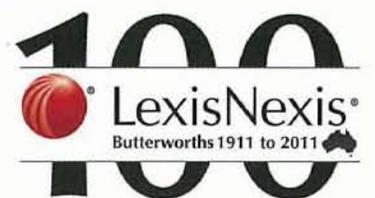




**Understanding
Business Law**
FIFTH EDITION

Brendan Pentony
Stephen Graw
Jann Lennard
David Parker



Index

References are to paragraphs

Advertising

- bait advertising 10.7
- common law, at 10.2
- comparative 10.2
- consumer protection 10.1–10.2
- invitation to treat 10.1, 10.2
- puff 10.2, 10.6
- statement 10.2
 - of fact 10.2
 - fraudulent misrepresentation 10.2
 - innocent misrepresentation 10.2
 - representation 10.2

Agency

- agents *see* Agents
- arrangements, categories 14.22
- cheques *see* Cheques
- insurance 21.35
- legislation 14.5, 14.11, 14.22, 14.24, 14.29
- presumption of 14.14, 14.15
- principal
 - duties 14.17
 - rights 14.17
- principal and agent relationship 14.1
 - agreement 14.11, 14.12
 - cohabitation 14.14
 - conflicts of interest 14.4
 - creation by agreement 14.11
 - emergence of 14.10–14.16
 - estoppel 14.16
 - fiduciary dimension 14.3–14.9
 - nature of 14.2–14.9
 - necessity 14.15
 - payments from another party 14.5
 - presumption of 14.14, 14.15
 - ratification of agent's conduct 14.13

relationships

- auctioneers 14.28
- companies 14.25
- examples 14.23–14.30
- insurance intermediaries 14.27
- partnerships 14.24
- real estate agents 14.29
- stockbrokers 14.30
- tax agents 14.26
- termination of 14.31–14.33
- sale of goods *see* Sale of goods
- termination of relationship 14.31–14.33
 - means of 14.32–14.33
 - revocation of authority 14.32
- third party relations 14.18–14.21

Agents

- accountability 14.9
- company 17.39
- conduct, ratification of 14.13
- del credere agents 14.22
- due care, skill and diligence 14.8
- duties to principal 14.3–14.9, 14.17
- employees as agents 14.22
- failure to pay money over 14.21
- general agents 14.22
- implied authority 14.12
- implied rights 14.17
- indemnity 14.7
- independent contractors 14.22
- instructions from principal 14.7
- insurance *see* Insurance
- lien 14.17
- mercantile agents 14.22
- misrepresentation 14.20
- obligations of 14.4–14.9

Agents — cont'd

- as personal representative 14.6
- remuneration 14.7
- rights 14.17
- role 14.1
- secret commissions 14.5, 14.33
- signatures by 25.7
- special agents 14.22
- trustees 14.22
- universal agents 14.22

Agreements

- arbitration *see* Arbitration
- contracts *see* Contracts

Alternative dispute resolution

- arbitration *see* Arbitration
- commercial transactions 3.7, 3.8
- compromise 3.6
- conciliation *see* Conciliation
- expert opinion 3.21
- financial industry scheme 3.24–3.27
 - Financial Ombudsman Service 3.24–3.27
- independent experts 3.21
- industry-based schemes 3.6, 3.23, 3.24
- inferior tribunals 3.6
- mediation *see* Mediation
- negotiation 3.6, 3.18

Anti-competitive conduct *see* Restrictive trade practices

Appeals

- courts 1.11, 2.1, 2.2, 2.9
 - constitution of 2.11
 - powers 2.2
- grounds for 2.11
- leave to appeal 2.11, 2.12
- to Privy Council 1.16

Arbitration

- agreement 3.15
- alternative dispute resolution 3.6
- alternatives 3.13
- arbitrators 3.11
- awards 3.15
 - binding awards 3.15
 - enforcement of 3.15
 - final awards 3.15
- compulsory 3.22
- court-annexed 3.22
- imposed settlements 3.15
- international 3.17
- legislation 3.10

- litigation and 3.14
- procedure 3.12
- voluntary 3.9

Associations

- definition 15.60
- enterprise 15.60, 15.62
 - annual general meetings 15.62
- incorporated 15.60, 15.62
 - constitutions 15.62
 - deregistration 15.62
 - distribution of profits 15.62
 - limited liability 15.62
 - minimum membership 15.62
 - record keeping 15.62
 - registration of 15.62
 - regulation of 15.62
 - rules 15.62
 - separate legal entity 15.62
- unincorporated 15.60, 15.61

Auctions

- auctioneers 8.96
 - agency relationship 14.2
- bids 8.93, 8.96
 - acceptance of 8.96
- contract 8.93
- offers 4.20
- online 4.20
- reserve price 8.94
 - notification of 8.95, 8.96
- sales 8.93
- without reserve 8.96, 8.97

Australian Securities and Investments Commission (ASIC)

- establishment 17.6
- role 17.6

Bailees

- classes of 20.21
- common carriers 20.21, 20.22
- common innkeepers 20.21, 20.23
- duties 20.5–20.10
 - due care 20.6
 - general 20.5
 - retain possession of goods 20.7–20.8
 - return of goods 20.10
 - unauthorised use of goods 20.9
- lawful possession of goods 20.12
- liability 20.8, 20.21
- lien 20.17

rights 20.16–20.17

role 20.2

sub-bailees 20.8

Bailment

bailed goods containing other goods 20.3

contractual 20.4

breach of contract 20.10, 20.18–20.19

exclusion clauses 20.15

definition 20.1

exemption clauses 20.15

gratuitous 20.4

non-contractual 20.4

breach of contract 20.18

possession and control of goods, passing
of 20.2–20.3

special bailments 20.21–20.23

sub-bailments 20.8

termination 20.20

agreement 20.20

destruction of subject matter 20.20

natural expiry 20.20

unilateral act 20.20

wrongful acts 20.20

types 20.4

Bailors

duties 20.11–20.14

dangerous goods notice 20.13

non-interference with lawful possession
of goods 20.12

quality and fitness of goods 20.14

liability 20.8

Bankruptcy

act of bankruptcy 23.51

agency relationships 14.33

annulment 23.57

capacity to contract 4.73

companies 23.62

company 17.121, 23.42

contributions 23.56

creditor's petition 23.48

debt agreement 23.58

debtor's petition 23.46

discharge from 23.57

effect of 23.47

individual 23.43

personal insolvency agreement 23.59–23.60

preferential treatment of creditors 23.49

proceedings 23.43–23.44

provable debts 23.50

sequestration order 23.53

consequences of 23.54

trustee in bankruptcy 23.55

void transfers 23.61

Bills of exchange

acceptors 24.17, 24.20

cheque distinguished from 24.20

commercial fundraising 24.20

definition 24.17

drawees 24.17

drawers 24.17

order bills 24.17

payees 24.17

regulation of 24.16

security over assets 23.10

term bills 24.18, 24.19

trading transactions 24.20

Breach of contract

actual 7.33

affirmation of contract 7.37

anticipatory 7.33, 7.34, 7.43

consequences of 7.35

determination of 4.55, 7.36

classification of terms 7.36

discharge for 4.4, 7.33–7.38

procuring 22.96–22.100

elements of 22.97

remedies *see* Remedies

remedies *see* Remedies

sale of goods, remedies *see* Remedies

sale of goods, for 8.27, 8.29, 8.40

remedies *see* Remedies

Business ethics

corporate social responsibility 13.17–13.19

case study 13.19

UN Global Compact 13.18

ethics, definition 13.1

meaning of 13.2–13.3

sources 13.4–13.16

case study 13.8–13.12

corporate governance 13.13

internal governance 13.14–13.16

legislative 13.5, 13.6

unconscionable conduct 13.6–13.7

Business form

association *see* Associations

choice of 15.1, 15.2

considerations 15.1, 15.2

company *see* Companies

Business form — *cont'd*

- joint venture *see* Joint ventures
- partnership *see* Partnerships
- sole trader *see* Sole traders
- syndicates *see* Syndicates
- trading trust *see* Trading trusts

Caveat emptor 4.8**Charges**

- effect of 17.70
- fixed 17.73
- floating 17.72
- notice of 17.70
- priority of 17.74
- property on 17.70
- registration of 17.71
- security over assets 23.10

