

# **BTC1110**

# **notes**

Based on  
Concise Australian Commercial Law 5th

## **What's included?**

- **Comprehensive chapter notes on the full textbook**
- **All notes have references to the textbook section**
- **Table of case law for section 1 (ch 1-12)**
- **Table of case law for section 2 (ch 13-17)**
- **Table of statutory law for section 2 (ch 13-17)**

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# Chapter 1: An Introduction to the Law and the Australian Legal System

## The nature and concept of law and justice

[1.20] Legal rules are made by courts or parliaments, whereas non-legal rules (such as school rules) are not.

## The functions of law in a civil society

[1.30] Five roles of law are:

- a. Regulate the way we live: what we may and may not do
- b. Resolve disputes
- c. Maintains stability and social cohesion
- d. Reinforce community values
- e. Promote justice and uphold the rule of law that no one is above the law
  - i. Law applies to everyone equally
  - ii. Laws are clear, publicised, and just
  - iii. The process of law administration is fair and efficient
  - iv. Competent and ethical judges deliver justice free from interference

## Magna Carta

[1.40] Signing of the Magna Carta (Great Charter) in 1215 established that the king was subject to all law.

Without the rule of law, commercial life would become dysfunctional.

## The Australian legal system

### History and development of Australian law and legal system

[1.70] Pre-European: Aboriginal and Torres Strait Islander peoples

[1.80] European colonisation: Explorers and later, James Cook.

[1.90] *Terra nullius*: British claimed Australia as *terra nullius* (nobody's land).

[1.100] The High Court of Australia decided in *Mabo v State of Queensland (No 2)* that the Meriam people are entitled to the Murray Islands, laying to rest the doctrine of *terra nullius*.

[1.110] *Mabo v State of Queensland (No 2)* regarding *terra nullius*.

[1.130] In response to *Mabo v State of Queensland (No 2)*, the Commonwealth Government enacted the *Native Title Act 1993* (Cth), dealing with the aspects of native title and how to determine claims.

## Constitutional arrangements: a federal system

# Chapter 3: Offer and Acceptance

## The offer

[3.20] An offer is a proposal by one party to enter into a legally binding contract with another. It must be clear, unconditional, and capable of acceptance.

Rules of an offer:

- a. May be made to one or more people
- b. All major terms must be included
- c. May specify conditions to be followed
- d. Must be communicated to the offeree
- e. May be revoked or lapse

## Offers and mere puffs

[3.30] A mere puff, or puffery, is a statement containing exaggerated claims or assertions that would not be taken seriously by a reasonable person (*Carlill v Carbolic Smoke Ball Co*; *Leonard v PepsiCo*).

## Offers, invitations to treat, and statements supplying information

[3.70] An invitation to treat is an indication that a person is willing to enter into negotiations, which may or may not result in a contract.

[3.90] Usual examples of invitations to treat: window displays, catalogues, price lists, advertisements.

[3.100] *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* regarding offers and invitations to treat.

[3.110] Advertisements may be regarded as unilateral offers if the terms of clear and a reasonable person would think that the advertiser wishes to enter a contract if a response is communicated.

## Auction sales

### Tenders

[3.180] An advertisement calling for tenders is usually an invitation to treat. When someone submits the tender, that would be the offer.

## Communication of offer

[3.200] The offer must be communicated to the person to whom it is made.

[3.210] *R v Clarke* regarding someone who acts in reliance (i.e., with the knowledge of) an offer.

## Revocation of offer

# Chapter 9: Contents and Interpretation of the Contract

## Express terms

[9.20] Terms that the parties orally or in writing expressed. However, if a contract is reduced to writing, most often the parol evidence rule applies.

## Parol evidence rule in relation to written contracts

[9.30] If a contract is entirely in writing, the parol evidence rule assumes that all the terms are contained in the written contract and nowhere else. Oral statements won't have legal effect. The main exception to the rule is the existence of a collateral contract.

## Identifying the contents of a contract: distinguishing representations and terms

[9.40] Representations are statements made to induce the other party into creating a contract, whereas terms are actual rules of the contract. The more important a statement, the more likely it will be a term.

[9.50] *Oscar Chess Ltd v Williams* regarding a statement that was deemed a representation, not a term.

[9.60] *Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd* regarding a statement deemed as a term due to one party having superior knowledge.

