### 02 CONTRACTS
#### SUMMER SESSION 2005-06

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COURSE DESCRIPTION AND OBJECTIVES

The law relating to contracts is one of the pillars of the common law system. An understanding of the basic elements of contract law is thus a critical pre-requisite for the study of a number of later subjects, including Conveyancing, Commercial Transactions and Industrial Law.

The course aims to provide students with an understanding of the basic principles of contract law which apply to nearly all contracts. In fulfilling this aim, the course focuses primarily on a study of relevant case law and statute law. The course covers the elements of formation of contracts, contractual capacity, terms of a contract, matters affecting consent to a contract, discharge of contracts, remedies, illegality and privity of contract.

Special principles that apply to specific types of contracts are dealt with in later courses.

The objectives of the course are:
(a) to provide students with an understanding of basic principles of contract law; and
(b) to develop in students an ability to analyse fact situations and correctly identify the relevant principles of contract law that are applicable to the resolution of problems raised by particular factual situations.

TEACHER

Dr Peter Radan, BA, LLB, PhD (Syd), Dip Ed (SCAE).

Dr Radan is a legal academic. He holds the degrees of Bachelor of Arts, Bachelor of Laws and Doctor of Philosophy from the University of Sydney, as well as a Diploma in Education from Sydney College of Advanced Education. Dr Radan has been a Teacher with the Law Extension Committee since 1984. His most recent publications are (with C Stewart & A Lynch) Equity & Trusts – Butterworths Tutorial Series (2nd Ed, LexisNexis Butterworths, Sydney, 2005), Law & Religion, God, the State and the Common Law (co-edited with D Meyerson & R Croucher, Routledge, London, 2005) and The Break-up of Yugoslavia and International Law (Routledge, London, 2002).

ASSESSMENT

To be eligible to sit for the Board’s examinations, all students must complete the LEC teaching and learning program, the first step of which is to ensure that you have registered online with the LEC in each subject for which you have enrolled with the Board. This gives you access to the full range of learning resources offered by the LEC.

Then, students must achieve a satisfactory result (at least 50%) in each subject where a compulsory component is prescribed.

To register with the LEC, go to www.usyd.edu.au/lec and click on the WEBCAMPUS link and follow the instructions. Detailed guides to the Webcampus are contained in the material distributed by the LEC, in the Course Information Handbook, and on the Webcampus.
MARCH 2006 EXAMINATION

Candidates will be expected to have a detailed knowledge of the prescribed topics: Introduction to contract law; Formation of a contract; Privity of contract; Terms of a contract; Breach of contract; Remedies; Vitiating factors; Discharge; Illegal and Void contracts.

Candidates will be expected to have made a study of the prescribed materials in relation to those topics, and to have analysed the cases and statutory provisions referred to in the Law Extension Committee's course outline.

The examination will consist of six questions. Students will have to complete five of the six questions. There may be internal choice within some of the questions. All questions will be of equal value.

At least five of the questions will be problem-type questions.

The examination will be an open book examination, although students will not be permitted to take into the examination room electronic sources of material nor library books borrowed from any University of Sydney library.

Please note: All questions in relation to the examination should be directed to the Legal Profession Admission Board, not the Law Extension Committee.

TEXT AND MATERIALS

Course Materials

- Guide to Presentation and Submission of Assignments (available on the LEC Webcampus)

Prescribed Materials


Reference Materials

- Monahan, Essential Contract Law, 2nd ed. Cavendish, 2001 (a useful introductory contracts textbook)
- Jeffey, Paterson & Robertson, Principles of Contract Law, 2nd ed, Thomson Lawbook, 2005
- Willmott, Christensen & Butler, Contract Law, 2nd ed, Oxford University Press, 2005
- CCH, Australian Contract Law Reporter
- Graw, Intro to Contract, 5th ed. Thomson Lawbook, 2004

The guide lists the cases that should be read as a minimum for students to gain a grounding in the basic principles of Contract Law. The guide also lists relevant statutory provisions that need to be studied and understood.

Students are encouraged to read beyond these cases, and in this respect the other cases listed serve as a starting point.

Lecture Outlines will be put up on the Contracts Course Materials section of the LEC Webcampus and will contain other cases mentioned in lectures.
LEC Webcampus

Once you have registered online with the LEC, you will have access to all the facilities on the LEC Webcampus including Lecture notes and problem questions for the problem solving sessions in Weeks 4, 7, 10 and 13. These course materials as well as links to relevant cases and legislation can be found on the Course Materials section of the LEC Webcampus.

LECTURE PROGRAM – UPDATED 9 NOVEMBER 2005

The first lecture will be held on Monday 14 November 2005.

Please note the detailed timetable for Contracts on the following page.

All lectures will be for 3 hours and will start at 6 pm.

In weeks 5, 7, 11 and 13 there will be problem solving sessions. These sessions will be for 2 hours and will start at 6 pm.