Cheques

- advantages of 25.1
- agency cheques 25.71–25.74
 - definition 25.71
 - treatment of 25.73–25.74
- bank cheques 25.69–25.70
 - dishonoured 25.70
- bearer cheques 25.13, 25.16
 - conversion 25.16
 - definition 25.16
 - negotiability 25.20
 - payable to bearer 25.13, 25.16
- bills of exchange distinguished 24.20
- consideration for 25.30
- creation of 25.5
- crossed cheques 25.21
 - account payee only 25.24
 - authority for 25.25
 - effect of 25.22
 - not negotiable 24.20, 25.21, 25.23
 - requirements 25.21
- definition 25.2
- dishonoured 25.42
 - assignment of customer's balance 25.59
 - bank cheques 25.70
 - bankruptcy or winding up 25.58
 - countermand of payment 25.53–25.55
 - discharged cheques 25.62
 - drawer's forged signature 25.61
 - mental incapacity 25.56
 - notice of drawer's death 25.57
 - post-dated cheques 25.51

- presenter's defective balance 25.60
 - refusal to pay 25.42
 - requirements for 25.42
 - right of 25.59–25.62
- drawees 24.20, 25.4
- drawers 24.20
 - liability 25.37
- enforceability 25.26
- holder in due course 25.32–25.34
 - benefits 25.34
 - presumption of 25.33–25.34
 - title, acquisition of 25.35
- holder for value 25.29–25.31
- holders
 - definition 25.27
 - rights 25.28, 25.31
 - title, acquisition of 25.35
- indorsement 24.20
- liability 25.36–25.41
 - drawees 2.64–2.68, 25.49–25.62
 - drawers 25.37
 - financial institutions 25.48–25.68
 - indorsers 25.38
 - prerequisites for 25.41
 - strangers 25.40
- negotiability 25.1, 25.17–25.25
- not negotiable 24.20
 - effect of 25.23
- open cheques 25.21
- order cheques 24.20, 25.13–25.15
 - definition 25.14
 - negotiability 25.18
 - payable to order 25.13
 - significance 25.15
 - transfer without indorsement 25.19
- origins 24.20
- payees 24.20
- payment on demand 24.20, 24.21, 24.25, 25.9–25.11
- post-dated 25.10–25.11
 - dishonour, right of 25.51
 - validity 25.11
- presentation 24.21, 24.25, 25.42–25.47
 - by collecting institution 25.44–25.47
 - for payment 25.43
- refusal to pay 25.42
 - actual 25.42
 - deemed 25.42
 - right of 25.59–25.62

- regulation of 24.16
- signature of 25.5–25.6
 - by agent 25.7
 - forged 25.61
 - limited liability 25.7
 - procuration 25.8
 - requirement of 25.5
 - requirements for 25.6
- stale cheques 25.52
- sum certain in money, requirement of
 - 25.12
- transferability 25.17, 25.19
- types 25.13–25.16
- unconditional orders 24.21, 25.3
- use 25.1

Civil law

- application 1.11
- civil action 2.23–2.28
 - discovery 2.24
 - identifying the issues 2.24
 - interrogatories 2.24
 - pleadings 2.24
 - pre-trial procedures 2.23
 - representation 2.23
 - role of court 2.28
 - witnesses 2.25, 2.27
- codification 1.4
- origins 1.4
- proceedings 2.21
 - conduct of 2.26, 2.28
 - examination of witnesses 2.27
 - hearings 2.26
 - parties to 2.28
 - preparations for 2.24
 - representation 2.23
 - witnesses 2.25, 2.27
- systems 1.4
- terminology 2.22

Civil liability

- breach of contract *see* Breach of contract
- conspiracy *see* Conspiracy
- conversion *see* Conversion
- detinue *see* Detinue
- intimidation *see* Intimidation
- negligence *see* Negligence
- negligent misstatement *see* Negligent misstatement
- passing-off *see* Passing-off
- trespass *see* Trespass
- vicarious liability *see* Vicarious liability

Common law

- application 1.11
- classification 2.17
- consumer protection 9.1, 9.2, 10.2
- court system 1.4
- development 1.5
- and equity 2.17–2.20
- history 2.17
- introduction 1.3
- jurisdiction 2.17
 - exercise of 2.17
- legal principles 1.4, 1.6, 1.7, 1.11
- and legislation 1.6
- meaning 1.4
- precedent 1.7–1.13
- prerogative powers 1.25
- sale of goods 8.20
- subordinate nature 1.6
- systems 1.4
- traditions 1.17

Commonwealth Constitution

- alteration 1.27
- charter of principles 1.17
- civil rights 1.17
- conventions 1.18, 1.24
- division of powers 1.29
- establishment 1.15
- executive government 1.25
- federation 1.21
- free trade 1.22
- judicature 1.26
- origins 1.20
- parliament 1.24
- personal rights and guarantees 1.17, 1.31
- referenda 1.27
- responsible government 1.19
- separation of powers 1.23
- structure 1.23–1.26

Commonwealth Government

- expanding role 1.30
- law-making powers 1.24, 1.28, 1.29
- powers 1.30
 - corporation 1.30
 - external affairs 1.30
 - postal 1.30
 - taxation 1.30
 - territories 1.30
 - trade and commerce 1.30

Companies

agency relationship 1.39, 14.25
agents *see* Agents
board of directors 17.27
capital 17.46
capital raising 17.40–17.47
 debentures *see* Debentures
 disclosure documents 17.41–17.45
 share capital *see* Shares
charges *see* Charges
classification of 17.12–17.25
constitution 17.34–17.39
 alteration of 17.37–17.38
 contractual effect 17.35
 replaceable rules 17.35
 scope of 17.36
control of 17.108
corporate governance 17.106
creation of 17.30–17.33
criminal liability 17.26–17.28
 determination 17.28
debentures *see* Debentures
directors *see* Company directors
disclosure documents 17.41–17.45
 advertisement of 17.45
 content 17.43
 liability for 17.44
 listed securities 17.43
 offer information statement 17.41, 17.43
 profile statement 17.41, 17.43
 prospectus 17.41
 requirements for 17.42
 short form prospectus 17.41
in distress 17.117
employees
 duties of 17.96
 liability of 17.27
financial report 17.76
foreign 17.24
formation 15.2
holding 17.23
incorporated company 17.7–17.11
 advantages 17.8
 disadvantages 17.8
 lifting of corporate veil 17.10
 regulation of 17.11
 separate legal personality 17.9
liability of members 15.2, 17.13–17.18,
 17.26–17.29

liability in torts 17.29
limited company 17.14–17.16
 by guarantee 17.15
 by shares 17.1
 by shares and guarantee 17.16
meetings 17.77–17.78
membership 17.47
 benefits 17.47
 refusal of 17.47
no liability 17.18
officers 17.105
 company secretary 17.105
 duties of 17.96–17.98
 role of 17.84
ownership 17.47, 17.75
perpetual succession 17.116
pre-registration contracts 17.33
promoters 17.32
proprietary companies 17.19–17.21, 17.75, 17.83
 characteristics 17.20
 large 17.21
 small 17.21
public companies 17.22, 17.75, 17.83
registration of 17.31, 17.32
regulation of 17.11
shareholders *see* Shareholders
shares *see* Shares
subsidiaries 17.23
takeovers *see* Takeovers
trust 16.21
trustee 17.25
unlimited companies 17.17
winding up 17.116
 bankruptcy 17.121, 23.62
 company in distress 17.117
 compulsory 17.116
 insolvent trading 17.124
 involuntary 17.116
 liquidation 17.120
 litigation by liquidators 17.123
 priority payments 17.122
 receivers, appointment of 17.118
 voluntary administration 17.116, 17.119

Company directors

alternate 17.89
appointment of 17.86
associate 17.89
chairman of directors 17.89
definition of 17.85

- disqualification of 17.88
- duties 17.96–17.98
 - act in best interest of company 17.100
 - avoid conflict of interest 17.100
 - breach of 17.103
 - business judgment rule 17.98
 - care of 17.100
 - common law 17.100
 - diligence 17.100
 - discretion 17.100
 - not to abuse position 17.100
 - not to profit from position 17.100
 - statutory 17.97
 - to creditors 17.101
 - to outsiders 17.104
 - of trust 17.100
- executive 17.89
- governing 17.89
- liability of 17.27, 17.102
- loans to 17.94
- loss of office 17.90
- managing 17.89
- nominee 17.89
- non-executive 17.89
- powers 17.95
- proprietary company 17.83
- public company 17.83
- qualifications 17.87
- reliance on others 17.99
- removal of 17.91
- remunerations 17.92
- retirement of 17.90
- role of 17.84
- termination payments 17.93
- types of 17.89

Company law

- administration of 17.6
- Corporate Law Reform program 17.5
- Corporations Act 17.4, 17.11, 17.110
- Corporations Law 17.3
- development in Australia 17.1–17.6
- origins 17.1–17.6
- regulatory bodies 17.6

