

# Law 141 Notes

## Module 1 – Classification of Law and Its Sources

### Lecture 2 – Civil and Common Law

- International Law is law between two states
- Domestic law is law within a nation
- NZ's domestic law is described as a common law system
- Norman's exercised central justice which was then referred to common law as it was common between Britain
- Adverbial system was established where two would settle disputes with judges being the neutral decider
- Overtime the law started to be recorded so decisions were written as case laws
- This led to a system of stare decisis where precedent would apply (with reasoning) and had a hierarchy of courts which maintained scope of judges involved in law-making
- Stare decisis means that precedents for one case would be used as law for later similar cases
- Civil law systems – from the roman law where Jurists (legal experts) gained prominence independent of courts – they would provide the litigation for courts
- They were responsible for development of comprehensive jurisprudence (theory of law) called a responsa – this was basically the law
- Decisions on precedents were not given any weight
- This was the building blocks of civil law which then led to a codified private law in 1804 under Napoleon when court decision was written down
- Ratio – reasons for their decision
- Law contained civil codes – codes were systematic, authoritative and guiding statutes of broad coverage
- The assumption is that codes regulate all cases – creating an inquisitorial system where the courts would interpret and apply these codes
- Judges were not involved in the law making
- Civil law – start with legal rule/norm in Code
- Common Law – start with case and compare it with previous cases and relevant precedents

John is a citrus fruit tree grower. Susan owns a bar. John and Susan decided to try and reach an agreement over lunch whereby John would supply lemons and limes to Susan's bar. To help record the terms of their agreement, John wrote the following down on the back of a napkin:

Quantities - John will deliver 50 limes and 50 lemons every week.

Timing - Delivery on Sunday.

Price - to be determined.

Force Majeure (reason why u can't deliver) - if performance is prevented by reasons of act of god, etc, John shall be

excused from such non-performance.

Returns - to be determined.

John and Susan finish their lunch and shake hands. **Susan thinks that unless they agree on price and what happens with returns they don't have a contract. John thinks there is a completed contract as represented by what is written on the napkin.**

Have John and Susan entered into a contract? Compare civil law approach vs. common law approach to determining this question.

Core issue is whether they have entered into the contract

**Civil Law** – Article 1114 = the essential elements need to be contained for it to be a contract and since they don't have price and returns

**Common Law** – Fletcher v Electricity NZ = [53] legally essential terms needs to be included

- Legal right is an entitlement or interest held by a person recognized by law
- Rights can be seen as a sense of duty that someone feels
- If there is no right, there must be a privilege

### Lecture 3 – Classification of Law

#### **Public Law**

- Criminal law – wrongs prohibited and punishable by law. Government agency e.g. police and acts on behalf of society – criminal law overlaps with torts – prove the crime beyond reasonable doubt
- Constitutional Law – describes how organs of government are compromised and how laws are created
- Revenue law – how the government collects taxes
- Administrative law – how government departments and tribunals act and conduct themselves – judicial review is concerned with the legality of the decision

#### **Private Law**

- Contract law – it's all about voluntary assumed rights and duties – key questions:
  - Have the parties reached an agreement? – have all the essential terms been found?
  - What are the terms of the agreement?
  - Has there been a breach of the terms of agreement?
  - What should the remedy be?
- Tort Law – civil wrongs by one person against another (between strangers) – these are duties that are imposed not agreed – biggest category is negligence -> law holds that people have a duty to not to carelessly do or omit to do things that could cause harm to another
- In NZ tort law doesn't cover personal injury – this is covered by ACC which compensates for the injury to some extent – this is because sometimes people don't have the finance to compensate for the injury
- Property law – rights and duties in relation to a thing – can be divided into real (land) property and personal property = tangible and intangible property
- Family law – marriage, adoption, divorce and status of children – family court which separate court – specialist judges, less formal, set up to allow people to speak more freely
- Equity – **trusts** – situations where a person holds a property of another and for the benefit of another – **fiduciary** duties special duties imposed on people in positions of trust
- Restitution – reversing situations of unjust enrichment – no one should be allowed to enrich themselves at the expense of another
- Remedies – how the infringement of a right is prevented, redressed or compensate
- Property based remedies – gives the owner the ability to prevent others using the property – to gain control you must buy it
- Liability based remedies – allows other to interfere with your property/interest/entitlement provided they pay compensation
- Money remedies – compensation / Specific remedies – injunctions
- Obligations – is a sense of duty – includes contracts, torts and restitution
- Right in rem – against a thing
- Right in personam – against a person

