

SAMPLENOTES

BLAW10001

be sufficiently promissory, Types of statements in negotiation:

1. No legal effect: **puffery** (exaggerated sales talk) and **opinion** (personal views or beliefs)
2. May constitute a **representation** of fact: not in contract, misrepresentation=cancel contract
 - *Oscar Chess LTD V Williams*: W trade mum's car to and says it's a 1948 model as it says in rego but it actually 1939, W's statement a misrepresentation so NOT BINDING, can cancel tho
3. May constitute a promise: contractual liability
 - *Handbury V Nolan*: cow auction, positive pregnancy test just before, turns out its infertile, sued because statement was promissory, BINDING because fact to increase price, when asked do you promise, they are likely to guarantee it

Implied Terms

- Terms can be:
 - Implied by operation of law: **universal**
 - Implied by operation of law: **Generic**
 - Implied **ad hoc** term

Universal

- **Universal**: all contracts contain a duty to cooperate with other party and to act reasonably
 - *Secured Income Real Estate V St Martins*: SI sell block to SM, if not enough rent they lose the \$170000, SI want ST to be tenant, they decline, sure for breach of cooperation, NOT BINDING because they acted reasonably due to concerns about financial strength of tenant

Generic: Common Law

- **Generic**: can be applied at common law or statute
 - **Common law**: not implied unless enjoyment of rights conferred by the contract is nugatory, worthless, or undermined unless the term is applied
 - *Breen V Williams*: W is B's doctor, B asked for her medical records for a class action case, W refused unless he isn't liable, V argues he must give them to her (doctor-patient contract) bc he has an implied duty for care and skill, no term for best interest tho no NOT BINDING

Generic: Statute

- **Goods Act 1958 (Vic)**: seller liable for the quality of goods
- **Sale of goods by description** (s18 and 19b): implied condition that the goods correspond with the description of them
 - *Varley v Whipp*: 'nearly new reaping machine', was quite old and had been fixed, decision: implied that the description corresponds because unseen, this was breached
 - **Merchantable quality**: sold by description and seller deals in goods of that description, unless defected revealed in examination, if buyers knowing of defects would still buy for the same price, not of mq if no use of purpose of normal use
 - *Australian Knitting Mills v Grant*: wears underwear, develops acute dermatitis, sued retailer that sold underwear, was of mq as most would buy and not get dermatitis
 - *David Jones v Willis*: wanted comfy walking shoes, heel broke after third time, not of mq because had no use for purpose they were intended for
 - *George Wills & co v Davids*: buys canned beetroot, after one year goes bad, were mq because a reasonable person would still buy them
- **Sale by sample** (s20): agreed that the quality of goods will be determined by reference to a sample. Implied that the bulk of goods must correspond with the sample and be of any defect not reasonably apparent in the sample
- **Fit for purpose** (s19a): buyer indicates purpose for which goods are required, relies on skills or judgement of seller, seller usually sells these goods

Express Actual Authority

- **Express actual authority**: may be specific or generic, orally or in writing, must be in writing for buying/selling land, appointed agent for over a year, task will take longer than a year
- *Freeman & Lockyer v Buckhurst Park Properties: BPP are a company that buy and resell land, directors (K & H) employed F & L to do work, BPP says they don't have to pay, F & L say that K was the general manager but he was never appointed in that position, Actual authority? No, the board of directors never gave him power to do so.... But there is apparent*

Implied Actual Authority

- **Implied actual authority**: occurs when any of the following
 - normally or necessarily incidental to act
 - normally an agent of this type would have the authority to do so
 - by custom, the agent would have the authority to do so
- *ANZ Bank v ACEC: ACEC electrical equipment appointed Helios as sales agent, ACEC didn't have Australian bank account so Helios would put cheques in his bank and then transfer to ACEC, Helios liquidation meant some money wasn't transferred, implied authority? Yes, Helios had the implied authority to do things necessarily incidental to authorised acts*

Apparent/Ostensible Authority

- **Apparent/ostensible authority**: principal acts in a way that makes it appear to a third party that the agent has authority, principal is bound by the acts of the agent
- *Freeman & Lockyer v BPP: binding because K had apparent authority, F&L get paid, all about the impression in the third party's mind, all 3 must be shown:*
 1. Representation made to third party that the agent has authority to act
 2. Representation by person with the actual authority to manage aspects
 3. Third party induced to enter into transaction due to representation
- Principal can avoid being bound if they make the third party aware that the agent is not authorised

Duties

- Duties of the **agent**:
 - Carry out instructions exactly
 - *Bertram, Armstrong & Co v Godfray: G instructed BA to sell stock when it reaches certain amount, BA didn't sell immediately as they were confident it would keep rising, it didn't, and it stayed low, G sue to recover consequential loss, decision: yes breach because didn't listen to instructions, doesn't matter if it is in their best interest*
 - Act with due care and skill
 - Act in good faith, honestly and openly
 - Make no secret profit or have conflict of interest
 - *Lintrose Nominees v King: LN sells units, appoints JH to find buyers for specified price, K also appointed JH for investment advice, JH tells K to buy LH's unit and so JH profits and doesn't tell the parties of his relationship, decision: breach bc conflict of interest and didn't disclose*
 - Keep proper accounts, not normally mix money with own
- Duties of the **principal**:
 - Must pay agent agreed fee
 - Reimburse agent for incurred expenses
 - Indemnify agent against losses of liabilities, compensate for legal liability as long as they acted within their authority to do so

Ending the Relationship

- **Completion of task**: task done