Competition

- anti-competitive conduct *see* Restrictive trade practices
- lessening of 12.5, 12.6, 12.15
- market 12.6
- protection 12.5

Conciliation

- alternative dispute resolution 3.6
- conciliators 3.20
 - role 3.20
- conduct of 3.20
- counselling 3.20
- referrals 3.22

Confidential information

- breach of confidence 19.83
 - remedies 19.83
- categories 19.77–19.80
- commercial 19.78
- definition 19.76
- government 19.79
- personal 19.80
- protection 19.75, 19.81–19.82

Consideration

- adequate 4.58
- for contract 4.2, 4.6, 4.22, 4.52–4.62
- definition of 4.52, 4.53
- move with the promisee 4.55
- past 4.56
- rule of 4.52
- sufficient 4.58–4.61
 - forbearance to sue 4.60
 - promise to perform existing obligations to promisor 4.61
 - promise to perform existing obligations to third party 4.62
 - what constitutes 4.59
- valuable 4.54, 4.57

Conspiracy

- compensation 22.101, 22.105
- criminal offence 22.101
- forms of 22.101
- injurious purpose 22.101, 22.102
- motive 22.103
- unlawful means 22.101, 22.102, 22.104

Constitution *see* Commonwealth Constitution

Consumer credit

- account charges 11.14
- bill facilities 11.14
- civil penalties 11.34–11.37
 - application for 11.36–11.37
- common law principles 11.8
- continuing credit contracts 11.10, 11.20
- credit, definition of 11.2
- disclosure regime 11.17–11.22
 - contract 11.19

Consumer credit — cont'd

- level of accuracy 11.21
- post-contract 11.22
- pre-contract 11.18
- requirements 11.20
- employee loans 11.14
- exclusions 11.14
- hire purchase 11.1, 11.10
- insurance premiums by instalment 11.14
- interest 11.1
- joint credit and debit facilities 11.14
- legislation
 - background 11.3–11.5
 - common law principles 11.8
 - licensing scheme 11.7
 - new national legislation 11.6–11.7
 - policy objectives 11.16
- licensing scheme 11.7
- margin loans 11.14
- National Credit Code
 - application 11.9–11.15
 - categories of transactions 11.10–11.13
 - circumstances when it does not apply 11.14
 - presumptions 11.15
 - scope 11.6
- no prior agreement 11.14
- pawnbrokers 11.14
- regulation 11.1
 - licensing scheme 11.7
- related transactions 11.11–11.13
 - guarantees 11.12
 - mortgages 11.13
- remedies 11.7
- responsible lending 11.7
- sanctions 11.7
- short term credit 11.14
- trustees of estates 11.14
- usury 11.1

Consumer credit contracts

- continuing credit contracts 11.10, 11.20
- disclosure 11.18–11.22
 - contract document 11.19
 - pre-contract 11.18
- disclosure regime, post-contract 11.22
- enforcement 11.28–11.33
 - action against guarantor 11.30
 - process 11.29
 - repossession 11.31–11.33
- requirements 11.35

- variation 11.23–11.27
 - hardship 11.27
 - unjust contracts 11.26

Consumer protection

- advertising *see* Advertising
- auctions *see* Auctions
- caveat emptor 9.2
- common law 9.1, 9.2
- competition in commerce 9.3
- consumer law, modern approach 9.3–9.4
- consumer rights 9.3
- consumer transactions
 - acquisition 9.8
 - goods and services 9.7
 - legislation 9.3
 - meaning under new law 9.4
 - meaning under old law 9.5
- consumers, meaning under new law 9.6
- credit cards *see* Credit cards
- debit cards *see* Debit cards
- dispute resolution 9.3
- false representation *see* Representation
- imbalance of bargaining power 6.47
- legislation 9.2–9.9
- misleading or deceptive conduct *see* Misleading or deceptive conduct
- product safety *see* Product safety
- promotion *see* Promotions
- remedies *see* Remedies
- sale of goods *see* Sale of goods
- spam 9.9
- telemarketing 9.9
- unconscionable conduct *see* Unconscionability;
Unconscionable conduct
- unfair contracts *see* Unfair contracts
- warranties *see* Warranties

Contracts

- affirmation 7.37
- agreement 4.2, 4.5, 4.6, 4.10, 4.43–4.44, 4.47, 6.1
- binding 4.10, 4.30, 4.37, 4.69
- breach *see* Breach of contract
- capacity 4.67–4.73
 - bankrupts 4.73
 - corporations 4.71
 - intoxicated persons 4.72
 - lack of 4.67
 - minors 4.68–4.70
 - persons of unsound mind 4.72
- collateral 5.12

- commercial 4.4
 - consent to 6.1
 - duress *see* Duress
 - forceful persuasion *see* Undue influence
 - voluntary 6.26, 6.29
 - consideration for 4.2, 4.6, 4.22, 4.52–4.62
 - consumer credit *see* Consumer credit contracts
 - content 5.2–5.3
 - continuing 4.69
 - definition 4.9, 4.16
 - determination 4.9, 4.16
 - discharge *see* Termination of contracts
 - E-commerce 4.77
 - enforcement 4.5, 4.6, 4.67, 4.75, 6.13
 - execution of 4.30
 - express intent 4.48
 - formal 4.10
 - formation 4.1–4.10, 4.36, 4.43
 - freedom of *see* Freedom of contract
 - frustration of 4.4
 - implied 4.2, 4.45
 - implied intent 4.48
 - inducement 6.3
 - inferred 4.33
 - informal 5.16
 - insurance *see* Insurance contracts
 - intent 4.2, 4.6, 4.10, 4.48–4.51, 5.8
 - in commercial transactions 4.49–4.50
 - in domestic agreements 4.49
 - letters of comfort 4.51
 - invalid 4.67
 - law of 4.1
 - legal requirements 4.2
 - legal transaction 4.1
 - liability 4.15
 - misrepresentations *see* Misrepresentation
 - mistakes *see* Mistakes
 - obligations 4.1
 - offer *see* Offers
 - options 4.22
 - oral 5.9, 5.13
 - part performance 4.76–4.77
 - parties to 4.1, 4.74, 4.75
 - agreement of 6.1
 - consent of 6.1
 - performance of 4.4, 4.6, 4.76–4.77, 7.2–7.12
 - conditions precedent 7.4
 - conditions subsequent 7.4
 - divisible contracts 7.12
 - entire performance rule 7.6, 7.12
 - exact 7.5
 - exceptions to performance rule 7.8–7.12
 - independent and dependent promises 7.3
 - prevention of 7.38
 - ready, willing and able rule 7.11, 7.38
 - refusal 7.38
 - strict 7.5
 - substantial 7.10
 - time for 7.7
 - pre-contractual statements 5.3
 - privity of *see* Privity of contract
 - promise 4.1, 4.5
 - recording of 5.3
 - repudiation of 7.34
 - requirements for 4.2, 4.6
 - rescission of 6.2, 6.13, 6.27, 6.36, 7.1, 7.40
 - partial 6.36
 - rights 4.1
 - sale of goods *see* Auction; Sale of goods contracts
 - simple 4.54
 - standard form 4.8, 4.46, 10.10
 - termination *see* Termination of contracts
 - terms *see* Terms of contracts
 - unconscionable *see* Unconscionability; Unconscionable conduct
 - unfair *see* Unfair contracts
 - unilateral 4.33
 - valid 4.2
 - violation of 6.1
 - void 6.24
 - waiver of 4.47
 - what constitutes a contract 4.1, 4.5
 - written 5.10
- Conversion**
- definition 22.82
 - establishment of 22.82
 - intent for 22.85
 - interference with possession 22.82
 - remedies 22.86
 - right of legal action 22.83
 - strict liability 22.82
 - what constitutes 22.84
- Copyright**
- assignment of 19.25
 - copyright–design overlap 19.44–19.48
 - definition 19.14
 - duration of 19.16
 - exclusive economic right 19.4

Copyright — *cont'd*

- infringement 19.17–19.23
 - literary, dramatic, musical or artistic works 19.17
 - parallel importation 19.18
 - performance of literary, dramatic or musical works 19.19
 - remedies 19.22–19.23
 - subject matter 19.20
- licence 19.25
- moral *see* Moral rights
- non-infringing dealings 19.21
 - reprints 19.46
 - reproductions 19.47
- ownership 19.5
- personal property 19.5
- protection 19.6–19.7, 19.15
 - authors 19.15
 - loss of 19.48
 - owners 19.15
- works 19.4, 19.8–19.13
 - artistic 19.13
 - dramatic 19.11
 - literary 19.10
 - musical 19.12
 - original 19.9
 - subject matter 19.14