The venues for the lectures and problem solving sessions are set out in the lecture program on the next page. For details as to the location of these venues refer to the back page of the Course Information Handbook for a map of the University of Sydney main campus.
<table>
<thead>
<tr>
<th>WEEK</th>
<th>DATE</th>
<th>ROOM</th>
<th>LECTURE</th>
<th>TOPIC</th>
<th>KEY CASES</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mon 14</td>
<td>ChLT 1</td>
<td>1</td>
<td>Introduction</td>
<td></td>
</tr>
<tr>
<td></td>
<td>November</td>
<td></td>
<td>(p. 8)*</td>
<td>Requirement of Writing Capacity</td>
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<tr>
<td>2</td>
<td>Mon 21</td>
<td>ChLT 1</td>
<td>2</td>
<td>Fact of Agreement - Offer</td>
<td>Carll &amp; Carbolic Smoke Ball Co Stevenson Jacques &amp; Co v McLean</td>
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<tr>
<td></td>
<td>November</td>
<td></td>
<td>(p. 9)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Mon 28</td>
<td>ChLT 1</td>
<td>3</td>
<td>Fact of Agreement – Acceptance</td>
<td>Bressan v Squires</td>
</tr>
<tr>
<td></td>
<td>November</td>
<td></td>
<td>(p. 10)</td>
<td>The Requirement of Certainty</td>
<td>Booker Industries v Wilson Carparking</td>
</tr>
<tr>
<td>4</td>
<td>Mon 5</td>
<td>ChLT 1</td>
<td>4</td>
<td>Consideration</td>
<td>Williams v Roffey Bros</td>
</tr>
<tr>
<td></td>
<td>December</td>
<td></td>
<td>(p. 11)</td>
<td>Promissory Estoppel</td>
<td>Waltons (Stores) v Maher</td>
</tr>
<tr>
<td>5</td>
<td>Mon 12</td>
<td>ChLT 1</td>
<td>5</td>
<td>Intention to create legal relations</td>
<td>Ermogenous v Greek Orthodox Community of SA Inc</td>
</tr>
<tr>
<td></td>
<td>December</td>
<td></td>
<td>(p. 12)</td>
<td>Privy</td>
<td>Trident General Insurance v McNiece Bros</td>
</tr>
<tr>
<td></td>
<td>(assignment 1 due this week)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>5</td>
<td>Thurs 15</td>
<td>ChLT 1</td>
<td></td>
<td>PROBLEM SOLVING SESSION</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Mon 19</td>
<td>ChLT 1</td>
<td>6</td>
<td>Terms of a Contract</td>
<td>Oscar Chess v Williams</td>
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<tr>
<td></td>
<td>December</td>
<td></td>
<td>(p. 13)</td>
<td></td>
<td>Glebe Islands Terminals v Continental Seagram</td>
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</tbody>
</table>

**STUDY BREAK: Saturday 24 December 2005 to Sunday 8 January 2006**

| 7    | Mon 9      | ChLT 3  | 7       | Common Law Damages                             | Commonwealth v Amann Aviation                                            |
|      | January    |         | (p. 14) |                                               | Baltic Shipping v Dillon                                                |
|      |            |         |         |                                               | Victoria Laundry v Newman Industries                                    |
| 7    | Thurs 12   | ChLT 1  |         | PROBLEM SOLVING SESSION                       |                                                                           |
| 8    | Mon 16     | ChLT 3  | 8       | Common Law Damages                             | Dunlop Pneumatic Tyre Co v Selfridge & Co                                |
|      | January    |         | (p. 15) | Equitable Damages                              | White & Carter v McGregor                                                |
| 9    | Mon 23     | ChLT 3  | 9       | Specific Performance                           | Beswick v Beswick                                                       |
|      | January    |         | (p. 16) | Injunction                                     | Co-operative Insurance Society v Argyll Stores                           |
|      | (assignment 2 due this week) |           |         |                                               |                                                                           |
| 10   | Mon 30     | ChLT 3  | 10      | Restitution                                    | Pavey & Mathews v Paul                                                  |
|      | January    |         | (p. 17) | Misrepresentation                             | Edgington v Fitzmaurice                                                 |
| 11   | Mon 6      | ChLT 3  | 11      | Mistake                                        | McRae v Commonwealth Disposals Commission                                |
|      | February   |         | (p. 18) | Duress                                         | Crescendo Management v Westpac                                           |
|      |            |         |         | Misleading & deceptive conduct                |                                                                           |
|      |            |         |         | Unjust contracts                               |                                                                           |
| 11   | Thurs 9    | ChLT 1  |         | PROBLEM SOLVING SESSION                       |                                                                           |
| 12   | Mon 13     | ChLT 3  | 12      | Discharge by performance                       | Hoenig v Isaacs                                                          |
|      | February   |         | (p. 19) | Discharge by breach                            | Hongkong Fir v Kawasaki Kisen Kaisha                                    |
| 13   | Mon 20     | ChLT 3  | 13      | Discharge by frustration                       | Codelfa Constructions v SRA                                              |
|      | February   |         | (p. 20) | Discharge by agreement                         | Yango Pastoral v First Chicago Australia                               |
|      |            |         |         | Illegal & void contracts                       |                                                                           |
| 13   | Thurs 23   | ChLT 1  |         | PROBLEM SOLVING SESSION                       |                                                                           |

*Refers to the page in the Subject Guide relevant to this topic.*
INTRODUCTORY DAY

The LEC will be holding an Introductory Day on Sunday 16 October 2005 in the main campus in the Eastern Avenue Auditorium (EAA) for all new students to:

- meet the faces behind the acronyms LEC and LPAB,
- have an opportunity to ask questions of both the LEC and LPAB,
- introduce some legal problem solving and study skills, and
- have an opportunity to meet each other and form study groups.

