

CONTRACT LAW SUMMARY



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Sample

1. INTRODUCTION

1.1 definition:

- A contract is simply an agreement between two parties that is legally binding
- The law of contract is concerned with:
 - The making of the contract
 - The enforceability and effect of the terms of the contract on the parties
 - The performance and discharge of the contract
 - Rights and remedies available where the contract is breached
- General principles of contract law are derived from common law
- The modern law of contract is based upon the idea of freedom of contract whereby parties are free to choose who to contract with, and to negotiate the terms therein. This assumes the parties have a similar capacity to negotiate terms favourable to their interests. However, there is increasing recognition that this is not always the case in practice:
 - Contracts occur more frequently between consumers and companies than between commercially savvy business people/entities. The inherent inequality of bargaining positions in the former case has led Parliament to pass measures aimed at protecting consumers, for example allowing the courts jurisdiction to grant relief for “unjust” contracts
 - There is now an emphasis on the will and intention of parties, rather than what is merely contained in the black letter terms of the contracts
- Many contracts are informal, and the terms are implied. Thus, contract law often has an important role in completing the contract
- A contract exists when the basic elements are satisfied. The 4 essential elements necessary for contract formation are:
 - (i) an agreement
 - Usually comprised of (a) an offer, and (b) acceptance of the offer
 - (ii) consideration
 - Each party must give something in return for the promise made by the other party
 - (iii) certainty
 - Must be complete and certain
 - (iv) an intention to create legal relations
 - Must appear so objectively

- Courts use an objective test to determine whether a contract exists i.e. would a reasonable person perceive that a contract exists? – *Toll (FGCT) v Alphapharm*¹
- Courts will generally try to find a way to uphold a contract rather than hold it does not exist or apply due to technical grounds

1.2 Traditional elements for liability of breach of contract

- A claim for breach of contract will succeed if it is shown that:
 - A valid contract was made between the parties;
 - The party has breached the contract as properly construed;
 - There are no excusing factors for non-performance;
 - The contract was terminated; and
 - It is not unconscionable to make the claim



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¹ *Toll (FGCT) Pty Ltd V Alphapharm Pty Ltd* (2004) 219 CLR 165.