Corporations

- artificial legal person 4.71
- capacity to contract 4.71
- criminal liability 17.26–17.28
- legal capacity 4.71
- see also* Companies

Court system

- adversarial nature 1.4, 2.15, 2.16
- appeal courts 1.11, 2.2, 2.9, 2.11
 - powers 2.2
- appeals to Privy Council 1.16
- civil law 1.4
- common law 1.4
- establishment 1.14
- federal 2.12–2.13
 - Family Court of Australia 2.13
 - Federal Court of Australia 2.13
 - Federal Magistrates Court of Australia 2.13
 - High Court *see* High Court of Australia
 - jurisdiction 1.26, 2.2, 2.12, 2.13
- hierarchy 1.7, 1.9, 2.1, 2.2
 - federal 2.2, 2.12–2.13
 - state 2.2, 2.3–2.11

- High Court *see* High Court of Australia
 - independent courts 1.26
 - intermediate courts 2.8–2.9
 - County Courts 2.8
 - District Courts 2.8
 - jurisdiction 2.8
 - jurisdiction of courts 1.26, 2.2
 - appellate 1.11, 2.2, 2.9, 2.11
 - civil 2.9, 2.10
 - common law 2.17
 - criminal 2.9
 - cross-vesting 2.14
 - equity 2.17
 - federal 1.26, 2.2, 2.12–2.14
 - original 2.9
 - state 2.3, 2.4, 2.9–2.11, 2.14
 - summary 2.3–2.7
 - procedures 1.4, 2.16
 - proceedings 2.16
 - parties to 2.16
 - role of courts 1.12
 - state 2.3–2.11
 - courts of summary jurisdiction 2.3–2.7
 - intermediate courts 2.8–2.9
 - superior courts 2.10–2.11
 - summary courts 2.3–2.7
 - civil matters 2.3
 - committal hearings 2.6
 - decisions 2.3
 - indictable offences 2.4
 - jurisdiction 2.3, 2.4
 - magistrates 2.3
 - summary offences 2.3
 - Superior courts 2.10
 - jurisdiction 2.10, 2.11
 - procedures 2.11
 - Supreme Court 2.10, 2.11
 - tribunals 3.4
 - jurisdiction 3.4
- ## Covenants, enforcement of 4.7
- ## Credit cards
- consumer protection 25.84
 - contracts 25.77
 - issuer/cardholder contract 25.78
 - issuer/merchant contract 25.79
 - legal effect of contractual relationships 25.81
 - merchant/cardholder contract 25.80
 - debit cards

- distinguished 25.83
- use as 25.82
- issue of 25.76
- legal position 25.77
- regulation of 25.75
- rights and obligations 25.77
- three-party cards 25.76
- two-party cards 25.76
- use 25.75, 25.76

Criminal law

- codification 1.4
- criminal action 2.29–2.34
 - arrest and charging 2.32
 - formal procedures 2.32
 - investigation powers 2.31
- enforcement of 2.21, 2.29
- presumption of innocence 2.29
- proceedings 2.21, 2.29, 2.33, 2.34
 - accused 2.29
 - indictable offences 2.33
 - initiating 2.30–2.32
 - summary offences 2.33
 - trial 2.34
- proof beyond reasonable doubt 2.29
- source of 2.29
- terminology 2.22

Damages

- causal link to breach 22.52–22.54
- legal recognition of 22.54
- proof of 22.50–22.59
- reasonable foreseeability 22.17, 22.56–22.59
 - 'eggshell skull' rule 22.57
 - novus actus interveniens* 22.58
- remoteness of 22.55

Debentures

- definition 17.67
- description 17.68
- holders 17.66
 - trustee for 17.69
- issue of 17.66
- public offers 17.66

Debit cards

- contract 25.82
- distinguished from credit cards 25.83
- electronic access to account funds 25.82
- regulation of 25.82
- rights and liabilities 25.82
- use of 25.75

Debt

- admission of 23.33
- amount of 23.18
 - liquidated 23.18
 - unliquidated 23.18
- claim for 23.26
 - acceptance of 23.26
 - counter-claim 23.32
 - cross-claim 23.31
 - defence to 23.27–23.29
 - set-off 23.33
- credit *see* Consumer credit
- debtors 23.22–23.35
- disputed 23.25
- guarantees 23.5
- interest on 23.24
- judgment debt, enforcement of 23.36–23.42
 - garnishee 23.42
 - payment by instalments 23.37, 23.38
 - warrant of execution 23.40–23.41
- legal action for 23.14–23.62
 - appeal 23.35
 - bankruptcy *see* Bankruptcy
 - choice of court 23.17–23.18
 - claims 23.26–23.27
 - counter-claims 23.32
 - cross-claims 23.31
 - default judgments 23.18, 23.23, 23.34
 - defence of 23.27–23.29
 - interest, award of 23.24
 - jurisdiction 23.18
 - originating process 23.19
 - right of 23.15
 - service of 23.21
 - set-off 23.33
 - time limit 23.14
- lien for 23.4
- nature of 23.1
- recovery of 23.14–23.62
 - Mareva injunction 23.16
 - preservation of assets 23.16
 - time limit for 23.14
- remedies *see* Remedies
- repossession for 23.11–23.12
 - letter of demand 23.12
- reservation of title 23.6–23.7
- secured 23.8–23.10
 - bill of sale 23.10

Goods — *cont'd*

- wrongful detention 22.87
- wrongful refusal to return 22.87
- wrongful return 22.87

Government

- executive 1.25
- judicature 1.26
- parliament 1.24
- powers 1.23, 1.26
- responsible government 1.19, 1.23–1.26

Guarantees

- guarantors
 - action against 11.30
 - contract 11.12
 - liability of 11.12, 11.37
 - obligations 11.12
 - rights 11.12
- National Credit Code, application 11.12

Hearings

- civil 2.26
- committal 2.6

High Court of Australia

- appeals to 2.12
- binding decisions 2.12
- establishment 2.12
- judicial power 1.26
- judiciary 1.26
- jurisdiction 1.26, 2.2, 2.12
 - appellate 2.2
 - original 2.2
- members 2.12
- pre-eminent court 2.12
- role 1.26, 2.12

Hire, bailment *see* Bailment**Hire purchase** *see* Consumer credit**Inertia selling**

- false directory entries 10.57
- ownership of goods 10.57
- right of payment 10.57
- technique 10.57

Insolvency *see* Bankruptcy**Insurance**

- agency relationship 21.35
- agent/insured relationship 21.16
- agents 21.13
- assurance 21.1
- brokers 21.13

- categories 21.3
 - claims 21.36
 - burden of proof 21.37
 - proximate cause 21.38–21.40
 - settlement of 21.50
 - classification of 21.3–21.6
 - commercial purpose 21.47
 - compulsory 21.3
 - contract *see* Insurance contracts
 - discretionary 21.80
 - double 21.89
 - fraud 21.56, 21.60
 - general 21.4, 21.79
 - health 21.3
 - institutions, regulation of 21.9
 - interim 21.25
 - intermediaries 14.27
 - regulation of 21.13–21.16
 - investigators 21.34
 - life 21.5, 21.71
 - annuity 21.5
 - cancellation of 21.98
 - endowment 21.5
 - insurable interest 21.61
 - regulation of 21.10
 - surrender of 21.9102
 - term cover 21.5
 - whole of life 21.5
 - marine 21.6, 21.69
 - regulation 21.11
 - salvage 21.95
 - marketing 21.35
 - motor vehicle third party 21.3
 - nature of 21.2
 - policy *see* Insurance contracts
 - premiums 21.1, 21.20
 - regulation of 21.1, 21.7–21.12
 - Commonwealth 21.7
 - State 21.7, 21.12
 - reinsurance 21.3
 - risk underwriting 21.1
 - role of 21.1
 - specialist 21.3
 - transaction, regulation of 21.14–21.15
 - at common law 21.14
 - by statute 21.15
 - workers' compensation 21.3
- Insurance contracts**
- breach of conditions 21.49

