

# Commercial Law

## Week 1: Introduction to key concepts

- Revision of contract law
- Estoppel
- Real and personal property

## Week 2: Agency

- What is agency
- Sources of agency
- Undisclosed principle
- Agency by law
- Duties of an agent
- Rights of an agent
- Liability of an agent
- Termination of agency

## Week 3: Government Tenders

- The tender process
- Contractual analysis of tenders
- Disclaimer clauses
- Potential basis of legal challenge
- Duty to act in good faith & act fairly

## Week 4: Sale of goods

- *Goods Act 1958* (Vic)
- *Competition & Consumer Act 2010* (Cth)
- Classification of goods
- Formation of a contract for the sale of goods
- Condition implied into contracts of sale
- Duties of seller and buyer
- Payment, delivery & acceptance
- Remedies

## Week 5: E-commerce Part 1-Online Presence

- Transmitting messages
- Domain name systems (DNS)

## Week 6: E-commerce Part 2- E-contracts

- What is e-commerce?
- Message integrity & confidentiality
- Formation of an e-contract
- Incorporation of terms

## Week 7: Credit Law

- National Consumer Credit Legislation
- General conduct obligations & credit licences
- Responsible lending obligations
- Application of the national credit code
- Entering into the credit contract
- Interest payments, fees & charges
- Changes to contractual obligations
- Notices
- Rights and Remedies
- Related contracts

## Week 8: Guarantees

- What is a guarantee?
- Requirements
- Discharging liability
- Vitiating factors
- Rights of the guarantor

## Week 9: Bailment

- What is bailment?
- Types of bailment
- Duties common to all bailment's
- Liability when delegating performance
- Termination of bailment
- Remedies

## Week 10: Insurance

- Legislative framework
- Nature of contracts of insurance
- Duties of disclosure
- Failure to perform duties
- Making a claim
- Subrogation
- Insurance complaint and codes of practice

## Week 11: Unjust enrichment

- Elements of unjust enrichment
- Unjust factors
- Subtractive unjust enrichment
- Restitution for wrongs
- Termination of contract

## Week 11: Unjust Enrichment

### Key points:

- Elements of unjust enrichment
- Unjust factors
- Subtractive unjust enrichment
- Restitution for wrongs
- Termination of contract

### Elements of unjust enrichment

1. Unjust factor
2. Enrichment of the defendant
3. At the expense of the plaintiff, by subtraction from the plaintiff, or by doing wrong to the plaintiff
4. Where no defences are applicable

### Unjust factors

- Vitiated intent: includes mistake, ignorance, duress etc
  - *Mistake*: cannot be a misprediction, can be a mistake of law (**e.g** *invalid statute*), or of fact (distinction not relevant)
  - *Ignorance*: stealing
- Qualified intent: total failure of consideration, failure of basis or circumstances for making payment or providing service
- Free acceptance: 'where a recipient knows that a benefit is being offered non gratuitously and where having had the opportunity to reject elects to accept': P. Birks, *An Introduction to the Law of Restitution* (Revised edition 1989) 104
- Ultra vires

### *Relevant cases:*

*David securities*: mistake

*Roxborough*: (defining) total failure of consideration

*Baltic Shipping Co v Dillion* (1993): plaintiff claimed for 14 day cruise, boat sank after 8 days, HCA said partial failure could not recover under unjust enrichment

*Lipkin v Gorman*: ignorance

### Subtractive unjust enrichment

- Always a loss and a gain
  1. Is there an unjust factor?
  2. Is there a benefit conferred on one party?
    - Subjective devaluation: 'this is not worth anything to me' – not worth anything = no benefit/enrichment **e.g** *could apply to a service*
    - Value can be objectified **e.g** *if someone was going to employ someone to do the service anyway*
    - Incontrovertible benefit (objective): cannot deny its benefit **e.g** *money*
    - Tests for overcoming subjective devaluation: can it be converted into money? Was it requested? Was it necessary expenditure?
  3. Did the benefit come from the plaintiff and benefit defendant?
  4. Defences:
    - Change of position: For example, where someone is paid money by mistake and spends it their position is altered. Must be an extraordinary expense **e.g** *a holiday which one only bought due to the money*, cannot be spent on ordinary living expenses **e.g** *groceries*
    - Passing on has been rejected as a defence by the HCA in *Roxborough*

### *Relevant cases:*

*David securities*: change of position

*Roxborough*: passing on

### Restitution of wrongs

- Gain only
- *Reading v Attorney-General* [1951] AC 507 – army sergeant took bribes while stationed in Egypt – rode in trucks with army uniform to help smugglers of illegal spirits – Crown confiscated the money – Reading argued it was his – Crown won

### Termination of contract

- You can elect to terminate a contract where there has been a breach of a condition, which causes substantial loss, or repudiation. All future rights and obligations are terminated.
- Unenforceable contract **e.g** *formalities not satisfied*
- Contract must be terminated before unjust enrichment can apply: *'if there was a valid and enforceable agreement governing the claimant's right to compensation, there would be neither occasion nor legal justification for the law to superimpose or impute an obligation or promise to pay a reasonable remuneration.'* (Deane J, Pavey v Matthews)
- Seek restitution instead of damages where there has been a total failure of consideration **e.g** *I contract to buy a car for \$900 and pay \$100 deposit, the seller fails to deliver car, therefore I terminate for breach – can claim restitution of the \$100 for total failure of consideration even though damages would be nil – Bush v Canfield (1818)*

### *Relevant case*

Pavey v Matthews: unenforceable contract, total failure of consideration