

# CLAW5001 FINAL RECAP

## Topic 7 Overview of the law of contract: ending the contract + remedies

### Ending the contract:

- discharge by performance • discharge by agreement
- discharge by frustration (no fault of either party; not foreseeable)
  - Taylor v Caldwell*- impossible to perform because of destruction of subject matter of contract
  - Krell v Henry*- impossible to perform due to non-occurrence of event essential to the contract
  - Codelfa Constructions v State Rail*- radical difference in performance
  - Fibrosa Spolfa v Fairbairn*- impossible to perform through a change in the law
    - (\*A deposit paid before the discharge cannot be recovered unless there has been a total failure of consideration- *Fibrosa Spolfa v Fairbairn*)
    - Statute: *Frustrated Contracts Act 1978* (NSW)
- discharge for breach (topic 6: classification of terms)
  - condition, terminate contract and/or claim damage- *Tramways Advertising v Luna Park*;  
*Associated Newspapers v Bancks*
  - warranty, claim damage only- *Bettini v Gye*
  - intermediate term- *Hongkong Fir Shipping*

### Remedies for breach of contract:

- Common law remedy- damages
  - 1) Actual loss and causation- 'but for' the defendant's breach, the loss would not have been suffered
    - Luna Park v Tramways*- must provide evidence of loss otherwise only nominal damages awarded
    - McRae v Commonwealth*- loss can be money spent in reliance on contract or wasted expenditure
  - 2) Remoteness of damage: damages must be either loss that arises naturally from the breach according to the usual course of things, or loss that may reasonably have been in the contemplation of both parties at the time when the contract was made as a probable result of breach-  
*Hadley v Baxendale*
  - 3) Mitigation: duty on plaintiff to take reasonable steps to minimize the loss suffered and cannot claim for loss that reasonably could have been avoided
  - 4) damages for distress and disappointment- *Jarvis v Swan Tours*; *Baltic Shipping v Dillon*  
damages for distress and disappointment are not recoverable unless they proceed from physical inconvenience caused by breach or unless the contract is one the object of which is to provide enjoyment or relaxation
- Equitable remedies (not available where damages have been adequate):
  - 1) Special performance (not available to enforce contracts for personal service or for contracts that require ongoing supervision by the court)
  - 2) Injunction (not available where breach is not continuing)
  - 3) Restitution (賠償) (to stop unjust enrichment )
    - restitution of money paid by the plaintiff to the defendant under an ineffective contract
    - claims for reasonable remuneration for work done or goods supplied under a void or invalid contract: *Pavey & Matthews v Paul*