Contracts Outline

1) Outline what a contract is…
   a) Differentiate a contract from a promise
   b) The requirements of a binding simple contract
      i) Essential elements to form a contract (A, I, C)
      ii) Elements lacking that make a contract invalid (Capacity, Consent, Legality)
2) Outline what constitutes legal agreement (conduct, offer-acceptance)
   a) Offer
      i) The definition of an offer
      ii) The requirements for an effective offer; contrast
         (1) Request for information
         (2) Invitation to treat
      iii) The ways in which an offer may be terminated
         (1) Rejection
         (2) Acceptance
         (3) Revocation (cf: an option)
         (4) Lapse
         (5) Condition failure
   b) Acceptance:
      i) The requirements for a valid acceptance
         (1) Unqualified (vs counter offer)
         (2) Communicated
         (3) In reliance of the offer
3) Intent:
   a) Social/domestic/voluntary rebuttable presumption
   b) Business rebuttable presumption
4) Define what is consideration
   a) Differentiate sufficient consideration from situations lacking
      i) Vague
      ii) Past
      iii) Legal obligations and
      iv) Prior debt
5) Role of enforceability, and the specific role of the consent principles in:
      i) Duress
      ii) Undue influence
      iii) Unconscionability
6) The importance of capacity and the situation for contracts involving:
      i) Minors; Intellectual impairment

1) The difference between a term in a contract and another statement
   a) Puffery
   b) Representation
      i) Definition
      ii) Test (Dick Bentley Productions Ltd v Harold Smith Motors Ltd)
         (1) Time lapse
         (2) Importance
         (3) Did one of the parties have special skill or knowledge
2) Implied terms
3) The effect of a term in writing and signed (Parole Evidence Rule)
   a) Definition including "whole of agreement" clauses
   b) Alternative: collateral contracts
4) Misrepresentation (definitions and effects)
      i) Fraudulent
      ii) Negligent
      iii) Innocent
5) Disclaimers and key elements of a disclaimer:
   a) Must be incorporated into the contract
      i) Signed, written? see Parole Evidence Rule (L'Estrange v Graucob Ltd) OR
      ii) brought to the attention of the other party (reasonable notice – see Thornton v Shoe Lane Parking) OR
      iii) prior dealings (Balmain New Ferries)
   b) Interpreted widely enough to cover the breach
      i) Principle of contra proferentem (against the interests of the party relying), including the Four Corners Rule (Sydney City Council v West)
   c) Not misrepresented (Curtis v Chemical Cleaning & Dyeing Co)
6) The difference between a condition and a warranty and its effects on remedies
   a) Determined objectively
      i) Condition
      ii) Warranty
7) Remedies
   a) Damages and their purpose
   b) Equitable remedies

Negligence Outline

R1: The defendant owed the plaintiff a duty of care

A. Established categories

OR

B. Other relationships
   I. Reasonable foreseeability
   II. Salient features of case

OR

C. Negligent misstatement: Either
   I. Duty of care owed if (Hedley Byrne v Heller - bank gave reference to advertising company who placed adds for client
   OR
   II. If third party relies on advice given to their advisor (Esanda Finance Corporation Ltd v Peat Marwick Hungerfords),

R2: The defendant breached that duty of care

<u>s 9 CLA (Civil Liability Act)</u>

s9(1)(a) The risk of the harm was foreseeable;

AND

s9(1)(b) The risk was not insignificant

AND

s9(1)(c) A reasonable person in the position of the defendant would have taken the precautions against the risk of harm.

S9(2) In deciding this issue, the Court considers the following factors:-

I. The probability that the harm would occur if care were not taken;

II. The likely seriousness of the harm;

III. The burden of taking precautions to avoid the risk of harm

Iv. The social utility of the activity that creates the risk of harm

R3: The defendant's breach caused the plaintiff to suffer harm.

<u>s 11 CLA (Civil Liability Act)</u>

(1) A decision that a breach of duty caused particular harm comprises the following elements—

(a) "factual causation" - "but for" test.

(b) "scope of liability"

Reducing Liability - Defences

1. Voluntary assumption of risk
   - The common law rule in Agar v Hyde?
   - The presumption under s14 of the CLA?
   - Establish if a risk is obvious under s13 CLA?
2. Contributory negligence
   - Common Law rule: Manley v Alexander.
   - Statutory test: s23 CLA.
   - Intoxication: presumptions ss47 and 48 (including the relevant definition in sch 2).

Week 5 & 6: Contract Law

What is a Contract?

A contract is a legally enforceable agreement which can be made verbally, in writing, or implied through conduct.

Elements of a Contract

Element 1: *Agreement*

An agreement is established when a valid offer by one party is met with a clear acceptance by another.

