

Understanding Business Law

6TH EDITION

Brendan Pentony Stephen Graw David Parker Keturah Whitford



Index

References are to paragraphs

A	cohabitation 15.17
Advertisement	creation of 15.13–15.19
bait 11.15	effect 15.4
common law, at 10.5	emergence of 15.13-15.19
comparative 11.7	estoppel 15.19
consumer protection 11.6	fiduciary 15.3, 15.6
documents, disclosing 18.43	nature of 15.5–15.12
invitation to treat 10.6	necessity 15.18
legal significance 10.7-10.8	presumption of 15.17, 15.18
opinion and fact, distinguished 10.8	relationships 15.26-15.33
promise, legally enforceable 10.6	auctioneers 15.31
puff 10.6, 10.7	authority 15.5
statement	companies 15.28
fact, of 10.7	effect 15.4
fraudulent misrepresentation 10.7	insurance intermediaries 15.30
innocent misrepresentation 10.7	partnerships 15.27
representation 10.7	real estate agent 15.32
Agency	stockbroker 15.33
agent see Agent	tax agent 15.29
arrangements 15.26-15.33	termination of 15.34-15.36
categories of 15.26-15.33	sale of goods see Sale of goods
cheques see Cheques	termination of relationship 15.34-15.36
definition 15.2, 15.3	means of 15.36
examples 15.26-15.33	revocation by authority 15.35
frustration	third-party relations 15.21–15.24
termination of agency relationship 15.36	aspects 15.22-15.24
illegality	types 15.25
termination of agency relationship 15.36	what is 15.2
presumption of 15.17, 15.18	Agent
principal	accountability 15.12
bankruptcy of, consequences 15.36	authority 15.5
death of, consequences 15.36	company 18.37
duties of 15.20	conduct of, ratification of 15.16
insanity of, consequences 15.36	del credere 15.25
rights of 15.20	due care, skill and diligence 15.11
principal and agent relationship 15.1	duties of 15.7–15.12, 15.20
agreement 15.14, 15.15	employee 15.25
authorisation of conduct 15.16	failure to pay money over 15.24

Agent – cont'd	intermediate 2.29
general 15.25	powers 2.22
implied authority 15.15	Arbitration
independent contractor 15.25	alternative dispute resolution 3.8, 3.13
insanity of	award 3.18
termination of agency relationship 15.36	binding 3.18
instructions 15.10	enforcement of 3.18
insurance see Insurance	final 3.19
mercantile 8.19, 15.25	foreign 3.20
misrepresentation by 15.23	Commercial Arbitration Act 3.10, 3.11
obligations of 15.7-15.12	paramount purpose 3.12
payment from other party 15.8	compulsory 3.25
personal representative 15.9	court-annexed 3.25
principal's interests, acting in 15.7	court intervention 3.13
rights of 15.20	dispute resolution methods other than 3.21
role of 15.1, 15.2	domestic commercial arbitration 3.12
secret commissions 15.8	interim measures 3.16
termination of agency relationship 15.36	interlocutory order 3.16
signatures by 29.7	international 3.20
special 15.25	international commercial arbitration 3.12, 3.20
trustee 15.25	legislation 3.10
universal 15.25	procedure 3.14
Agreement	proceedings
arbitration see Arbitration	conduct 3.17
contract see Contract	termination 3.19
principal-agent relationship created by 15.14, 15.15	tribunal 3.14
Alternative dispute resolution	award 3.18
arbitration see Arbitration	jurisdiction 3.15
commercial transactions 3.7, 3.8	proceedings, conduct of 3.17, 3.18
compromise 3.8	UNCITRAL Model Law on International
conciliation see Conciliation	Commercial Arbitration 3.11, 3.20
expert opinion 3.24	voluntary 3.9
independent expert, use of 3.24	Arrangement
industry-based schemes 3.26	competition, affecting 13.5
inferior tribunals 3.8	dealings, restricting 13.5
mediation see Mediation	definition 13.5
methods 3.21	exclusionary provisions lessening competition
negotiation 3.8	13.5
relevant legislation 3.6	price fixing 13.6
Anti-competitive conduct see Restrictive trade	Association
practices	definition 16.60
Appeals	enterprise 16.60, 16.62
courts 2.16, 2.22, 2.31	incorporated 16.60, 16.62

annual general meeting 16.62	common innkeepers 22.24
constitution 16.62	sub-bailee 22.9
deregistration of 16.62	lien 22.18
limited liability 16.62	private carriers 22.23
minimum membership 16.62	rights of 22.17-22.18
profits, distribution of 16.62	role 22.1
record keeping 16.62	sub-bailee 22.9
registration of 16.62	liability 22.9
regulation of 16.62	wrongful act 22.21
rules 16.62	Bailment
separate legal entity 16.62	see also Bailee, Bailor
unincorporated 16.60, 16.61	bailed goods containing other goods 22.4
Auction	case examples 22.4
auctioneer	responsibility of bailee 22.4
agency relationship 15.31	circumstances for 22.2
bids 8.57	classification of 22.5
acceptance of 8.60	contractual 22.5
contract 4.9, 8.57	breach of contract 22.19–22.20
invitation to treat 4.9	exclusion clauses 22.16
offer 4.9	definition 22.1
online 4.9	gratuitous 22.2, 22.5
reserve price 8.58	licences and 22.3
notification of 8.59, 8.60	non-contractual 22.5
sale 8.57	breach of 22.19
without reserve 8.60, 8.61	possession and control
Australian Securities and Investments	lawful 22.13
Commission (ASIC)	passing of 22.1, 22.3
establishment of 18.6	remedies see Remedies
role of 18.6	reward, for 22.2, 22.5
_	special 22.22–22.24
B	sub-bailment 22.9
Bailee	termination of 22.21
classes of 22.22	agreement 22.21
common carrier 22.22, 22.23	destruction of subject matter 22.21
common innkeepers 22.22, 22.24	natural expiry 22.21
duties of 22.6–22.11	unilateral act 22.21
due care 22.7	wrongful act of bailee 22.21
goods, no unauthorised use of 22.10	types of 22.5
retain possession 22.8-22.9	Bailor
return of goods 22.11	duties of 22.12–22.15
lawful possession 22.13	dangerous goods, notice of 22.14
liability of 22.9, 22.22	delivery 22.13
common carriers 22.23	

