

CONTRACT LAW SUMMARY



LAWSKOOL.COM.AU

LAWSKOOL PTY LTD

Contents

CASES 7

STATUTES..... 15

1. INTRODUCTION 17

1.1 DEFINITION OF A CONTRACT 17

1.2 TRADITIONAL ELEMENTS FOR LIABILITY OF BREACH OF CONTRACT 18

2. AGREEMENT: OFFER..... 19

2.1 OFFER 19

 2.1.1 What is an offer? 19

 2.1.2 Offers distinguished from an invitation to treat 21

 2.1.3 Contractual intention negated 27

 2.1.4 Ticket cases 28

3. AGREEMENT: ACCEPTANCE..... 29

3.1 GENERAL RULES FOR ACCEPTANCE..... 29

 3.1.1 Approaches 29

 3.1.2 Acceptance must be in response (reliance) to the offer 30

 3.1.3 Acceptance must be absolute, unqualified, and unconditional 31

 3.1.4 A meeting of the minds 33

3.2 COMMUNICATION OF ACCEPTANCE..... 33

 3.2.1 General rule 33

 3.2.2 Postal acceptance rule 34

 3.2.3 Silence and Conduct as Acceptance 37

 3.2.4 Faxes 39

 3.2.5 Electronic Communication 39

3.3 TERMINATION OF OFFER 40

 3.3.1 Withdrawal 40

 3.3.2 Communication of Revocation 41

 3.3.3 Revocation and Unilateral Contracts 43

 3.3.4 Options Contracts 43

 3.3.5 Lapse 43

 3.3.6 Failure of condition and changed circumstances 44

 3.3.7 Rejection and counter offer 45

 3.3.8 Death 45

3.4 ILLUSORY PROMISES, INCOMPLETENESS AND UNCERTAIN CONTRACTS 45

 3.4.1 Illusory Promises: 46

 3.4.2 Incompleteness 46

3.4.3 The Machinery Clause:	47
3.3.4 Uncertainty	48
3.3.4 Severance of Inessential Terms	50
4. AGREEMENT: CONSIDERATION.....	51
4.1 INTRODUCTION	51
4.2 RULES OF CONSIDERATION.....	53
4.2.1 Consideration must be referable to the promise	53
4.2.2 Consideration must move from the promisee but not necessarily to the promisor	55
4.2.3 Consideration must be sufficient, but need not be adequate	56
4.2.4 Past consideration is not good consideration	58
4.2.5 Exception to the general rule of past consideration	59
4.2.6 Part payment of a debt is not good consideration.....	60
4.2.7 Existing legal duty as consideration	62
4.3 EXCEPTIONS TO THE EXISTING LEGAL DUTY RULE.....	63
4.3.1 Beneficiary supplies fresh consideration.....	63
4.3.2 Beneficiary's promise to perform includes a practical benefit of the modifying party...65	65
4.3.3 Payment or promise of payment of a lesser sum than owing	67
4.3.4 Where promise to perform existing legal duty is made to a third party	67
4.3.5 Forbearance and Compromise	68
4.3.6 Termination and replacement of original contract.....	69
4.4 CONSIDERATION CANNOT BE ILLUSORY	69
4.5 PROMISES UNDER SEAL	70
5. PROMISES BINDING IN THE ABSENCE OF CONSIDERATION – PROMISSORY ESTOPPEL.....	71
5.1 ESTOPPEL IN THE CONTEXT OF PRE-EXISTING RELATIONSHIPS.....	71
5.2 THE AUSTRALIAN DEVELOPMENT OF ESTOPPEL.....	72
6. AGREEMENT: INTENTION TO CREATE LEGAL RELATIONS.....	77
PRESUMPTIONS	77
6.1 DOMESTIC ARRANGEMENTS	78
6.2 COMMERCIAL TRANSACTIONS.....	80
6.3 SUBJECT TO CONTRACTS	82
6.4 DEALINGS WITH THE GOVERNMENT	83
6.5 CONSTITUTIONS OF VOLUNTARY ASSOCIATIONS	85
7. CONTRACTS REQUIRING WRITTEN EVIDENCE	86
7.1 CONTRACTS REQUIRING WRITING	86
7.2 THE EFFECTS OF NON-COMPLIANCE.....	88
7.2.1 Common law – contract unenforceable but not void.....	88