Offer: An offer is a clear expression by the offeror of a willingness to enter into a contract on stated terms with the offeree. Offers can be verbal, written or implied.

What is not an offer?

- *Invitation to Treat*: These invite others to make an offer but are not offers themselves (e.g. goods in shop windows and shelves (***Boots***); advertisements (***Partridge v Crittenden***); catalogues; price lists;
- *Responses to Requests for Information*: These do not constitute an offer (e.g. a statement of lowest price for a property was deemed merely a response to a query, not an offer (***Harvey v Facey***)).
- *Advertisements*: These are generally invitations to treat. However, exceptions exist where the ad's language and the company's actions demonstrate a clear intention to be bound (***Carbolic Smoke Ball***).
- *Automated Systems*: Goods displayed may constitute an offer since the acceptance occurs when the customer inserts payment (e.g. vending machine sales, car park entrance).

Who can you make an offer to? Offers can be directed to individuals, groups or the world at large (***Carbolic Smoke Ball***).

When is an offer terminated?

- *Acceptance*: An offer terminates when it is validly accepted, resulting in a binding contract. Once the offeree communicates acceptance to the offeror, neither party can withdraw from the agreement.
- *Rejection*: If the offeree rejects the offer, the offer immediately terminates and cannot be later accepted.
- *Counteroffer*: A counter offer acts as both a rejection of the original offer (***Hyde v Wrench***) and the presentation of a new offer. The original offer cannot be reinstated.
- *Revocation*: An offeror may revoke the offer at any time before it is accepted, provided the revocation is communicated to the offeree (***Dickinson v Dodds***). However, revocation is ineffective if the offeree has already accepted the offer. Offers can specify irrevocability (i.e. option) where the offeree provides consideration to keep the offer open for a specified period.
- *Lapse of Time*: Offers may lapse if they are not accepted within a specified period of time contained in the offer or a reasonable period of time (e.g. offers will be short-lived for perishable goods, whereas for land, the offer will remain open for a longer time (but not indefinitely) (***Ramsgate***).
- *Death of the Offeror*: If the offeror dies before acceptance, the offer may terminate, depending on the nature and relationship between the parties (***Carter v Hyde***).
- *Condition Failure*: If an offer is contingent upon a specific condition and that condition is not met, the offer terminates (e.g. "I will sell you my car for $10,000 if you secure financing by Friday") (***Financings Ltd v Stimson***)

Acceptance: For an offer to be valid, it must be accepted by the offeree. It must meet the following elements:

Was the acceptance communicated?

- Acceptance is not effective until it has been clearly communicated to the offeror.
- Communication can occur through verbal statements, written documents, or conduct (e.g. handing cash to cashier for an item is acceptance through conduct). Silence does not amount to acceptance unless explicitly agreed upon by the offeree (***Felthouse v Bindley***).
- If the offeror has specified a specific mode of acceptance, then acceptance is not valid unless it is communicated in the manner specified (unless a reasonable alternative is equally prompt and does not disadvantage the offeror).
- If no method is indicated, the custom of the trade or what is reasonable in the circumstances will be accepted.
- *Postal Acceptance Rule*: Acceptance becomes effective upon dispatch, rather than receipt (***Adams v Lindsell***).

Was the acceptance unqualified?

- The offeree must accept the offer without modifying it. Any deviation constitutes a counteroffer (***Hyde v Wrench***).

Was the acceptance made in reliance on the offer?

- Acceptance must occur with knowledge of the offer and in response to it. The offeree cannot accept an offer they are unaware of or for reasons unrelated to the offer's existence (e.g. providing information to clear your name rather than in reliance on the advertised reward (***R v Clarke***).

Element 2: *Intention to Create Legal Relations*

For a contract to be valid, parties must intend to create legal relations. Courts apply a traditional test to determine intent by relying on presumptions, which can then be rebutted with evidence. The courts will make an assessment from the conduct of the parties, words spoken, documentation, the surrounding circumstances and the consequences of the agreement (***Fitzpatrick, Jeffrey F., et al. (2019): 87***).

Social, Domestic and Voluntary Agreements

Agreements made in social, domestic, or voluntary settings are generally presumed not to convey an intention to establish legal relations. These agreements are usually informal and influenced by personal relationships rather than legal obligations.

- *Volunteering*: If you are legally bound to do something, you are not really a volunteer. Therefore, volunteers do not intend to be legally bound.
- *Case Example*: A husband promised to give his wife a monthly allowance while he worked overseas. The court determined that such agreements within a household context typically do not show the necessary intent for a legally binding contract (***Balfour v Balfour***).
- *Rebuttal*:
- When examining the argument, courts evaluate the circumstances surrounding the agreement. For instance, they look at the seriousness of agreement, the conduct of the parties as well as other relevant evidence such as documentation.
  - A lottery pool among friends was deemed legally binding because stakes were high (consequences were serious) and the parties' conduct suggested a clear intent to share any winnings (***Trevillion v Grubb***).