Bailor - cont'd	examples 28.18, 28.19
fitness for purpose 22.15	holder 28.17
merchantable quality of goods 22.15	indorsee and indorser 28.17
non-interference with lawful possession 22.13	order bill 28.17
Bank see Financial institutions	payee 28.17
Bankruptcy	regulation of 28.16
act of 27.33	security over assets 27.10
annulment 27.43	term 28.18
assets of bankrupt 27.34	term bills 28.19
capacity to contract 4.54	trading transactions 28.20
company 19.47, 27.25, 27.49	usance 28.18
contributions 27.41-27.42	Breach of contract
creditors 27.30	actual 7.27
petition of 27.30	affirmation of contract 7.31
property divisible between 27.34	anticipatory 7.27, 7.28, 7.36
debt agreement 27.44	consequences of 7.29
debtor 27.27	determination of 4.38, 7.30
petition of 27.28	classification of terms 7.30
discharge from 27.43	discharge for 7.27-7.28
effect of 27.29	procuring 26.22
individual 27.25	elements of 26.23
partner, of 16.42	remedies see Remedies
personal insolvency agreement 27.45-27.46	remedies see Remedies
preferential treatment of creditors 27.31	sale of goods, for 8.27
principal, of	remedies see Remedies
termination of agency relationship 15.36	termination of contract 7.31
proceedings 27.25	Business ethics
process for 27.25-27.26	corporate social responsibility 14.18-14.21
property divisible between creditors 27.34	multinational companies 14.20
provable debts 27.32	United Nations Global Compact
sequestration order 27.35	14.19
consequences of 27.36	ethics, definition of 14.1
trustee in bankruptcy 27.37-27.40	meaning of 14.2-14.3
void transfers 27.47-27.48	sources of 14.4-14.17
Bills of exchange	corporate governance 14.14
acceptor 28.17, 28.20	internal guidelines/codes 14.15-14.17
bearer bill 28.17	legislative 14.5, 14.6
cheque distinguished 28.20	Business forms
commercial fundraising 28.20	association see Association
definition of 28.17	choice of 16.1, 16.2
discount 28.18	considerations 16.1, 16.2
drawee and drawer 2817	company see Company

joint venture see Joint venture	dishonour 29.42
overview 16.2	assignment of customer's balance, notice of
partnership see Partnership	29.59
sole trader see Sole trader	bank cheque 29.70
syndicates see Syndicates	bankruptcy, notice of 29.58
trading trust see Trading trust	countermand of payment 29.53-29.55
	discharged cheque 29.62
C	drawer's death, notice of 29.57
Cartels	drawer's forged signature 29.61
anti-competitive conduct 13.1, 13.10	financial institution's own cheques 29.70
criminal offence 13.13	mental incapacity, notice of 29.56
immunity policy of ACCC 13.27	post-dated cheques 29.51
law against 13.13	presenter's defective title, notice of 29.60
penalties	refusal to pay 29.42
civil 13.11	requirements for 29.42
criminal 13.12	right of 29.50–29.62
prosecution policy 13.16	stale cheque 29.52
sanctions 13.15	winding up, notice of 29.58
what is 13.10	drawee 28.20
Charges	drawers 28.20
security over assets 27.10	liability of 29.37
Cheques	enforceability of 29.26
advantages of 29.1	financial institution
agency cheques 29.71-29.74	addressed to 29.4
definition 29.71	cheques institution draws on itself
permissible 29.72	29.69-29.70
treatment of 29.73-29.74	holder
bank cheques 29.69-29.70	definition of 29.27
dishonoured 29.70	rights of 29.28, 29.31
bearer cheques 29.13, 29.16	title, acquisition of 29.35
definition of 29.16	holder for value 29.29-29.31
example 29.16	holder in due course 29.32-29.34
negotiability of 29.20	benefits 29.34
payable to bearer 29.13, 29.16	presumption of 29.33, 29.34
bills of exchange distinguished 28.20	title, acquisition of 29.35
consideration for 29.29, 29.30	indorsement 28.20
crossed cheques 29.21	indorser's liability 29.38
'account payee only' 29.24	limitation 29.39
authority for 29.25	liability 29.36-29.41
effect of 29.22	drawee 29.48–29.62, 29.64–29.68
'not negotiable' 28.20, 29.21, 29.23	drawer 29.37
what constitutes 29.21	financial institutions, of 29.48-29.68

C

definition of 29.2

Cheques – cont'd	identifying the issues 2.44
indorser 29.38-29.39	interrogatories 2.44
prerequisites 29.41	pleadings 2.44
strangers 29.40	pre-trial procedures 2.43
negotiability 28.20, 29.1, 29.17-29.25	representation 2.43
not negotiable 28.20, 29.21	role of court 2.48
effect of 29.23	witnesses 2.45, 2.47
open cheques 29.21	origins 1.10
order cheque 28.20, 29.13-29.15	proceedings 1.2, 2.41
definition of 29.14	conduct of 2.46, 2.48
negotiability of 29.18	examination of witnesses 2.47
payable to order 29.13	hearing 2.46
significance of 29.15	parties to 2.48
transfer without indorsement 29.19	preparations for 2.44
origins 28.20	representation 2.43
payee 28.20	witnesses 2.45, 2.47
payment on demand 28.20, 28.21, 28.25, 29.9, 29.11	terminology 2.42
post-dated 29.10-25.11	Civil liability
dishonour, right of 29.51	breach of contract see Breach of contract
validity of 29.11	conspiracy see Conspiracy
presentation of 28.21, 28.25, 29.42-29.47	conversion see Conversion
collecting institution, by 29.44-29.47	detinue see Detinue
payment, for 29.43	intimidation see Intimidation
proceeds, collection of 28.27	negligence see Negligence
refusal to pay 29.42	negligent misstatement see Negligent misstatement
right of 29.50-29.62	passing off see Passing off
regulation of 28.16	trespass <i>see</i> Trespass
signature of 29.5–29.6	vicarious liability see Vicarious liability
agent, by 29.7	Common law
forged 29.61	classification 2.37
limited liability 29.7	court system 1.9
procuration 29.8	development of 1.10, 2.1
requirement of 29.5	history 2.37
what constitutes 29.6	introduction of 1.8
stale 29.52	judge-made law 2.1
sum certain in money, requirement of 29.12	jurisdiction 2.37
transferability of 29.17, 29.19	exercise of 2.37
types of 29.13-29.16	legal principles 1.9, 1.11, 2.16
unconditional orders 28.21, 29.3	legislation 1.11
use of 29.1	meanings 1.9
Civil law	personal liberty protection 1.12
civil action 2.43-2.48	personal rights and guarantees 1.30
discovery 2.44	precedents 2.10

