

Topic 1: Introduction to Contract Law

Definition of Contract

1. Contract in terms of a *'promise or set of promises which the law will enforce'*. Pollock
 - its implication that the only promises that can be enforced are those contained in the contract. This is clearly not the case.
 - an oral promise made in the context of a sale of land, can give rise to a valid contract, but the promise will be unenforceable due to the lack of writing evidencing the promise
2. Contract in terms of *'an agreement giving rise to obligations which are enforced or recognized by law'* Trietel
 - a contract can exist in the absence of actual agreement between the parties. This flows from the fact that the law takes an **objective** rather than **subjective** view of the facts when assessing whether an agreement exists.
 - not all agreements giving rights to obligations are contracts. Unless the agreement is intended by the parties to be legally binding a contract does not exist. (eg, domestic/social arrangements are not binding)

Sources of Contract Law

- a) Common Law – key legal principles are derived from this part of law
- b) Equity Law – equitable principles derived from the origins of the equity courts (Chancery Courts) back in the 15th Century
 - developed 'specific performance' remedy
- c) Statute Law – if there is a conflict, Statute Law applies. (most significant changes in this area)

Classification of Contracts

i) Simple and Formal Contracts

- Simple & informal --> can be entered into orally and / or in writing
- Formal contract --> agreement between parties entered into a particular form of writing (eg, deed)

ii) Bilateral and Unilateral Contracts

- Bilateral contract → both parties have obligations to perform constituted by exchange of promises between them. (majority of contracts are bilateral)
 - both yet to carry out their obligations at time contracts' entered into. (still executory)

E.g. A agrees to sell his car to B for \$1,000, at the time of its formation it consists a promise by A to transfer title in the car to B, in return for B's promise to pay A the sum of \$1,000. At the time of formation, neither party has yet carried out their promises. At this stage, their promises are said to be executory.

Union Dominions Trust (Commercial) Ltd v Eagle Aircraft Services Ltd [1968] 1 All ER 104 at 108

- Court (Lord Diplock) --> observed that in a bilateral contract *'each party undertakes to the other party to do or to refrain from doing something, and in the event of his failure to perform his undertaking, the law provides the other party with a remedy'*.

- Unilateral contract → is one in which only one party has obligations to perform at the time of its formation.
 - only one party yet to perform (other party already performed) – eg, offer of reward (Smoke Ball)

e.g. A promises that he or she will pay B if B performs some act, a contract arises when B performs the act. At the time of formation only A has to perform his or her promise as B has already performed, or executed, his or her obligation.

Mobil Oil v Lyndell Nominees (1998) 153 ALR 198 at 222

- Court --> *'A unilateral contract is one which the act of acceptance of the offer is also executed consideration for the promise offered. The act of acceptance called by the offeree, leaves the contract executory only on the part of the offeror.'*

iii) Void, Voidable, Unenforceable and Illegal Contracts

- Void contract --> agreement that is void is not a contract and the main effect is that neither party is able to sue each other pursuant to it. It is 'treated as if it never had effect': London Borough of Islington v Uckac [2006]

- Voidable contract --> is one whose validity is called into question because of a defect in the quality of the consent given by one of the parties upon entering into it.

- Unenforceable contract --> is one, which is in all respects valid, but cannot be enforced by one or either of its parties. The principal basis for unenforceability is the absence of writing evidencing the contract where such writing is required by statute. Eg, contracts involving the sale of land.

- Illegal contract --> is one that is prohibited either by statute or because it is contrary to public policy at common law. Generally, neither party to such a contract is entitled to enforce it or recover property that may have passed pursuant to its terms e.g. a contract for the murder of a person is illegal.

Topic 2: Capacity

Capacity of Minors

Definition of 'Minor' --> those that are under 18 years old (do not have full contractual capacity)

Common Law

- All Australian States (except NSW) follow common law that if contract is made with minor, then it is voidable at minor's option unless contract is for 'necessaries' which makes the contract valid.
- **Necessaries** --> defined as things necessary, indispensable or requisite (from Macquarie Dictionary), eg, minor's food, clothing and shelter
 - > difficulty in determining what is a necessary (especially in relation to goods and services)

Statute Law

- Common law no longer applies in NSW.
- Replaced by **Minors (Property and Contracts) Act 1970 (the Act)**

