

Week 7

Introduction to Contract Law

- **CONTRACT:**
 - An **AGREEMENT** between **TWO OR MORE PARTIES** giving rise to **LEGAL OBLIGATIONS** which are enforced or recognised by law
- **CONTRACT** vary in complexity and size:
 - Can range from buying a newspaper, building a house, getting a bank loan
 - Different rules apply, depending on types of contract
- Can be wholly in writing, partly written and partly oral or wholly oral
- Can be divided into **SIMPLE CONTRACTS** and **FORMAL CONTRACTS** (contracts under seal)
 - Contracts under seal = **DEED** and must be in **WRITING**, **SIGNED**, **SEALED** and **DELIVERED**
 - All other contracts are called **SIMPLE CONTRACTS**

Sources of Australian Contract Law

- Common law (Judge-made law found in UK and Australian Legal cases)
- Statutory Law (i.e ACL, Sale of Goods Act)

Important Contract Law Principles

- **FREEDOM OF CONTRACT** (gradual erosion by legislation, but still the general rule)
 - Has its roots in the individualistic and self-reliant ethic prevailing in 19th century England
- **PACTA SUNT SERVANDA** (agreements are to be kept)
 - Courts are willing to imply terms into contracts and seek for meaning when parties have not made clear their intentions
- **COURTS ADOPT AN OBJECTIVE APPROACH TO SEARCH FOR INTENTIONS**
 - Intention ascertained from communication between parties, understood in the light of the context and surrounding circumstances
 - Not the role of courts to examine inmost states of minds of the parties

Essential Elements of a Contract

- Parties must have **INTENTION** to create legal relations
- Must reach **AGREEMENT**
- Agreement must be supported by **CONSIDERATION**
- Parties' **CONSENT** must be genuine
- Contract must be **LEGAL** and possible
- Agreement must be in necessary **LEGAL FORM**

Agreement

- Agreement means a meeting of minds on essential terms needed for a workable transaction:
 - i.e in a sale contract, there must be an agreement on the thing sold and price
- Traditional approach is to look at **NEGOTIATIONS** that have occurred to see if one party has made an offer which the other party has accepted
- If preceding negotiations are **COMPLEX** and **PROTRACTED**, the courts will see if the parties' conduct show a tacit understanding or agreement

Agreement (Offer)

- OFFER:
 - Proposal by one party to enter into a legally binding contract with another (without further discussion/negotiation)
 - May be oral, in writing or implied by conduct
- Requirements for valid offer:
 - Must be PROMISSORY in nature
 - Sufficiently complete (contain essential terms)
 - Intended to result in a contract if accepted
 - Addressed to a particular person or identified group of persons, or to world at large (**Carlill v Carbolic Smoke Ball Co**)
 - The person making the offer is called the OFFEROR and the person to whom it is made is called the OFFEREE
- Following are not offers, though can be mistaken for one:
 - INVITATION TO TREAT (i.e INVITATION TO MAKE OFFERS). EXAMPLES:
 - Depends on the wording of letter (**Gibson v Manchester City Council**)
 - Advertisements
 - Catalogue (**Grainger v Gough**)
 - Display of goods in a shop (**Pharmaceutical Society of GB v Boots Cash Chemists**)
 - Auctioneer's call for bids (**Barry v Davies**)
 - Supply of information in response to a query is not an offer (**Harvey v Facey**)

Agreement (Acceptance)

- ACCEPTANCE:
 - An indication of a readiness to contract on the offered terms (without further negotiation or discussion)
 - When the offeree agrees to the offeror's proposal
- Requirements for ACCEPTANCE:
 - Accepted by offeree while offer in existence
 - Accepted in reliance of the offer (**R v Clarke**)
 - Accepted in the same terms as the offer
 - Accepted unconditionally (**Master v Cameron; Godecke v Kirwan**)
 - Acceptance must be communicated to be effective, unless:
 - Waived (unilateral contract)
 - Postal rule applies

Agreement (Acceptance)

