

Law: rules (ought to aim at good/fair outcomes) of conduct that are recognised, applied and enforced by the power of the state. In larger groups, non-legal rules become inadequate.

- Legal rules (enforced by the state)
- Non-legal rules: morals, religion, laws of nature (enforced by peer pressure, good will...)

Law is made by elected legislatures and courts at the federal, state and territory level.

Business law includes aspects of: contract, tort, consumer and agency law.

Law (e.g. Australian Law) > Area (e.g. contract law) > Concept (e.g. contract) > Principle (e.g. intention to be legally bound; principle is non-negotiable) > Rule (specific to cases) > Meaning

Law must be predictable to ensure consistency and equity, and so citizens can have faith in it. Tradeoffs between predictability and fairness when making law sometimes occurs.

- Bill commencement is assumed to be 28 days after it's passed unless otherwise specified.
- Roman Law (Civil law): began in 753 BC; used by Switzerland, Germany, Austria.
- English (Common) law: 12th century; Australian law largely influenced by, with some Roman.

1788: British established colony of NSW; over next 50 years colonies of QSL, VIC, TAS, WA, SA made; Britain initially ruled AUS colonies directly, during 1800s they were allowed to become self-governing with general powers to administer/enforce and make new law, but couldn't make law that was inconsistent with laws by British parliament, and not those that operated outside their borders.

1901: Commonwealth of Australia (CommAus) formed, colonies became states: NSW, VIC, QLD, SA, TAS, WA; agreed to give specified powers to a new federal Australian government. 10 other territories. Each state has its own constitution, and so does the CommAus. To change CommAus constitution, need a national referendum, whereas to change that of the states' doesn't require.

The crown: the Queen (acts through governor general at federal level, governors at state level; they exercise certain executive powers, some legislative powers (royal assent), commission judges appointed by government and are the formal heads of state of Comm and six states).

Executive: the crown, the chief minister (PM at federal, premier at state), elected by the political party forming the govt. of the day; other ministers of government (appointed by PM), statutory bodies and offices. PM and senior ministers form cabinet (who decides government's policies at a time).

Legislature: a body with authority to make law. CommAus (federal), each state and each self-governing territory has its own legislature. Comm and state legislatures can be called 'parliaments' (self-governing territories not called this).

Australian legislatures are generally 'bicameral': upper and lower house (QLD is unicameral, 1 legis.).

- Upper house of Comm legislature: senate; lower house: House of representatives.
- Upper house of state parliaments: legislative councils, lower house: legislative assemblies (NSW, QLD, VIC, WA) and houses of assembly (SA, TAS).

Law laid down by judges when deciding cases is the common or case or general law. Commonwealth law prevails over state which prevails over local only to the extent that they are inconsistent.

The courts: first trial: hearing referred to as 'original' or at 'first instance'. When decision is taken to a higher court: 'appeal'.

- High court of Australia: seven judges appointed by governor-general on advice of PM, given power by the commonwealth constitution.
 - Superior courts: federal court of Australia (Comm); supreme courts (state; territories).
 - Inferior courts: ranked as either intermediate or lower. Intermediate: federal circuit court or magistrates court (federal level). In states, intermediate courts are county or district courts, territories no intermediate courts. Lower: called magistrates or local courts or courts of petty sessions.
 - Local governments: six states and NT established a local government.
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- Only parties to the contract can bring an action to enforce it: referred to as the **'privity'** of contract: exception includes beneficiaries to insurance contracts.
 - o Agent generally doesn't become bound, the principal does.

Offer must be:

- Promissory, i.e. an undertaking to give or do; or an undertaking of liability.
- Sufficiently complete, i.e. sets out all necessary aspects of a workable transaction.
- Intended to result in a contract if accepted and addressed to a particular person or identified group (can be made to any person in the world at large or any member of the general public).
- An offer expires after a reasonable time, or after a set period. Offeror can withdraw it any time before it is accepted. To extend time to consider, potential acceptor must obtain an 'option' – separate binding contract that keeps the offer open for a time.
- Counter-offer destroys previous offer; provided response doesn't materially differ, acceptance is made.

