

Introduction to Law and Contracts

All you wanted to know but was afraid to ask

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Outline

- 1 Introduction
 - Legal Jurisdiction: A Historical Context
- 2 Contracts

Legal Jurisdiction

Forms of legal action

In Australia, the legal system can be broadly classified into 4 different jurisdictions:

- Criminal Jurisdiction
- Civil Jurisdiction
 - Contract Law
 - Tort Law
- Administrative Jurisdiction
- Equity

A criminal action does not prevent a plaintiff from taking civil action (O.J. Simpson).

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Legal Origins

Where does the law come from?

- Australia's body of law arrived in Australia with the first settlers, which includes:
 - UK Statutes
 - Common Law
- State governments had autonomy to make its own laws, but UK Parliament reserved the right to enforce its will through *paramount force*.
- The *Australia Act (Cth)* 1986 severed UK's influence.
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- It is a legally binding promise between 2 parties.
- It can be either oral or written.
- Failure to fulfill your end of the bargain may result in damages for breach of contract.
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Elements of a contract

- Offer
 - Offer/counter offer
 - Invitation to treat
- Acceptance
- Consideration
- An intention to create legal relations
- Certainty

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Terms of the contract

- **Express Terms**

- Warranty: no rights to terminate
- Condition: rights to terminate for breach
- Mere representations: no remedy
- Whole of contract term

- **Incorporating by:**

- Notice (timing, knowledge, reasonableness)
- Course of dealings (*Balmain New Ferry Co Ltd v Robertson*)

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- ***L'Estrange v F Graucob*: effect of signature.**
 - Purchase cigarette vending machine
 - Signed 'Sale Agreement'
 - Machine delivered did not work
 - Sued seller, machine not reasonably fit for the purpose
 - Seller relied on clause excluding all implied conditions and warranties.
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- *Curtis v Chemical Cleaning and Dyeing Co*
 - Curtis took white satin wedding dress to be dry cleaned
 - She was asked to sign a paper headed 'Receipt'
 - Before doing so she asked why and was told that they would not be accepting liability for damage to dress trimmings
 - She signed it and dress was returned stained and claimed damages
 - Court finds for Curtis because they had misrepresented the the extent of the clause.
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- Implied Terms (course of dealings, business efficacy, obviousness)
- Parol Evidence Rule
 - Excludes any evidence other than the language contained in the written contract.
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- Beware of how long the contract is binding for.
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- **By an express term in the contract**
- Implied right (that both parties would not have intended the contract to continue indefinitely).
- Express agreement (new contract which agrees to release the other from the original contract)
- Abandonment
- Breach of condition (right to damages)
- Repudiation (anticipatory breach)
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Things to watch out for

- What is a condition?
- Intermediate (innominate term)
 - Warranty
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 - Condition
- Root of the contract
- Estoppel
 - where an aggrieved party has been induced to act to their detriment

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 - Civil: Balance of probability
 - Criminal: Beyond a reasonable doubt
- The burden is on the party bringing the action (the Plaintiff)
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Alternate Dispute Resolution

- Litigation can be costly and something to be avoided
- Consider mediation and arbitration for civil matters
- In some contracts, mediation is an explicit term of the contract.
- It is cheaper to correct a clause before you sign a contract than after
- Getting the contract drafted well can avoid problems later on.

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