- For instantaneous communication (fax, telex), acceptance concluded at time and place where it is RECEIVED BY OFFEROR (**Mendelson-Zeller Co Inc v T & C Providores**)
- For acceptance by post, acceptance effective when letter posted (**Adams v Lindsell; Household Fire and Carriage Accident Insurance v Grant**)
 - Not affected by delay or loss of letter in course of post
 - Rule does not apply to REVOCATION of offers
 - Can be excluded by offeror (**Holwell Securities Ltd v Hughes**)
 - Can be excluded by implication – letter sent by ordinary post instead of registered post (**Elizabeth City Centre v Corralyn P/L**)
- For electronic communication (email), ELECTRONIC LEGISLATION determines when accepted communicated, unless agreed otherwise or excluded
- Offeror cannot stipulate silence or inaction as constituting acceptance (**Felthouse v Bindley**)

- But can be accepted by conduct, where offeree takes benefit of offer without formally accepting it (**Empirnall Holdings Pty Ltd v Machon Paul Partners Pty Ltd**)
- Generally, acceptance may be communicated in the same way as offer made:
 - Unless method of communication stipulated
 - Even if method stipulated (provided not the only acceptable method) equally expeditious method acceptable

Termination of Offer

- An offer may be terminated in following ways:
 - REVOCATION:
 - Must be communicated to offeree before offer accepted (**Byrne & Co v Van Tienhoven**)
 - Options can only be revoked on expiry (**Goldsborough Mort v Quinn**)
 - REJECTION
 - If offeree rejects, cannot later accept offer
 - Acceptance on different terms is actually a rejection and the making of a counter-offer (**Hyde v Wrench**)
 - But, a request for information is not a counter-offer (**Stevenson, Jacques & Co v McLean**)
 - LAPSE OF TIME
 - Non-acceptance within a specified or reasonable time
 - (**Ramsgate Victoria Hotel Company v Montefiore**)

Intention to Create Legal Relations

- An AGREEMENT is only binding if the parties intend to be LEGALLY BOUND
- When parties do not expressly state their intentions, courts rely on 2 ASSUMPTIONS:
 - DOMESTIC & SOCIAL AGREEMENTS:
 - Parties do not intend to create legal relations
 - BUSINESS & COMMERCIAL AGREEMENTS
 - Parties intend agreement to be legally binding
- In (**Ermogenous v Greek Orthodox Community of SA, INC**), the HC warned about the over-reliance on presumptions to determine the intention to create legal relations; at most, they indicate who bears the onus of proof in court

Domestic & Social Agreements

- Onus of rebutting presumption on the party seeking to enforce agreement:
 - By proving additional circumstances from which an intention can be inferred
 - Courts are more inclined to find legal intention where:
 - One of the parties significantly changed their position in reliance on the agreement (**Todd v Nicol**)
 - The agreement concerns some commercial matter (**Millner v Millner**)
 - The agreement was made after the material relationship had broken down (**Merrit v Merritt**)

Business & Commercial Agreements

- Onus of rebutting presumption on party seeking to deny enforceability of agreement:
 - Harder to rebut the transaction as 'the whole thrust of the law today is to attempt to give proper effect to commercial transactions
 - (**Banque Brussels Lambert SA v ANI**)

- Parties can agree among themselves that their agreement is binding 'in honour only'
 - **(Rose & Frank Co v JR Crompton & Bros Ltd)**
- Government promises in the nature of policy commitments are not treated as intending to create legal relations
- But, government is bound by normal commercial agreements

Consideration

- To enforce a promise, a promise must show that he/she has given something or promised to give something in return for the promise (i.e given consideration for the promise)
- It is the price paid by one party in exchange for the promise of the other
- In (Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co), Lord Dunedin defined it as:
 - 'An act of one party, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable'
- Consideration arises from 'the notion that a contract is a bargain struck between the parties by an exchange)

Consideration

- Consideration must be present for a 'simple' (INFORMAL) contract to be enforceable
- Not required under deed (FORMAL)
- In BILATERAL CONTRACT (both parties make promises to each other); one party's promise provides the necessary consideration for the other party's promise
- With UNILATERAL CONTRACTS (i.e promise to pay reward for finding lost article), the act of finding the article provides the consideration for the promise for paying the reward