Minors (Property and Contracts) Act 1970

- **Basis** --> minors bound by civil act made in accordance with the provisions of the Act
- **'Civil Act' (s6)** --> contract, election to rescind or determine a contract, dispose of property, disclaimer or acknowledgement
- **S18** --> minor who lacks or appears to lack (due to age) the necessary understanding is not bound to a civil act
- **S19** --> bound to a civil act if: **'beneficial'** to the minor at the time (wider meaning than necessities) - means any contract entered into that favours the minor and is beneficial to the minor.
- **S20** --> any executed or partially executed purchase or sale of real or personal property by a minor is presumptively binding so long as the contract was a fair exchange. (thus of benefit of the minor)
- **S21** --> minor makes a reasonable gift
- **S23** --> investments in government securities.
- **S26** --> Supreme Court grant power for minor to participate in civil act
- **S27** --> contract with consideration less than \$100,000 with prior court approval.
- **Voidable Contract** - if a contract made by a minor is not binding under the Act (ie, minor will lose their rights in cases of affirmation, undue delay or where 3rd party is involved (s24))

Other Capacity Issues

- a) Person suffering a Mental Disability --> contract declared 'void'
- b) Bankruptcy
- c) Corporations
- d) Aliens (Foreign National)
- e) Married Women

Topic 3: Requirement of Writing

Do Contracts Have to be in Written Form?

Common Law - no contracts need to be in written form

Statute Law - overrules common law, depending on certain contracts, it must be in written form according to the provisions of the Act.

- derived from **Statute of Frauds (1677)** – aim to prevent frauds in land contracts
- key legislation involving land contracts – Conveyancing Act 1919 (NSW) s59(A)

Conveyancing Act 1919 (NSW)

- **S59(A) (1)** → No action or proceedings may be brought upon any contract for the *sale or other disposition of land or any interest in land*, unless the *agreement* upon which such action or proceedings *is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged* or by some other person thereunto lawfully authorised by the party to be charged.

Key elements of the Act

a) What contracts are covered?

- i) *Sales or disposition of land* – must be in exchange for ‘money’ (Sun World Inc v Registrar, Plant Variety Rights (1977))
 - if exchange properties, not money related, therefore no requirement for written contract
- ii) *Interests in land* – eg, leases of land, mortgages and other forms of security over land, such as creating easements and covenants (eg, agreement not to build house above certain height)

b) How are the contracts written?

- i) *Written contracts* – formally prepared by solicitors
- ii) *Note or Memorandum* – eg, Letter (**Thirkell v Cambi [1919] 2 KB 590**)
 - eg, Receipt (**Dinan v Harper [1922] VLR 49**)
- iii) *Mixture of documents* (**Harvey v Edwards Dunlop & Co (1927) 39 CLR 302**)

c) Required Terms

- Terms of a land contract should have at least the minimum:
 - P = Parties** (description of the parties)
 - P = Price** (can be a fixed price, or formula agreed by parties on how price is calculated)
 - P = Property** (which land / property is in agreement)
- Parties may agree to other ‘essential’ terms such as:
 - * Date of completion
 - * Payment of purchase price done in instalments
 - * Separate prices are to be paid for separate lots

d) Acknowledgement of the Contract

- Must acknowledge the agreement in writing (**Pirie v Saunders (1961) 104 CLR 149**)
- Only exception --> specific term to acknowledge that the contract is not a real contract

Pirie v Saunders (1961) 104 CLR 149

- Facts → S claimed handwritten notes prepared by P set out instructions for lease showing property and term of lease and rent, but not indicated when lease will commence.
- Court (HC) → ruled that P’s notes did not satisfy requirements of s54A (not enforceable)
 - (property name not specific – ‘Lot B’ ; rights and obligations not effected until execution ; does not contain all the terms)

e) Must be Signed

- Party to be charged (or **party against whom the contract is sought to be enforced**)
- Can be signed by party or agent (person authorized to sign on behalf of the party)
- Do not need both parties to sign the same document

Example of Land contract process:

Step 1: House listed by Real Estate Agent for Sale

Step 2: Contract is prepared (both vendor / purchaser will have a copy)

Step 3: Each party sign their copy of the contract

Step 4: Parties (via their solicitor) physically exchange contracts (at this point – contract is enforceable as you have the contract signed by the other party)

Step 5: Settlement – land title exchanged, organize mortgage, money passed (at this point – you become the house owner)