More specifically, this will include an introduction to the program from both the LEC and the Legal Profession Admission Board and an opportunity to ask questions of both organisations, talks from Sydney University Law Library, the Language Learning Centre and an introduction to Legal Study and Research Skills from the LEC’s Tutors and Curriculum Officer.

A full program of the day can be accessed on the LEC Webcampus and was included in your Enrolment Package.

LEGAL INSTITUTIONS AND CONTRACTS INTRODUCTORY WEEKEND SCHOOL

An introduction to Legal Institutions, Contracts and Legal Skills will be held on the weekend of 5-6 November 2005, in the Eastern Avenue Lecture Theatre (EALT), for all students enrolled in Legal Institutions and Contracts for the Summer Session 2005-06. A detailed program of the Weekend was included in your Enrolment Package. It is also available on the LEC Webcampus.

The classes to be held in Contracts are as follows:

<table>
<thead>
<tr>
<th>TIME</th>
<th>MAJOR TOPICS</th>
<th>KEY READING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunday 6 November 2005 – Eastern Avenue Lecture Theatre</td>
<td></td>
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<tr>
<td>9.30am-10.55am</td>
<td>Introduction</td>
<td></td>
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</tbody>
</table>
| 11.05am-12.30pm | Offer & Acceptance | *Carlill v Carbolic Smoke Ball Co*  
*Stevenson, Jacques & Co v McLean*  
*Bressan v Squires*  
| 12.30pm-1.30pm | LUNCH BREAK | |
| 1.30pm- 3.20pm | Consideration | *Williams v Roffey Bros and Nicholls (Contractors)*  
| 3.30pm- 4.30pm | Problem Solving | |
WEEKEND SCHOOLS 1 AND 2

Classes in Contracts are held at both Weekend Schools 1 and 2. The focus of these classes is the external students. Lecture students may attend on the understanding that weekend classes aim to cover the topics covered in weekly lectures and are principally for the benefit of external students.

It will not be possible to cover the entire course at the weekend schools. These programs are a general guide, and may be varied according to need. Readings are suggested to introduce you to the material to be covered in the lecture, to enhance your understanding of the topic, and to encourage further reading. You should not rely on them alone.

WEEKEND SCHOOL 1

<table>
<thead>
<tr>
<th>TIME</th>
<th>MAJOR TOPICS</th>
<th>KEY READING</th>
</tr>
</thead>
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<tr>
<td>Saturday 3 December 2005 – Carslaw Lecture Theatre 159 (CLT 159)</td>
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<tr>
<td>8.00am-9.20am</td>
<td>Promissory Estoppel</td>
<td>Waltons Stores v Maher</td>
</tr>
<tr>
<td></td>
<td>Privity</td>
<td>Trident General Insurance v McNiece Bros</td>
</tr>
<tr>
<td>9.30am-10.40am</td>
<td>Privity</td>
<td>Trident General Insurance v McNiece Bros</td>
</tr>
<tr>
<td>10.45am-11.45am</td>
<td>Terms of a Contract</td>
<td>Oscar Chess v Williams</td>
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<tr>
<td></td>
<td></td>
<td>Sydney City Council v West</td>
</tr>
<tr>
<td>Sunday 4 December 2005 – Carslaw Lecture Theatre 157 (CLT 157)</td>
<td></td>
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</tr>
<tr>
<td>12.15pm-1.25pm</td>
<td>Damages</td>
<td>Hadley v Baxendale</td>
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<tr>
<td></td>
<td></td>
<td>Baltic Shipping Co v Dillon</td>
</tr>
<tr>
<td>1.30pm-2.40pm</td>
<td>Damages</td>
<td>Dunlop Pneumatic Tyre Co v New Garage and Motor Co</td>
</tr>
<tr>
<td>2.45pm-3.55pm</td>
<td>Problem Solving</td>
<td></td>
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</tbody>
</table>

WEEKEND SCHOOL 2

<table>
<thead>
<tr>
<th>TIME</th>
<th>MAJOR TOPICS</th>
<th>KEY READING</th>
</tr>
</thead>
<tbody>
<tr>
<td>Saturday 4 February 2006 – Chemistry Lecture Theatre 2 (ChLT2)</td>
<td></td>
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</tr>
<tr>
<td>8.00am-9.20am</td>
<td>Breach of contract</td>
<td>Tramways Advertising v Luna Park</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hongkong Fir Shipping Co v Kawasaki Kisen Kaisha</td>
</tr>
<tr>
<td>9.30am-10.40am</td>
<td>Discharge by frustration</td>
<td>Codefia Construction v SRA</td>
</tr>
<tr>
<td>10.45am-11.45am</td>
<td>Illegality</td>
<td>Yango Pastoral Co v First Chicago Australia</td>
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<tr>
<td></td>
<td></td>
<td>Nordenfelt v Maxim Nordenfelt Guns and Ammunition Co</td>
</tr>
<tr>
<td>Sunday 5 February 2006 – Chemistry Lecture Theatre 2 (ChLT2)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>12.15pm-1.25pm</td>
<td>Misrepresentation and Misleading conduct</td>
<td>Smith v Land and House Property Corporation</td>
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<td></td>
<td></td>
<td>Alati v Kruger</td>
</tr>
<tr>
<td>1.30pm-2.40pm</td>
<td>Mistake</td>
<td>McRae v Commonwealth Disposals Commission</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taylor v Johnson</td>
</tr>
<tr>
<td>2.45pm-3.55pm</td>
<td>Problem Solving</td>
<td></td>
</tr>
</tbody>
</table>
TUTORS AND LEGAL SKILLS WORKSHOPS