7.2.2 Equitable intervention – the doctrine of part performance	88
8. IDENTIFICATION OF TERMS.....	91
8.1 EXPRESS TERMS.....	91
8.1.1 Pre contractual negotiations - Terms and mere representations	92
8.2 COLLATERAL CONTRACTS	96
8.2.1 Elements of a collateral contract.....	97
8.3 CONTRACTS IN WRITING – THE PAROL EVIDENCE RULE:	98
8.3.1 Exceptions to the Parole Evidence Rule:.....	101
8.3.2 Integration Clauses	101
8.4 CONSTRUCTION OF TERMS OF A CONTRACT AND THE USE OF EXTRINSIC MATERIAL.....	102
8.5 RECTIFICATION OF DOCUMENT BECAUSE OF MISTAKE	103
9. INCORPORATION OF TERMS – THE EFFECTS OF SIGNATURE	107
9.2 EXCEPTIONS TO THE GENERAL RULE THAT SIGNATURE IS BINDING.....	109
9.2.1 EXCEPTION 1 – Documental misrepresentation	109
9.2.2 EXCEPTION 2 – Manifest lack of contractual intent.....	110
9.2.3 EXCEPTION 3 – Non-Est Factum	111
9.3 INCORPORATION OF TERMS BY NOTICE.....	113
9.3.1 Incorporate of terms by notice – Timing.....	114
9.3.2 Incorporation of terms by notice → Knowledge.....	114
9.3.3 Incorporation of terms by notice – unusual terms	116
9.4 INCORPORATION BY COURSE OF DEALINGS	117
9.5 INCORPORATION BY REFERENCE.....	120
10. IMPLIED TERMS	121
10.1 TERMS IMPLIED IN FACT	121
10.2 TERMS IMPLIED IN LAW.....	124
10.3 TERMS IMPLIED BY CUSTOM OR TRADE USAGE.....	125
11. EXCLUSION CLAUSES	127
11.1 CONSTRUCTION OF TERMS OF THE CONTRACT	127
11.2 THE INTERPRETATION OF EXCLUSION CLAUSES	127
11.2.1 Types of exclusion clauses	127
11.2.2 Construction contra proferentum	128
11.3 STATUTORY CONTROL OF EXCLUSION CLAUSES	130
12. PRIVACY	131
12.1 THE GENERAL RULE.....	131
12.2 EXCEPTIONS TO THE RULE.....	131
12.2.1 Agency.....	132

12.2.2 Insurance contracts.....	132
12.3 CONTRACTS FOR THE BENEFIT OF A THIRD PARTY	133
13. CONTRACT VARIATION	134
13.1 CONTRACT VARIATION BY CONDUCT	134
14 PERFORMANCE	135
14.1. ORDER OF PERFORMANCE	135
14.2 SUBSTANTIAL PERFORMANCE	135
15. BREACH OF CONTRACT	136
15.1 INTRODUCTION	136
15.2 BREACH BY FAILURE TO PERFORM.....	136
15.3 TERMINATION FOR BREACH OF CONTRACT	136
15.3.1 Generally.....	136
15.3.2 Situations where contracts may be terminated	137
15.3.3 Breach of a condition (breach of an essential term)	137
15.3.4 Breach of a term 'going to the root of the contract'	139
15.3.5 Breach of Intermediate Term	140
15.4 TERMINATION FOR REPUDIATORY CONDUCT	143
15.4.1 Readiness and Willingness.....	144
15.5 TERMINATION FOR DELAY	146
15.5.1 Breach of time clauses.....	146
15.6 FRUSTRATION	148
15.6.1 Frustration – Destruction of subject matter	149
15.6.2 Frustration – Purpose of contract destroyed.....	149
15.6.3 Frustration – State of affairs.....	150
16. RESTRICTIONS ON THE RIGHT TO TERMINATE	151
16.1 ELECTION.....	151
16.2 WAIVER	152
16.3 ESTOPPEL	152
16.4 EFFECTS OF TERMINATION	153
17. DAMAGES AND EQUITABLE REMEDIES	154
17.1 DATE OF ASSESSING DAMAGES	155
17.2 IDENTIFYING THE LOSS	155
17.3 CAUSATION	156
17.4 REMOTENESS	157
17.5 MITIGATION OF LOSS.....	160
17.6 HEADS OF DAMAGE.....	160

17.6.1 Loss of profit (Expectation loss).....	160
17.6.2 Reliance loss.....	162
17.6.3 Loss of chance.....	163
17.6.4 Injured feelings.....	164
17.6.5 Contractual Damages – liquidated damages and penalties.....	165
18. MISREPRESENTATION	168
18.1 ESTABLISHING MISREPRESENTATION:	168
18.2 FACTUAL MISREPRESENTATION	168
18.3 ELEMENTS OF MISREPRESENTATION:	170
18.3.1 False statement must be of a material fact:.....	170
18.3.2 Statement must induce entry into the contract.....	171
18.3.3 Rescission:.....	171
19. MISLEADING AND DECEPTIVE CONDUCT UNDER THE AUSTRALIAN CONSUMER LAW S18	173
19.1 IN TRADE OR COMMERCE.....	173
19.2 MISLEADING OR DECEPTIVE CONDUCT	174
19.3 DETERMINING THE AUDIENCE	177
19.3.1 Conduct aimed at the public as a whole.....	177
19.3.2 Conduct aimed at identified individuals.....	177
19.4 REMEDIES FOR MISLEADING AND DECEPTIVE CONDUCT.....	178
19.4.1 Causation.....	178
19.4.2 Measure of damages	178
20. CONTRACTS VOIDABLE ON CERTAIN GROUNDS	180
20.1 GENERAL PRINCIPLES	180
20.2 DURESS.....	180
20.2.1 Physical Duress	181
20.2.2 Duress of Goods.....	182
20.2.3 Economic Duress.....	182
20.2.4 Remedies.....	184
20.3 UNDUE INFLUENCE	184
20.3.1 Presumed undue influence:.....	185
20.3.2 Situations of Dependence:.....	185
20.3.3 Rebutting the presumption.....	186
20.4 UNCONSCIONABLE BARGAINING	186
20.4.1 Rebutting the presumption.....	191
20.5 UNCONSCIONABILITY UNDER STATUTE	191

