

Contract Law

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Introduction

Structure

- Contractual remedies
- Formation of contracts
- Privity, agency and assignments
- Terms and interpretation
- Performance of contracts
- Termination of contracts
- Vitiating factors

Relevant material from other courses:

Commercial Transactions

- ACL (including consumer guarantees, misleading and deceptive conduct, unconscionable conduct, unfair terms)
- sale of goods and commercial leases
- guarantees and insurance

Equity

- estoppel

Basics

What is a contract?

- A legally enforceable agreement that involves one or more promises, given for something in return.
- *'an agreement or set of promises that the law will enforce'* (p 3)
- *'an expression of the joint will of parties engaged in a transaction'* (p 3)
- Two parties. The parties to a contract involves the people or the entities that enter into a legally enforceable agreement. Can be more than two parties (privity of contract).
- Some agreements that are not contracts:
 - SOCIAL ARRANGEMENTS: e.g. making plans to meet for dinner, if someone doesn't show it is not a breach of contract as it is not a contract. This is because there was no intention to make it legally enforceable.
 - GIFTS: e.g. a promise to give someone a new car, the other person was going to take them out for dinner, this is not a contract. This is because there is no agreement where a promise is given for something in return. What has actually happened is a promise to give a gift with a promise for a gift in return. There is no contract because we don't have a bargain. If they said 'I'll give you a car if you give me dinner' it could be a contract. This is just a couple of gifts, not an arrangement with an exchange of promises.
 - *Quid pro quo* - something for something
 - integral to the doctrine of consideration
 - the requirement that an agreement has each party doing something for one another

Why enforce promises?

MORAL ARGUMENTS:

- In a human society a special significant attaches to promises, e.g. if you make a promise, you should keep it.
 - but, this doesn't explain why some promises are considered more important than others e.g. one promise is a contract but another isn't
- The concept of reliance. If you promise to do something and the other person relies on them for that promise.
 - however, the fact that one person relies on another person in doing something is not sufficient or necessary in itself to create a contract.
 - e.g. if one person promises to sell a car and the other promises to give money for it, they are bound to the promise even if no one relies on it

ECONOMIC ARGUMENTS