The LEC has appointed Tutors, Katherine Jolley and Susan Carter to assist students in Legal Institutions and Contracts. Katherine and Susan will hold workshops during December and February and online in January through the Summer Session 2005-06 and during the Introductory Day, the Legal Institutions and Contracts Introductory Weekend School and both Weekend Schools 1 and 2.

The Tutors will post a workshop question on the Tutors’ homepage of the LEC Webcampus on the Friday preceding the relevant workshop. The answer to the question will be posted on the following Friday allowing students unable to attend an opportunity to attempt the question and receive the answer via the Webcampus (the timetables and room venues for these workshops are set out on page 49 of the Course Information Handbook).

The Tutors can be contacted by phone between 10am-12 noon on Tuesdays and Thursdays during the Summer Session 2005-06 on either (02) 9392 0326 or (02) 9392 0334 or by email on tutors@lec.pip.com.au.

ASSIGNMENTS

There are two compulsory assignments in Contracts. Assignments must be submitted by the due dates. The maximum word length for each assignment is 2000 words (inclusive of all footnotes but not bibliography).

The rules regarding the presentation of assignments and instructions how to submit an assignment are set out in the LEC Guide to the Presentation and Submission of Assignments which can be accessed on the LEC Webcampus. Please read this guide carefully before completing and submitting an assignment.

Completed assignments should be lodged through the LEC Webcampus by 9.00am on the following dates:

<table>
<thead>
<tr>
<th>Assignment 1 – 50 Marks</th>
<th>Wednesday 14 December 2005</th>
<th>(Week 5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assignment 2 – 50 Marks</td>
<td>Wednesday 25 January 2006</td>
<td>(Week 9)</td>
</tr>
</tbody>
</table>

To be eligible to sit the examination in Contracts, you must:

a) submit both assignments by the due dates, and
b) achieve a combined total of 50 or more marks for the two assignments.

Markers will mark the assignments as quickly as possible. However, please note that many of the markers are busy practitioners or academics. Do not wait for the return of the first assignment before commencing the second assignment.

ASSIGNMENT QUESTIONS

To obtain copies of the assignment questions for the Summer Session 2005-06 of the Contracts course, please follow the instructions below:

1. Register online with the LEC (see page 27 of the Course Information Handbook for detailed instructions). Once you have registered, you will have access to all the facilities on the LEC Webcampus.

2. Then go into the Webcampus, select the Course Materials section and click on the link to the Assignment questions for this subject.
At the end of this lecture students should understand the following:

(a) the historical background to and significance of contract law
(b) the distinction between obligations in tort and contract law
(c) the rules as to when contracts have to be in written form
(d) the extent to which a person under the age of 18 has the capacity to enter into a contract.

1. **Introduction to contract law**

   Text: Carter & Harland, pp. 3-20

   The introduction to the subject of Contracts looks at the following issues:
   
   (a) Historical development of contract law
   (b) The significance of contract law
   (c) The boundaries of contract law and in particular between contracts and tort law.

2. **Formation of a contract**

   This topic covers the fundamental requirements for the formation of a contract, namely whether a contract needs to be in written form or not; the capacity of persons, especially minors, to enter into a contract; the existence of an agreement; and the requirement of consideration.

   This topic will be covered under the following headings:

   A. The Requirement of Writing
   B. Capacity
   C. The Fact of Agreement - Offer & Acceptance
   D. Consideration
   E. Intention to Create Legal Relations

   **A  The Requirement of Writing – Do Contracts Have to be in Written Form?**

   Text: Carter & Harland, pp. 172-181

   At common law there is no requirement that any contract has to be in written form. However, statute imposes such a requirement in certain types of contract, a significant example being contracts involving land or interests in land.

   *Conveyancing Act 1919* (NSW), s 54A

   **B  Capacity – Who Can Enter into a Contract?**


   Some classes of persons have a limited or no capacity to enter into a contract. In particular, the limitations on the contractual capacity of persons under the age of 18 (minors) is to be analysed.

   *Minors (Property and Contracts) Act 1970* (NSW)
LECTURE 2

Aims and Objectives

At the end of this lecture students should understand the circumstances in which an offer is made as part of process of creating a contract as well when an offer comes to an end and the rules as to the acceptance of offers as part of the process of formation of an agreement by the parties to a contract.