prerogative powers of Crown 1.24	constitution 18.32-18.37
role 1.12	alteration of 18.35-18.36
sale of goods 8.21	contractual effect 18.33
system 1.9	replaceable rules 18.33
traditions 1.16	scope of 18.34
Commonwealth	control of 19.34
law-making powers 1.23, 1.27, 1.28	corporate governance 19.32
parliament see Federal Parliament	creation of 18.29–18.31
powers 1.29	criminal liability 18.25-18.28
corporation 1.28	determination of 18.27
exercise of 1.29	debentures see Debentures
external affairs 1.29	derivative action, statutory 19.8
taxation 1.29	directors see Company director
Commonwealth Constitution	disclosure documents 18.39–18.43
alteration of 1.26	advertisement of 18.43
Commonwealth of Australia Constitution Act	content 18.41
1900 (UK), 1.14, 1.16	liability for 18.42
conventions 1.17	listed securities 18.41
federation, formation of 1.20	lodging with ASIC 18.40
free trade 1.21	offer information statement 18.39, 18.41
operation of 1.16	profile statement 18.39, 18.41
origins 1.19	prospectus 18.39, 18.41
overview 1.16	requirements for 18.40
personal rights and guarantees 1.30	short form prospectus 18.39
political document 1.16	distress, in 19.43
responsible government 1.18	employees
separation of powers 1.22	duties of 19.22
structure of 1.22-1.25	liability of 18.26
time of effect 1.16	financial report 19.2
Westminster government model 1.18	foreign 18.23
Companies	formation of 16.2
agency relationship 15.28	holding 18.22
agents see Agency	illegal or improper action 19.8
bankruptcy 19.47, 27.25, 27.49	incorporated company 18.7-18.10
board of directors 18.26	advantages 18.7
capital 18.44	disadvantages 18.7
capital raising 18.38-18.44	lifting the corporate veil 18.9
debentures see Debentures	regulation of 18.10
disclosure documents 18.39-18.43	separate legal personality 18.8
share capital see Shares	insolvency and security interests 18.61
charges see Charges	liability in torts 18.28
classification of 18.11-18.24	liability of members 18,12-18,17, 18,25-18,28

Companies - cont'd	takeovers see Takeovers
limited 18.13-18.15	trustee 17.21, 18.24
guarantee, by 18.14	Public Trustee 17.22
shares, by 18.13	unlimited 18.16
shares and guarantee, by 18.15	winding up 19.42
meeting 19.3-19.4	bankruptcy 19.47
notice of 19.4	company in distress 19.43
procedures 19.4	compulsory 19.42
membership 18.45	insolvent trading 19.50
benefits 18.45	involuntary 19.42
refusal of 18.45	liquidation 19.46
register 18.47	litigation by liquidators 19.49
statutory derivative action 19.8	priority payments 19.48
money, raising see capital raising above	proof of debts 19.47
no liability 18.17	receivers, appointment of 19.44
officers	voluntary administration 19.45
company secretary 19.31	Company director
duties of 19.22-19.24	alternate 19.15
role of 19.10	appointment of 19.12
oppressive action 19.8	associate 19.15
ownership 19.1	benefits 19.20
perpetual succession 19.42	chairman of directors 19.15
phoenix activity 18.6	definition of 19.11
pre-registration contract 18.31	disqualification of 19.14
promoter 18.30	duties of 14.7, 19.22–19.27
proprietary 18.18–18.20, 19.1, 19.9	act in best interests of company 19.26
characteristics 18.19	avoid conflict of interest 19.26
large 18.20	breach of 19.29
small 18.20	business judgment rule 19.24
public 18.21, 19.1, 19.9	care, of 19.26
registration of 18.29	common law 19.26
regulation 18.10	creditors, to 19.27
security interests 18.61	diligence, of 19.26
insolvency, in 18.61	discretion, of 19.26
shareholders see Shareholders	misuse information, not to 19.26
shares see Shares	not to abuse position 19.26
social responsibility of 14.18-14.21	not to profit from position 19.26
case study 14.21	outsiders, to 19.30
multinational companies 14.20	statutory 19.23
United Nations Global Compact 14.19	trust, of 19.26
statutory derivative action 19.8	executive 19.15
subsidiary 18.22	governing 19.15

liability of 18.26, 19.28	understandings affecting 13.5
loans to 19.20	what is 13.3
loss of office 19.16	Conciliation
payment 19.19	conciliator 3.23
managing 19.15	role of 3.23
nominee 19.15	conduct of 3.23
non-executive 19.15	counselling 3.23
payment 19.18	referrals 3.25
termination 19.19	Confidential information
powers 19.21	breach of confidence 21.76
proprietary company 19.9	remedies 21.76
public company 19.9	categories of 21.71–21.74
qualifications of 19.13	commercial 21.72
reliance on others 19.25	definition of 21.70
removal of 19.17	government 21.73
remuneration 19.18	personal a 21.74
termination 19.19	protection of 21.69, 21.75
retirement of 19.16	Consideration
payment 19.19	adequate 4.40
role of 19.10	contract, for 4.11, 4.36-4.44
termination payment 19.19	definition of 4.36
types of 19.15	move from the promisee 4.38
Company law	past 4.39
administration of 18.6	rules of 4.37
Corporate Law Reform program 18.5	sufficient 4.40
Corporations Act 18.4, 18.10	compromise of existing claim 4.44
shareholder protection under 19.6–19.7	exceeding existing duty 4.42
takeover provisions 19.36	forbearance to sue 4.44
Corporations Law 18.3	promise to perform existing obligation 4.41
development in Australia 18.1–18.6	4.43
origins 18.1	what constitutes 4.40
regulatory bodies 18.6	Conspiracy
Competition	criminal offence 26.27
anti-competitive conduct see Restrictive trade	damages 26.32
practices	difference between types, significance 26.31
arrangements affecting 13.5	forms of 26.27
contracts affecting 13.5	injurious purpose 26.28
definition 13.3	lawful means 26.27, 26.28
lessening of 13.3	motive 26.29
exclusionary provisions 13.5	remedies 26.32
prohibition against acquisitions resulting in	tort 26.27
13.20	unlawful means 26.27, 26.30
	1