Acceptance must be:

- In same terms of the offer, not still subject to a condition, made while the offer is still in existence, made by the person to whom the offer was addressed and made in an acceptable form.
- Physical mail: acceptance is made when the mail is dropped into the post (as long as proof is provided)
- Telefax/fax: contract is made when and where the message is received, not when and where it is sent from.
- Email: if email is specified, acceptance is made once email is received by system. If not specified, the offeror must have made attention to the mail.
 - o If the offeror specified an email address as a way in which to accept the offer, then receipt takes place when the email reaches that system.
 - o If not (i.e. the offeror has an email address, but didn't actually specify that they wanted the offer to be accepted by email), the receipt takes place only when the email comes to the attention of the addressee (i.e. the offeror actually opens the email).

Advertisements and displays generally not 'offers': they act as an 'invitation to treat', where the customer offers.

Consideration: applies to all oral agreements; something given in exchange for a promise received. It may be: a thing, money or a promise to give (or not give) or do (or not do) something. Must be of some value (even \$0.1).

'Executed consideration': act performed with intention of receiving promised counter-performance – good consid.

'Past consideration': when a new agreement is trying to be reached by bargaining something from the past as a current consideration.

Term: 'terms of a contract' include the contents of a contract; the agreed undertaking or the promise made in the contract where it can be inferred it was legally binding; can become a part of contract through agreement.

Parol evidence rule: if proved that contract was wholly written, can decide just from this. Exception: typos, terms were also agreed to orally, ambiguous terms in contract. Exceptions:

- Evidence in support of rectification; evidence that the written contract is only part of the agreement; resolution of uncertainty in the written agreement.
- Mistakes: if terms recorded are not actually what parties agreed on, court may allow other evidence to rectify and substitute the terms actually agreed on.

Puffs: exaggerated or obviously insincere statements made by contracting party to engage, attract or excite others into contracts (don't become part of the contract).

Opinions: statements of personal views, doesn't form a legal liability if honest (or even if wrong); treated as misrepresentation if person misrepresents their actual opinion.

Representations: statement of fact made by one party in a contract. Are not binding unless can be inferred that the statement was intended to be a binding promise. Misrepresentations (false) are not terms of contract, cannot be breaching (but tort law, ACL provide other relief).

- Representation or binding promises: timing, was it a response to a question, how it was said.

Conditions: terms that are of fundamental importance in the agreement; wouldn't have entered contract without, unless they've been assured of strict or substantial performance of the promise, and this was apparent to promisor.

Warranties: less important than conditions.

- To determine **condition or warranty:** ask if a party would have entered the contract without the promise, if yes, **warranty**, if not, **condition**.

Innominate: hard to determine the types of terms; all terms become Innominate (or treated as intermediate terms).

- **Terms** are 'expressly agreed' when they have been actually declared or definitely stated, whether oral or written: terms should not be in unexpected places. A **term** can be 'implied' when it passes **the officious bystander test**, where it can be inferred that the contracting parties answer yes they know the term exists even if it isn't discussed.

Expressed terms: have been declared either orally or written (signed document or referred to on a ticket or notice).

Implied (ad hoc) terms: the term will help both parties, it is unambiguous, it doesn't contradict any expressed terms; it fills gaps between expressed terms; it can be inferred that these terms were intended; it was necessary to give **business efficacy** to the contract; it must be reasonable/equitable; the law may put terms into a contract to fill these gaps (known as '**generic terms**' where contracting parties cannot foresee and provide for every possible situation by agreement. – implied ad hoc terms must arise from written terms of contract, and not from external evidence.

- Generic term in doctor/patient contracts: 'doctor to exercise reasonable care and skill', not in their best interests.

Universal terms: implied; put into all contracts: 1). both parties should cooperate so they both benefit. 2). both parties use powers honestly, to act in good faith.