C. The Fact of an Agreement - The Rules Relating to Offer, Acceptance and Certainty

Text: Carter & Harland, pp. 23-89

Where a court has to determine whether persons have entered into an agreement the tools of offer and acceptance are usually used. This technique is not always suitable and in some instances other techniques will be employed. Furthermore, if the agreement is not sufficiently certain it will be void and unenforceable.

1. The Offer

   *Gibson v Manchester City Council* [1979] 1 All ER 972
   *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256
   *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern)* [1953] 1 QB 401
   *A G C (Advances) v McWhirter* (1977) 1 BPR 9454
   *Blackpool and Fylde Aero Club v Blackpool BC* [1990] 1 WLR 1195

2. Termination of Offers

   *Stevenson, Jacques and Co v McLean* (1880) 5 QBD 346
   *Dickinson v Dodds* (1876) 2 Ch D 463
   *Mobil Oil v Lyndell Nominees* (1998) 153 ALR 198, at 222-228
LECTURE 3

Aims and Objectives

At the end of this lecture students should understand the following:

(a) the rules as to the acceptance of offers as part of the process of formation of contracts
(b) the requirement that agreements must be sufficiently certain to be enforceable.

3. The Acceptance

*R v Clarke* (1927) 40 CLR 227
*Felthouse v Bindley* (1862) 142 ER 1037
*Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256
*Brinkibon v Stahag Stahl* [1983] 2 AC 34
*Bressan v Squires* [1974] 2 NSWLR 460
*Manchester Diocesan Council v Commercial & General Investments* [1970] 1 WLR 241

4. The requirement of certainty and completeness

*Booker Industries v Wilson Parking (Qld)* (1982) 149 CLR 600
*Whitlock v Brew* (1968) 118 CLR 445
*Coal Cliff Collieries v Sijehama* [1991] 24 NSWLR 1
LECTURE 4

Aims and Objectives

At the end of this lecture students should understand the following:

(a) The concept of and rules relating to the doctrine of consideration
(b) the doctrine of equitable estoppel as a means of taking action against a promisor notwithstanding the absence of consideration
(c) the nature of relief available based upon an equitable estoppel claim.

D Consideration

Text: Carter & Harland, pp. 96-156

The element of consideration refers to the requirement that a contract is a bargain in the sense that there is an exchange between the parties of promises or an exchange of a promise for an act for the agreement to amount to a contract at law. The requirement of consideration is reflected in the major rule that unless a promisee has given consideration he or she cannot enforce the promisor’s promise. In such a case the promisee would be held not to have given consideration. The use of a deed allows for the enforcement at common law (but not in equity) of a promise for which no consideration has been given. The doctrine of promissory estoppel allows a promisee to circumvent the requirement of consideration in certain circumstances.

1. Consideration

Australian Woollen Mills v The Commonwealth (1954) 92 CLR 424  
Coulls v Bagot's Executor and Trustee Co (1967) 119 CLR 460  
Roscorla v Thomas (1842) 114 ER 496  
Re Casey's Patents [1892] 1 Ch 104  
Placer Development v The Commonwealth (1969) 121 CLR 353  
Woolworths Ltd v Kelly (1991) 22 NSWLR 189 at 193-194  
Glasbrook Bros v Glamorgan CC [1925] AC 270  
Williams v Roffey Bros and Nicholls (Contractors) [1991] 1 QB 1  
Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723  
Wigan v Edwards (1973) 47 ALJR 586  
Foakes v Beer (1884) 9 App Cas 605

2. Equitable Estoppel

Waltons Stores (Interstate) v Maher (1988) 164 CLR 387  
Je Maintiendrai v Quaglia (1980) 26 SASR 101
LECTURE 5

Aims and Objectives

At the end of this lecture students should understand the following:

a) the operation of presumptions relating to the question of the parties’ intention to create a legal relationship
b) the meaning of the doctrine of privity of contract
c) the relationship of the privity doctrine to the consideration rule that consideration must move from a promisee
d) the remedies available at common law and equity to a promisee when enforcing a contractual promise by a promisor to benefit a person who is not a party to the contract
e) the ‘exceptions’ by which a person not a party to a contract can take enforcement action in relation to a contractual promise for his or her benefit.

E Intention to Create Legal Relations

Text: Carter & Harland, pp. 163-171

An integral element of a contract at law is that the parties to it must intend their agreement to have legal force in the sense that each party can take legal action to enforce it. Unless there is an express statement in the agreement on this matter, there is a presumption that agreements of a family, social or domestic character are not intended to have legal effect. In all other agreements (commercial agreements) the presumption is that the parties did intend it to have legal intent. In both situations the presumptions can be rebutted by evidence to the contrary.

Jones v Padavatton [1969] 2 All ER 616
Rose and Frank Co v J R Crompton and Bros [1923] 2 KB 261
Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95

3. Privity of contract

Text: Carter & Harland, pp. 339-363

The privity of contract doctrine dictates that only persons who are parties to a contract are entitled to take action to enforce the contract. A person who stands to gain a benefit from the contract (a third party) is not entitled to take any enforcement action if he or she is denied the promised benefit. The doctrine raises the issue as to whether this is a separate doctrine to the consideration rule that dictates that only persons who have provided consideration can enforce a promise. The remedies available to a promisee against a promisor who fails to carry out a promise to benefit a third party are either for damages at common law or equitable enforcement of the promise, usually by an application for specific performance. The privity doctrine is however, subject to various exceptions that enable the third party to take steps that result in enforcement action against a defaulting promisor. Arguably, these exceptions operate so liberally that very few cases arise in which a third party is left with no rights because of the application of the doctrine of privity of contract.