Constitution see **Commonwealth Constitution Consumer credit**

```
account charges .... 12.12
bill facilities .... 12.12
civil penalties .... 12.32-12.33
   limitation of .... 12.35
contract see Consumer credit contract
credit, definition of .... 12.2
credit transaction legislation .... 12.6
disclosure regime .... 12.14-12.19
   contract .... 12.16
   level of accuracy .... 12.18
   post-contract .... 12.19
   pre-contractual .... 12.15
   requirements .... 12.17
employee loans .... 12.12
hire purchase .... 12.1
history .... 12.1
insurance premiums by instalments .... 12.12
interest .... 12.1
joint credit and debit facility .... 12.12
margin loans .... 12.12
National Consumer Credit Protection Act
   .... 2009, 12.3, 12.5
   policy objectives .... 12.4
National Credit Code .... 12.3, 12.6
   credit transactions regulated by .... 12.8
   objectives .... 12.4
   penalties .... 12.33
   presumptions .... 12.13
   provisions of credit inapplicable to .... 12.12
   transactions applicable to .... 12.7
national credit regime .... 12.3
no prior agreement .... 12.12
pawnbrokers .... 12.12
presumption of application of legislation .... 12.13
provider
  linked .... 11.47
   right loss/restoration .... 12.32
provision of .... 12.12
related transactions .... 12.9
   guarantee .... 12.10
```

```
trustees of estates .... 12.12
  usury .... 12.1
Consumer credit contract
   content .... 12.34
   disclosure .... 12.14
  enforcement of .... 12.25-12.31
     guarantor, action against .... 12.28
     process .... 12.26-12.27
     repossession .... 12.29-12.31
  hardship .... 12.24
  requirements for .... 12.34
  unjust contract .... 12.23
  variation of .... 12.20-12.22
     areas where changes can be made .... 12.21
     form of .... 12.22
     grounds for .... 12.23-12.24
Consumer protection
  advertising see Advertisement
  auctions see Auction
  Australian Consumer Law (ACL) .... 10.14, 10.15
  background .... 10.1-10.3
  caveat emptor ('let the buyer beware') .... 10,4
  common law .... 10.1, 10.3, 10.4, 10.9
  Commonwealth jurisdiction .... 10.12
  Competition and Consumer Act 2010 (Cth) .... 10.14
  consumer, meaning under ACL .... 10.17
  consumer transaction .... 10.16, 11.5
  credit cards .... 29.84
  debit cards .... 29.84
  Do Not Call Register .... 11.3
  electronic funds transfer .... 29.84-29.87
  exclusion clauses .... 5.27
  false representations see Representation
  fitness for purpose of goods .... 10.26, 10.27, 10.28
  goods bought by description of merchantable
     quality, implied condition .... 10.29
  goods free from charge/encumbrance, implied
     warranty .... 10.24
  goods sold by description comply with
     description, implied condition .... 10.25
  implied warranties/conditions .... 10.22-10.29, 10.31
  legislation .... 10.9-10.15
```

short term 12.12

mortgage 12.11

advertising see Advertisement	capacity 4.48-4.54
structure 11.1	bankrupt 4.54
twenty-first century, in 11.4	corporation 4.52
wider 11.3	intoxicated persons 4.53
merchantability of goods 10.26, 10.27	lack of 4.48
merchantable quality of goods	minor 4.49–4.51
goods bought by description, implied	persons of unsound mind 4.53
condition 10.29	collateral 5.11
meaning 10.30	competition, affecting 13.5
rules 10.30	consent to
misleading or deceptive conduct see Misleading	duress see Duress
or deceptive conduct	forceful persuasion 6.21
1960s, before 10.2	undue influence see Undue influence
1960s, since 10.3	voluntary 6.18, 6.21
product safety see Product safety	consideration for 4.11, 4.36-4.44
promotion see Promotion	consumer contract, defined 6.35
quiet possession, implied warranty 10.23	consumer credit see Consumer credit contract
remedies see Remedies	content of 5.2-5.3
sale of goods see Sale of goods	continuing, and minors 4.50
Sale of Goods Acts, under 10.21	contractual force of standard form contract 5.5
implied warranties/conditions 10.22-10.29,	dealings, restricting 13.5
10.31	discharge of see Termination of contract
limitations 10.32	electronic transactions, legal status 4.28
non-excludable consumer guarantees 10.33	employment see Employment contract
sale regulation 10.13	enforcement of 4.56
seller's right to sell goods, implied condition 10.22	legally incapable party 4.48
spam 11.3	exclusionary provisions lessening competition
technology abuses 11.3	13.5
telemarketing 11.3	execution of 4.19
Trade Practices Act 1974 (Cth), 10.10-10.12,	formation of 4.24, 4.30–4.31
10.14	time of 4.24
mirror legislation 10.12	freedom of see Freedom of contract
unconscionable conduct see Unconscionability;	implied
Unconscionable conduct	consumer guarantees, distinguished 8.29
unfair contracts see Unfair contracts	inducement 6.2
warranties see Warranty	informal 5.15
Contract	insurance see Insurance contract
affirmation of 7.31	intent 4.33
agreement 4.2, 4.30-4.31	language 4.34-4.35
binding 4.19, 4.25	interpretation of 5.1
minors 4.50	invalid 4.48
breach of see Breach of contract	law of 4.1

Contract – cont'd	unconscionable see Unconscionability;
legal transaction 4.1	Unconscionable conduct
liability of partners 16.27	unfair see Unfair contracts
misrepresentation see Misrepresentation	void 6.16
mistake see Mistake	voidable 6.19
obligations 4.1	written 5.9
offer see Offer	Conversion
option 4.11	definition 26.8
oral 5.12	establishment of 26.8
parties to 4.55, 4.56	intent for 26.11
agreement of 4.2	interference with possession 26.8
consent of 6.1	remedies 26.12
performance of 7.1–7.9	right of legal action 26.9
divisible contracts 7.9	what constitutes 26.10
entire performance rule 7.3, 7.9	Co-operatives
exact 7.2	definition 16.67
exceptions to performance rule 7.5-7.9	limited liability 16.67
prevention of 7.32	regulation 16.67
ready, willing and able rule 7.8, 7.32	Copyright
refusal 7.32	assignment of 21.26
strict 7.2	copyright-design overlap 21.42
substantial 7.7	definition of 21.4
time for 7.4	duration of 21.17
precontractual statements 5.7-5.8	exclusive economic right 21.4
price fixing 13.6	infringement of 21.18–21.24
privity of see Privity of contract	literary, dramatic, musical or artistic works 21.18
promise 4.1	parallel importation 21.19
enforceability 4.1	penal sanctions 21.24
rectification of 6.15	performance of literary, dramatic or musical
repudiation of 7.28	works 21.20
requirements for 4.2	remedies 21.23
rescission of 6.5, 6.6, 6.19, 6.27, 7.31	subject matter 21.21
bars to 6.5	substantial part of work 21.5
partial 6.27	licence 21.26
sale of goods see Auction; Sale of goods	moral see Moral rights
contract	non-infringing dealings 21.22
standard form 4.32, 10.11	ownership 21.6
consumer contract 6.35-6.36	personal property 21.6
contractual force time 5.5	protection 21.7-21.8, 21.16
tickets as example 5.5	arising 21.8
termination of see Termination of contract	author 21.16
terms of see Terms of contract	owner 21.16