Rules Relating to Consideration

- 'PAST CONSIDERATION' is not good consideration
 - Past acts can never be treated as consideration for subsequent promise (Anderson v Glass)
 - Except where the ACT that precedes a promise to pay is:
 - Done at the request of the promisor
 - Understood at that time that some payment would be made
 - IT would be legally enforceable if given in advance (Pau On v Lau Yiu Long)
 - Executed consideration is not past consideration
- Consideration must move from the promisee, but it need not move to the promisor (could move to a third party)
 - **E.g. X (promisor) promises to pay Y (promisee) \$100 (X's consideration), if Y agrees to clean (Y's) Z's swimming pool – here the consideration moves to Z instead of X**
- Consideration must be something of VALUE in the eyes of the law
 - Doesn't have to be a FAIR EXCHANGE
 - Cannot be uncertain or vague
 - (Chappell & Co Ltd V Nestle Co Ltd)
- Examples of INSUFFICIENT CONSIDERATION:
 - Performance of a public duty (Collins v Godefroy), except where the promisee has done more than what the public duty required (Glasbrook v Glamorgan County Council)
 - Performance of an existing contractual duty (Stilk v Meyrick)
 - Exception is where the promise provides a 'practical benefit' to the promisor (Williams v Roffey Bros)
 - Part payment of a debt (rule in Pinnel's Case – Goakes v Beer)

- Rule not applicable where debtor offers something different (i.e makes payment different in kind, payment at a different time or place)

Promissory Estoppel

- A promise, even if not supported by consideration, may be legally binding under the DOCTRINE OF PROMISSORY ESTOPPEL
 - Mainly concerned with modification of existing contracts
- (Central London Property Trust Ltd v High Trees House Ltd)
 - Promise to accept a lower rent during the war years was binding on the landlord even though no consideration was given
 - If a promise is intended to be binding, is intended to be acted on, and is in fact acted on, then it is binding notwithstanding the absence of consideration
 - But there is nothing preventing the promisor from reverting back to its previous legal position in the case of continuing contract by giving notice
- (Walton Stores (Interstate) Ltd v Maher)
 - Can enable a promise to enforce a promise even in the absence of a pre-existing contractual relationship
- Promise followed by reliance on such a promise to the detriment of the promisee is insufficient to enforce the promise in the absence of consideration
 - More is required:
 - Creation of an assumption by the promisee that such a promise would be performed (Je Maintiendrai Pty Ltd v Quaglia)
- Doctrine of promissory estoppel doesn't prevent the promisor from revert back to his/her strict legal position by giving reasonable notice

Introduction to Incapacity

- The law imposes limitations on the contractual capacity of certain classes of persons such as:
 - Minors
 - Mentally disabled persons
 - Intoxicated persons
 - Bankrupts
 - Corporations

Effects of Incapacity

- When a contract is made by a person who lacks capacity, the contract may be treated as:
 - VOID – no legal effect from the beginning; does not give rise to any rights or obligations
 - VOIDABLE – valid until it is avoided by the party lacking capacity
 - UNENFORCEABLE – valid but can't be enforced in court due to some technical defect

Contract with Minors

- MINOR:
 - A person below 18 years of age (Age of Majority Act 1972 (WA))
- Minors have limited capacity to contract:
 - To protect minors from entering into bad contracts due to immaturity
 - One-sided rule (only the minor can avoid his/her obligations)
- At common law, minors' contracts fall into:
 - Contracts binding on minors (valid contracts)
 - Contracts binding on minors unless repudiated (voidable)

- Contracts not binding on minors unless ratified (void until ratified)
- Contracts not binding and cannot be ratified (void)

Contracts Binding on Minors fall into two categories:

- Contracts for NECESSARIES
 - E.g food, clothes
 - *'To render an infant's contract for necessities an enforceable contract two conditions must be satisfied, namely, (1.) the contract must be for goods reasonably necessary for his support in his station in life, and (2.) he must not have already a sufficient supply of these necessities.'* (**Nash v Inman**)
- Beneficial Contracts of Service:
 - Employment, apprenticeship, training, education
 - Must improve the minor's capacity to earn a living, not just confer some commercial benefit
 - Contract enforceable even if some terms are onerous (**Hamilton v Lethbridge**), but not if it is substantially detrimental to the minor (**Francesco v Barnum**)
- NOTE:
 - Minor is only required to pay a reasonable sum, not the actual price of the article (**Scarborough v Sturzaker**)