Coulls v Bagot’s Executor and Trustee Co (1967) 119 CLR 460
Beswick v Beswick [1968] AC 58
New Zealand Shipping Co v A M Satterthwaite and Co (The Eurymedon) [1975] AC 154
LECTURE 6

Aims and Objectives

At the end of this lecture students should understand the following:

(a) the operation of the rule excluding the proof of contractual terms by oral evidence in relation to written contracts
(b) the circumstances in which pre-contractual statements amount to terms of a contract
(c) the formation of collateral contracts
(d) the principles for the incorporation of contractual terms
(e) the principles for the interpretation of exclusion clauses
(f) the inclusion of terms by implication
(g) the inclusion of terms pursuant to custom.

4. Terms of a contract

Text: Carter & Harland, pp. 199-251, 263-282

This topic is concerned with establishing the terms of the contract between the parties to the contract. In written contracts additional express terms may be added by oral evidence unless the oral evidence rule applies to exclude this possibility. However, it needs to be established first that such evidence establishes that the parties intended pre-contractual statements to be express terms and were not merely representations. Alternatively such statements may amount to collateral contracts – contracts that are collateral to the main contract between the parties. Even in situations where one party intends a statement to be a part of the contract questions arise as to whether that party has done enough to have the term incorporated into the contract. Particular care is taken in analysing the principles upon which courts interpret terms excluding or limiting liability for a breach of contract.

Terms may also arise by implication, either under common law principles or pursuant to statute. Finally, terms can arise because of the existence of a custom in a particular industry, trade or locality.

1. Express terms

_Ellul and Ellul v Oakes_ (1972) 3 SASR 377
_Oscar Chess v Williams_ [1957] 1 All ER 325
_Dick Bentley Productions v Harold Smith Motors_ [1965] 2 All ER 65
_L G Thorne and Co v Thomas Borthwick and Sons (A/Asia)_ (1956) 56 SR (NSW) 81
_J J Savage and Sons v Blakney_ (1970) 119 CLR 435
_Hoyt's v Spencer_ (1919) 27 CLR 133
_Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd_ (2004) 79 ALJR 129
_Curtis v Chemical Cleaning and Dyeing Co_ [1951] 1 KB 805
_Thornton v Shoe Lane Parking_ [1971] 2 QB 163
_Parker v South Eastern Railway Co_ (1877) 2 CPD 416
_Causer v Browne_ [1952] VLR 1
_Interfoto Picture Library v Stiletto Visual Programmes_ [1988] 1 All ER 348
_Henry Kendall & Sons v William Lillico & Sons Ltd_ [1969] 2 AC 31
_D J Hill & Co Pty Ltd v Walter H Wright Pty Ltd_ [1971] VR 749

2. Implied terms

_Codelfa Construction v State Rail Authority of New South Wales_ (1982) 149 CLR 337

3. Construction of Terms of a Contract

_Darlington Futures v Delco Australia_ (1986) 161 CLR 500
_Photo Production v Securicor Transport_ [1980] AC 827
_Glebe Island Terminals v Continental Seagram_ (1993) 40 NSWLR 206
_Sydney City Council v West_ (1965) 114 CLR 481
_Trade Practices Act 1974 (Cth), s 68-68A_
LECTURE 7

Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the compensation principle as the basis for the recovery of damages
(b) the nature of interests protected in an award of damages
(c) the requirement that the breach must cause the losses sought to be recovered
(d) factors that affect the quantum of damages awarded.

5. Remedies

The enforcement of contracts can be at common law by the remedy of damages or in equity by the remedies of specific performance or injunction. Common law damages involves the innocent party accepting a breach of contract and being compensated for losses suffered as a result of such breach. Upon proof of a breach an innocent party is entitled to an award of damages. The principles relating to common law damages are fundamentally concerned with assessment of the amount of compensation to be awarded to the innocent party. Equitable remedies focus on forcing the party in breach to carry out his or her contractual obligations. An innocent party is not automatically entitled to equitable remedies simply upon proof of breach of contract. The focus on equitable remedies is upon the circumstances in which such remedies will be awarded. Common law damages is the primary remedy for a breach of contract because equitable remedies will not be awarded if damages at common law is an adequate remedy.

Additional remedies within the framework of restitution are available in contract cases. These include those of quantum meruit and an account of profits.

The topic of remedies will be analysed under the following headings:

A. Damages
B. Specific performance
C. Injunctions
D. Restitution

A Damages

Text: Carter & Harland, pp. 815-844, 848-888.