- Obligations are enforced against another person
- Property rights are enforceable against the world at large – can be asserted by holding onto or reclaiming property (thing or object)
- There is a blur distinction between property and obligations and overlap in areas such as – intellectual property
- Obligation can be divided into – Causes of Action => what the plaintiff has to prove – Defenses => what a defendant can prove to avoid liability

Which area of law does this concern – Property or Obligation

1. Fred was hired to spray herbicide on Jane's farm to kill gorse. High winds means the pesticide flows onto the neighbouring property owned by Jill causing damage to Jill's apple trees.

- Torts – as this is seen as negligence by Fred to not take care of the wind
- The contract is only between Fred and Jane

2. Alice is a lawyer for Wawrick. Wawrick wanted to buy an island in the Hauraki gulf and asks Alice to help him negotiate an agreement with the vendors of the island. An agreement isn't reached. Alice then goes and helps Patricia negotiate an agreement with the vendor. The negotiation is successful and Patricia buys the island.

- Contract law – Wawrick with Alice – fiduciary duties – breach of confidence and confidentiality
- Alice needs to have loyalty to Wawrick – Alice had valuable information and she misused this information in her position of trust

3. ABC Ltd signed a contract with XYZ Ltd agreeing to deliver 1000 widgets to XYZ Ltd's premises by 1 December. ABC Ltd were only able to deliver 500 widgets at that date.

- Contract Law – the court will order compensation for them to cover the cost of the 500 widgets

## Lecture 4 – Equity and its influence

- Two types of case laws – equity and common law
- Medieval English common laws – they applied very bright line rules (precise and rigid)
- Common law is reactive, so it evolved really slowly – other matters were not covered by these rules
- It was very difficult for plaintiffs to work their way through
- The only remedies that could be obtained were monetary – stop the defendant from doing something or gain something back
- Response to this was to not reform the common law but develop a whole new system of law – known as equity
- Administered by the Chancellor acting under the king's name – Courts of Chancery
- It was to help make common law more flexible, fill gaps within the common law and gain the remedies that were fair – when a party used remedies in an oppressive way/they could not obtain a certain type of remedy/or when there was no remedy
- Equity is a court of conscience – 3 things helped with conscience => fraud, accident and things of confidence
- Equity maybe evoked when the common law resulted in an unconscionable – if the common law result had nothing wrong with it then the decision would stand
- The common law and equity are not competing systems, but equity is derived from the common law and in itself is not self-sustaining
- Equity courts provide remedies like specific performance and injunctions
- In equity courts the defaulting party could not recover more than their actual loss – as seen with the example below

A penalty clause is a provision in a contract by which a “defaulting party” must pay a set amount to the non-defaulting party. X signs a contract agreeing to supply Y with 100 apples. Y intends to sell the apples to consumers for \$1. A clause in the contract states that if X does not supply the apples on the agreed date, X will pay Y \$200.

- In Equity courts Y would not be allowed to claim \$200 but rather only up to the amount of profit he/she would have made
- However, in the common law system they might actually enforce this