Cases

<i>A Roberts & Co v Leicestershire County Council</i> [1961] 2 All ER 545	105
<i>ACCC v Berbatis Holdings</i> (2003) 197 ALR 153	189, 193
<i>Accounting Systems 2000 (Developments) P/d v CCH Aus Ltd</i> (1993) 42 FCR 470.....	176
<i>Adams v Lindsell</i> (1818) EWHC KB J59	35
<i>Administration of Papua New Guinea v Leahy</i> [1960-61] 105 CLR 60.....	85
<i>AGC (Advances) Pty Ltd v McWhirter</i> (1977) 1 BLR 9454	24, 25, 139
<i>Air Great Lakes v K S Easter (Holdings)</i> (1985) 2 NSWLR 309	28, 83
<i>Alati v Kruger</i> (1955) 94 CLR 216	172
<i>Alexander v Cambridge Credit Corp Ltd</i> [1985] 2 NSWLR 685.....	158, 159
<i>Alfred McAlpine Construction Ltd v Panatown Ltd</i> [2001] 1 AC 518	156
<i>Associated Newspapers Ltd v Bancks</i> (1951) 83 CLR 322.....	139
<i>Attorney-General for England and Wales v R</i> [2002] 2 NSLR 91.....	52
<i>Australian Financial Services and Leasing Pty Ltd v Hills Industries Ltd</i>	192
<i>Australian Woollen Mills Pty Ltd v Cth</i> (1954) 92 CLR 424	21, 53, 55, 85
<i>B Seppelt & Sons Ltd v Commissioner for Main Roads</i> (1975) 1 BPR 9147	21
<i>Baker v Taylor</i> (1906) 6 SR (NSW) 500	45
<i>Balfour v Balfour</i> [1919] 2 KB 571	80
<i>Ballantyne v Raphael</i> (1889) 15 VLR 538	170
<i>Ballas V Theophilos (No 2)</i> (1957) 98 CLR 193	44
<i>Balmain New Ferry Co Ltd v Robertson</i> (1904) 4 CLR 379	120
<i>Baltic Shipping Co v Dillon (Mikhail Lermontov)</i> (1993) 176 CLR 344	117, 166
<i>Banco de Portugal v Waterlow and Sons Ltd</i> (1932) AC 452.....	161
<i>Banque Brussels Lambert SA v Australian National Industries Ltd</i> (1989) 21 NSWLR 502	82
<i>Barry v Davies</i> [2001] 1 All ER 955	25
<i>Barton v Armstrong</i> [1976] AC 104.....	182, 183, 184
<i>Baulkham Hills Private Hospital v G R Securities</i> (1986) 40 NSWLR 622	84
<i>Beaton v McDivitt</i> (1987) 13 NSWLR 162	53, 56
<i>Bellgrove v Eldridge</i> (1954) 90 CLR 613.....	162
<i>Beswick v Beswick</i> [1968] AC 58	134
<i>Bettini v Gye</i> (1876) 1 QBD 183	140, 148
<i>Bevanere Pty Ltd v Lubidineuse</i> (1985) 7 FCR 325	174
<i>Biotechnology Australia Pty Ltd V Pace</i> (1988) 15 NSWLR130	46
<i>Blomley v Ryan</i> (1956) 99 CLR 362	181, 188
<i>Bolton v Mahadeva</i> [1972] 1 WLR 1009.....	136
<i>Booker Industries Pty Ltd v Wilson Parking (Qld) Pty Ltd</i> (1982) 149 CLR 600.....	48, 49
<i>Boucaut Bay Co Ltd v Commonwealth</i> (1927) 40 CLR 98	167
<i>BP Refinery (Westernport) Pty Ltd v Hastings Shire Council</i> (1977) 180 CLR 266	122, 123, 125
<i>Brambles Holdings v Bathurst City Council</i> [2001] NSWCA 61.....	37, 39
<i>Bressan V Squires</i> [1974] 2 NSWLR 460	35, 36