1. Common Law Damages

McRae v Commonwealth Disposals Commission (1951) 84 CLR 377
Anglia Television v Reed [1972] 1 QB 60
The Commonwealth v Amann Aviation (1991) 174 CLR 64
Ruxley Electronics v Forsyth [1996] 1 AC 344
Baltic Shipping Co v Dillon (1992) 176 CLR 344
Alexander v Cambridge Credit Corp (1987) 9 NSWLR 310
Hadley v Baxendale (1854) 154 ER 145
Victoria Laundry (Windsor) v Newman Industries [1949] 2 KB 528
Koufos v C Czarnikow (The Heron II) [1969] 1 AC 350
British Westinghouse & Manufacturing Co v Underground Electric Railways Co [1912] AC 673
Howe v Teefy (1927) 27 SR (NSW) 301
The Mihalis Angelos [1971] 1 QB 164
Lavarack v Woods of Colchester [1967] 1 QB 278
Watts v Morrow [1991] 4 All ER 937
Johnson v Agnew [1980] AC 367
Hungerfords v Walker (1989) 171 CLR 125
Koufos v C Czarnikow (The Heron II) [1969] 1 AC 360
H Parsons (Livestock) v Uttley Ingham & Co [1978] 1 QB 791
Law Reform (Miscellaneous Provisions) Act 1965, ss. 8-9
Astley v Austrust Ltd (1999) 197 CLR 1
LECTURE 8

Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the principles governing the recovery of equitable damages
(b) the principles governing the validity of the parties’ contractual agreement as to the measure of damages in the event of a breach
(c) the principles for the recovery of debts.

2. Equitable Damages

*Supreme Court Act 1970, s 68*

*Johnson v Agnew* [1980] AC 367

2. Actions for a Fixed Sum & Debt

*Dunlop Pneumatic Tyre Co v New Garage and Motor Co* [1915] AC 79

*White & Carter (Councils) Ltd v McGregor* [1962] AC 413
Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the nature of the equitable remedy of specific performance
(b) the jurisdictional reasons for the refusal of a decree of specific performance
(c) the discretionary reasons for the refusal of a decree of specific performance
(d) the principles for awarding the equitable remedy of injunction for the enforcement of negative contractual obligations.

B Specific Performance

Text: Carter & Harland, pp. 945-955

J C Williamson v Lukey and Mulholland (1931) 45 CLR 287
Dougan v Ley (1946) 71 CLR 142
Beswick v Beswick [1968] AC 58
Coulls v Bagot’s Executor and Trustee Co (1967) 119 CLR 460
Giles v Morris [1972] 1 All ER 960
Co-operative Insurance Society v Argyll Stores (Holdings) Ltd [1998] AC 1
Mehmet v Benson (1965) 113 CLR 295
Price v Strange [1978] Ch 337

C Injunction

Lumley v Wagner (1852) 42 ER 687
Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(e) the principles underlying the non-contractual remedy of quantum meruit
(f) the circumstances in which an account of profits can be awarded for breach of contract
(g) the principles governing the establishment of the vitiating factor of misrepresentation
(h) the remedies available for misrepresentation.

D  Restitution

Text: Carter & Harland, pp. 907-944

Pavey and Mathews v Paul (1987) 162 CLR 221
Sumpter v Hedges [1898] 1 QB 673

6. Vitiating factors

The topic of vitiating factors relates to factors that affect the quality of the consent given to the entry into of a contract. The major such factors are misrepresentation, mistake, duress, undue influence, and unconscionability. The last two of these are covered in the Equity subject. In most cases the consequence of the relevant factor is that the contract is voidable. In cases of mistake at common law the contract will be void as from the very beginning (ab initio). The distinction between voidable and void ab initio has particular consequences for the rights of third parties to the contract who have innocently acquired property that has in the meantime passed between the parties to the contract.

Statutory provisions have been enacted that overlap with and extend these principles established by common law and equitable principles. In particular there are the misleading and deceptive conduct provisions of the Trade Practices Act 1974 (Cth) and the Fair Trading Act 1987 (NSW), as well as the principles relating to unjust contracts pursuant to the Contract Review Act 1980 (NSW).

The topic of vitiating factors will be covered under the following headings:

A. Misrepresentation
B. Mistake
C. Duress
D. Misleading & Deceptive Conduct
E. Unjust Contracts

A Misrepresentation

Text: Carter & Harland, pp. 367-413

1. Misrepresentation

Balfour & Clark v Hollandia (1978) 18 SASR 241
Edginton v Fitzmaurice (1885) 29 Ch D 459
Smith v Land and House Property Corp (1884) 28 Ch D 7
Redgrave v Hurd (1881) 20 Ch D 1
Holmes v Jones (1907) 4 CLR 1692
Derry v Peek (1889) 14 App Cas 337
L Shaddock and Associates v Parramatta City Council (1981) 150 CLR 255

2. Remedies

Alati v Kruger (1955) 95 CLR 216
Kramer v McMahon [1970] 1 NSWLR 195
Coastal Estates Pty Ltd v Melevende [1965] VR 433
LEcTure 11

Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the operation of the law of mistake at both common law and equity
(b) the operation of the principles of duress
(c) the operation of the statutory principle of misleading and deceptive conduct
(d) the operation of the statutory principle of unjust contracts.