## Collateral contracts

[9.80] A statement which isn't a term of the contract may be treated as a collateral contract for which damages can be recovered. Also referred to as a collateral warranty, as it cannot be a condition, but only a warranty. This applies if it can be shown that:

- a. The statement is promissory and intended to have legal effect
- b. It does not contradict the main contract
- c. There was consideration for the collateral contract (which is usually the *entering* into the main contract)

[9.90] *Van Den Esschert v Chappell* regarding an oral statement which became a collateral contract.

[9.110] *Crown Melbourne Ltd v Cosmopolitan Hotel (Vic) Pty Ltd* regarding an oral statement which was not promissory and therefore did not constitute a collateral warranty.

## Classifying terms: conditions, warranties, and innominate terms

[9.130] Conditions are terms of greater importance, while warranties are terms of lesser importance. For breaches of conditions, one can terminate and sue for damages. For breaches of warranties, only damages.

In order to decide whether a statement is a condition or a warranty:

# Chapter 13: Consumer protection

## ACL s18: Misleading or deceptive conduct

### Section 18(1): Misleading or deceptive conduct

[13.70] ACL s18: “A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.”

#### “Trade or commerce”

[13.80] The trade must be of a commercial or trading nature, not a personal or private transaction. See [13.90] *Plimer v Roberts* regarding non-commercial conduct.

#### “Engage” in conduct

[13.100] A person must actually engage in the conduct. They cannot be a mere conduit for information. See [13.110] *Google Inc v ACCC* and [13.130] *Hyder v McGrath Sales Pty Ltd* regarding being a mere conduit.

#### Engage in “conduct”

[13.140] Conduct means doing or refusing to do acts. Silence can sometimes constitute misleading conduct:

- Where the information is incomplete, or a half-truth
- Where there is a reasonable expectation that disclosure be made

See [13.150] *Henjo Investments Pty Ltd v Collins Marrickville* and [13.160] *Demagogue Pty Ltd v Ramensky* regarding reasonable expectation of disclosure.

#### “Misleading or deceptive”

[13.170] Misleading or deceptive means that the conduct is likely to lead the reasonable members of the class of the audience into error.

### Section 18 on marketing and advertising

[13.190] Advertising cannot make representations likely to mislead or deceive. The key question revolves around the **dominant message** of the advertisement and the ordinary and reasonable members of the **target audience**. See [13.200] *ACCC v TPG Internet Pty Ltd* and more cases in the table regarding dominant message of misleading advertising.

### Section 18 and business competitors

See [13.280] *McWilliam's Wines Pty Ltd v McDonald's System of Australia Pty Ltd* and other cases in the table regarding business competitors.

### Section 18 on representations during contract negotiation

[13.310] There is not much common law remedy for misrepresentations, so s18 is typically used for misleading representations intended to induce a party into a contract.

### Fault, intention, and limiting liability

# Chapter 17: Corporations

## Nature and formation of companies

[17.30] The main features of a company are that:

- It is a separate legal entity
- The liability of shareholders is limited by shares
- Other features in CACL pp 398

See [17.50] *Salomon v Salomon & Co Ltd* regarding separate legal entity.

## Assumptions of third parties

[17.190] People acting with a company can make certain assumptions in order to hold the company liable for the actions of its agents:

Section 128 lists the conditions under which a third party can make assumptions.

Section 129 list the following assumptions that can be made:

- Constitution or replaceable rules have been complied with s129(1)
- Can rely on ASIC and assume people have been appointed with their usual powers in their roles s129(2)
- A person held out by the company to be an officer or agent has been appointed and has authority of that kind s129(3)
- Officers and agents perform their duties properly s129(4)
- Relevant documentation has been duly signed s129(5)-(6)
- An officer has authority to issue documents on company's behalf s129(7)

See [17.220] *Panorama Developments (Guildford) Ltd v Fidelis Furnishing Fabrics Ltd* regarding apparent authority of an officer.

## Corporations Act ss180-184: Director duties

[17.310] Directors have a common law duty to act with reasonable care and diligence in their role in the company, and to act in good faith for a proper purpose in the interests of the company.

[17.320] Directors also have statutory duties ss180-183 along with remedies, and if these are breached with dishonestly or recklessness, they can be criminally charged under s184.

### s180: Duty of care and diligence

[17.330] A director must discharge their duty with the care and diligence expected of a director or officer of their kind in the given business's circumstances s180(1). See

[17.340] *ASIC v Healey* regarding due care and diligence.