<i>Bret v J S & Wife</i> (1600) Cro Eliz 756	71
<i>Bridgewater v Leahy</i> (1998) 158 ALR 66	188
<i>Bright v Sampson</i> (1985) 1 NSWLR 346	129, 131
<i>Brinkibon</i> [1983] 2 AC 34	35
<i>Brogden V Metropolitan Railway Company</i> (1877) 2 AC 666	37, 38
<i>Bunge Corporation New York v Tradax Export SA Panama</i> [1981] 1 WLR 711	148, 152
<i>Burger King Corporation v Hungry Jack's Pty Ltd</i> (2001) 69 NSWLR 558	122
<i>Burgess v Cox</i> (1950) 2 All ER 1212	88
<i>Butler Machine Tool Co Ltd V Ex-Cell-O Corporation (Eng) Ltd</i> [1979] 1 All ER 965 .31, 32, 40, 45	
<i>Byrne v Australian Airlines</i> (1995) 185 CLR 71	122, 124
<i>Byrne V van Tienhoven</i> [1880] 5 CPD 344	41, 42
<i>Cameron v Hogan</i> (1934) 51 CLR 358	86
<i>Campomar Sociedad Limitada v Nike International Limited</i> (2000) 202 CLR 45	178
<i>Car and Universal Finance Co Ltd v Caldwell</i> [1965] 1 QB 525	173
<i>Carlill V Carbolic Smoke Ball Company</i> [1893] 1 QB 256	20, 22, 53
<i>Carr v J A Berriman Pty Ltd</i> (1953) 89 CLR 327	142
<i>Carter v Hyde</i> (1923) 33 CLR 115	32
<i>Casey v Commissioner for Inland Revenue</i> [1959] NZLR 1052	61
<i>Causer v Browne</i> [1952] VLR 1	118
<i>Cavallari v Premier Refrigeration Company Co Ltd</i> (1952) 85 CLR 20	27
<i>Central London Property Trust v High Trees House Ltd</i> [1947] KB 130	72, 73
<i>Chaplin v Hicks</i> [1911] 2 KB 786	164, 165
<i>Chappell & Co Ltd v Nestle & Co Ltd</i> [1960] AC 87	59
<i>Civil Service Co-Operative Society of Victoria v Blyth</i> (1914) 17 CLR 601	170
<i>Coal Cliff Collieries Pty Ltd v Sijehama Pty Ltd</i> (1991) 24 NSWLR 1	47
<i>Coastal Estates v Melevande</i> [1965] VR 433	172
<i>Codelfa Constructions Pty Ltd v State Rail Authority of NSW</i> (1982) 149 CLR 337 ..100, 103, 123, 151	
<i>Cohen v Cohen</i> (1929) 42 CLR 91	80
<i>Collins v Godefroy</i> [1831] 1 B Ad 950	64, 65
<i>Commercial Bank of Australia Ltd v Amadio</i> (1983) 151 CLR 447	188, 189, 190
<i>Commonwealth of Australia v Crothall Hospital Services (Aust) Ltd</i> (1981) 36 ALR 567	135
<i>Commonwealth of Australia v Verwayen</i> (1990) 170 CLR 394	76
<i>Commonwealth v Amann Aviation Pty Ltd</i> (1991) 174 CLR 64	163, 164
<i>Concrete Constructions (NSW) v Nelson</i> (1990) 169 CLR 594	174
<i>Con-Stan Industries of Australia Pty Ltd v Norwich Winterthur (Australia) Ltd</i> (1986) 160 CLR 226	126
<i>Coogee Esplanade Surf Motel Pty Ltd v Commonwealth of Australia</i> (1983) 50 ALR 3	83, 84
<i>Couchman v Hill</i> [1947] KB 554	94, 100
<i>Couldery v Bartrum</i> (1880) 19 Ch. D 394	62

<i>Coulls v Bagot's Executor and Trustee Co Ltd</i> (1967) 119 CLR 420	57, 132
<i>Council of the City of Sydney v West</i> (1965) 114 CLR 481	129, 130
<i>Crescendo Management Pty Ltd v Westpac Banking Corp</i> (1988) 19 NSWLR 40	182, 185
<i>Curtis v Chemical Cleaning & Dyeing Co</i> [1951] 1 KB 805	110
<i>Cutter v Powell</i> (1795) 101 ER 573	136
<i>Darlington Futures Ltd v Delco Australia</i> (1986) 161 CLR 500	128, 129, 130
<i>David Securities Pty Ltd v Commonwealth Bank of Australia</i> (1992) 175 CLR 353	164
<i>Davis Contractors Ltd v Fareham UDC</i> [1956] 2 All ER 145	150
<i>Davis v London & Provincial Marine Insurance Co</i> (1878) 8 Ch D 469	171
<i>Demagogue Pty Ltd v Ramensky</i> [1993] ATPR 41.203	176, 177
<i>Dick Bentley Productions Ltd v Harold Smith Ltd</i> [1965] 1 WLR 623	94, 95
<i>Dickinson V Dodds</i> [1876] 2 Ch D 463	41, 42, 46
<i>Director of Public Prosecutions for Victoria v Le</i> (2007) 232 CLR 562	58
<i>DTR Nominees Ltd v Mona Homes Pty Ltd</i> (1978) 138 CLR 423	147
<i>Dunlop Pneumatic Tyre Co Ltd v New Garage and Motor Co Ltd</i> (1915) AC 79	167
<i>Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd</i> [1915] AC 847	132
<i>Dunton V Dunton</i> (1892) 18 VLR 114	70
<i>Eddington v Fitzmaurice</i> (1885) 29 Ch.D 459	172
<i>Edwards v Skyways Ltd</i> [1964] 1 WLR 349	81, 82
<i>Eggleston v Marley Engineering Pty Ltd</i> (1979) 21 SASR 51	119
<i>Ellul & Ellul v Oakes</i> (1972) 3 SASR 377	93, 94, 96, 97
<i>Empirnall Holdings Pty Ltd V Machon Paul Partners Pty Ltd</i> (1988) 14 NSWLR 523	37, 38
<i>Entores Ltd V Miles Far East Corp</i> [1955] 2 QB 327	39
<i>Equuscorp Pty Ltd v Glengallan Investments Pty Ltd</i> (2004) 218 CLR 471	100
<i>Ermogenous v Greek Orthodox Community of South Australia Inc</i> [2002] HCA 8	78, 81
<i>Esanda Finance Corp v Tong & Ors</i> (1997) 41 NSWLR 482	167, 192
<i>Esso Petroleum Ltd v Commissioners of Customs & Excise</i> [1976] 1 All ER 117	82
<i>Falco v James McEwan & Co Pty Ltd</i> [1977] VR 447	165
<i>Farmers Mercantile & Chaff Mills Ltd v Caade</i> (1921) 30 CLR 113	34
<i>Federal Commerce and Navigation Co Ltd v Molena Alpha Inc and Ors</i> [1979] 1 All ER 307 ...	142, 147
<i>Felthouse V Bindley</i> (1862) 142 ER 1037	37
<i>Financings Ltd V Stimson</i> [1962] 3 All ER 386	41, 43, 45
<i>Foakes v Beer</i> (1884) 9 App Cas 605	62, 68
<i>Foran v Wight</i> (1989) 168 CLR 385	145, 146
<i>Futuretronics International Pty Ltd v Gadzhis</i> [1992] 2 VR 2174	175, 177
<i>G Scammell & Nephew Ltd v HC & JG Ouston</i> [1941] AC 251	50
<i>Garcia v National Australia Bank</i> (1998) 194 CLR 395	189
<i>Gates v City Mutual Life Assurance Society Ltd</i> (1986) 160 CLR 1	179
<i>GEC Marconi Systems Pty Ltd v BHP Information Technology Pty Ltd</i> [2003] FCA 50	144

