

Legal Aspects of Business

The law is:

- a body of rules made by Parliament (state & federal)
- often broadly stated with detail provided by government subordinate legislation (regulation)
- interpreted by the courts, with these decisions influencing later court decisions (common law precedent)

Australian Federalism:

- Constitution indicates areas of State & Federal legal responsibility
- Federal - national
- State - state-based
- Council of Australian Govts (COAG) - federal / state forum

Legal precedent may flow from
other legal jurisdictions with
similar legal institutions

ie; Westminster Parliamentary
democracy

Courts & the legal system

- Criminal law - state prosecution
- Civil law - adjudication on remedy between to parties (sue)
- Federal law - Federal court, Full Federal Court, High Court
- State/Territory law - Magistrate's, District, Supreme Courts

Contract -

A legally binding agreement between 2 parties with consideration (money) given in exchange for a promise to carry out a specified activity.

Contract Law:

- Presumed to be legally binding unless otherwise agreed
- Binding (if enforced) regardless of all terms being fully understood
- Assumed valid if signed
- May be written or verbal

Contract Law (cont.):

- Consideration must be proven
- Identification of performance risk factors - activity, time, cost
- Non-performance - 'frustrated' contract
- Rare for breached contract to be honoured & fulfilled - legal redress (damages)

Product Liability Law:

Established in contract, tort of negligence & specific laws (Trade Practices Act, Consumer Protection Acts)

Liability under Contract:

- Established contract's existence
- Contract terms voided by defect
- Plaintiff needs to establish importance of quality - 'merchantable quality', 'workmanlike manner'

Liability via Negligence

- Implies duty of care of manufacturer or supplier
- ‘Reasonably foresee’ situations so as to prevent injury
- Defendant must be proven careless, not just to have caused harm
- Negligence may be overridden by contract clause or specific laws (eg. Personal Responsibility Amendments)

Consumer Protection Legislation:

- Wide definition of ‘consumer’ - personal, domestic, household, commercial vehicle, usually <\$ 40 k
- Manufacturer’s liability for defects - merchantable quality - unless defects occur after manufacture
- Prescribed standards - laws on quality & supply of dangerous or perishable goods

Professional Liability:

- Contract & tort law applicable
- Accuracy of advice - ‘misleading a reasonable class of people’, however inadvertant
- Minimise risk - careful advice and wording
- Potential for ‘proportional liability’

Regulation of Production Process

- Factories Act - complex, uneven
- Occupational Health & Safety Act - Duty of care on employers & individuals - emphasis on consultation
- Environment Protection - policy and process for regulating pollution

Taxation Law:

- Companies - Profits, losses, investment, inventory
- Individual - employers, employees
- Direct - PAYG
- Indirect - GST

Company Law:

- Legal incorporation - processes, requirements
- Director's responsibilities
- Reporting - ASIC, ATO