works 21.4, 21.9-21.14	independent courts 1.25
artistic 21.14	intermediate courts 2.28–2.29
dramatic 21.12	county courts 2.28
literary 21.11	district courts 2.28
musical 21.13	jurisdiction 2.29
originality 21.10	jurisdiction of courts
subject matter 21.15	appellate 2.22, 2.29, 2.31
substantial part of 21.5	civil 2.29, 2.30
Corporation see also Companies	common law 2.37
artificial legal person 4.52	criminal 2.29
bankruptcy 19.47, 27.25, 27.49	cross-vesting 2.34
capacity to contract 4.52	equity 2.37
cartel behaviour, civil penalties for	federal 2.32-2.34
13.11	original 2.21, 2.29
criminal liability 18.25-18.28	specialist 2.27
legal capacity 4.52	state 2.22, 2.23, 2.25, 2.34
social responsibility of 14.18–14.21	summary 2.23–2.27
case study 14.21	procedures 2.36
multinational companies 14.20	proceedings 2.36
United Nations Global Compact 14.19	parties to 2.36
Court system	reported cases 2.7, 2.8
adversarial 1.9, 2.35, 2.36	role of courts 1.12
alternative dispute resolution 3.25	state 2.23-2.31
appeal courts 2.16, 2.22, 2.29, 2.31	courts of summary jurisdiction
powers 2.22	2.23–2.27
arbitration, intervention in 3.13	intermediate courts 2.28-2.29
case reports 2.7, 2.8	superior courts 2.30–2.31
civil law 1.9	summary courts 2.23-2.27
common law 1.9	civil matters 2.23
court, what is 2.20	committal hearings 2.26
federal 2.32-2.33	decisions 2.23
Family Court of Australia 2.33	indictable offences 2.25
Federal Court of Australia 2.33	jurisdiction 2.23, 2.25
Federal Magistrates Court of Australia 2.33	magistrates 2.23
High Court see High Court of Australia	non-indictable offences 2.24
jurisdiction 2.32, 2.33	specialist jurisdiction 2.27
hierarchy 2.19	summary offences 2.24
appellate jurisdiction 2.22	superior courts 2.30
federal 2.22, 2.32-2.33	appeals 2.31
precedents 2.11	jurisdiction 2.30, 2.31
state 2.22, 2.23–2.31	procedures 2.31
High Court see High Court of Australia	Supreme Court 2.30, 2.31
	I

Court system - cont'd	D D
tribunals 3.4	Damage
distinguished from courts 2.20	causal link to breach 25.39-25.41
jurisdiction 3.4	legal recognition of 25.38
Credit cards	proof of 25.37-25.46
consumer protection 29.84	reasonably foreseeable 25.4, 25.43
contract 29.77, 29.78-29.80	'eggshell skull' rule 25.44
issuer/cardholder 29.78	novus actus interveniens 25.45-25.46
issuer/merchant 29.79	remoteness of 25.42
legal effect 29.81	Debentures
merchant/cardholder 29.80	definition 18.60
debit card see Debit cards	description of 18.60
issue of 29.76	holders 18.61
legal position 29.77	issue of 18.60
regulation of 29.75	public offer 18.60
relationships 29.77-29.80	registered security 18.60
legal effect 29.81	Debit cards
three-party 29.76	consumer protection 29.84
two-party 29.76	contract 29.82
use of 29.76	credit card, difference from 29.83
Criminal law	electronic access to account funds 29.82
criminal action 2.49-2.54	regulation of 29.75, 29.82
arrest and charging, 2.52	use of 29.82
formal procedures 2.52	Debt
investigation powers 2.51	amount of 27.18
enforcement of 2.41, 2.49	liquidated 27.18
presumption of innocence 2.49	unliquidated 27.18
proceedings 1.2, 2.41, 2.49, 2.53, 2.54	credit see Consumer credit
accused 2.49	guarantees 27.5
indictable offences 2.53	instalments, payment by 27.21
initiating 2.50	oral examination 27.22
summary offences 2.53	judgment debt, enforcement of 27.20
trial 2.54	garnishee 27.24
proof beyond reasonable doubt 2.49	payment by instalments 27.21-27.22
source of 2.49	warrant of execution 27.23
terminology 2.42	legal action for 27.14-27.49
Criminal trial	bankruptcy see Bankruptcy
arguments 2.54	choice of court 27.17
judge, role of 2.54	default judgment 27.18
jury, role of 2.54	instalments, payment by 27.21-27.22
plea 2.54	judgment debt 27.20

jurisdiction 27.17	Development of law in Australia
outline of 27.19	Australia Act 1.15
right of 27.15	colonial 1.13
time limit 27.14	Commonwealth Constitution 1.14, 1.16
lien for 27.4	English law, application of 1.13
nature of 27.1	independence 1.15
recovery of 27.14-27.49	Statute of Westminster 1.15
Mareva injunction 27.16	Director see Company director
preservation of assets 27.16	Dispute resolution
time limit for 27.14	alternative see Alternative dispute
remedies see Remedies	resolution
repossession for 27.11	banking 3.1, 3.27
letter of demand 27.12-27.13	Banking Ombudsman 3.30
reservation of title 27.6-27.7	independence 3.30
secured 27.8-27.10	consumer claims tribunals 3.5
bill of sale 27.10	court system 3.1, 3.7
charges 27.10	Financial Ombudsman Service 3.28-3.31
mortgage's power of sale 27.9	disputing parties, relationship with 3.29
unsecured 27.2	independence 3.30
Designs	operation style 3.31
definition of 21.28	terms of reference 3.29
design-copyright overlap 21.42	government agencies 3.3
examination of 21.35	insurance 3.1, 3.27
protection of 21.27, 21.36-21.37	self-help 3.2
duration of 21.39	small claims jurisdiction 3.4, 3.5
publication of 21.32–21.34	legislation 3.6
registrable 21.29	telecommunications industry scheme 3.27
registration of 21.30-21.35	Division of powers
protection under 21.36-21.37	Commonwealth and states 1.28
spare parts exception 21.38	Donoghue v Stevenson
rights	duty of care 1.10
assignment of 21.40-21.41	negligence 1.10
licensing of 21.40-21.41	Duress
Detinue	circumstances for 6.19
definition 26.13	coercion 6.19
demand and refusal 26.13	doctrine of 6.19
proof of 26.13	economic 6.19
remedies 26.14	legislative protection from 6.20
unlawful interference 26.13	physical 6.19
wrongful detention of goods 26.13	statute, under 6.20
wrongful refusal to return goods 26.13	threat 6.19