B Mistake

Text: Carter & Harland, pp. 434-485

1. Common Mistake

McRae v Commonwealth Disposals Commission (1951) 84 CLR 377
Associated Japanese Bank (Int) v Credit du Nord SA [1988] 3 All ER 902
Bell v Lever Brothers [1932] AC 161
Great Peace Shipping Ltd v Tsavliris (International) Ltd [2002] QB 679
Australia Estates Pty Ltd v Cairns City Council [2005] QCA 328

2. Mutual Mistake

Goldsborough Mort and Co v Quinn (1910) 10 CLR 674

3. Unilateral Mistake

Shogun Finance Ltd v Hudson [2004] 1 All ER 215
Taylor v Johnson (1983) 151 CLR 422
Petelin v Cullen (1975) 132 CLR 355

C Duress

Text: Carter & Harland, pp. 486-504

Crescendo Management Pty Ltd v Westpac Banking Corp (1988) 19 NSWLR 40
North Ocean Shipping Co v Hyundai [1979] QB 705

D Misleading & Deceptive Conduct

Text: Carter & Harland, pp. 414-433

Trade Practices Act 1974 (Cth), ss. 52, 80, 82, 87
Fair Trading Act 1987 (NSW), ss. 42, 65, 68, 72
Gates v C M L Assurance Society (1986) 160 CLR 1

E Unjust Contracts

Text: Carter & Harland, pp. 534-541

Contracts Review Act 1980 (NSW), ss. 6, 7, 9, 14, 16, 17, 21
West v A G C (Advances) (1986) 5 NSWLR 610
Baltic Shipping Co v Dillon (1991) 22 NSWLR 1
LECTURE 12

Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the order of performance in relation to contractual obligations
(b) the meaning of performance at common law and qualifications to its applications
(c) the classification of contractual terms according to a breach justifies termination of the contract
(d) the effect of time stipulations in contracts
(e) the application of principles of anticipatory breach.

7. Discharge

The topic of discharge covers the means by which parties to a contract are discharged or released from liability under the contract. This topic is covered under the following headings:

A. Discharge by performance
B. Discharge by breach
C. Discharge by frustration
D. Discharge by agreement

A Discharge by Performance

Text: Carter & Harland, pp. 645-672

1. Order of performance

*Automatic Fire Sprinklers v Watson* (1946) 72 CLR 435

2. Meaning of performance

*Cutter v Powell* (1795) 101 ER 573
*Hoenig v Isaacs* [1952] 2 All ER 176
*Sumpter v Hedges* [1898] 1 QB 673

B Breach of Contract

Text: Carter & Harland, pp. 251-259, 673-744, 751-757

1. Conditions and warranties

*Tramways Advertising v Luna Park* (1938) 38 SR (NSW) 632; (1938) 61 CLR 286
*Associated Newspapers v Bancks* (1951) 83 CLR 322

2. Intermediate terms

*Hongkong Fir Shipping Co v Kawasaki Kisen Kaisha* [1962] 2 QB 26

3. Breach of time stipulations

*Conveyancing Act 1919* (NSW), s 13

4. Anticipatory breach

*Universal Cargo Carriers Corp v Citati* [1957] 2 QB 401

5. Election and the effect of a terminating breach

*Heyman v Darwins Ltd* [1942] AC 356
Aims and Objectives

At the end of this lecture students should have an understanding of the following:

(a) the discharge of contractual obligations by frustration
(b) the effect of frustration
(c) the discharge of contracts by agreement
(d) the circumstances in which contracts are illegal both pursuant to statute and common law principles
(e) the effect of illegality on contractual obligations
(f) the recovery of property that has passed pursuant to illegal contracts
(g) the circumstances and effects of contracts that are void on common law grounds.

C Discharge by frustration

Text: Carter & Harland, pp. 758-802

Paradine v Jane (1647) 82 ER 897
Jackson v Union Marine Insurance Co (1874) LR 10 CP 125
National Carriers v Panalpina (Northern) [1981] AC 675
Krell v Henry (1903) 2 KB 740
Codelfa Construction v State Rail Authority of New South Wales (1982) 149 CLR 337
Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour [1943] AC 32
Frustrated Contracts Act 1978 (NSW)

D Discharge by agreement

Text: Carter & Harland, pp. 157-159

Morris v Baron and Co [1918] AC 1
McDermott v Black (1940) 63 CLR 161 at 183-184

8. Illegal and void contracts

Text: Carter & Harland, pp. 555-641

This topic deals with circumstances under which statute and common law principles declare certain classes of contract either illegal or void. Public policy concerns are the basis of these principles. The consequences of contracts being illegal or void are explained. In general the consequences are more severe where the contract is illegal as opposed to being void.

A Illegal Contracts

Re Mahmoud and Ispahani [1921] 2 KB 716
Yango Pastoral Co v First Chicago Australia (1978) 139 CLR 410
St John Shipping Corp v Joseph Rank [1957] 1 QB 267
Wilkinson v Osborne (1915) 21 CLR 89
Alexander v Rayson [1936] 1 KB 169
Thomas Brown and Sons v Fazal Dean (1962) 108 CLR 391
Clegg v Wilson (1932) 32 SR (NSW) 109
Singh v Ali [1960] AC 167
Bowmakers v Barnet Instruments [1945] 1 KB 65

B Contracts void on public policy grounds

Papastravou v Gavan [1968] 2 NSWR 286
Amoco Australia v Rocca Bros Motor Engineering Co (1973) 133 CLR 288
Restraints of Trade Act 1976 (NSW)