Remedy Type	When Available	Effect
Damages	For any breach, as long as loss is proven.	Compensates the injured party.
Termination	Only for breach of a condition.	Ends the contract + allows damages claim.
Specific Performance	When damages are inadequate (e.g., unique goods).	Court orders the breaching party to perform the contract.
Injunctions	To stop/prevent a breach (e.g., restraining trade).	Court order to enforce compliance.

Week 7 & 8: Negligence

Negligence involves breaching a legal duty to take care. For a legal action in the tort of negligence to succeed, the plaintiff must establish all of the following:

- ***Element 1***: The defendant owed the plaintiff a duty of care;
- ***Element 2***: The defendant breached that duty of care; and
- ***Element 3***: The defendant's breach caused the plaintiff to suffer harm.

Element 1: The defendant owed the plaintiff a duty of care

The onus is on the plaintiff to establish that a duty of care was owed by the defendant.

The law provides three ways in which a plaintiff can establish the defendant owed a duty of care:

A. Established Category.
B. The Common Law Test.
C. Negligent Misstatement.

A. Established Category

If a plaintiff demonstrates that a specific relationship exists between them and the defendant, a duty is owed. Some established categories include:

- **Motorists** owe a duty of care to other **road users** (i.e. pedestrians, cyclists and fellow drivers (***Imbree v McNeilly***)).
- **Doctors** owe a duty of care to their **patients** (i.e. provide treatment with the skill and diligence expected of a competent medical professional (***Rogers v Whitaker***)).
- **Manufacturers** owe a duty of care to **consumers** (i.e. ensure their products are safe for intended use).
  - In ***Donoghue v Stevenson***, a woman became ill after drinking ginger beer containing a decomposed snail. Although she did not purchase the drink herself, the court held that the manufacturer owed her a duty of care as a consumer, even though there was no contractual relationship between them (she did not buy the drink herself).
- **Occupiers** owe a duty of care to **entrants** (i.e. to take reasonable steps to prevent foreseeable hazards).
  - In ***Australian Safeway Stores v Zaluzna***, a customer slipped on a wet floor in a supermarket. It was held that Safeway owed her a duty of care as occupiers must ensure the safety of people entering their premises.
- **Professionals** owe a duty of care to **clients** (i.e. requiring lawyers, accountants, financial advisors etc. to exercise reasonable skill and diligence in providing advice or services (***Hill v Van Erp***)).
- **Employers** owe a duty of care to their **employees** (i.e. ensuring a safe working environment, proper training and risk management to prevent foreseeable workplace injury (***Czatyrko v Edith Cowan University***)).
- **Directors** owe a duty of care to the **company** (i.e. act in its best interests with due diligence (***Daniels v Anderson***)).
- **Agents** owe a duty of care to their **principal** when acting on their behalf (***Pierlite Australia Pty Ltd v Fatseas***).

B. The Common Law Test

If the relationship does not fall within one of the established categories, both of the following must be established:

(i) *Reasonable Foreseeability*
The plaintiff must show that (at the time of the incident) it was reasonably foreseeable that the defendant's carelessness could cause harm to someone in the plaintiff's position (***Bourhill v Young***).

- In ***Bourhill v Young***, a pregnant woman suffered shock after seeing the aftermath of a motorcycle accident. It was held that no duty of care was owed to her, as there was insufficient proximity and the harm was not reasonably foreseeable.
- Whatever you are doing, you owe a duty of care to those people you can reasonably foresee as likely to be affected by your conduct (e.g. when driving a car, you owe a duty of care to those people you can reasonably foresee are likely to be affected by your driving).
- It is not necessary to show that the defendant actually foresaw that their conduct could harm the plaintiff.
- It is not necessary that the harm actually suffered by the plaintiff was reasonably foreseeable, **only that some kind of harm** to someone in the plaintiff's position could be caused by the defendant's carelessness.

(ii) *Salient Features*
The plaintiff must show that the salient features of the case are consistent with the existence of a duty of care (***Perre v Apand***).

- Three important features:
  - The control the defendant has over the situation;
  - The relative vulnerability of the plaintiff; and
  - The need for people to take responsibility for their own actions.

In ***Perre v Apand***, a company introduced a bacterial disease that led to financial loss for neighbouring potato farmers due to quarantine restrictions on potatoes grown on land affected by the disease. It was held that Apand owed a duty of care to Perre, based on factors such as Apand's knowledge of the risk to Perre, the control Apand had over Perre's situation (they introduced the disease), and Perre's vulnerability (nothing they could do to overcome regulatory ban).

C. Negligent Misstatement