<i>George Hudson Holdings Limited V Rudder</i> (1973) 128 CLR 387	36
<i>Gibson v Manchester City Council</i> [1979] 1 All ER 972	19, 20, 21
<i>Giumelli v Giumelli</i> (1999) 73 ALJR 547	76
<i>Glasbrook Bros Ltd v Glamorgan County Council</i> [1925] AC 270	64
<i>Goldsborough Mort & Co Ltd v Quinn</i> (1910) 10 CLR 674	40, 41, 42, 43
<i>Google Inc v Australian Competition and Consumer Commission</i> [2013] HCA 1	177
<i>Great Northern Railway Company v Witham</i> (1873) LR 9 CP 16.....	26
<i>Hadley v Baxendale</i> (1854) 9 Ex 341	159, 160, 161, 162
<i>Harding v Eddy</i> [1951] KB	94
<i>Hardwick Game Farm v Suffolk Agricultural & Poultry Producers Association</i> [1969] 2 AC 31 ..	120
<i>Harrison v National Bank of Australia Ltd</i> [1982] Tas LR	181
<i>Hart v McDonald</i> (1910) 10 CLR 417	102
<i>Hartley v Ponsoby</i> (1857) 119 ER 1471	65
<i>Harvela Investments Ltd v Royal Trust of Canada (CI) Ltd</i> [1986] AC 207	24, 25, 27
<i>Harvey v Edwards Dunlop & Co Ltd</i> (1927) 39 CLR 306	88
<i>Hawker Pacific Pty Ltd v Helicopter Charter Pty Ltd</i> (1991) 22 NSWLR 298	183
<i>Heilbut, Symons v Buckleton</i> [1913] AC 30	97
<i>Helmos Enterprises Pty Ltd v Jaylor Pty Ltd</i> [2005] NSWCA 235	84
<i>Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd</i> (1988) 79 ALR 83	176
<i>Henthorn v Fraser</i> [1892] 2 Ch 27	20, 35
<i>Hercules Motors Pty Ltd v Schubert</i> (1953) 53 SR (NSW) 301	97
<i>Heywood v Wellers</i> (1976) QB 446	165
<i>Hobbs v London and South Western Railway Company</i> (1875) LR 10 QB 111	165
<i>Hoening v Isaacs</i> [1952] 2 All ER 176	136
<i>Holmes v Jones</i> (1907) 4 CLR 1692	172
<i>Holwell Securities Ltd v Hughes</i> [1974] 1 WLR 155	36
<i>Hong Kong Fir Shipping Co v Kawasaki Kisen Kaisha Ltd</i> [1962] 2 QB 26	140, 141
<i>Hope v RCA Photophone of Australia Pty Ltd</i> (1937) 59 CLR 348	102
<i>Howe v Teefy</i> (1927) 27 SR (NSW) 301	162
<i>Hoyt's Pty Ltd v Spencer</i> (1919) 27 CLR 133.....	98, 99
<i>Hughes Aircraft Systems v Airservices Australia</i> (1997) 146 ALR 1	26
<i>Hughes v Metropolitan Railway Co</i> (1877) 2 AC 439	72
<i>Hyde v Wrench</i> (1840) 49 ER 132.....	45
<i>Immer (No 45) Pty Ltd v Uniting Church in Australia Property Trust (NSW)</i> (1993) 182 CLR 26	152
<i>Interphoto Picture Library Ltd v Stilleto Visual Programmes Ltd</i> [1989] QB 433	118
<i>JJ Savage & Sons Pty Ltd v Blakney</i> (1970) 119 CLR 435.....	98
<i>Johnson Matthey Ltd v AC Rochester Overseas Corporation</i> (1990) 23 NSWLR 190	103
<i>Johnson v Buttress</i> (1936) 56 CLR 113	186
<i>Jones v Padavatton</i> [1969] 2 All ER 616	80
<i>Kakavas v Crown Melbourne Ltd</i> [2013] HCA 25	181

