70211 Contract Notes

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Part 1: Formation

Part 4 Discharge and Termination

A CONTRACT IS AN AGREEMENT BETWEEN TWO OR MORE PARTIES IN WHICH LEGAL OBLIGATIONS ARE CREATED WHICH ARE ENFORCEABLE BY LAW

Traditional approach: There are many different theories: See Lecture 1

Offer and Acceptance

Form or Valuable Consideration

(See classes of contract below)

(Alternative: Promissory Estoppel)

Intention to create legal relations

Certainty

Contractual Capacity

1. Minor
2. Mentally disabled
3. Intoxicated person
4. Prisoner
5. Bankrupt
6. Corporation

Genuine Consent

1. Mistake
2. Misrepresentation
3. Duress
4. Undue influence
5. Unconscionability

Legal Purpose

At Common Law

By Statute

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Valid Contract

CLASSES OF CONTRACT

Formal Contracts

Require a special form or method of creation to be enforceable

1. Deed or under seal, written, signed, attested, delivered
2. Contracts of record

Example
Power of Attorney

Simple Contracts

Require consideration

1. Implied
2. Oral
3. Written

Sometimes formalities required. Evidenced in writing. Parties. Subject matter and Consideration must be expressed. Signature may be required

Example
Sale of Land , Long term lease

EQUITY

REMEDIES

COMMERCIAL LAW

TERMS OF CONTRACTS

EXPRESS TERMS

1. Representations
2. Conditions & Warranties
3. Uncertain Terms
4. Meaningless Terms
5. Exclusion Terms (Disclaimer Notices)

IMPLIED TERMS

1. Conduct of the Parties
2. Custom or Trade Usage
3. Statute
4. The Courts

Parties to the Contract

Assignment
Doctrine of Privity

CONCLUDING OR DISCHARGING CONTRACTS

1. Actual Performance
2. Attempted performance
3. Agreement between parties
4. Term in the contract
5. Operation of the law
6. Frustration
7. Lapse of time
8. Breach of the contract

CHARACTERISING CONTRACTS

1. Valid
2. Void
3. Voidable
4. Unenforceable
5. Illegal
6. Executed
7. Executory
8 Unilateral
9. Bilateral

REMEDIES FOR BREACH OF CONTRACT

1. Damages
2. Termination
3. Specific Performance
4. Injunction
5. Action under Statute
6. Restitution

BREACH OF THE CONTRACT

1. Total Breach
2. Partial Breach
3. Repudiation

1 Intro

1.1 Contract Definition

1. Is a legal expression of agreement between parties
2. The parties make the rules
3. Enforceable at law
4. A mechanism to define, arrange and regulate a transaction

1.1.1 Key elements of a contract

1. Promise
2. Capable persons - age, mental state
3. Obligation
4. Enforcement - key boundaries of the law

1.1.2 Formation Requitements

1. **Agreement** – offer and acceptance
2. **Consideration** – exchange of promises
3. **Intention** to be legally bound
4. Legal **capacity** to enter
5. Genuine **consent**
6. **Legality**

7. Certainty

1.1.3 Key definitions

- <u>Validity/enforceability</u>
  - ⇨ **Valid:** the essential elements present
  - ⇨ **Void:** no legal validity → one of the elements does not exist
  - ⇨ **Voidable:** validly formed but inherent defect through undue influence etc
    - It is only voidable on the behalf of the offeree
    - i.e. right to void a contract
  - ⇨ **Unenforceable:** validly formed à but with a technical defect
    - E.g. failure to pay stamp duty
  - ⇨ **Illegal:** "the court will not lend its aid to a man who founds his cause of action in an immoral or illegal act"
    - e.g. a contract to sell heroin
- <u>Performance</u>
  - ⇨ **Executed:** where one party has performed their promise
  - ⇨ **Executory:** where all the parties have done is exchange promises
    - Neither party has performed anything
- <u>Content</u>
  - ⇨ **Express:** by written or spoken word
  - ⇨ **Implied:** by conduct
- **Formal:** some must be in writing
- **Simple:** six essential elements (can be both written or oral or both)
- <u>Unilateral/bilateral</u>
  - ⇨ **Unilateral:** the offeree does not undertake to *perform* anything → but accepts the offer by performing their side of the bargain
    - E.g. Carlill (1983): the plaintiff accepted the offer by using the smoke ball
    - In a reward cases, the finder accepts the offer by returning the dog
    - In a unilateral contract à the obligation of the offeree is executed
  - ⇨ **Bilateral:** where at the formation there is an *exchange of promises and* the obligations of both parties remain to be performed
    - Executory

1.1.4 Relevance of equity

1. Used Where inadequate consideration → promissory esptopple
2. Some remedies such as equitable stop are so closely connected they are regarded as part of contract law
3. Remedies supplement common law damages →eg specific performance and injunction
4. A contract will be set aside or rescinded in equity where there has been unconscionable conduct
5. Equity will rectify where document mistakes have been made

1.1.5 Statutory obligations and regulation

- Key Legislation → Australian Consumer law (ACL→ Competition and Consumer act 2010 (Cth) (CCA) schedule 2
- Financial services however → Australian Securities and Investments Commission act (2001) (Cth) (ASIC Act)
  1. Misleading or deceptive conduct
  2. Unconscionable conduct
  3. Unfair contract terms
  4. Consumer guarantees

2 Agreement	
2.1 Objective test of agreement ❖ Court will assess what has gone on between the parties objectively - Need an outward manifestation of intention to be bound	*Taylor v Johnson (1983) HCA*
❖ All the circumstances will be assessed - traditional offer and acceptance is not always required. - In this case Brambles conduct showed it had accepted the council terms – even though it sent a letter back saying it didn't accept	*Brambles v Bathurst City Council (2001) NSWCA*
❖ "*sometimes… having discussed the commercial essentials and having put in place necessary structural matters, the parties go about their commercial business on the clear basis of some manifested mutual assent, without ensuring the exhaustive completeness of documentations*" ⇨ essential question is whether the parties' conduct (including what was said and not said) reveals an understanding or agreement (mutual assent) which bespeaks an intention to be legally bound to the essential elements of a contract	*Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd (2001)*
❖ Need a meeting of the minds – consensus ad idem - Buyer thought he was getting old oats not new	*Smith v Hughes (1871)*
❖ "*It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe*" ❖ *'The meaning of the terms of a contractual document is to be determined by what a reasonable person would have understood them to mean. That, normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction.'*	*Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) HCA* *<-- move this to terms*
However, the courts have tended towards objective standards because it is very difficult to investigate or rely upon private intentions: ❖ Chong signed an application to join a gym on a 12-month contract without reading she was liable to pay a $200 free if she cancelled within the first two months ⇨ Held: A valid contract does not require the parties to have consensus ad idem in that each full know and understand the terms of their agreement ⇨ By signing the form, Chong had manifested her assent to the printed terms. It was irrelevant that there was no true consensus ad idem between the parties she accepted through her conduct without a meeting of the mind à not necessary	*Fitness first v Chong (2008)*