

# 1.1) Introduction to Contracts

## Background

- Heavily based on common law incl equity
- Key to studying is learning key principles and doctrines through cases

## Overview of contracts

### Key questions:

- *Whether parties have entered into a contract*
- *What elements will need to be satisfied before a court will enforce an agreement between parties*
- *Offer & acceptance*
- *Consideration, intention, and equitable estoppel*

### Contents of contracts:

- *How does a court determine what the parties have actually agreed*
- *How do courts classify the various statements parties make during negotiations*
- *Express terms & implied terms*
- *Principles of construction (interpretation) of contractual terms*
- *Use of contractual terms to exclude or limit the liability of the parties*

### Discharge of contracts:

- When and how contracts come to an end *and parties can be released from their contractual obligations*
- *How do we know when and whether a contract has been discharged*
- Discharge by agreement
- Discharge by performance
- Discharge by termination of breach
- Discharge by frustration

## Enforceability

### A. Vitiating factors

- a. Genuine consent or free will?
- b. Duress, misrepresentation, mistake, undue influence, unconscionability (under the general law and statute)

**B. Illegality**

- a. When a contract becomes illegal and thus unenforceable
- b. In what circumstances could a contract be against public policy or the public interest
- c. Common law illegality and statutory illegality

**C. Form requirements**

- a. Eg: writing requirements that impact the enforceability of the contract

**D. Privity**

- a. Involves the rights of people that are not parties to a contract
- b. Can ppl who aren't parties have contractual obligations enforced against them?
- c. Can a non-party expecting a benefit under a contract enforce right or benefit?
- d. The **privity rule** and its **exceptions**

**E. International contract law**

- a. Between aus and int businesses
- b. Different contract rules

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## 1.2) Fundamental Concepts and Remedies

### 1) 3 sources of law

<b>Common law</b>	<ul style="list-style-type: none"><li>• Court made, judge made law based on precedents</li><li>• Developed in 1066AD</li></ul>
<b>Equity</b>	<ul style="list-style-type: none"><li>• Addressed the rigidity of common law</li><li>• Chancery developed its own principles based on conscience</li><li>• Offered an alternative jurisdiction with more flexible remedies (i.e. equitable remedies)</li><li>• Over time, equity was recognised as prevailing over common law where necessary to achieve justice</li></ul>
<b>Statute</b>	<ul style="list-style-type: none"><li>• Main source of making laws after the 17th century</li><li>• Its powers lies within the principle of separation of powers</li></ul>

### 2) Fundamental concepts

#### Hierarchy of sources of law

- State > equity > common

## Definition of a contract

- Private law of obligations (torts, contract, restitution)
- Reasonable person or objective bystander test → helps courts determine whether a promise was intended to be legally binding

## 3) Classification of contracts

### Classification by promissory intent

<b>Bilateral contract</b>	<ul style="list-style-type: none"><li>• <b>Bilateral contract:</b> the offeror's promise is met by the offeree's acceptance of that promise, an exchange of promises; the contract is formed when the promises are exchanged<ul style="list-style-type: none"><li>◦ At the time the contract is created, both parties have obligations left to perform.</li><li>◦ Creation of the contract does not depend on any active performance by the parties, just an exchange of the promises.<ul style="list-style-type: none"><li>▪ Eg: signing a contract for the sale of land → contract is formed even though neither parties have not performed anything yet.</li></ul></li></ul></li></ul>
<b>Unilateral contract</b>	<ul style="list-style-type: none"><li>• <b>Unilateral contract:</b> the offeror's offer is accepted by the offeree's performance of an act specified in the offer; an act in exchange for a promise; the contract is formed when the act is performed<ul style="list-style-type: none"><li>◦ i.e.: no contract will be formed until the act is performed</li><li>◦ Eg: you publish that you are rewarding people for your lost dog. When someone finds the dog and brings it to you, now the contract is formed and you are bound to pay them.</li></ul></li></ul>

### Classification by level of formality

- **Simple:** no special form. can be oral, written or a combination of both
  - Must be supported by consideration
- **Formal:** require special formalities. They take the form of a deed –a special written document that has to comply with a particular form that is prescribed by the law.
  - No need to be supported by consideration and the formality requirement takes the place of consideration

### Classification according to Enforceability

- **Valid:** satisfies the elements of formation & is enforceable
- **Void:** no contract '**ab initio**' (from the beginning), aka there was no contract from the start; no rights and obligations have arisen
- **Voidable:** validly formed contract that can be rescinded, usually bc of a vitiating factor such as lack of consent. Innocent party may seek damages for any loss
  - Can be voided by the innocent party, this is called rescission
- **Unenforceable:** may be valid but cannot be enforced; usually bc of a lack of formal requirement such as writing

- **Illegal:** the purpose of the contract is contrary to statute or the common law, sometimes these contracts may be unenforceable

## Classification by extent of performance

- **Executed** contract: one where the contractual obligations have been performed
- **Executory** contract: one where the obligations of both parties are outstanding and yet to be performed

## 4) Remedies

<b>a) common law</b>	<ul style="list-style-type: none"> <li>• <b>Damages</b> <ul style="list-style-type: none"> <li>○ Principal remedy for breach</li> <li>○ Monetary compensation for loss</li> <li>○ Court determines quantum → depends on the measure of damages (court measures the difference between the plaintiff's position and the position the plaintiff should've been in if it wasn't for the breach)</li> <li>○ Given as of right</li> <li>○ Substantial v nominal damages <ul style="list-style-type: none"> <li>■ Nominal damages: when the plaintiff proves a breach but cannot prove loss</li> </ul> </li> </ul> </li> </ul>
<b>b) equity</b>	<ul style="list-style-type: none"> <li>• <b>Specific performance:</b> court order to enforce a positive contractual obligation, discretionary</li> <li>• <b>Injunction:</b> court order to enforce a negative contractual obligation, discretionary</li> <li>• <b>Rescission:</b> court order that validates a suit or void a contract <ul style="list-style-type: none"> <li>○ it's not necessary for the innocent party to go to court or get a court order. Instead, the innocent party just needs to serve a notice that they're rescinding on the breaching party.</li> </ul> </li> <li>• <b>Rectification:</b> court order to correct written contract to reflect what the parties actually agreed</li> </ul>
<b>c) remedies not dependent on contract</b>	<p>These remedies are not contractual remedies because they don't depend on the existence of a contract. But they might arise within the contract. These are alternative remedies.</p> <ul style="list-style-type: none"> <li>• Remedies in <b>tort:</b> deceit (fraud) and negligence</li> <li>• Remedies in <b>statute:</b> misleading or deceptive conduct – <b>s18 of ACL</b></li> <li>• Remedies in <b>restitution</b></li> </ul>

## 1.3+ 1.4) Offer Part 1

### 1. Agreement (Domestic)

#### Contract Formation

- Most important requirements: agreement, consideration, intention