<i>Kaufman v Gerson</i> [1904] 1 KB 501	184
<i>Koompahtoo Local Aboriginal Land Council v Sanpine Pty Limited</i> (2007) CLR 1125	141, 142
<i>Krell v Henry</i> [1903] 2 KB 740	150
<i>L'Estrange v Graucob</i> [1934] 2 KB 394	108
<i>Lampleigh v Brathwait</i> (1916) Hob 105	60
<i>Latec Finance Ltd v Knight</i> (1969) 2 NSW79.....	33
<i>Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd</i> (1989) 85 ALR 183	148
<i>Law of Property Act 1936</i> (SA)	90
<i>Le Mans Grand Prix Circuits Pty Ltd v Iliadis</i> [1998] 4 VR 661	110
<i>Leaf v International Galleries</i> [1950] 2 KB 86	172
<i>Lee v Ah Gee</i> (1920) VLR 278 D.....	111
<i>Legione v Hateley</i> (1983) 152 CLR 406	72, 73
<i>Lexmead (Basingstoke) Ltd v Lewis</i> [1982] AC 225.....	157
<i>LG Thorne & Co P/L v Thomas Borthwick & Sons (A'Asia) Ltd</i> (1956) 56 SR (NSW) 81	101
<i>Life Insurance Co. Of Australia Ltd v Phillips</i> (1925) 36 CLR 60	50
<i>Liverpool City Council v Irwin</i> [1977] AC 239	125
<i>Louth v Diprose</i> (1992) 175 CLR 621	188, 191
<i>Lucy v The Commonwealth</i> (1923) 33 CLR 229	161
<i>Luna Park (NSW) Ltd v Tramways Advertising Pty Ltd</i> (1938) 61 CLR 286	138, 139, 144, 146, 155, 156
<i>MacRobertson Miller Airline Services v Commissioner of State Taxation (WA)</i> (1975) 133 CLR 125	28
<i>Maggbury Pty Ltd v Hafele Australia Pty Ltd</i> (2001) 210 CLR 181	104
<i>Maple Flock Co v Universal Furniture Products (Wembley)</i> [1934] 1 KB 148	146
<i>Maralinga Pty Ltd v Major Enterprises Pty Ltd</i> (1973) 128 CLR 336.....	105
<i>March v E and MH Stramare</i> (1991) 171 CLR 506	157
<i>Marks v GIO Australia Holdings Ltd</i> [1998] 196 CLR 494	179
<i>Masters v Cameron</i> (1954) 91 CLR 353.....	20, 27, 84
<i>Masterton Homes v Palm Assets</i> [2009] NSWCA 234	101
<i>McBride v Sandland</i> (1918) 25 CLR 69.....	90
<i>McDonald v Dennys Lascelles Ltd</i> (1933) 48 CLR 457	152, 154
<i>McRae v Commonwealth Disposals Commission</i> (1950) 84 CLR 377	163
<i>Meehan v Jones</i> (1982) 149 CLR 571.....	49, 71
<i>Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd</i> (1998) 153 ALR 198	43
<i>Musumeci v Winadell Pty Ltd</i> (1994) 34 NSWLR723	62, 67
<i>North Ocean Shipping Co Ltd v Hyundai Construction Co Ltd</i> [1979] 1 QB 705.....	184
<i>O'Brien v Smolonogov</i> (1983) 53 ALR 107	175
<i>Oceanic Sun Line Special Shipping Company v Fay</i> (1988) 165 CLR 197.....	115
<i>Ogilvie v Ryan</i> [1976] 2 NSWLR 502	39, 90
<i>Olley v Marlborough Court Hotel</i> [1949] 1 KB 532	115

