

LAW2101: CONTRACT A

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INTRODUCTION TO CONTRACT LAW

AUSTRALIAN LAW

- Originated in English law
- 2 sources of law: parliament/legislation/statute & courts/common law
- Parliament can legislate to change case law
- Contract is a 'civil' law matter
- A court:
 - Determines the facts based on evidence
 - Applies the law (statute or common law) to the facts

DOMESTIC CONTRACT LAW

- Contract law is predominantly case law - common law and equity
- Other areas of case law impacting on contract:
 - Enforcement of promise by way of estoppel
 - Restitution for unjust enrichment
- Legislation affecting contracts:
 - ACL (regulates the term of contracts): unfair contract terms & consumer guarantees
 - Contract B ACL misleading or deceptive conduct & unconscionable conduct
 - Vitating factors^^
- Other legislations:
 - Goods Act - re: Sale of goods
 - Statute of Frauds
 - Electronic Transactions Act

INTERNATIONAL CONTRACT LAW (week 2 topic 4)

- Consider some comparative provisions of 2 international instruments:
 1. **UNIDROIT Principles of International Commercial Contracts 2016** - non-binding uniform rules for international commercial contracts
 2. **UN Convention on Contracts for the International Sale of Goods 1980** - binding uniform rules for contract for International sale of goods (via domestic legislation) — considered binding law in Australia

Contract Law and the Theories that Underpin it

What is a contract?

- A contract is a promise or set of promises that is or are legally binding
- A promise in the legal sense relates to an undertaking by one person, the promisor, to do something or refrain from doing something if the other person, the promisee, does something or refrains from doing something or even simply makes a promise in return
- Eg. Legally binding promise could be a promise to sell you my car if you give me \$10,000, or even I promise to sell you my car if you promise to give me \$10,000.
- However, an example of a promise that is NOT legally binding might be that I promise to go swimming with you every Friday
- LEGALLY BINDING WHEN SOMETHING IS BEING DONE OR REFRAINED FROM/PROMISED IN RETURN/EXCHANGE
- **A contract is a legally binding promise - means that if the contract has not been performed, the law will enforce the performance of the contract or if that's not possible, will give a remedy to the innocent party**

What are the theoretical underpinnings of contract law?

- **2 fundamental ideas about contract law;**
 - **1. The doctrine of freedom of contract** - refers to the fact that contractual obligations are self-imposed, meaning that contract law allows people to be free to choose whether to enter a contract, with whom they wish to contract, and the terms of the contract, including the consequences of any breach of it.
 - Limitations and exceptions to this freedom: eg. The law forces you to enter into compulsory third party car insurance, whether you want to or not.
 - Contrastingly, there are some things that you cannot contract to do: eg. You can't enter a contract to commit a crime
 - inequality in bargaining power often between a consumer and a large corporation which often means ones party is agreeing to the terms set by the other, whether they want to or not
 - **2. Doctrine of sanctity of contract** - refers to the fact that a contract made by parties who were free to enter it is sacred, and its terms should be enforced, meaning a court will always try its best to uphold the contract and make sense of its terms, rather than find it unenforceable, avoidable or void.

Rationale behind contract law

Why is contract law important in our lives?

- A capitalist society with a laissez faire economy and free trade could not function without contract law

- In the Australian context with a free market economy and increasing privatisations of government services, contract goes to the core of almost everything we do - its the basis for and it regulates commercial transactions, consumer transactions and increasingly, government services
- From the perspective of businesses, contracts facilitate and regulate buying, selling, leasing, hiring etc - contracts are needed so goods and services can be produced, sold and distributed
- From the perspective of the customer or consumer, contracts are also essential - nearly all consumer transactions involve the purchases of goods or services — joining a gym, buying a parking ticket, use of public transport, buying a new shirt — these are all consumer transactions governed by contract law
- Contracts may be unfair - particularly so in consumer contracts where large corporations might take an advantage of an individual consumer simply by virtue of their size and position

Consumer Law

- Interaction between contract law and consumer protection law such as the Goods Act or the Australian Consumer Law
- Both provide consumers with protections and remedies should this occur
- This protection of consumers reflects the tension between freedom and sanctity of contract and the need for courts to sometimes interfere in contractual relationships in order to protect weaker parties

From the perspective of the government, the government is treated a bit differently from most contracting parties and much of what the government does is not actually contractual in nature simply by virtue of the the fact that it is the government. However, the more the government privatises its services, the more it is regulated by contract

Sources of contract law

- Contract law is predominantly judge-made law/common law/case law — most of what is used today is derived from English case law
- Increasing tendency in all areas of the law to pass legislation, rather than rely simply on common law
- **Australian Consumer Law** (*statute relevant to contract law*) contained in schedule 2 of the **Competition and Consumer Act 2010 Commonwealth**
- **Goods Act 1958 Victoria**
- **Australian Consumer Law and Fair Trading Act 2012 Victoria**

Can someone be compelled to enter a contract? Yes