- The law only asks whether a reasonable person observing the situation would conclude that the person signing the document appears to consent to the terms (doesn't matter if document was read or not). In cases by reference it may be necessary to point out unusual terms with greater precision than normal.

Generic terms in sales:

- Goods are sold by description when described as belonging to a type of good, e.g. 'shoes', no implied guarantees on quality under s 18 Goods Act.
- s19: applies if a buyer makes known to seller the purpose for the goods AND the buyer relies on the seller's skills to provide suitable goods AND the goods are of description that is in course of seller's business to supply; becomes condition that seller is obliged to deliver goods of at least 'merchantable quality' (true if other buyers would buy it under same description and price) unless buyer has examined goods in a way that ought to have revealed defects; no implied condition to quality of goods if bought under patent/trade name.
- s20: when agreed that quality of goods determined by reference to a sample; becomes a condition that bulk of goods correspond to quality of sample and buyer has reasonable opportunity to compare bulk to sample.
- Liability can be limited, but the terms must be clear/precise and brought to the attention of the other party.
- When the meaning of an exclusion clause is ambiguous, it is likely to be interpreted against interest of the preferred party (**contra proferentem**), e.g. ambiguous words interpreted narrowly; events that fall outside the '**four corners**' of a contract will not be covered by an exclusion clause which appears intended to exclude liability for only things done within the scope of the contract.

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- **Breach of contract** doesn't **discharge** the contract: **remedy** for breach can be claimed, such as payment of damages instead of follow-through of **specific performance**, or victim can **terminate** the contract to receive payment. Complete performance known as '**voluntary performance**' discharges a contract.
 - When interpreting contracts, firstly: words should be given ordinary and natural meaning in context. If terms remain ambiguous, different interpretation is made that considers terms as sensible, realistic, convenient. This doesn't mean that clearly expressed and unambiguous terms can be avoided if they prove inconvenient.
 - Intentions are interpreted from a reasonable third party's perspective.
 - Post-contractual behaviour is not considered by courts when interpreting a contract.
 - Exclusion clauses of liability are enforced in absence of deliberate fraud and if they're clear and certain. A exclusion clause will be understood as intending to operate within the parameters ('four corners') of the agreement; therefore it doesn't extend to events that go beyond the scope of the agreement.
 - There is a presumption that reciprocal duties are performed at same time: e.g. good sold + pay, work done + pay.

Courts can **excuse performance on the basis that performance is impossible when:**

1. **Initial impossibility.** If promise is impossible from outset it does not create enforceable obligations, e.g. make contract, someone burns car before contracting to sell it.
2. **Supervening impossibility/ Frustration.** Make contract, someone burns car after contract is made.
 - If can be inferred that the parties assumed the risk of changed conditions, they remain bound and must pay damages for non-performance, But: if can't be inferred AND party seeking relief isn't responsible for changed circumstances AND it would be unjust in new circumstances to enforce contract, then it is **frustrated**. If person brings about frustrating event deliberately, frustration not viable. It is only unperformed obligations existing at the time of frustration that are treated as discharged – any performance (e.g. delivery of goods) made before cannot be recovered unless nothing at all was received in return: 'a total failure of consideration'.

Risk: when identified goods are bought and sold, ownership passes to buyer as soon as contract is made, even if delivery is postponed. Therefore, any risk of accidental damage that happens after contract is carried by the buyer.

Types of breach:

1. **Complete non-performance:** not doing anything when the time comes or doing something irrelevant to the contract.
2. **Partial performance:** if it is a condition: may justify rejection of that performance and termination (can also claim damages), if warranty: doesn't justify rejection of performance and termination, can only claim damages.
3. **Substantial performance:** breach of condition is relatively minor: cannot be terminated, only pay damages for any losses (treated as a breach of warranty).
4. **Late performance:** if condition, performance can be rejected and future performance terminated. If late performance leads to breach of warranty, performance can't be rejected or termination.