Duty of care	dismissal
breach of 25.16-25.36	summary 9.41
proof of 25.34-25.36	unfair 9.30
children 25.23	employee, defined 9.5
dangerous activity 25.20–25.22	employees' patents 21.53
determination of 25.5	employer, defined 9.5
salient features 25.13	employer/employee relationship 9.1
establishment of 25.8	duties and responsibilities 9.10
cases involving 25.12	entry right 9.32
reasonably foreseeable harm 25.9-25.11	Fair Work Act 2009 (Cth), 9.1
limitation of 25.7	industrial action 9.31
policy considerations 25.14-25.15	law 9.1
probability of harm 25.19	legislation 9.2
reasonably foreseeable harm 25.6, 25.13	multi-factor test 9.6
salient features 25.13	protected action 9.31
seriousness of 25.24	stand-down 9.33
test 25.7	termination see Employment contract
vulnerable person 25.24	termination
reasonably foreseeable injury 25.9-25.11	third-party employees 9.9
risk, knowledge of 25.24	case law 9.9
risk avoidance 25.25–25.31	unfair dismissal 9.30°
standard of care 25.18	protection from 9.30
community standards 25.31, 25.32	Employment contract
established standards 25.31, 25.32	common law duties and obligations 9.17
test 25.5	employees' duties
	care and skill, use of 9.23
E	fidelity and good faith 9.27
Electronic funds transfer	indemnification 9.23
see also Credit cards; Debit cards	orders, obey 9.22
code of conduct 29.84-29.87	other work, perform 9.25
electronic communications 29.87	work method, change 9.26
consumer protection 29.84	workplace, change 9.24
financial institutions	employees' implied duty of care 9.22
account administration 29.87	employers' duties 9.28
electronic access to accounts 29.85	employers' implied duty of care 9.21
electronic communications 29.87	express terms 9.11
Electronic transactions	implications from facts 9.15
legal status 4.28	implications of law 9.14
Employment	implied terms 9.13-9.16
see also Vicarious liability	industry custom and practice 9.16
casual employees 9.7	interdependent obligations 9.18
contract see Employment contract	mutual trust and confidence 9.20
contractors 9.8	nartial/defective performance 919

Ε

termination see Employment contract termination	F
terms from other documents 9.12	Fair work
variation agreement 9.49	entry right 9.32
Employment contract termination	Fair Work Act 2009 (Cth) 9.1
agreement 9.49	overview 9.4
condonation and waiver 9.42	rights and responsibilities under 9.29
constructive dismissal 9.45	Fair Work Australia 9.3
custom, usage and general hiring 9.47	industrial action 9.31
employee, by 9.44	institutions 9.3
employer's right 9.34	protected action 9.31
frustration 9.48	stand-down 9.33
notice	unfair dismissal 9.30
invalid 9.37	protection from 9.30
minimum period 9.35	False representation
payment in lieu 9.39	contractual right, payment for 11.34
requirement 9.35	employment, related to 11.35
valid, requirements for 9.36	forms of 11.19
withdrawal 9.38	generally 11.19
redundancy pay 9.40	goods and services, related to 11.21-11.32
repudiation 9.43	guarantees and warranties 11.33, 11.34
summary dismissal 9.41	land, related to 11.35
case 9.41	prohibited conduct 11.20-11.34
grounds 9.41	remedies 6.4
time, passing of 9.46	rescission of contract for 6.5
Equitable estoppel	Federal Courts
doctrine 4.45-4.46	see also Court system
relief 4.47	judicial power 1.25
remedy 4.45	Federal Parliament
Equity	legislative power 1.23, 1.27, 1.28
case law 2.40	Financial institutions
classification 2.37	account holder 28.22
equitable remedies 2.38-2.39	accounts 28.22, 28.25
injunction 2.38	administration 29.87
specific performance 2.39	closing of, notice of 28.29
history 2.37	electronic access 29.85
jurisdiction 2.37	irregularities 28.39–28.40
exercise of 2.37	advice 28.30–28.31
Executive government	authorised deposit-taking institution 29.4
Cabinet 1.24	cheques see Cheques
Executive Council 1.24	code of conduct 29.84-29.87
Governor-General 1.24	review 29.87
judiciary, relationship 1.5	code of practice 28.33-28.35
prerogative powers 1.24	breach 28.34

Financial institutions – cont'd	information, provision of 28.30-28.31
collecting (deposit) institution 28.27, 29.63	liabilities of 29.48-29.68
protection of 29.66-29.68	obligations 28.23
customer 28.21-28.40	proceeds of cheques, collection of 28.27
account irregularities 28.39-28.40	protection of 29.64-29.68
advice 28.30	secrecy 28.28
becoming 28.22	stored value transactions 29.86
confidentiality 28.28	Financial services
directions 28.26	regulation of 18.6
duties of 28.36-28.40	Franchise
duties to 28.24-28.32, 29.10, 29.48-29.63	definition 16.66
forgery prevention 28.37	franchising code 16.66
'Greenwood duty' 28.39	regulation 16.66
information 28.30	
misleading institution 28.38	G
obligations to 28.23	Goods
payment demands, honouring 28.25	acceptable quality guarantee 10.37
reasonable precautions by 28.37	acquisition 11.2
relationship 28.23	ascertained 8.5
status 28.22	bailment of see Bailment
termination of relationship, notification 28.29	chattels personal 8.4
unambiguous cheque drawing 28.38	classification of 8.5
definition of 29.4	definition 8.4
deposits, acceptance of 28.25, 28.27	demonstrated goods supply guarantee 10.40
drawee (paying) institution 29.48-29.62	description, bought by
protection of 29.64-29.65	guarantee 10.39
duties of 28.24-28.32, 29.10	merchantable quality, implied condition 10.29
statutory 29.48-29.63	emblements 8.4
duty of care 28.30-28.32	encumbrances
property of customers, for 28.32	free from charge/encumbrance, implied
electronic fund transfer 29.84-29.87	warranty 10.24
administration 29.87	existing 8.5
consumer protection 29.84	express warranty guarantee 10.42
electronic access to accounts 29.85	false representation 11.21, 11.23–11.27, 11.29–11.32
electronic communications 29.87	fitness for purpose 10.26, 10.27, 10.28
privacy 29.87	guarantee 10.38
facilities	future 8.5
electronic fund transfer 29.84-29.87	guarantees
stored value 29.86	acceptable quality 10.37
use of 28.22	demonstration model, supply of goods by
industry code of practice 28.33-28.35	10.40
breach 28.34	description, supply of goods by 10.39

