

# **MLL111 - Case Summaries**

## **Contract Law**

**(A – Z)**

# A

## **A & Ors v Hayden (1984) CLR**

### **Facts**

- A group of ASIS trainees involved in mock hostage rescue in hotel room
- They were alleged to have performed illegal acts when carrying out this training (including assault)
- 'A' thought they had any necessary consent to conduct the act
- A's sought to prevent disclosure of their identity, pointing to a contract by which Cth agreed to keep their identities confidential
- Was the contract enforceable?

### **Comment**

- Judge suggested this sounded like an episode from the adventures of Maxwell Smart
- Was very critical of the government

### **Held**

- Agreement prejudicial to administration of justice
- Powerful public interest in enforcement of criminal law
- Effective criminal enforcement requires unrestricted cooperation of the public
- Could not agree not to release identity
- No sufficient countervailing public interest

## **ACCC v Berbatis Holdings (FCR) (2000)**

### **Facts**

1. Roberts leased shop premises from Berbatis and was in dispute over the rental
2. Roberts decided to sell business – in part because of family pressures – but to do this needed to renew lease which was due to expire shortly and be able to assign it to a purchaser
3. As part of extension and assignment negotiations, Berbatis insisted that Roberts release them from any legal claims over the lease payments
4. Issue: was insisting upon this unconscionable under TPA predecessor to s. 20?

### **Held**

1. A person is not in a position of 'special disadvantage' merely because of inequality of bargaining power. This is the case with most contracts. Here, the Roberts were at a

disadvantage because they needed Berbatis' agreement (but there was nothing special about it:)

- They had legal advice
  - They made a rational decision (were able to judge what was best for them)
2. Although the concession extracted was commercially irrelevant to the proposed new lease (this did not matter) (contra – Trial judge). Parties often use their bargaining power to extract concessions from the other party.

### **Admin of PNG v Leahy (1961) (High Court)**

#### **Facts**

- Government agreed to eradicate ticks infesting P's cattle
- Failed in their endeavors
- P sued

#### **Held (Dixon CJ)**

- No contract (no intention)
- Dept just giving effect to policy of tick eradication
- Function of Government policy (not contract)

#### **Held (McTiernan J)**

- No intention (admin arrangement consistent with policy (like 'social service'))

### **AG v Blake (UK)**

- Here P had legitimate interest in preventing D's profit making
- Court (UK) awarded 'disgorgement' of profit despite no demonstrable loss suffered by Government
- This is not the position in Australia (*Hospitality Group v Aus Rugby Union*) has been subjected to criticism

### **AGC (Advances) Ltd v McWhirter (1977)**

#### **Facts**

- Plaintiff put up property for sale at a reserve price
- Highest bid was \$70,000, less than asking price
- Plaintiff instructed the auctioneer to withdraw reserve and the defendant bid \$70,500 and was not accepted

#### **Held**

- Did the Court agree with McWhirter?
- No, bidders at auctions make offers which may be accepted or rejected

- Withdrawing reserve does not amount to be willing to sell the property

### Tenders

- Standing offers involve several separate contract (contract only formed when offer is made)
- Tender for specific item or service analyzed the same as an auction

### Air Great Lakes v KS Easter (1989)

#### Facts

- Parties entered into agreement for sale of airline business
- AGL alleged agreement had been repudiated by Easter
- Easter alleged no intention for document to be legally binding

#### Held

- **Objective**
- Actual subjective intent *relevant* but not determinative
- Where A conducts himself so a reasonable person would think he was intending to contract then no subjective reservation will prevent there being such a contract

#### When might subjective intention be relevant?

- If B knew A's subjective intent not to contract:

#### Example:

- A is 'play-acting' (pretending to contract but not intending to create legal contract)
- B knows this
- A bystander may think there is a contract but the court would not impose legal relationship on either party

#### Held

- Objective test applies:
- Assess from position of 'reasonable bystander'
- Even if 'play-acting' A may be bound if a reasonable person would have understood his words in a promissory sense
- Also consider **relationship of party**