- characteristics of 21.51–21.95
 - insurable interest 21.60–21.62
 - utmost good faith 21.52–21.59
- claims under 21.36
 - burden of proof 21.37
 - proximate cause 21.38–21.40
 - settlement of 21.50
- consideration 21.20
- cover 21.29–21.30
 - exclusions 21.31
 - extent of 21.29
 - general exclusions 21.30
 - maximum 21.88
 - standard 21.31
- cover notes 21.25
- defined events 21.28
- disclosure 21.48, 21.63–21.82
 - duty of 21.48, 21.64, 21.74, 21.76–21.77, 21.77, 21.81
 - exclusion of 21.76–21.77
 - marine policies 21.69
 - material 21.75
 - misrepresentation 21.60–21.72, 21.66
 - notification for 21.81
 - pre-existing conditions 21.79
 - relief from 21.79
 - statutory duty 21.73
 - waiver of 21.78
- exclusion clauses 21.44–21.47, 21.76–21.77
 - onus of proof 21.46
- formation of 21.17, 21.18
 - offer and acceptance 21.18
- identity of parties 21.19
- indemnity under 21.83–21.92
 - agreed value 21.86
 - average 21.90–21.92
 - double insurance 21.89
 - extent of 21.84
 - market value 21.85
 - maximum cover 21.88
 - replacement 21.87
 - salvage 21.951
 - subrogation of 21.93–21.95
- insurer/insured relationship 21.17
- interpretation of 21.41–21.43
- knock-for-knock agreements 21.94
- legislative reforms 21.82
- offer and acceptance 21.24
- parties 21.32, 21.33

- policies 21.27
 - exclusion clauses 21.44–21.46
 - interpretation of 21.41–21.43
- policy periods 21.22
- premiums 21.20
- renewal of policy 21.23
 - refusal of 21.103
- sum insured 21.21
- termination of 21.96–21.103
 - cancellation 21.97–21.98
 - grounds for 21.96–21.103
 - non-formation of policy 21.99
 - refusal to renew 21.103
 - surrender of policy 21.102
- terms of 21.26
- transactions 21.1, 21.17–21.50
- written 21.27

Intellectual property

- confidential information *see* Confidential information
- copyright *see* Copyright
- definition of 19.1
- designs *see* Designs
- forms of 19.3
- infringement of 19.1
- patents *see* Patents
- protection of 19.2
- trade marks *see* Trade marks

Intimidation

- coercion by threat of violence 22.99
- intent 22.99
- no lawful justification 22.99
- remedies *see* Remedies
- unlawful act 22.99

Invitation to treat

- advertisements 10.1
- expression of interest 4.14
- no legal obligation 4.14
- promotions 10.1
- statement 4.11
- tenders 4.15

Joint ventures

- advantages of 15.56
- agreement 15.57
- business relationship 15.50
- characteristics of 15.52
- conduct of 15.57
- definition of 15.50, 15.53

Joint ventures — cont'd

- determination of 15.50
- liability under 15.50
- partnership distinguished 15.54, 15.55
- planning 15.57
- use of 15.51

Judgments

- precedent 1.8
- publication of 1.8
- ration decidendi* 1.8
- reasons for decision 1.7, 1.8
- record of decision 1.8

Judiciary

- appointment 1.26
- independence 1.26
- judicial powers 1.26
- remuneration 1.26
- tenure 1.26

Jurisdiction

- common law 2.17
- of courts *see* Court system
- equity 2.17
- small claims 3.1, 3.4

Law *see* Civil law; Common law; Sources of law**Lay-by**

- acquisition of goods 10.61
- instalments 10.61
- ownership of goods 10.61
- regulation of 10.61
- transaction requirements 10.61

Legal rights

- enforcement of 3.1
- loss of 3.1

Legislation

- in Australian colonies 1.14
- law-making powers 1.24, 1.28, 1.29
 - Commonwealth 1.29
 - Federal Parliament *see* Federal Parliament
 - States 1.29

Lien

- agency 14.17
- bailees 20.17
- effect of 8.70
- equitable 23.4
- exercise of 8.76
- goods, over 23.4
- maritime 23.4
- possessory 8.69, 23.4

- revival of 8.72
- termination of 8.71

Mabo case 1.3

- native title 1.6

Manufacturers, liability of 10.46–10.47**Mareva injunction, preservation of assets 23.16****Market, competition 12.6****Mediation**

- agreed resolution 3.15, 3.19
- alternative dispute resolution 3.6
- mediators 3.19
 - role 3.19
- process 3.19
 - referrals 3.22

Mere puff

- defence 4.12
- non-specific 4.12
- representation 4.12
- statement 4.11, 4.12

Minors, capacity to contract 4.68–4.70**Misleading or deceptive conduct**

- commercial benefit 10.5
- commercial transactions 6.2
- 'conduct likely to mislead or deceive' 10.3
- definition 10.3
- examples 10.4, 10.5
- intent 10.3

Misrepresentation

- actionable 6.3
- by agent 14.20
- commercial transactions 6.2
- fraudulent 10.2, 21.70
- innocent 6.11
- insurance 21.66–21.68, 21.70–21.72
 - effect of 21.68
 - fraudulent 21.70
 - significance of 21.66
 - statutory adjustment 21.67
- intentional 22.90–22.93
- legislative interpretation 6.12, 10.6
- non-commercial transactions 6.2
- non-disclosure 6.3
- oral 6.3
- passing-off *see* Passing-off
- proof of 6.4–6.7
- reliance on 7.40
- remedies *see* Remedies
- rules 6.2

silence 6.2
types of 6.8
untrue statements 6.2

Mistakes

commercial transactions 6.13
common 6.14–6.18
defence of *non est factum* 6.24
identity of parties 6.22
mutual 6.19
of payment 6.25
payment of payment, recovery for
.... 6.25
quality-related 6.17–6.18
rectification 6.13, 6.23
regarding nature of documents 6.24
relief for 6.13
subject matter, as to 6.15–6.16
types 6.13
unilateral 6.20–6.21

Moral rights

attribution of authorship 19.24
duration of 19.24
enforcement of 19.24
infringement of 19.24
relief for 19.24
integrity of authorship 19.24
non-economic rights 19.4

Mortgages

definition 11.13
goods mortgage 11.13
mortgagees 11.13
mortgagors 11.13
National Credit Code, application 11.13
requirements 11.13

Negligence

contributory 22.61
damage, proof of 22.50–22.59
defence 22.60–22.66
definition 22.15
doctrine of 22.17
duty of care requirement 22.17–22.29
breach of 22.30–22.49
establishment of 22.48
res ipsa loquitur 22.48–22.49
obvious risk 22.66
proof of 10.5, 22.17, 22.47–22.49
requirements for 22.17
statutory reform 22.16

vicarious liability for 22.106
volenti non fit injuria 22.64–22.66

Negligent misstatement

assumption of responsibility 22.71
common law 22.68–22.70
damage, proof of 22.67
duty of care 22.67
breach of 22.67
liability for 22.67–22.70
proof of 22.67
reliance 22.71–22.74

Negotiable instruments

bills of exchange *see* Bills of exchange
cheques *see* Cheques
definition 24.1
historical context 24.2–24.8
negotiability 24.1, 24.9–24.14
statutory recognition 24.15

Offences

indictable 2.5, 2.33
summary 2.5, 2.33

Offers

acceptance 4.2, 4.29
binding 4.11, 4.30
communication of 4.29, 4.32, 4.35, 4.37–4.40
conditional 4.30
contractual relationship 4.33
correspond to offer 4.42
e-mail 4.41
execution of 4.40
form of 4.32
implied 4.34
instantaneous communication 4.38–4.40
method of 4.37, 4.38
performance by 4.32
postal rule 4.37
response to offer 4.42
right of 4.31
time of 4.36, 4.37, 4.39
unqualified 4.29
valid 4.32
auctions 4.20
communication of 4.18
conditional 4.23
death of offer 4.27–4.28
definition of 4.11
determination of 4.11–4.16
duration of 4.22

Offers — cont'd

- intent 4.11
- internet shopping 4.19
- lapse of 4.25, 4.27
- making of 4.17
- online auctions 4.20
- rejection of 4.26, 4.29
- revocation of 4.21, 4.22, 4.24
 - communication of 4.24
- statement 4.11, 4.16
- termination of 4.21
- use of term 4.16

Options, purchase of 4.22

Parliament

- House of Representatives 1.24
- legislative powers 1.24,
1.28, 1.29
- representation 1.25
- Senate 1.24

Parol evidence rule

- application of 5.10–5.11
- basis for 5.10
- operation of 5.10
- purpose of 5.10

Partnerships

- advantages 15.48
- agent and principal relationship 14.24, 15.17
- agreement 15.33
 - express 15.33
 - implied 15.33
 - variation of 15.33
- bankruptcy 15.42
- business enterprise 15.2, 15.8–15.49
 - determination of 15.11, 15.14
- by estoppel 15.30
- commercial relationship 15.10, 15.12
- conduct of business 15.21–15.24
- dealings 15.21–15.24
- definition 15.9
- determination of 15.14, 15.16
 - statutory rules for 15.14
- disadvantages 15.49
- dissolution of 15.40–15.44
 - bankruptcy 15.42
 - by court 15.44
 - death of partner 15.42
 - for fixed term 15.41
 - for illegality 15.43