express warranties 10.42	wrongful detention 26.13
fitness for disclosed purpose 10.38	wrongful refusal to return 26.13
repairs and spare parts 10.41	Government
sample, supply of goods by 10.40	executive 1.24
title 10.34	judicature 1.25
undisclosed securities 10.36	parliament 1.23
undisturbed possession 10.35	powers 1.22, 1.25
merchantability 10.26, 10.27	responsible 1.18
merchantable quality	Guarantee
goods bought by description, implied	breach, consumers' remedy for 10.49-10.50
condition 10.29	consumer 8.29
meaning 10.30	implied contract terms, distinguished 8.29
rules 10.30	consumer credit transactions 27.5
payment for 11.47-11.50	debt, for 27.5
personal, household or domestic use, for 10.17,	false representation 11.33, 11.34
10.18	goods
case example 10.18	acceptable quality 10.37
personal chattels 8.4	demonstration model, supply of goods by
price of 8.6-8.8	10.40
recovery of 27.11	description, supply of goods by 10.39
rejection by consumer 10.49	express warranties 10.42
repairs guarantee 10.41	fitness for disclosed purpose 10.38
repossession of 27.11	repairs and spare parts 10.41
letter of demand 27.12-27.13	sample, supply of goods by 10.40
safety of see Product safety	title 10.34
sale of see Sale of goods	undisclosed securities 10.36
sampled goods supply guarantee 10.40	undisturbed possession 10.35
sold by description comply with description,	guarantor
implied condition 10.25	contract 12.10
spare parts guarantee 10.41	enforcement action against 12.28
specific 8.5	liability of 12.10
tangible property 8.4	obligations 12.10
title to	rights of 12.10
guarantee 10.34	National Credit Code, application of 12.10
retention of 8.15	non-excludable 10.48
voidable 8.22	services
trespass to see Trespass	due care and skill 10.44
unascertained 8.5	fitness for particular purpose 10.45
undisclosed securities guarantee 10.36	services without 10.47
undisturbed possession guarantee 10.35	supply, reasonable time for 10.46
unlawful interference torts 26.1	undue influence and unconscionable conduct
what constitutes 8.4	6.28

Н	right of payment 11.46
Hardship	technique 11.46
case example 12.24	Injunction
consumer contract 12.24	Mareva 27.16
Hearings	remedy, as
civil 2.46	breach of contract 7.34, 7.36, 7.37, 26.24
committal 2.26	equitable 2.38, 7.36-7.37
High Court of Australia	passing off 26.20, 26.21
appeals to 2.32	Insolvency see Bankruptcy
binding decisions 2.32	Instrument
establishment of 2.32	definition 28.1
judicial power 1.25	negotiable see Negotiable instruments
judiciary 1.25	Insurance
jurisdiction 1.25, 2.22, 2.32	agents 23.20
appellate 2.22	assurance 23.1
original 2.32	average 23.12
justices 1.25	brokers 23.20
members 2.32	burden of proof 23.43
pre-eminent court 2.32	categories 23.14
role of 1.25, 2.32	classification of 23.14-23.17
Hire	co-insurance 23.12
bailment see Bailment	commercial purpose 23.52
Hire purchase see Consumer credit	compulsory 23.14
Historical background	contract see Insurance contract
see also Development of law in Australia	discretionary 23.87
Anglo-Saxon law 1.7	double 23.11
civil law 1.9	fraud 23.59-23.60, 23.70-23.71
common law 1.8	general 23.15
English law 1.8	health 23.14
application of 1.13	indemnify, defined 23.4
House of Commons 1.7	indemnity
House of Lords 1.7	agreed value 23.8-23.9
Magna Carta 1.7	extent 23.5
parliament as supreme law-making body	market value 23.6-23.7
1.7	institutions, regulation of 23.24
prerogative powers of sovereign 1.7	insureds 23.19
proclamations of sovereign 1.7	misrepresentation by 23.53-23.63
	insurers 23.18
1	interim 23.25
Inertia selling	intermediaries 15.30, 23.20
'debt' non-payment 11.46	investigators 23.21
false directory entries 11.46	life 23.16
ownership of goods 11.46	annuity 23.16

cancellation of 23.64	what is 23.1-23.3
endowment 23.16	workers' compensation 23.14
insurable interest 23.76	Insurance contract
misrepresentation, in 23.61, 23.64	acceptance 23.34
regulation of 23.25	offer and 23.28
surrender of 23.95	characteristics of 23.65-23.74
term cover 23.16	insurable interest 23.75-23.77
whole of life 23.16	utmost good faith 23.66–23.74
loss adjusters 23.21	consideration 23.30
marine 23.17	cover 23.39-23.41
regulation of 23.26	extent of 23.39
salvage 23.90	general exclusions 23.40
misrepresentation by insured 23.53-23.63	standard 23.41
age 23.62	cover note 23.35
cancellation 23.63-23.65	defined events 23.38
consequences 23.58	disclosure 23.78-23.88
effect 23.57	duty of 23.79-23.83, 23.88
fraudulent 23.59-23.60	excuse 23.84
life insurance, in 23.61, 23.64	misrepresentation 23.53-23.63
statutory adjustment 23.54	notification for 23.88
motor vehicle third-party 23.14	pre-existing condition 23.86
nature of 23.1-23.2	relief from 23.86
over-insurance 23.11	statutory duty 23.80, 23.81–23.83
policy see Insurance policy	waiver of 23.85
premiums 23.30	exclusion clauses 23.50-23.51
promise 23.1, 23.42	onus of proof 23.51
proof, burden of 23.43	formation of 23.27, 23.28
proximate cause 23.44-23.46	offer and acceptance 23.28
reason for 23.42	identity of parties 23.29
regulation of 23.22–23.26	indemnity under
commonwealth 23.22	salvage 23.90
state 23.22	subrogation of 23.90
reinsurance 23.14	insurer/insured relationship 23.27
risk underwriting 23.1	interpretation of 23.47-23.49
role of 23.1	offer and acceptance 23.28
salvage 23.90	parties 23.18-23.19
self-insurance, partial 23.12–23.13	policy see Insurance policy
specialist 23.14	premiums 23.30
subrogation 23.89	specified perils 23.38
under-insurance 23.12-23.13	sum insured 23.31
underwriters 23.18	termination of 23.91–23.96
underwriting guidelines 23.18	non-formation of policy 23.92–23.93

