

**LAWS50026**

**OBLIGATIONS**

## Course Outline

### Contractual Obligation:

- Contract formation - elements
  - Agreement (offer and acceptance)
  - Consideration
  - Intention to be legally bound
  - Certainty and completeness
  - Capacity
  - Any applicable formal requirements
- Privity

### Misleading and Deceptive Conduct

- Section 18, *Australian Consumer Law*
  - Obligation not to engage in misleading and deceptive conduct in trade or commerce
- Note similar provision in *Corporations Act 2001 (Cth)*
  - S 1041H: obligation not to engage in misleading and deceptive conduct in relation to a financial product or service

### Equitable Obligations

- What is equity?
  - Separate body of (judge-made) law, as distinct from common law
  - Historical reasons for distinction: Developed in Court of Chancery 1500s – 1800s
  - Judicature Act 1873: English courts could apply common law and equity
- In Australia:
  - Separate principles/bodies of law, BUT
  - Federally, and in Victoria, courts have a common law and equitable jurisdiction
- Estoppel:
  - Operates where non-contract promises and representations have been relied upon
    - Representation made?
    - Representation relied upon?
    - Detriment suffered as a result?
    - Elements of unconscionability?

### Restitution

- Old term: “Quasi-Contract”
- Attempts to restore unjust gains
- Two common restitutionary actions:
  - Action to recover reasonable remuneration : *quantum meruit*
  - Action to recover money paid under, eg, mistake, compulsion, or a purpose that has totally failed: *money had and received*
- Also available where contract is ineffective
  - Not validly formed?

- Terminated for breach? Or by frustration?
- Does not comply with a statutory requirement?
- Is illegal?

**Case:** *King v David Allen & Sons*

**Court:** Privy Council

**Parties:** Appellant: King Respondent: David Allen & Sons

**Issue:** Did the contract guaranteeing bill posting rights in exchange for rent amount to a right to use the land rather than just a license?

**Facts:**

- King owned land on which a picture theatre was to be built
- King entered into an exclusive licence agreement under which DA&S was granted permission to place posters on wall; DA&S paid 12 pounds a year for the licence
- King granted a 40-year lease of building to a company and lease said nothing about the arrangements with DA&S
- King believed that he would be able to assign the licence agreement to the company. This did not occur
- When DA&S attempted to place advertising posters on the wall, company rep preventing them from doing so
- DA&S sued King, claiming damages for breach of contract. There was a question as to whether defendant King could join the company to the proceeding as a defendant

**Reasoning/Test:** Buckmaster LC: "The contract between King and DA&S creates nothing but a personal obligation – nothing other than personal rights was contemplated by the parties"

**Ratio:** Even though the circumstances are beyond his control, King has breached his obligation

**Case:** *Breen v Williams*

**Court:** High Court of Australia

**Parties:** Appellant: Breen (The patient) Respondent: Williams (the doctor)

**Issue:** Whether the general obligations of a doctor to a patient include a general duty to provide the patient with access to the doctor's records regarding that patient

**Facts:**

- Breen had breast implants; saw Dr W about complications (Dr W hadn't performed the initial operation, however)
- Breen was given the opportunity to 'opt in' to a class action against the manufacturer of the implants. To do so, she needed to lodge copies of her medical records for the purposes of the litigation taking place in US.
- When she sought copies of her medical records from Dr W, he refused to provide them unless Breen released him from all liability. He offered to provide a summary of the records, but she refused.

- Breen sought the following from the Court:
- A declaration that she had a right and interest in the information in the medical records held by Dr W
- On a proprietary basis
- On the basis of contract
- On the basis of the existence of a fiduciary duty
- A declaration as to the nature of the legal relationship between her and Dr W
- An order allowing her to examine and obtain copies of the information stored in her medical records

**Reasoning/Test:** the contract was wholly effective without requiring the implication of any term that entitled the appellant access to the medical records.

**Ratio:** There is no implied term in a doctor patient contract requiring the doctor to provide access to the patient's records

## Agreement

### Offer

- Focus on the “offer” element of “agreement”
  - What constitutes an offer?
  - What is the difference between an offer and an invitation to treat?
  - What is a unilateral contract?
  - How may an offer be validly revoked?
  - How may an offer under a unilateral contract be validly revoked?

### Offer and Acceptance

- Offer-and-acceptance model developed in 19<sup>th</sup> century
  - the making of contracts usually occurred *via letter*
- The model conceives of a “magic moment of formation” where the parties are *ad idem* (of one mind)
- Thus: contract comes into existence when acceptance of the offer has been communicated to the offeror

### Courts’ approach today

- “In order to identify whether, when or where a contract has been formed, the courts will usually seek to attach the labels ‘offer’ and ‘acceptance’ to particular actions, even where it is quite artificial to do so”. (PM)
- However, bear in mind that the law of estoppel, misleading conduct, negligent misrepresentation and unjust enrichment indicate that parties owe obligations to one another *before* the moment of formation

### What constitutes an offer?

- An expression of willingness to enter a contract on certain terms
- The offeror must indicate that he or she is prepared to be bound immediately upon acceptance
- Assessed objectively: ie “outward manifestation” of offeror’s conduct
  - ie if it appears to a person in the offeree’s position that the offeror was offering to enter into a contract

### The difference between an offer and an invitation to treat

- An offer is distinct from an *invitation to treat*
- An *invitation to treat* is an invitation to make offers, or enter into negotiations
- Example of an invitation to treat: a property owner stating that they might be interested in selling property in a certain price range