- 'on notice' 15.41
- venture 15.41
- expulsion from 15.38
- fixed term 15.41
- formal 15.2
- gross returns, distribution of 15.14
- illegal 15.43
- incorporated limited 15.20
- informal 15.2
- joint ownership of property 15.14
- joint venture distinguished 15.54, 15.55
- leaving 15.38
- legal recognition 15.17
- liability under 15.2, 15.21, 15.23
- limited liability 15.19
- misapplication of money or property 15.30
- 'on notice' 15.41
- partners 15.12, 15.17
 - admission of 15.32
 - agreement 15.33
 - assignment of share 15.38
 - authority of 15.22, 15.24
 - conduct of business 15.21–15.24
 - death of 15.42
 - duties of 15.33, 15.36, 15.37, 15.46
 - expulsion from 15.38
 - liability 15.21, 15.25–15.29, 15.39
 - limited 15.20
 - obligations of 15.33, 15.36
 - personal property 15.34
 - relationship 15.33–15.38
 - representations by 15.32
 - retirement of 15.38
 - rights of 15.33, 15.36
 - role of 15.33
 - trustee 15.30
 - unlimited 15.20
- post dissolution 15.45–15.47
 - distribution of profits 15.47
 - distribution of property 15.46
- profits, distribution 15.13, 15.14, 15.47
- property of 15.34
 - distribution 15.46
- regulation of 15.2, 15.18
- venture 15.41

Passing-off

- common law 10.6
- elements of 22.91–22.93
- establishment of 22.90

intentional misrepresentation 22.90–22.93
misleading or deceptive conduct 22.93
proof of 22.91
remedies *see* Remedies
tort 10.6, 22.90
unlawful interference with business interests
.... 22.90
what constitutes 10.6

Patents

definition 19.50
employees' claim 19.59
grant of 19.57
infringement of 19.60
 remedies 19.60
inventive step 19.51, 19.54
manner of manufacture 19.51, 19.52
novelty 19.51, 19.53
obtaining a patent 19.57
previous secret use, prohibition of 19.51, 19.56
protection of invention 19.49
requirements for 19.51
rights 19.58
useful 19.51, 19.55

Personal property

chattels attached to chattels 18.21–18.22
chattels personal 18.19
co-ownership 18.34
conversion to realty 18.24
copyright *see* Copyright
definition 18.2
distinguished from real property 18.2–18.3, 18.17
forms of 18.18–18.23
intermingling 18.23

Persons of unsound mind, capacity to contract 4.72

Possession

concept of 18.37–18.45
definition 18.37
finders 18.40–18.44
 employees 18.43–18.44
 obligations 18.45
 rights 18.45
 things on another's property 18.41–18.42
interference with 22.82
occupiers
 obligations 18.45
 rights 18.45
possessors' rights 18.38–18.39
right of 22.75

Precedents

advantages 1.12
application 1.7
binding 1.9–1.11
development 1.11
disadvantages 1.13
disapproving 1.11
distinguishing 1.11
doctrine of 1.7, 1.9
judgment 1.8
overruling 1.11
persuasive precedent 1.10
preservation of 1.11
protection of 1.11
record of 1.7, 1.8
reversing 1.11

Privity of contract, doctrine 4.74–4.75

Product safety

bans 10.49
consumer rights 10.48
product recall 10.50
regulation 10.48
reporting death, serious injury or illness 10.52
safety warning notices 10.51

Promise

broken 4.63
 remedies *see* Remedies
consideration for 4.22
enforceability 4.1, 4.6
gratuitous 4.7
obligation 4.1, 4.63
payment for 4.22
performance for 4.6
voluntary 4.1

Promotions

consumer protection 10.1
invitation to treat 10.1
offering gifts 10.8–10.9

Property

charges *see* Charges
classification 18.2–18.3
co-ownership 18.34
concept of 18.1–18.3
conversion *see* Conversion
definition 18.1
intellectual *see* Intellectual property
land *see* Real property
ownership
 concept of 18.26–18.36

Property — cont'd

determination of 18.26

land 18.27

right of 18.25

partnerships *see* Partnerships

personal *see* Personal property

possession *see* Possession

real *see* Real property

rights 18.25, 22.75

Public trustee

functions of 16.22

performance 16.22

trust company 16.22

Pyramid selling

characteristics 10.53

distribution hierarchy 10.55

forms of 10.55

marketing of 10.55

prohibition of 10.55

regulation of 10.55

schemes 10.55

Real property

definition 18.2

distinguished from personal property 18.2–18.3,
18.17

emblems 18.11

fixtures 18.5–18.10

degree of annexation 18.6

purpose of annexation 18.7

tenants' fixtures 18.10

land 18.12–18.16

co-ownership 18.34–18.36

Crown's interest 18.28

estates in fee simple 18.31

freehold 18.30

joint tenancy 18.35

leasehold 18.33

life estate 18.31

occupier rights and obligations 18.45

ownership 18.27

rights to airspace 18.13–18.14

rights to sub-stratum 18.15–18.16

tenancy in common 18.36

tenure types 18.29–18.33

trespass *see* Trespass

tenure 18.4

Referral selling

prohibition of 10.56

regulation of 10.56

techniques 10.56

Remedies

breach of bailment 20.18–20.19

contractual 20.18

non-contractual 20.18

third parties, against 20.19

tort 20.18

breach of confidence 19.83

breach of contract 4.3, 7.39–7.58

damages 7.41, 7.46–7.57, 22.98

discharge for 4.4, 7.33–7.38

enforcement of contract 7.41

injunction 7.43, 7.44, 22.98

procuring breach, for 22.98

rectification 7.41, 7.58

specific performance 7.42, 7.44

types of 7.41

breach of contract for sale of goods 8.27–8.29,
8.67–8.92, 10.44–10.45

action for price 8.81

buyer, of 8.86–8.92

consumer guarantees, supplier's major failure
to comply 10.44

court orders 10.44–10.45

criminal offences 10.44

customer guarantees, consumer's major failure
to comply 10.44

damages 8.82–8.85, 8.87, 8.89, 8.90, 10.44

lien 8.69–8.72, 8.76

recovery of price 8.88

refunds 10.44

rejection of goods 10.44

repudiation of contract 8.87

seller, of 8.80–8.85

specific performance 8.91

standard of proof 10.44

stoppage in transit 8.72–8.79

tort, in 8.92

unpaid seller 8.67–8.81

breach of warranty 8.89, 10.44

damages 8.89, 10.44

broken promises 4.63–4.66

consumer protection 10.44–10.45, 11.7

conversion 22.86

court system 3.1

damages 7.41, 7.46–7.57

aggravated 22.100

assessment of 7.55

- award of 7.46
 - causation for 7.49
 - determination of 7.46
 - exemplary 22.98, 22.99
 - expectation 7.57
 - heads of 7.50
 - liquidated 7.56
 - measure of 7.48
 - mitigation of 7.54
 - nominal 7.46
 - pecuniary 7.56, 22.98
 - proof for 7.46
 - purpose of 7.47
 - remoteness of 7.51–7.53
 - substantial 7.46
 - debt 23.3–23.13
 - guarantee 23.5
 - legal action 23.14–23.21
 - lien 23.4
 - repossession 23.11–23.12
 - reservation of title 23.6
 - security 23.8–23.10
 - detinue, for 22.88
 - dispute resolution schemes *see* Dispute resolution
 - duress 7.40
 - equitable 2.18–2.19, 7.43–7.45
 - estoppel *see* Equitable estoppel
 - injunction 2.18, 7.43–7.44, 22.98
 - rectification 7.45
 - specific performance 2.19, 7.42, 7.44
 - infringement of copyright 19.22–19.23
 - penalties 17.23
 - infringement of patent 19.60
 - infringement of trade mark 19.74
 - intimidation 22.100
 - damages 22.100
 - misleading or deceptive conduct 6.9
 - for misrepresentation 6.2, 6.9–6.10, 7.40
 - damages 6.11, 10.44
 - innocent 6.11
 - rescission of contract 6.2, 6.10, 6.11, 7.40, 10.2
 - tort 6.2
 - mistake 7.40
 - passing off 22.90, 22.94, 22.95
 - damages 22.90, 22.94, 22.95
 - injunction 22.94, 22.95
 - penalties 10.44–10.45
 - repossession 11.30–11.33
 - accounting for proceeds 11.33
 - disposal of repossessed goods 11.32
 - rescission of contract 6.2, 6.13, 6.27, 6.36, 7.1, 7.40, 10.2
 - partial 6.36
 - restitution 7.41, 7.58
 - for termination of contract 7.39–7.58
 - rescission 7.40
 - types of 7.40
 - unconscionable conduct 6.36, 6.44, 7.40
 - legislative 6.44–6.46
 - partial rescission 6.36
 - rescission of contract 6.36
 - undue influence 7.40
- Representation**
- existing facts of 6.5
 - false 6.2, 6.6, 6.10, 10.12–10.27
 - prohibited conduct 10.13–10.27
 - inducement 6.7
 - mere 6.2
 - misrepresentation *see* Misrepresentation
 - oral 6.3
 - significant 6.4–6.7
 - silence 6.3
- Restrictive trade practices**
- anti-competitive conduct 12.1, 12.7–12.14
 - arrangements 12.7, 12.8
 - boycotts 12.1
 - cartel mergers 12.1
 - cartels 12.9–12.11
 - civil penalties 12.10
 - contracts 12.7, 12.8
 - criminal penalties 12.22
 - exclusive dealings 12.1, 12.4, 12.13
 - misuse of market power 12.1, 12.12
 - price fixing 12.1, 12.8
 - protection from 12.5, 12.6
 - resale price maintenance 12.1, 12.14
 - substantially lessening competition 12.15
 - understandings 12.7, 12.8
 - authorisation 12.3, 12.8
 - forms of conduct 12.2
 - notification 12.4
 - penalties 12.16
 - prohibition of 12.2
 - regulation 12.1
- Romalpa clause**
- contract of sale 23.6
 - protection of supplier 23.7
 - reservation of title 23.6–23.7

