- Damages and liquidated claims

Week 12: Equitable remedies

- Equitable remedies
- Specific performance
- Injunction

Week 10: Performance and Termination

Key Points

- Discharge for breach
- Discharge for frustration

Discharge for breach

- Terminates future rights & obligations
- Innocent party (usually) has choice to discharge or affirm, election to discharge = rescission
- Election to rescind not effective until communicated
- Damages are recoverable
- Payments made or due before discharge may be recovered or retained, unless discharge results in failure of consideration
- Can sue under quantum meruit for the value of any benefit conferred on the guilty party or the work they have carried out
- 3 types of breach will allow innocent party to discharge:
 - Where the contract itself provides the innocent party can
 - Repudiatory breach: guilty party renounces the contract; any form of conduct by a party that reveals an intention not to be bound by the contract.
 - Not essential the guilty party intend to repudiate the contract
 - If a breach of relatively unimportant terms is accompanied by statements etc of the guilty party indicating they do not intend to perform = discharge on grounds of repudiatory breach
 - If innocent party discharges on repudiatory breach & it's determined breach not serious enough, innocent party's conduct may amount to repudiatory breach & guilty can sue on these grounds
 - Anticipatory breach: when the guilty party repudiates the contract before the date on which they are due to perform their obligations & the innocent party elects to discharge as a result. Guilty not in breach as date of performance has not occurred. Innocent party cannot claim damages.
 - Actual breach that is very serious in nature: non-performance or defective performance
- Restriction on the right of election
 - Must be fair conduct; not exercise right oppressively
 - Where the guilty party's co-operation is required
 - Contractual restrictions
 - Statutory restrictions e.g *Fair Trading Act (Vic) s 32P*

Relevant case

Associated Newspaper v Bancks (1951) 83 CLR 322

Discharge by frustration

- Deals with the allocation of risks and losses which occur as a result of an unanticipated change/supervening event in circumstances occurring after the parties have entered into the contract
- What is a frustrating event is a matter of construction
- Consideration is given to the terms, nature of the event, type of contract, then an assessment is made as to whether, following the event, the contract is radically different
- Does not operate where the frustrating event is caused by one of the parties
- Events that may frustrate a contract, by rendering it 'radically different':
 - Destruction of something essential: if the continuing existence of sthng/someone is assumed by both parties as the foundation of a contract, its destruction may invoke the doctrine of frustration
 - Non-occurrence of an essential event: if event is foundation of the contract, non-occurrence = frustration
 - Impossibility of performance: where a supervening event means that the contract is impossible to perform
 - Events causing delay or making performance more expensive: do not frustrate a contract unless it makes contract radically different
 - Changes in the law: does not have to render the contract illegal, only make it substantially different
- At common law, the contract is terminated in futuro & the law permits recovery of money due & paid prior to event where there has been a total failure of consideration
- Statutory, *Fair Trading Act 1999* (Vic) ss 332 F-M

Relevant case

Codelpa Construction Pty Ltd v State Rail Authority (NSW) (1982) 149 CLR 337: definition of doctrine

Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26: time delay

