

# Principles of Business Law (BLAW10001) Lecture Notes

## Week 1 Lecture Notes

### LEGAL AND NON-LEGAL RULES

LAW (working definition): rules of conduct or organisation that are **recognised, applied and enforced by the power of the state.**

- **State:** governmental machinery that operates in Australia

NON-LEGAL RULES: rules of conduct or organisation that are enforced by things such as peer pressure, a need for co-operation, feelings of goodwill, or for promoting convenience

- E.g. queuing at certain places is a need of cooperation between people
- They're more like social codes.
- Derived from a variety of sources e.g. moral/philosophical beliefs, the 'laws' of nature, social values, customs, traditions.
- They work well in small groups and communities
- In larger groups - they become inadequate - we need rules enforced by a central body (the state) to govern and regulate societal conduct
  - Ensuring that our behaviour is safe and doesn't harm others, and that it is relatively predictable - links to how the law is best when the application is predictable.
- Particular rules that the state chooses to enforce are identified/made in different ways - **elevating things to the status of the law.**
  - Deciding to enforce rules based on non-legal rules e.g. established customs
  - OR to make sure that laws continually adapt over time - rather than looking at established informal rules, to develop new rules when problems arise (a perceived need for regulation)
  - In Australia, we have a combo of both

### WHO HAS THE AUTHORITY TO MAKE LAW??

- Elected legislatures AND the courts - main agencies of law-making at federal, state and territory level.
  1. **Legislature** - a group of politicians each elected by a local constituency. They congregate in the one space and write draft versions of the laws which are then voted on. If there is a majority, these laws are passed and turn into a jurisdiction.
    - i. Books that are readily available in libraries, or the internet
      - **Readily available to people in that geographical area**

## THE LEGISLATIVE PROCESS

- **BICAMERAL PARLIAMENTS** - two houses of parliament
  - Within one parliamentary building, there are two separate groups of politicians
  - For bicameral legislations to pass - there has to be a majority vote
    - That majority vote has to be replicated in both houses.
  - Two different bodies of politicians whose approval needs to be gained in order for draft legislation to become law for that particular jurisdiction.
  
- **HOUSE OF REPRESENTATIVES** - politicians representing a part of the Australian population, restricted to a particular geographical area
  
- **SENATE** - different type of constituted house - **every state given 12 senators to represent them**
  - However, the people of Australia elect those senators
  - E.g. Victorians will elect who they want to sit in the Victorian seats of the Senate
  - Not the same - Tasmania has a small population compared to Victoria, but still 12 senators
  
- **Government** - group of elected politicians who have to come into parliament with ideas for legislation - where these drafts of legislation are then debated
  - **Whoever commands the majority in the HOUSE OF REPRESENTATIVES is the government of the day**
    - **The political party forming the government of the day elects the PM of Australia.**
  - However, sometimes there is no complete majority from a single political party
  - This forms a coalition - who all agree to vote together for the term of a particular parliament
  
- **Minister** - a member of parliament for their local constituency, but they are also given a particular subject matter of policies that they are in charge of e.g. Minister of Foreign Affairs, Minister of Environment
  - Present new ideas to parliament
  
- In bicameral legislations, draft of legislation is given to Lower House first for it to be voted on, then it is given to Upper House for approval
- However - there are times when it is given to the Senate first for approval, then go to the Lower House (you can swap)
  - **In practice, however, most Bills originate in the House of Representatives**
- **HOUSE OF ORIGIN** - whichever house first deals with draft legislation
- **HOUSE OF REVIEW (bicameral only)** - the second house that gives approval for a piece of legislation
  - You just need 50% of the votes + 1 (bare majority) for legislation to be approved

## **THE LEGISLATIVE PROCESS**

- **Was this promise a motivating reason for the person to enter the contract?**
  - If it is, and the person realises that, **then it becomes a condition**
  - **Associated Newspapers Ltd v Bancks (1951)**

### **INNOMINATE TERMS**

- Sometimes the courts avoid 'conditions' and 'warranties' and leave them unnamed or 'innominate'