Sale of goods

- agency 8.18
 - mercantile agent 8.19
- auction *see* Auctions
- buyer in possession, by 8.24
- common law, under 8.21
- consumer protection 10.30–10.43
- contract *see* Sale of goods contracts
- court orders 8.20
- delivery of goods 8.73, 8.90
- description, by 8.38–8.41
 - 'bought by description' 8.54
 - compliance 8.40
 - dealer 8.55
 - 'examination proviso' 8.60
 - implied conditions 8.38–8.41
 - interpretation of 8.39
 - liability for 8.49
 - merchantable quality 8.52–8.60
 - patent name 8.50
 - provision of description by seller 8.48, 8.49
 - specified article 8.50
 - strict liability 8.40, 8.41, 8.51
 - trade name 8.50
- door-to-door 10.53–10.54
 - coercion 10.53
 - harassment 10.53
 - physical force, use of 10.54
 - uniform legislation 10.53–10.54
 - unsolicited 10.53–10.54
- estoppel 8.17
- fitness of goods 8.42–8.60
 - affirmative reliance 8.45
 - inherently dangerous goods 8.46
 - knowledge of purpose 8.43
 - onus of 8.42
 - partial reliance 8.47
- free from unnotified encumbrances 8.37
- goods *see* Goods
- inertia selling 10.57
- lay-by 10.61
- legislative reform 10.28–10.43
- 'market overt', in 8.25
- merchantable quality for 8.52–8.60
 - 'bought by description' 8.54
 - dealer 8.55
 - 'examination proviso' 8.60
 - meaning of 8.53
 - partial defects 8.56
 - reasonable period 8.59
 - remedial defects 8.57
- non-delivery 8.90
- non-excludable consumer guarantees 10.30–10.43
 - acceptable quality 10.34
 - due care and skill 10.40
 - express warranties 10.39
 - fitness for any disclosed purpose 10.35
 - fitness for particular purpose 10.41
 - reasonable time for supply 10.42
 - repairs and spare parts 10.38
 - supply of goods by description 10.36
 - supply of goods by sample or demonstration model 10.37
 - title 10.31
 - undisclosed securities 10.33
 - undisturbed possession 10.32
- open market, in 8.25
- passage of property 8.12, 8.32
 - acceptance of goods 8.13
 - deliverable state 8.13
 - delivery of goods 8.13
 - determination of 8.12
 - goods by description 8.13
 - 'on approval' 8.13
 - passage of risk 8.10, 8.12
 - rejection of goods 8.13
 - requirements for 8.13
 - rules for 8.13
 - 'sale or return basis' 8.13
 - specific goods 8.13
- payment for 10.58
- price 8.6–8.8
 - ascertaining 8.7
 - determination of 8.8
 - establishing 10.59
 - independent valuation 8.8
 - reasonable 8.7
 - representations 10.60
- product safety 10.48
- pyramid selling 10.55
- quality of goods 8.42, 8.52–8.60
 - defective goods 10.44
 - merchantable 8.52–8.60
- referral selling 10.56
- refunds 10.44
- regulation of 10.30–10.43
- rejection of goods 8.82–8.85, 8.87
- resale, right of 8.77

- reservation of right of disposal 8.15
- retention of goods, right of 8.76
- retention of title 8.15
- right to sell 8.16, 8.34, 8.35
- risk 8.10
 - actual loss of goods 8.10
 - agreement for 8.10
 - bearer of 8.10
 - deterioration of goods 8.10
 - fault, assessment of 8.11
 - passage of 8.10, 8.12
- sample, by 8.61–8.64
 - compliance with sample 8.64
 - determination of 8.62
 - reasonable examination 8.63
- seller in possession, by 8.23
- statutory power, under 8.21
- stoppage in transit 8.72–8.79
 - effect of 8.75–8.77
 - implementation of 8.74
 - right of resale 8.77–8.79
 - right of retention 8.76
- suitability of goods 8.43
 - affirmative reliance 8.45, 8.46
 - implied condition 8.43
 - inherently dangerous goods 8.46
 - knowledge of purpose 8.44
 - onus of 8.42
 - partial reliance 8.47
- transfer of property 8.16–8.25
 - exceptions to ‘nemo dat’ rule 8.17–8.25
 - ‘nemo dat’ rule 8.16
 - non-owner, by 8.16–8.25
- voidable title, under 8.22

Sale of goods contracts

- auction 8.93
- breach *see* Breach of contract
- conditional 8.15
- contract of sale definition 8.2
- form of 8.9
- frustration of 8.29
- money considerations 8.6–8.9
- non-performance of 8.27
- repudiation of 8.29, 8.87
- requirement for 8.1, 8.6, 8.7
- Romalpa clause 23.6–23.7
- strict liability 8.40
 - avoidance of 8.41
- terms of 8.26–8.29

- breach of 8.27, 8.28
- classification of 8.27
- conditions 8.27, 8.29, 8.38–8.60
- exclusion of 8.65
- express 8.26
- implied 8.26, 8.30–8.60, 8.65
- interpretation of 8.29
- non-essential 8.27
- statutory 8.65
- variation of 8.65
- warranties 8.27, 8.29
- types 8.3
- unconditional 8.13

Shareholders

- financial report 17.76
- meetings 17.77
 - notice of 17.78
 - procedures 17.78
- proprietary company 17.75
- protection of 17.79–17.82
- public company 17.75
- register 17.47
- rights of 17.47
- small 17.79–17.82
- status of 17.47, 17.75

Shares

- allotment 17.47, 17.58
- application for 17.47
- buy-backs 17.63
 - employee 17.63
 - identical offers 17.63
 - on market 17.63
 - minimum holdings 17.63
 - selective 17.63
- deferred 17.56
- dividends 17.64–17.65
 - source of 17.65
- hawking 17.57
- holding 17.47
- issue of 17.47, 17.58, 17.66
- nature of 17.48
- options 17.60
- ordinary 17.53
- payment for 17.59
- preference 17.54
 - redeemable 17.55
- purchase of 17.47, 17.62
 - financial assistance for 17.62
 - own shares 17.62

Shares — cont'd

- rights attached to 17.47
- share capital 17.47, 17.50–17.51
 - authorised 17.50
 - issued 17.50
 - maintenance of base 17.61
 - uncalled 17.51
- share register 19.49
- types of 17.52–17.56

Sole traders

- business enterprise 15.2–15.7
- definition 15.4, 15.6–15.7
 - advantages 15.7
 - disadvantages 15.7
 - legal aspects 15.6
 - limited life 15.6
 - no separate entity 15.6
 - sale of 15.6
 - unlimited liability 15.6
- operation, taxation 15.6
- regulation of 15.5
- resources 15.2
- risks 15.2
- sole proprietor 15.3

Sources of law

- case law 1.4
- historical background of Australian law 1.2
- introduction of English law to Australia 1.3
- judge-made law 1.1, 1.4, 1.6, 1.12
- legislation 1.1, 1.6
- origins 1.1
- parliamentary 1.1
- primary sources 1.1
- secondary sources 1.1

State Parliaments 1.24

Statements

- advertisements *see* Advertising
- contractual force 5.7–5.9
- invitation to treat 4.11, 4.14
- mere puff 4.11, 4.12
- offers 4.11
- untrue *see* Misrepresentation