### Andrews v Parker (1973)

#### Facts

- Woman left husband for a 'simple minded' man (Andrews)
- She induced him to transfer his house to her name

- He agreed she could keep home unless she returned to her husband
- Woman's husband moved in to house and they threw Andrews out....
- Andrews wanted house back and she refused claiming agreement against public policy

### **Held**

- Andrew recovered house: the agreement was upheld as it had not brought about the immoral relationship
- Scathing comments by Stabile J re Parker

### **Associated Newspapers v Bancks**

#### **Facts**

- Contract required Bancks to provide weekly drawings of 'Ginger Meggs' and Associated Newspapers to print them on front page of Comic Section
- On three occasions the paper printed the drawing on the third page of the comic section
- Bancks sought to terminate the contract

### **Australian Woolen Mills v Commonwealth (1954)**

#### **Facts**

- Commonwealth Government announced that it would pay a subsidy to manufactures of wool who purchased and used it for local manufacture
- The Plaintiff purchased and used wool for local manufacture and received some payments
- The Government subsequently stopped its subsidy scheme
- The plaintiff sued the Government for subsidies it claimed it was due

#### **Plaintiff Argued**

1. There was a contract between it and the Government under which the Commonwealth promised to pay subsidies if wool was bought for domestic consumption/manufacture
2. The plaintiff made purchases of wool in pursuance of the agreement.

#### **High Court Held**

1. There was no contract.
2. The statement made by the Commonwealth was not offered as consideration for the plaintiff buying the wool (i.e. statement was not "in consideration for you buying wool I'll pay you a subsidy").

3. In cases such as this: "...it is necessary... that it should be made to appear that the statement or announcement which is relied on as a promise (subsidy statement) was really offered as consideration for the doing of the act, and that the act (buying and using the wool directed) was really done in consideration of potential promise inherent in eh statement or announcement".

### **Automatic Fire Sprinklers v Watson (1946) CLR**

#### **Facts**

- W appointed general manager of A's companies
- A entitled to sack W if they considered him unfit to act
- A terminated W's employment after 6 years
- W refused to accept termination and kept coming to his office, ready to work, until eventually A's excluded him from the building

#### **Issue**

- Did A's have to pay W for the time he turned up at work ready to perform?

#### **Held**

- General rule (at common law) is payment under employment contract not due unless and until earned:
- Even where failure to perform wrongly prevented by the other party
- Damages for breach will be available (but not payment)
- Where payment is periodical, those payments not due until complete service for relevant period is deformed
- This case: salary dependent on service; despite wrongful dismissal; not entitled to salary

***End of 'A' Cases***

# B

## **Bail v Fothergill (1874)**

**When:** Vendor of land fails to complete as a result of 'defect' in title.

**Purchaser:** Only entitled to recover loss associated with investigating title and deposit paid.

**Unless:** Vendor guilty of fraud or bad faith.

**Note:**

- This rule abolished in Queensland and NSW but not Victoria
- This rule does not apply if V frequently misrepresents that the title to land is clear and if V fails to use his or best efforts to obtain a clear title (*Malhotra v Choudhury 1908*)

## **Balfour v Balfour (1919)**

**Facts**

- Husband promised to pay wife 30 pounds per month while she remained in England due to illness
- Husband returned to Ceylon (Sri Lanka) to work
- Parties were on good terms when agreement made
- Parties subsequently divorced (was agreement enforceable?)

**Held**

- Parties did not intend to create legal relations
- Agreements between spouses: 'not contracts because parties did not intend that they should be attended by legal consequences'
- 'In the inception of the arrangements [the parties] never intended that they should sued upon'
- Courts would have to be multiplied 100 fold if such agreements were legally enforceable'
- Wife did not discharge her onus

## **Baltic Shipping v Dillon (1993) HCA**

**Facts**

- Mrs Dillon was a passenger on ship
- 9 days into 14 day cruise it sank