<i>Oscar Chess v Williams</i> [1957] 1 WLR 370.....	93, 95
<i>Pacific Carriers Ltd v BNP Paribas</i> (2004) 218 CLR 451	113
<i>Paciocco and Another v Australia and New Zealand Banking Group Ltd (ACN 005 357 522)</i> ...	160
<i>Pao On v Lau Yiu Long</i> [1980] AC 614	69, 182
<i>Parker v South Eastern Railway Co.</i> (1877) 2 CPD 416	114, 116
<i>Pavey & Matthews Pty Ltd v Paul</i> (1987) 162 CLR 221	89, 136
<i>Payne v Cave</i> (1789) 100 ER 502.....	41
<i>Peek v Gurney</i> (1873) All ER 116	172
<i>Petelin v Cullen</i> (1975) 132 CLR 355.....	113
<i>Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd [1953]</i> 1 QB 401	23
<i>Photo Production Ltd v Securicor Transport Ltd</i> [1980] AC 827.....	155
<i>Pinnel's case</i> (1602) 5 Co. Rep. 117a.....	62, 68
<i>Pirie v Saunders</i> (1961) 104 CLR 149.....	88
<i>Placer Development Ltd v Commonwealth</i> (1969) 121 CLR 353.....	71
<i>Popiw v Popiw</i> [1959] VR 197	66, 89
<i>Port Jackson Stevedoring v Salmond & Spraggon (Aust) (The 'New York Star')</i> (1978) 139 CLR 231	133
<i>Precision Pools Pty Ltd v Cmr of Taxation</i> (1992) 37 FCR 554	31
<i>Prenn v Simmonds</i> [1971] 1 WLR 1381	101
<i>Public Trustee v Taylor</i> [1978] VR 289.....	171
<i>Pukallus v Cameron</i> (1982) 43 ALR 243.....	106
<i>Pym v Campbell</i> (1856) 119 ER 903.....	102, 103
<i>R v Clarke</i> (1927) 40 CLR 227	30
<i>Re Casey's Patents</i> [1892] 1 Ch 104	61
<i>Re London and Northern Bank; ex parte Jones</i> [1900] 1 Ch 220.....	35
<i>Re Selectmove Ltd</i> [1995] 2 All ER 531 (CA).....	63
<i>Redgrave v Hurd</i> (1881) 20 Ch. D 1.....	172, 176
<i>Redwood Pty Ltd v Mongoose Pty Ltd</i> [2005] NSWCA 32	32
<i>Reg Glass Pty Ltd v Rivers Locking Systems Pty Ltd</i> (1968) 120 CLR 516.....	157
<i>Regent v Millet</i> (1976) 133 CLR 679	91
<i>Rehins Pty Ltd v Debin Nominees Pty Ltd (No 2)</i> [2011] WASC 168.....	45
<i>Reynolds v Atherton</i> (1922) 66 Sol Jo 404.....	46
<i>Ridgeway v Wharton</i> (1857) 10 Eng. Rep. 1287	47
<i>Roscola v Thomas</i> (1842) 3 QB 234	60
<i>Rose and Frank Co v JR Crompton & Bros Ltd</i> [1923] 2 KB 261	81
<i>Royal Botanic Gardens and Domain Trust v South Sydney Council</i> (2002) 186 ALR 289	122
<i>Sagacious Procurement Pty Ltd (Subject to a Deed of Co Arrangement) v Symbion</i>	103
<i>Sargent v ASL Development Ltd</i> (1974) 131 CLR 634.....	152
<i>Saunders (Executrix of Estate of Rose Maud Gallie) v Anglia Building Society</i> (1971) UKHL 5.112	
<i>Saxon v Saxon</i> (1976) 24 RFL 47	183

<i>Seivewright v Brennan</i> [2005] NSWSC 216	24
<i>Shadwell v Shadwell</i> (1860) 142 ER 62	69
<i>Shepperd v Ryde Corporation</i> (1952) 85 CLR 1	98
<i>Shevill v Builders Licensing Board</i> (1982) 149 CLR 620	162
<i>Shuey v United States</i> , 92 U.S. 73 (1875).....	41
<i>Sindel v Georgiou</i> (1984) 154 CLR 661	32
<i>Smith v Hughes</i> (1871) LR 6 QB 597	30, 106
<i>Smith v Land & House Property Corporation</i> (1884) 28 Ch D 7	170, 171
<i>Smith v William Charlick Ltd</i> (1924) 34 CLR 38	184
<i>Spencer v Harding</i> (1870) LR 5 CP 561	26
<i>State Rail Authority (NSW) v Heath Outdoor Pty Ltd</i> (1986) 7 NSWLR 170	100, 102
<i>Steadman v Steadman</i> [1976] AC 536	90, 91
<i>Stilk v Myrick</i> (1809) 2 Camp 317	63, 65
<i>Stuart v Condor Commercial Insulation</i> [2006] NSWCA 334	160
<i>Sudbrook Trading Estates v Eggleton</i> [1983] 1 AC 444	49
<i>Sunbird Plaza Pty Ltd v Maloney</i> (1988) 166 CLR 245	143
<i>T A Sundell & Sons Pty Ltd v Emm Yannoulatos (Overseas) Pty Ltd</i> [1956] 56 SR (NSW) 523 64	
<i>Tabcorp Holdings v Bowen Investments</i> (2009) 236 CLR 272.....	162
<i>Taylor v Caldwell</i> [1863] EWHC QB J1	150
<i>The Solholt</i> [1983] 1 Lloyd's Rep 605.....	161
<i>Thomas National Transport (Melb) v May & Baker (Aus)</i> (1966) 115 CLR 353	129
<i>Thomas v Thomas</i> (1842) 2 QB 851	52, 59
<i>Thomson v McInnes</i> (1911) 12 CLR 562.....	88
<i>Thomson v Palmer</i> (1933) 49 CLR 507.....	72
<i>Thorby v Goldberg</i> (1964) 112 CLR 597	46
<i>Thornton v Shoe Lane Parking Ltd</i> [1971] 2 QB 163.....	20, 116
<i>Timbercorp Finance Pty Ltd (In Liq) v Collins</i>	77
<i>Todd v Nichol</i> [1957] SASR 72.....	79
<i>Toll (FGCT) Pty Ltd V Alphapharm Pty Ltd</i> (2004) 219 CLR 165.....	18, 30, 103, 108, 109
<i>Trident General Insurance v McNiece Bros</i> (1988) 165 CLR 107	57, 132, 133
<i>Tropical Traders Ltd v Goonan</i> (1964) 111 CLR 41	152
<i>Ulbrick v Laidlaw</i> [1924] VR 247.....	24, 25
<i>Unison Finance Group Pty Ltd v Electric Life Pty Limited</i>	104
<i>United Scientific Holdings Ltd v Burnley Borough Council</i> [1978] AC 904	148
<i>Universal Cargo Carriers Corp v Citati</i> [1957] 2 QB 401	143, 147
<i>Universe Tankships of Monrovia v International Transport Workers Federation</i> [1983] 1 AC 366	
.....	184
<i>University of WA v Gray</i> [2009] FCAFC 116	125
<i>Update Constructions v Rozelle Child Care Centre</i> (1990) 20 NSWLR 251	135