### s180(2): Business judgment rule

If the following four conditions are met, an officer can be exempted from s180(1) under the claim that his actions constituted a regular business judgment call:

# Table of case law (ch 1-12)

Index	Participants	Theme	Conclusion
<b>Introduction and legal system</b>			
1.110	<i>Mabo v State of Queensland (No 2)</i>	<i>Terra nullius</i> and native title	Native title was granted to the Meriam people due to "continuous connection to the land in question"
1.200	<i>EHT18 v Melbourne IVF</i>	State and Commonwealth law inconsistencies	Commonwealth Act prevailed over State Act and woman was allowed IVF, as denying her would constitute a violation of Sex Discrimination Act 1984 due to her married status
1.300	<i>EHT18 v Melbourne IVF</i>	The literal and the purposive approach	The court denied the woman's suggested interpretation of the word "spouse" because the law was clear in its terms
1.370	<i>Brighton Australia Pty Ltd v Multiplex Constructions Pty Ltd</i>	The doctrine of precedent	All courts lower than the Supreme Court in the hierarchy are bound by the decision (?)
<b>Contracts: offer and acceptance</b>			
3.40	<i>Carlill v Carbolic Smoke Ball Co</i>	Offers and mere puffs	The deposit by CSB of £1,000 into a bank account showed sincerity and the advertisement was a valid offer
3.40	<i>Carlill v Carbolic Smoke Ball Co</i>	Who can be an offeree	The CSB ad was an offer to the entire world
3.50	<i>Leonard v PepsiCo</i>	Offers and mere puffs	PepsiCo's advertisement was comical and would not be deemed as a real offer of a Harrier Jet for



## Table of case law (ch 13-17)

Index	Participants	Theme	Law	Conclusion
<b>Consumer protection</b>				
13.90	<i>Plimer v Roberts</i>	Trade or commerce		Dr Roberts's lectures were not of a commercial nature
13.110	<i>Google Inc v ACCC</i>	Engage or mere conduit		Google ads are a mere conduit for information
13.130	<i>Hyder v McGrath Sales Pty Ltd</i>	Engage or mere conduit		McGrath real estate agent did not <i>engage</i> ; just a conduit
13.150	<i>Henjo Investments Pty Ltd v Collins Marrickville</i>	Silence and reasonable expectation of disclosure	ACL s18	Henjo should have disclosed the seating capacity; misleading
13.200	<i>ACCC v TPG Internet Pty Ltd</i>	Dominant message and target audience	ACL s18, s48	Dominant message was \$29.99, but there were more fees; small print did not reduce this; misleading
13.210	<i>ACCC v Turi Foods Pty Ltd</i>	Dominant message and target audience	ACL s18, s29(1)(a)	Target audience would understand chickens were "free to roam"; misleading
13.220	<i>ACCC v Reckitt Benckiser</i>	Misleading advertising	ACL s18, s33	Nurofen types were actually all the same; misleading
13.230	<i>Telstra Corporation Ltd v Singtel Optus Pty Ltd</i>	Humorous advertising		Humorous advertising would mislead or deceive
13.280	<i>McWilliam's Wines Pty Ltd vs McDonald's System of Australia Pty Ltd</i>	Business competitors		Using "Big Mac" for wine would not mislead customers, too distant from burgers
13.290	<i>Parkdale Custom Built Furniture Pty Ltd v Puxu Pty Ltd</i>	Business competitors		Purchasers would reasonable inspect goods to see differences; not misleading

# Table of statutory law (ch 13-17)

Law	Description
<b>Consumer protection</b>	
<b>Misleading and deceptive behaviour</b>	
s18(1)	General prohibition of misleading and deceptive behaviour
s18	Dominant message and target audience
<b>Specific protections for false or misleading representations</b>	
s29(1)(a)-(n)	Specific protections for goods and services
s30	False or misleading representations connecting to sale of land
s224	Pecuniary penalties for unconscionable conduct
<b>Unconscionable conduct</b>	
s20	Unconscionable conduct rules from <i>Commonwealth v Amadio</i>
s21	Unconscionable conduct in connection with goods and services
s22	Considering whether unconscionable conduct has occurred
<b>Unfair contract terms</b>	
s23	Unfair contract terms are void for consumer/small business
s23(3)	Consumer contract: supply of goods/services/land; acquired predominantly for domestic use
s24(1)	Three rules of unfair contract terms
s27(2)	Definition of a standard form contract
<b>Consumer guarantees</b>	
ss51-59	Specific consumer guarantees relating to goods
s54(1)	Acceptable quality
s54(2)(a)-(e)	Criteria for acceptable quality
s54(3)	Other relevant matters for acceptable quality
s55(1)	Fitness for disclosed purpose