

LAWS1015 Contracts

LECTURE 1 Introduction

- **Contract:** legally binding agreement between parties
- **Unilateral Contract:** one party make an offer that is open and available to anyone who performs specific obligations
- **Bilateral Contract:** reciprocal arrangement between two parties by which each promises to perform an obligation in exchange for the other party's obligation
- **Contract Formation:** for the law to regard that a legally binding contract has been formed, it requires 4 elements to be present:
 - o 1. Intention to create legal relations (when the parties are agreeing to certain terms and conditions of a contract, they intend them to be legally enforceable)
 - o 2. Agreement between the parties to the terms/conditions of the contract (usually indicated by an offer and acceptance of that offer)
 - o 3. Certainty in those terms/conditions, so the court would be able to enforce the K
 - o 4. Consideration for a promise to be enforceable as a contract, it must be paid for

ELEMENTS of Contract formation:

- **Agreement** offer and acceptance
- **Consideration** benefit and detriments
- **Intention** to create legal relations
- **Certainty** of the terms

Contract: a promise or a set of promises supported by consideration that the law will enforce

- Private parties determine the contractual obligations themselves
- Does not have to be in writing
- Any person with 'capacity' to make a contract can bind themselves to one, but only themselves (privity)
- Legal consequences flow from breach of contract by a party – damages or termination
- One way or another, contracts come to an end (are discharged)
- Contract law = 'private law' or the 'law of obligations'
- Statute, common law and equity can intervene where it appears on the surface that each party has freely consented, but consent of one party may have been impaired that it is no longer considered consent (*Thorne*)

CLASSIC CONTRACT LAW

- Late 19th century: came from the idea of free and voluntary will addressing land, industry, labour; by public policy requires that men of fall age and competent understanding have the utmost liberty of contracting, and that their contracts when entered into freely and voluntarily is held sacred and enforced by the courts

Legal enforcement of contracts:

- **Will theory:** contract as an expression of free human will, which the law should enforce
- **Bargain theory:** contract as a bargain for an exchange between autonomous parties
- **Reliance theory:** when parties enter into a contract, each party should be able to rely on the promises of the other party without suffering detriment
- “Reasonable expectations of honest men”

Types of Justifications of Contract Law

Right, fair and just to enforce contracts	Good and useful to enforce contracts
<ul style="list-style-type: none"> - Promise - Consent 	<ul style="list-style-type: none"> - Wheels of commerce - Efficiency

Enforcement of agreements – factors that may impose a limit on the subject matter

- Lacking contractual capacity
- Illegality doctrine or contrary to public policy
 - o **REW08 Projects Pty Ltd v PNC Lifestyle Investments Pty Ltd (NSW)** → delay in stamp duty, argued that the subject matter of contract is illegal, held that there would be penalties but transaction is not illegal so sale of land contract is still enforceable
- Some impairment of genuine consent
 - o Contract induced by misrepresentation, duress, undue influence, unconscionability
- Contract has unfair or imbalanced terms
 - o **Contract Review Act 1980 (NSW)**
 - o **Australian Consumer Law (Cth)**

Thorne v Kennedy [2017] HCA 49

- **FACTS:** Marriage gone wrong, D found bride on a website, pre-nuptial agreement (Binding Financial Agreement BFA) that was said to be entirely inappropriate from independent legal advice, P signs it anyway but there was a breakdown of marriage, P sought settlement
- **ISSUE:** Whether the BFA should be binding and enforceable upon the breakdown of the marriage
- **HELD:** court was not interested in the intricacies of the contract, despite legal advice given there was:
 - o Lack of consent, bargaining power, fair or reasonable outcome, financial equality, competent or voluntary decision
 - o Time pressure to fully understand information, reliance on D, emotional aspect of relationship (motherhood, preparation), publicness of marriage, sense of urgency from D
- **PRINCIPLE: Contract signed due to undue influence and unconscionable conducts are voidable.**

Agreement is said to exist when an offer (an expression of willingness to bound immediately on certain terms without further negotiation) made by one party is accepted unequivocally by the other party or else it can be inferred from the circumstances that the parties have reached agreement.

THE FREELY NEGOTIATED BILATERAL EXECUTORY CONTRACT

- Is there a contract – formation
 - o T1: Negotiations begin
 - o T2: Agreement is reached, moment of K formation
- Has the contract been performed – performance
 - o T3: Performance of the contract begins
 - o T4: Performance of the contract ends

OFFER

- An offer has to be concrete and precise enough to express a willingness to be legally bounded with other party on certain terms and conditions
- Terms and conditions are expressed with specific certainty that a court can interpret and enforce
- Magic moment → parties has to have mutual intention to conclude legal relationships
 - All agreements consist of an offer made by one party and accepted by the other. The offer and acceptance may be contemporaneous OR under such circumstances that it is to be regarded as a continuing offer existing at the moment of acceptance = consensus *ad idem*, contract
 - An offer may be withdrawn at any time before acceptance. A mere promise to leave it open for a specified time makes no difference because there is no agreement = *nudum pactum*, not binding

Unilateral contracts

- Unilateral offer 'offers to the whole world'
 - o Anybody who performs the conditions named in the advertisement accepts the offer
 - o Performance of condition
 - o Formed when performed
- Puff
 - o Advertisement that is not a legal offer to bound
 - o Absence of certainty and consideration
 - o No intention to make an offer that can be accepted by the other side
 - o Not intending subjectively
- Reasonable person test
 - o Nature of communication → a reasonable person objective perspective