States

- independence 1.30
- law-making powers 1.29
- responsibilities 1.30

Syndicates

- definition 15.58
- liability under 15.58

- members 15.58
- relationship 15.58
- taxation of 15.58

Takeovers

- company 17.107
- on market 17.114
- off market 17.113
- procedures 17.111–17.114
- prohibited behaviour 17.115
- regulation of 17.109–17.110

Tasmanian Dam case 1.30

Tenders

- acceptance of 4.15
- call for 4.15
- contractual liability 4.15
- invitation to treat 4.15
- submission of 4.15

Termination of contracts

- abandonment 7.18
- agreement by 7.13–7.18
- breach of contract *see* Breach of contract
- discharge by 4.4, 4.47, 7.1–7.12, 7.14–7.38
 - breach 7.33–7.38
 - intent for 7.34
 - mutual 7.15–7.18
 - operation of law 7.14, 7.19–7.32
- frustration 7.20–7.25
 - conditions for 7.21–7.22
 - consequences 7.24
 - events 7.23
- illegality 7.26–7.32
 - common law 7.31
 - consequences 7.32
 - grounds for 7.27–7.30
 - statutory 7.27–7.30
- insurance contracts *see* Insurance contracts
- methods of 7.1
- novation or substitution 7.17
- operation of law 7.14, 7.19–7.32
 - statutory reform 7.25
- performance by 7.2–7.12
 - conditions precedent 7.4
 - conditions subsequent 7.4
 - divisible contracts 7.12
 - entire performance rule 7.6, 7.12
 - exact 7.5
 - exceptions to performance rule 7.8–7.12
 - independent and dependent promises 7.3

- prevention of 7.38
- ready, willing and able rule 7.11, 7.38
- refusal 7.38
- strict 7.5
- substantial 7.10
- time for 7.7
- release by waiver 7.16
- remedies *see* Remedies
- statutory illegality 7.27–7.30
 - express 7.28
 - implied 7.29

Terms of contracts

- agreement for 5.6
- alteration of 5.10
- ambiguity 5.25
- classification of 7.36
- consent to 5.4, 5.5
- construction of 5.24
- as contractual promises 5.2
- determination of 5.9–5.11
- e-commerce 5.23
- exclusion clauses 5.27–5.29
 - consumer transactions 5.29
- express 5.7–5.10, 5.10
 - collateral contracts 5.12
 - interpretation of 5.8–5.9
- implied 5.13–5.19
 - business efficacy 5.14
 - custom or trade usage 5.15
 - good faith 5.19, 6.47
 - informal contracts 5.16
 - residential tenancy agreements 5.18
 - statute by 5.17
- incorporated 5.20–5.23
 - dealings from 5.22–5.23
 - electronic communications 5.23
 - from separate documents 5.21
 - notice by 5.21
 - process of incorporation 5.21–5.23
 - rule in *L'Estrange v Graucob* 5.20
- interpretation of 4.3, 5.1
- knowledge of 5.4, 5.5
- sale of goods *see* Sale of goods contracts
- uncertainty 5.26
- unfair 6.47

Tort

- cause of action 22.2–22.10
- civil liability *see* Civil liability
- contract and 22.11–22.13

- crime and 22.6–22.10
- definition 22.1–22.13
- duty of care *see* Duty of care
- illegitimate acts or omission 22.2
- legal wrong 22.5
- negligence *see* Negligence
- remedies *see* Remedies
- unlawful interference with goods 22.75–22.88

Trade marks

- brand identification 19.62
- certification of 19.71
- collective 19.73
- defensive 19.72
- definition 19.63
- distinguish goods and services 19.66
- features of 19.63
- infringement of 19.74
 - intended use 19.65
 - remedies 19.74
- product recognition 19.62
- registration 19.67
 - benefits 19.68
 - process 19.69
- removal of 19.70
- signs 19.63, 19.64
- unregistered 19.67
- use of 19.65

Trading trusts

- assets, ownership of 15.64
- co-operatives 15.67
- creation of 15.63
- franchises 15.66
- structure of 15.64
- taxation of 15.63, 15.64
- trustee 15.64
 - appointment of 16.4
 - role of 16.4
- unit trusts 15.65, 16.4
 - dividends, payment of 16.4
 - public 16.4
 - unit holders 16.4

Trespass

- chattels, to 22.77–22.81
 - direct harm 22.79
 - establishment of 22.78–22.80
 - fault 22.80
 - recognised interference 22.78–22.79
 - remedies 22.8
- goods, to 22.76

Trespass — *cont'd*

- establishment of 22.76
- land, to 22.76
- persons, to 22.76
 - assault 22.76
 - battery 22.76

Trials

- criminal 2.34
 - arguments 2.34
 - judge's role 2.34
 - jury's role 2.34
 - plea 2.34

Tribunals

- consumer claims 3.5
 - legislation 3.6
- inferior 3.6
- jurisdiction 3.1, 3.4
- small claims 3.4
 - legislation 3.6
 - operation of 3.5

Trusts

- alteration of 16.11
 - by court 16.11
- beneficiaries 16.1, 16.11
 - rights of 16.20
- breach of 16.18
- charitable trusts 16.1, 16.7
 - creation 16.10
 - enforcement of 16.7
 - express form 16.7
 - preferential tax treatment 16.7
 - writing in 16.7
- composition of 16.1
- construction of 16.9
- creation of 16.1
 - by operation of law 16.1, 16.8
 - by will 16.1
 - express trusts 16.9–16.10
 - rules for 16.9, 16.10
- definition 16.1
- discretionary trusts 16.1, 16.2
- express trusts 16.2–16.3
 - creation 16.9–16.10
 - discretionary trusts 16.2, 16.3
 - family trusts 16.2
 - private 16.9
 - retirement trusts 16.2
 - trading trusts *see* Trading trusts
 - unit trusts 16.2

- family trusts 16.2, 16.6
 - control of 16.6
 - income splitting 16.6
 - tax minimisation 16.6
- parties to 16.1
- rectification of 16.12
- revocation of 16.12
- superannuation trusts 16.5
 - operation 16.5
 - regulation 16.5
- termination of 16.11
- trading *see* Trading trusts
- trust deed 16.1, 16.11
- trustee companies 16.21, 16.22
- trustees 16.1, 16.13–16.17
 - appointment 16.14
 - breach of trust 16.18
 - duties 16.15
 - legal position 16.13
 - liability of 16.18
 - powers 16.16
 - public 16.22
 - rights of 16.19
 - termination of trusteeship 16.17
- types of 16.2–16.7
- unit trusts *see* Trading trusts
- voidable 16.12

Unconscionability

- concept of 10.11
- doctrine of 6.26
- equitable relief 10.11
- procedural unfairness 6.26

Unconscionable conduct

- abuse of power 6.32
- application of doctrine 6.33
- business ethics 13.6–13.7
- business loans and spouses 6.37
- business transactions 10.11
- commercial pressure 6.28
- concept 10.11
- consumer protection 10.11
- consumer transactions 10.11
- definition 6.43
- financial services 10.11
- guarantees and mortgages 6.37
- legislative regulation 6.38–6.42
- prohibition of 10.11, 13.6
- remedies *see* Remedies

special disadvantage 6.35
test for 6.34
trade or commerce 10.11
unconscionable dealing 6.32
what constitutes 10.11

Undue influence

abuse of power 6.30
actual 6.30, 6.32
business loans and spouses 6.37
guarantees and mortgages 6.37
pressure 6.30
presumed 6.30, 6.31
relationship of parties 6.30, 6.31

Unfair contracts

consumer contracts 10.10, 11.26
determination of 6.48–6.49, 11.26
regulation of 10.10, 11.26
standard form contracts 10.10
void 10.10

United Kingdom

appeals to Privy Council from Australian
courts 1.16
application of English law in Australian colonies 1.14
Australia Act 1.16
development of common law 1.5
development of English law and justice system 1.2

introduction of English law to Australia 1.3
Statute of Westminster 1.15, 1.16

Unjust enrichment, prevention of 7.58

Vicarious liability

employer–employee relationship
consequences 22.111
course of employment 22.109
defences 22.110
employer–employee relationship 22.107–22.113
establishment of 22.108
recovery from employee 22.112, 22.113
liability for acts of others 22.106
negligence, for 22.106
principal and agent 22.106
relationship for 22.106–22.109

Warranties

breach of 7.37, 8.27
damages 8.89, 10.44
definition 8.27
express 10.39
implied 8.31, 8.36, 8.42
manufacturer 10.46–10.47
non-performance of 8.27
term of contract 8.27, 8.29