- Equity is a flexible jurisdiction – its aim is to give justice
- “Justice as long as the Chancellor’s Foot” – it is at the discretion of Chancellor and it can be quite subjective – this makes the law very unpredictable since the Chancellor would interpret the law in different ways
- Equitable Maxims – the fundamental ethical and jurisprudential principles that lie at the core of the exercise of equitable jurisprudence
  - Equity considers common law and statutes – equity will only go away from it to bring justice
  - Equity does not assist volunteer – if someone hasn’t provided any consideration or value for the obligation they are a volunteer
  - He who seeks equity must do equity – a plaintiff should not ask more than what they actually lost
  - Equality is equity – everyone has the same rights and duties
  - Equity will not make allow statute to become fraud – we won’t interpret the statute that is inconsistent with the parliament’s aim
  - Equity looks at intent rather than form – what were the intentions behind it and use context to interpret the case
  - When equities are equal the first one prevails – whoever brings the case up first has a distinct advantage
  - Equity will not suffer a wrong without a remedy – equity will not allow the victim to suffer if a wrong is committed
- Courts of Chancery started to systemize – this makes equity more predictable and rigid, yet it was still flexible
- In 1615, equity would have precedence over common law – in 1870 UK brought both courts together and judges would wear 2 hats

#### **Keech vs Sandford (1726)**

- Child has the lease for the Romford Market, he chooses not to renew it and Stanford takes the lease
- Stanford was then sued by the child after he grows up
- The courts ordered Stanford to give the child all the profits he gained
- This allows for accounts of profits – when a trustee acts in breach of the fiduciary duty they must give up all the profits they made

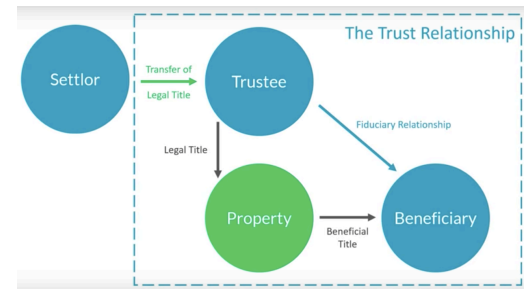
#### **Fry v Lane (1888)**

- They had a reversion – when their uncle died they had the right to the land
- The Fry brothers were uneducated
- They ended up selling it to Lane – they sold their interest far under-valued
- They got advice from the same lawyer acting under Mr. Lane
- This is an unconscionable bargain

#### **Premium Real Estate v Stevens (2009)**

- Premium Real Estate was acting under the Stevens to sell their property
- Mr. Larsen wanted to purchase the house to re-sell later at a profit
- Premium told the Stevens that he was buying it for his own personal use

- This would have influenced their decision to sell at lower than market value
- Mr. Larsen sold the house again at a \$1 million profit 5 months after
- This a breach of fiduciary duty/breach of the Fair-Trading Act misleading trading
- In fiduciary duty he/she must act in good faith, not make profits from the trust, not have a conflict of interest and must not seek private benefit without consent
- Account of Profit – is to make sure that people in this duty don't put their interests ahead of the person they have the duty towards



## Lecture 5 – Intro to International and Comparative Law

- All the states are equal under the International Law
- NZ system does not operate system in a vacuum (by itself/out of nowhere)
- NZ interacts with other states and these need a legal network – controlled by international law
- No rule is applicable to states without their consent – meaning laws cannot be enforced
- The Security Council under the UN charter – there is breach of peace or an act of aggression the security council might take measure according to article 41/42 to maintain peace
- Under article 39 the Security Council does not have to take consent of the state to enact sanctions – this is the only exception
- Spheres of Validity of International Law
  - Space => international law is applicable all over the universe
  - Time => exists forever unless it is changed
  - Personal => the subjects to the international are the states
  - Material => international sources of laws come from treaties that have been agreed upon by states and customary practice (practices accepted by law)
- The NZ legal system did not emerge out of nothing rather it was adopted by the English law which was imposed onto the Maori
- Comparative Law – is a method to compare the different systems of law between different states and to see how they interact
- We compare law to figure out the similarities and differences
- When bills are in front of Parliament they may use comparative law to help understand how a similar bill in other countries is working – this will help them to apply it to their country and/or reform it to be clearer
- The major case of this was in the USA when they were considering legalizing gay marriage and judges looked at outside to determine society's views – **Lawrence v Texas 2003**
- If a rule gets transplanted from A to B – B will take the rule and apply/interpret it in many different ways and it would be barely the same as it was in A
- Foreign solutions as guidance or an additional ground to justify changes in the law
- Foreign solutions as a counter-examples of the superiority of local rules