Contracts Binding on A Minor Unless Repudiated by Minor:

- Contracts involving acquisition of an interest in property of a permanent nature and with continuing obligations
 - i.e contracts involving land, partnership, leases and shares in a company
- Minor must repudiate contract while under 18 or reasonable time after turning 18
- What is regarded as 'reasonable time' depends on the facts
- Once the contract has been repudiated by the minor, the minor will not be liable for future obligations
 - But liable for any ACCRUED OBLIGATIONS (obligations prior to repudiation)
- The minor will be entitled to restitution for amounts paid prior to repudiation, only if there is a total failure of consideration
 - (**Steinberg v Scala (Leeds) Ltd**)

Contracts not binding on minor unless ratified

- Must be ratified by minor on attaining majority or a reasonable time after that
- Contracts for non-necessaries will fall into this category

Contracts not binding (void)

- In certain states (Vic), loan contracts cannot be enforced, even if minor chooses to ratify it on attaining the age of 18

Notes on Contracts with Minors

- Adult cannot sue minor for tort, if the effect is to enforce that contract (**Leslie Ltd v Sheill**)
- If a minor receives non-necessaries as a result of deceit, they are recoverable under the DOCTRINE OF RESTITUTION if:
 - The goods are readily identifiable
 - They are still in the minor's possession

Contracts with Mentally Disabled & Intoxicated Persons

- At common law, the mentally ill and drunkards are basically treated like MINORS:

- May be made to pay for necessities
 - But all other contracts entered during period of incapacity are voidable at their option
- To avoid being bound by the contract, the mentally ill person/drun kard must prove:
 - They were incapable of understanding the nature of what was agreed at the time of contracting
 - Other party had knowledge of that fact (Hart v O'Connor)
- Courts adopt a cautious approach when faced with claims of INTOXICATION
- The other party has no entitlement to set aside the contract (one-sided rule – Gibbons v Wright)
- Later ratification of a contract by a mentally ill person is possible, provided they were capable of understanding the terms of the earlier contract
 - (McLaughlin v City Bank of Sydney)
- Mentally ill person must pay a reasonable price for necessities obtained while incapable of knowing what they were doing

Formalities

- Common law does not require contracts to be in writing for them to be enforceable
- But for some contracts, statutes require them to be in writing
- Writing requirements take two forms:
 - Contracts must entirely be in writing
 - Contract must be evidenced in writing

Contracts to be in Writing

- Examples:
 - Consumer credit contracts
 - Marine insurance contracts
- Requirements found in the relevant Act

Contracts Evidence in Writing

- Principal Act – Statute of Frauds 1677
 - Examples:
 - Contracts dealing with an interest in land and guarantee contracts

Formalities: Statute of Fraud

- Section 4 states:
 - No legal action shall be brought unless the agreement is in writing signed by the party to be charged or by an authorised person acting on their behalf
 - The memorandum is not the contract but evidence of it. To be effective, must contain all the express term
 - Applies to very limited categories of contracts

Past Performance Doctrine

- If a contract is not evidenced in writing as required by Statute of Frauds, it is not enforceable at common law
- EQUITY will enforce it:
 - If the person seeking to enforce the contract has part performed the contract – as it would be unjust not to enforce the contract

- We call this the DOCTRINE OF PAST PERFORMANCE and its application has in practice been confined to contracts for disposal of an interest in land
 - **(Riley v Osborne; Watson v Delaney)**
- To Rely on the doctrine, must prove:
 - Acts of part performance relied on are 'equivocally referable' to some such contract as that alleged (Regent v Millett)
 - They were actively or passively encouraged by the defendant
 - Contract must be specifically enforceable
 - Sufficient parol evidence of the agreement to allow a court to ascertain what exactly was agreed and therefore should be enforced
- The payment of money of itself is an insufficient act of past performance (Khoury v Khouri)