<i>Upper Hunter County District Council v Australian Chilling and Freezing Do.</i> (1968) 18 CLR 429	48, 50, 104
<i>Vadasz v Pioneer Concrete</i> (1995) 130 ALR 570	173
<i>Veivers v Cordingly</i> [1989] 2 Qd R 278	43
<i>Victoria Laundry (Windsor) Ltd v Newman Industries Ltd</i> [1949] 2 KB 528	159
<i>Vision Eye Institute Ltd v Kitchen (No 2)</i>	156
<i>Wallis v Pratt</i> [1911] AC 394	138
<i>Waltons Stores (Interstate) Ltd v Maher</i> (1988) 164 CLR 387	72, 74, 153
<i>Ward v Byham</i> [1956] 2 All ER 318	65
<i>West v AGC (Advances)</i> (1986) 5 NSWLR 610	189
<i>Western Export Services v Jiren International</i> [2011] HCA 45	101
<i>Westmelton (Vic) v Archer and Schulman</i> [1982] VR 305	187
<i>Whitlock v Brew</i> (1968) 118 CLR 445	47
<i>Whittet v State Bank</i> (1991) 24 NSWLR 146	102
<i>Wigan v Edwards</i> (1973) 1 ALR 497	63, 70
<i>Williams v Roffey Bros & Nicholls (Contractors) Ltd</i> [1991] 1 QB 1	63, 67
<i>Woolworths Ltd v Kelly</i> (1991) 22 NSWLR 189	58

Sample

Statutes

<i>Builders and Licensing Act 1971 (NSW)</i>	89
<i>Civil Law (Property) Act 2006 (ACT)</i>	88, 90
<i>Competition and Consumer Act 2010 (Cth)</i>	131, 174
<i>Contacts Review Act 1980 (NSW)</i>	194
<i>Conveyancing Act 1919 (NSW)</i>	88, 90
<i>Conveyancing and Law of Property Act 1884 (Tas)</i>	90
<i>Conveyancing and Law of Property Act 1884 (Vic)</i>	88
<i>Corporations Act 2001 (Cth)</i>	86
<i>Electronic Transactions Act 2000 (Vic)</i>	40
<i>Fair Trading Act 1999 (Vic)</i>	150
<i>Family Law Act 1975 (Cth)</i>	79
<i>Frustrated Contracts Act 1978 (NSW)</i>	150
<i>Frustrated Contracts Act 1988 (SA)</i>	150
<i>Goods Act 1958 (Vic)</i>	24, 125
<i>Industrial Relations Act 1996 (NSW)</i>	194
<i>Instruments Act 1958 (Vic)</i>	87, 88
<i>Insurance Contracts Act 1984 (Cth)</i>	134
<i>Law of Property Act 1936 (Tas)</i>	88
<i>Law of Property Act 2000 (NT)</i>	87, 88, 90, 134
<i>Limitation Act 1969 (NSW)</i>	155
<i>Limitation Act 1974 (Tas)</i>	155
<i>Limitation Act 1981 (NT)</i>	155
<i>Limitation Act 1985 (ACT)</i>	155
<i>Limitation Act 2005 (WA)</i>	155
<i>Limitations of Action Act 1936 (SA)</i>	155
<i>Limitations of Actions Act 1958 (Vic)</i>	155
<i>Limitations of Actions Act 1974 (Qld)</i>	155
<i>Mercantile Law Act 1935 (Tas)</i>	87
<i>Property Law Act 1958 (Vic)</i>	90
<i>Property Law Act 1958 (WA)</i>	88
<i>Property Law Act 1969 (WA)</i>	90, 134
<i>Property Law Act 1974 (Qld)</i>	87, 90, 134
<i>Property Law Act 1974 (SA)</i>	88
<i>Sale of Goods Act 1895 (SA)</i>	24, 125
<i>Sale of Goods Act 1895 (WA)</i>	24, 87, 125
<i>Sale of Goods Act 1896 (Qld)</i>	24, 125
<i>Sale of Goods Act 1896 (Tas)</i>	24, 87, 125
<i>Sale of Goods Act 1923 (NSW)</i>	125
<i>Sale of Goods Act 1954 (ACT)</i>	24, 125

<i>Sales of Goods Act 1972 (NT)</i>	125
<i>Trade Practices Act 1974 (Cth)</i>	174

Sample

1. INTRODUCTION

1.1 Definition of a contract

- 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

◆◆◆◆

**To order the complete version of the Lawskool Contract Law
Summary please visit www.lawskool.com.au**

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