

❖ Topic 6 Consumer protection

Our primary focus = protect consumer

ACL protect consumer in 3 ways:

- Prohibit **Misleading Conduct, specific misrepresentations, certain unfair practices, unfair contract terms and unconscionable conduct.**
- Provides that **statutory guarantees** apply to each consumer contract
- ensure **product safety and manufacturers' liability for defective goods***

ALSO, It prevents businesses from gaining a competitive edge by not complying with the law

1. If a NON complying business with the ACL= its goods cheaper than a complying competitor

→ ACL (AUSTRALIA CONSUMER LAW)

- In **Schedule 2** of the **Competition and Consumer Act (CCA)**, ACT = administered by the **Australian Competition and Consumer Commission (ACCC)**.
 - applies very broadly to conduct engaged in and outside Aust by Aust citizens or persons ordinarily resident here, to natural persons and to corporations engaged in business, including the internet

❖ Prohibition of 'misleading or deceptive conduct' Focus on s 18(general), 29(specific application to case) ,33

- **Section 18(1) - '1) a person shall not in 2) trade or commerce 3) engage in 4) conduct that is 4) misleading or likely to be misleading'**

For e.g. Arsh buy back book & sell it back only once, was one off transaction

1. does it engage a person?

- Both natural and legal persons are included.
- S18 ♦ **applies to 'persons' and 'corporations'**

2. is it trade or commerce

- ♦ **s18 only applies to conduct occurring 'in trade or commerce'** – must have a commercial flavour – not private sales
- s 18 is concerned with "the conduct of a corporation towards persons ... with whom it ... has or may have dealings which ... **bear a trading or commercial character**"

→ *Concrete Constructions v Nelson*

- The Court has held that the misleading conduct provision did not apply to an *internal* communication between a foreman and a worker about the safety latch on a manhole (which was misleading) because it was not made "in" trade or commerce

3. what it engage?

- ♦ **s18 applies to a wide range of 'conduct'** ... broader than 'representations'

ACCC v Google		<p>The search engine was not the author of the misleading content, which was supplied by the advertiser.</p> <p>An intermediary such as the search engine would be liable if they adopted or endorsed the misleading content</p> <p>However, the search engine had not adopted or endorsed the sponsored search results</p> <p>Engage in conduct</p>
---------------	--	---

- **S2(2) of the ACL** states that “ a reference to engaging in conduct shall be read as a reference to do or refusing to do any act”
- **cannot** involve puffery, opinions or statements about the future as it is not factual.

But s4(1):

Where a person **makes a representation about a future matter** (eg the future profitability of a business or the future trends of the ASX) **BUT does not have reasonable grounds for making it**, the representation may be misleading.

- Silence- There are generally no duty to disclose (2 circumstances refute(prove to be wrong)
 - Where incomplete information is provided.(Half truth)
 - Failure to disclose change circumstances
- 2. Permit to develop property not required, then, before contract finalised, law requires permit
 - Failure to disclose where there is a ‘*reasonable expectation*’ that disclosure would be made:

<ul style="list-style-type: none"> • Henjo v Collins Marrickville 	<p>Seller led the purchaser to believe that the restaurant seated 128 people and, indeed, it was set up to seat 128. However the licence restricted the seating capacity to 84.</p>	<p>Decision: Remaining silent as to the true position to seating was misleading conduct.</p> <p>The seating capacity would affect the business profitability, which gave rise to a duty on the part of seller to reveal the position.</p> <p>Silence Failure to disclose when there is a "reasonable expectation" that disclose would be made Consumers sue corporations for misleading or deceptive conduct</p>
<ul style="list-style-type: none"> • Demagogue v Ramensky 	<p>A contract for purchase of land was signed, which included a “driveway”, which was in fact a public road and seller had been negotiating with authority for the right to use the road but had not been successful.</p>	<p>Decision: Silence constituted misleading or deceptive conduct as there was a reasonable expectation that there should have been disclosure of the unusual circumstances surrounding access to property.</p> <p>Silence Failure to disclose when there is a "reasonable expectation" that disclose would be made Consumers sue corporations for misleading or deceptive conduct</p>

	Seller did not inform buyer the issue.	
--	---	--