### **AGREED TERMS VS IMPLIED TERMS**

- **Terms can become part of a contract via:**
  - Agreement (which can be express or implied)
  - Or because they are put into the contract by operation of law (general law or legislation)
- **Expressly agreed terms**
  - One that was declared or definitely stated, either in writing or orally
  - They are discussed, included in a signed document or referred to on a ticket or notice
  - Even sometimes they result in complications e.g. if one of the parties never read/understood one of the 'expressly agreed terms'
    - **L'Estrange v F Graucob Ltd (1934)**
      - **If you sign a contract but don't read it, you are still bound by the terms of the contract**
    - **Causer v Browne (1952)**
- **Terms agreed by implication ad hoc**
  - When we have a contract, and sometime after it's made one of the parties says 'isn't it obvious that this is a promise we made...!' (an implied term)
  - A term may be 'implied' into a contract when it can be inferred that the term was intended to be part of the contract without being expressly stated
  - Only recognised by courts when there is some gap in the contract or a dispute
  - There are a number of requirements that need to be met before a term is implied ad hoc
  - **OFFICIOUS BYSTANDER TEST:**
    - Must be obvious from the circumstances that the parties must have intended to include such a term in their agreement
    - **The test: "what would the parties have replied if an officious bystander had asked them at the time of agreement whether the suggested term was part of their contract?"**
    - If it can be inferred that **both parties would have answered 'of course'** - the necessary intention is established

- Barton proved Armstrong made alleged threats to him and his family, and Armstrong couldn't prove that his threats did not contribute to Barton's decision, **contract set aside on grounds of duress**
- You don't need to show that the threats were the ONLY reason for entering the contract, even if it was one of many reasons, the contract will still be deemed void.
- **North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd (1979)**
  - Not physical duress, but a threat of *economic harm*
  - However, North Ocean Shipping Co took **several years** to get to court, so they couldn't recover the money they lost

### Undue Influence (the relationships factor)

- 'the relationships factor'
- ***Undue influence is NOT to be mixed with duress.***
- It may exist when, because of their relationship, one party necessarily places confidence and trust in the other. **The dominant party may influence the decisions of the weaker.**
- The contract can be declared void, but the weaker party **must act reasonably soon**
- **Relationships inevitably involving a presumptive controlling influence**
  - Some relationships give the stronger party a controlling influence over the weaker, and **contracts between them are *presumed (initially)* to be the result of undue influence**
  - **These relationships are:**
    - Parent and child
    - Doctor and patient
    - Solicitor and client
    - Religious advisor and believer
  - The judge will start with the assumption that the weaker party has been subject to undue influence.
  - **The stronger party/defendant has the onus of *proving* that no undue influence was exercised**
- **Allcard v Skinner (1887)** - although the circumstances gave rise to presumptive undue influence (religious devotee and adviser), Allcard had **waited too long** before attempting to get her property back, and so the court interpreted that Allcard effectively affirmed the transaction.
- **Relationships in which a general controlling influence is proved to exist**

- Overlaps with general law doctrine of **duress**, but provides a broader range of remedies/penalties
- **Multiple pricing:** if more than one price is displayed for the same good, the supplier should supply them at the lowest price (**section 47**), single prices should be displayed that show the minimum combined price of the goods or services including all charges and taxes payable (**section 48**)
- **Referral selling and pyramid schemes (section 44-45):**
  - Participation in **pyramid schemes** is prohibited - those in which a person joining the scheme must provide a benefit (monetary) to other participants, in the expectation that when new people join they'll receive a benefit
  - **Referral selling** occurs when a supplier offers to provide goods for a discount on the condition that the purchaser brings in new customers (discount is conditional)

## REMEDIES FOR UNFAIR BUSINESS PRACTICES

- Civil pecuniary penalties can be imposed
- Private remedies (injunctions, damages, compensation orders, non-punitive orders, declaring a transaction void etc) also all available

### Statutory guarantees in consumer contracts

- ACL provides a number of important guarantees for consumers who enter into contracts for goods or services - basically like the Goods Act provisions
- However, unlike the *Goods Act* provisions, these **cannot be 'contracted out of' via exclusion clauses.**
- **Section 56** - that when goods are bought by description, the goods supplied will accord with the description under which they were sold
- **Section 54** - that goods are of 'acceptable quality' - goods are NOT of this quality if they are not fit for the purposes for which such goods are normally used; not durable; not safe; not free from defects; don't have an acceptable appearance to the extent that a reasonable consumer who knows of their qualities would find them unacceptable (**Australian Knitting Mills Ltd v Grant**)
- **Section 55** - when the consumer has disclosed the purpose for which they want the goods and indicated that they are relying on the seller's judgement, goods supplied must be reasonably fit for disclosed purpose
- **Section 57** - when goods are supplied by reference to a sample (Goods Act S20), goods must correspond with the sample in quality, state and condition; must be free of any defect that was not apparent from a reasonable examination of the sample, and which would make the goods of unacceptable quality