

## Week 1 Summary

- Principles of equity:
  - Equity: A branch of law that has been developed by the courts to provide remedies where a strict application of common law rules would result in some injustice.
  - Those seeking relief must come into equity with clean hands
    - Plaintiff cannot have contributed to the harm/wrongdoing.
    - Bars relief from anyone guilty of improper conduct in the matter at hand.
  - Equity follows the law.
    - Does not replace or violate the law, but it backs it up and supplements it.
  - Equity will not suffer a wrong to be without a remedy.
    - *Ubi jus, ibi remedium*: 'Where there is a right, there is a remedy'.
  - *Qui prior est tempore, potior est jure*: 'He/She who is first in time takes precedence'.
    - When two parties each have a right to possess something, then the one who acquires an interest first should prevail in equity.
  - Where the equities are equal, the law prevails.
    - When two parties want the same thing and the court cannot in good conscience say that one has a better right to the item than the other, the court will leave it where it is.
  - Equity assist the diligent, not the tardy.
    - Adversary (Defendant) can lose evidence, witnesses and a fair chance to defend him/herself after the passage of time from the date the wrong was committed.
  - Equity is equality.
    - Equity does not play favourites.
  - Equity looks to the intent, rather than to form.
    - Equity will not permit justice to be withheld just because of a technicality.
  - Equity looks on that as done which ought to be done.
    - If someone undertakes an obligation for the other, equity courts look on it as done and as producing the same results as if the obligation had actually been performed.
  - Equity imputes an intention to fulfil an obligation.
    - Equity considers and estimates acts of parties: A person is presumed to do what he is bound to do.
  - Equity acts *in personam*.
    - Acts upon a person's conscience.
  - He who seeks equity must do equity.
    - Plaintiff must recognise and submit to the right of his defendant.
  - Equity delights to do justice and not by halves.
    - Find a complete answer to the issues that are raised; it will bring in all necessary parties, balance their rights, and give a decree that should protect all of them from further litigation on the subject.
- Black Letter Law: Fundamental legal principles that have been accepted as part of common law or are embodied in legislation.
  - Used to describe the expression of these principles as technical rules or as formulae.
- Substantive Law: Legal rights and duties – elements of each particular law.
  - Public Law: Relationships involving government.
  - Private Law: Relationships between private parties.
- Procedural Law: Regulates the process, method and rules by which the substantive law is administered.
  - Criminal Law: Criminal cases only.
  - Civil Law: All non-criminal cases.

- **Common Law: Derived from custom and judicial precedent rather than statutes.**
  - Judge made law.
  - Judge is unable to seek additional information.
  - If information is not brought before the court, it cannot be deliberated on and therefore, is not part of the case.
  - Derive from customary law.
  - In the form of judgements.
  - Can be changed by judges, but require a case to be brought forward.
- **Statutory Law: Body of law created by legislative statutes.**
  - Law made by parliament.
  - Statutes can be changed at any time.
  - Statutes are outlined in one document.
- **International Law: A body of rules established by customs or treaty and recognised by nations as binding in their relations with one another.**
  - **International treaties: An international agreement concluded between states in written form and governed by international law.**
- **Customary Law: A traditional common rule or practice that has become an intrinsic part of the accepted and expected conduct in a community, profession or trade and is treated as a legal requirement.**
  - Customs
  - Made into statutory laws by Parliament = Put in writing.
- **Civil Code: Name for the collection of statutes and laws which deal with business and negligence lawsuits and practices.**
  - Used in Italy, France and Germany.
  - Predict every possible situation.
  - Everything has been covered and thought out; to an extent. Judge takes an active role; can investigate case on their own.
  - No customary law.

## Statutes

### Acts Interpretation Act 1901 (Cth):

- S4: Exercise of powers between enactment and commencement of Act

#### *Application of section*

1. This section applies if an Act is enacted and at a time (the start time) after its enactment the Act will confer power to make an appointment, or to make an instrument of a legislative or administrative character (including rules, regulations or by-laws), because:
  - a. The Act will commence at the start time; or
  - b. The Act will be amended at the start time by an Act that has been enacted and that commences at that time.

#### *Exercise of power before start time*

2. The power may be exercised before the start time as if the relevant commencement had occurred.
3. Anything may be done before the start time for the purpose of enabling the exercise of the power, or of bringing the appointment or instrument into effect, as if the relevant commencement had occurred.
4. The exercise of a power under subsection (2) does not confer a power or right or impose an obligation on a person before the relevant commencement except so far as is necessary or convenient for the purpose of:
  - a. bringing the appointment or instrument into effect; or
  - b. bringing the Act conferring power into operation; or
  - c. Making the Act conferring power fully effective at or after the start time.
5. An appointment, or a provision of an instrument, made under subsection (2) takes effect at the start time or a later time specified in the appointment or instrument.

- S13: Material that is part of an Act

1. All material from and including the first section of an Act to the end of:
  - a. If there are no Schedules to the Act—the last section of the Act; or
  - b. If there are one or more Schedules to the Act—the last Schedule to the Act; is part of the Act.
2. The following are also part of an Act:
  - a. The long title of the Act;
  - b. Any Preamble to the Act;
  - c. The enacting words for the Act;
  - d. Any heading to a Chapter, Part, Division or Subdivision appearing before the first section of the Act.

- S15AA: Interpretation best achieving Act's purpose or object

'In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation'.

- S15AB: Use of extrinsic material in the interpretation of an Act

1. Subject to subsection (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material:
  - a. To confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

## Air Great Lakes Pty Ltd v KS Easter (Holdings) Pty Ltd

**Citation:** [\(1985\) 2 NSWLR 309](#)

**Court:** New South Wales Court of Appeal

**Judge/s:**

- Hope JA
- Mahoney JA
- McHugh JA

**Parties:**

- **Appellant:** Air Great Lakes Pty Ltd
- **Defendant:** KS Easter (Holdings) Pty Ltd

**Material Facts:**

- Parties entered into an agreement for the sale of an airline business.
- Air Great Lakes alleged that the agreement had been repudiated (rejected) by Easter and claimed damages.
- Easter argued, in part, that there was no intention for the document signed by the parties to be legally binding.

**Litigation History:**

- New South Wales Supreme Court (1983)

**Issue to be decided:**

- Was the contract entered into by the parties legally binding?

**Decision:**

- That where a contract is alleged to be found in a written signed document, notwithstanding that the document contemplates further agreement, including additional terms and conditions to be recommended by the parties' legal advisers, the court may have regard to extrinsic evidence of surrounding circumstances for the purpose of determining objectively whether there was an intention that there should be a concluded contract.
- That where a concluded contract is alleged to have been abandoned or abrogated, extrinsic evidence of prior negotiations and subsequent events is admissible to establish mutual agreement to abandon the contract.

**Reason for the decision:**

- Where A conducts himself so that a reasonable person would think he was intending to contract, then a subjective reservation by A not to contract will not prevent a contract existing.
- Subjective intention may, however, be relevant if B knew of A's actual subjective intent; thus, if A is 'pretending' to contract (play-acting), and B knows this, then the law would not impose upon either party the relationship of a contract (even though it might objectively appear as if they were!).
- Intention can be proven, not by the 'document' itself (where one exists) but statements of the parties and other outside material may also be considered.