Insurance contract - cont'd	internet shopping 4.8
refusal to renew 23.96	no legal obligation 4.6
surrender of policy 23.95	statement 4.3
terms 23.47	tenders 4.7
transaction 23.27-23.35	
understanding 23.47	J
written 23.37	Joint venture
Insurance policy	advantages of 16.56
contract in writing, part of 23.37	agreement 16.57
double 23.11	business relationship 16.50
exclusion clauses 23.50-23.51	characteristics of 16.52
generally 23.3, 23.37	definition of 16.50, 16.53
indemnity 23.3, 23.4	determination of 16.50
agreed value 23.8-23.9	liability under 16.50
extent 23.5	partnership distinguished 16.53, 16.54, 16.55
market value 23.6-23.7	planning 16.57
interpretation of 23.47–23.49	use of 16.51
life 23.3	Judges
period 23.32	accountability 2.7
renewal 23.33	decision reasons, publication 2.7, 2.8, 2.12
refusal of 23.96	obiter dicta 2.13
replacement 23.10	ratio decendi 2.8, 2.12
terms of 23.36	Judgment
wording of 23.47	publication of 2.8
	ratio decendi 2.8, 2.12
Intellectual property confidential information see Confidential	reasons for decision 2.7, 2.8, 2.12
	significance 2.12
information	Judiciary
copyright see Copyright	executive, relationship 1.5
definition of 21.1–21.3	independence 1.25
designs see Designs forms of 21.2-21.3	judicial powers 1.25
	Jurisdiction
patents see Patents	arbitral tribunal 3.15
protection of 21.2–21.3	common law 2.37
trade marks see Trade marks	courts, of see Court system
Intimidation	equity 2.37
coercion by threat of violence	small claims 3.4
26.25	Sittaii Gairris 5. 1
intent 26.25	L
remedies see Remedies	Land see Real property
unlawful act 26.25	Law
Invitation to treat	civil see Civil law
auctions 4.9	common see Common law
expression of interest 4.6	I

criminal see Criminal law	Lien
judge-made 1.6, 1.9, 1.10, 1.11, 2.1 <i>see also</i>	bailee 22.18
Common law	debt, for 27.4
operation of see Operation of law	effect of 8.34
private 1.2	equitable 27.4
public 1.2	goods, over 27.4
reform 1.11	maritime 27.4
rule of, in practice 1.5	possessory 8.32-8.35, 27.4
study of	revival of 8.36, 8.39
AustLII 2.6	termination of 8.35
library 2.6	
reasons 1.3	M
Lay-by	Mabo
acquisition of goods 11.50	legislation following 1.11
instalments 11.50	native title rights 1.8
regulation of 11.50	reaction to decision 1.11
termination of agreement	Magistrates
11.50	summary courts, in 2.23
transaction requirements 11.50	Malice
Legal rights	lawful business conduct, effect on 24.4
enforcement of 3.1	Manufacturer
loss of 3.1	Australian Consumer Law 11.37
Legislation	liability of 11.36
common law and 1.11	Mareva injunction
criminal law source 2.49	preservation of assets 27.16
delegated 2.2, 2.4	Market
development 1.11	available 8.48-8.49
employment 9.2	definition 13.4
judge-made rule, conflict 1.11	misuse of power 13.1, 13.17
lead-up to 2.3	substitutability 13.4
mirror 1.28	value indemnity insurance 23.6–23.7
overview 2.2	Mediation
procedure 2.3	alternative dispute resolution 3.8, 3.22
Legislature	mediator's role 3.22
law-making powers 1.5	process 3.22
Commonwealth 1.28	referrals 3.25
Federal Parliament see Federal Parliament	Minor
states 1.28	capacity to contract 4.49-4.51
role 1.12	Misleading or deceptive conduct
Letter of comfort	Australian Consumer Law provisions 11.8
intent 4.35	common law rules, effect on 11.9
language 4.35	construction of s 18 11.12
legally binding 4.35	s 18 as business weapon 11.14

Misleading or deceptive conduct - cont'd	subject matter, as to 6.9
'conduct likely to mislead or deceive' 11.8	unilateral 6.12-6.13
'misleading or deceptive or likely to mislead or	Moral rights
deceive' 11.11	attribution of authorship 21.25
examples of conduct 11.13	false, against 21.25
passing off see Passing off	duration of 21.25
remedies see Remedies	enforcement of 21.25
Misrepresentation	infringement of 21.25
actionable 6.2	relief for 21.25
agent, by 15.23	integrity of authorship 21.25
establishing 6.1	non-economic rights 21.4
fraudulent 6.3, 10.7, 23.59-23.60	Mortgage
innocent 6.3, 10.7	definition 12.11
insurance 23.53-23.63	'goods' 12.11
age 23.62	mortgagee's power of sale 27.9
cancellation 23.63-23.65	National Credit Code, application of 12.11
consequences 23.58	prohibited securities 12.11
effect 23.57	requirements for 12.11
fraudulent 23.59–23.60	undue influence and unconscionable conduct
life insurance, in 23.61, 23.64	6.28
significance of 23.53	
statutory adjustment 23.54	N
intentional 26.16-26.19	Negligence
negligent 6.3	contributory 25.48–25.50
oral 6.3	damage, proof of 25.37-25.46
passing off see Passing off	defence 25.47-25.53
remedies see Remedies	accepted practice 25.33
silence 6.2	definition of 25.2
types of 6.3	doctrine of 25.4
what constitutes 6.1	duty of care, requirement of 25.4-25.15
Mistake	breach of 25.16-25.36
common 6.8	establishment of
contract law 6.7	res ipsa loquitur 25.35–25.36
defence of non est factum 6.16	obvious risk 25.53
identity of parties 6.14	proof of 25.34-25.36
money, payment of 6.17	res ipsa loquitur ('the thing speaks for itself')
recovery for 6.17	25.35–25.36
mutual 6.11	statutory reform 25.3
nature of documents, as to 6.16	tort of 25.1
quality, as to 6.10	volenti non fit injuria ('the willing cannot be
rectification of 6.7, 6.15	injured') 25.51–25.52
relief for 6.7	obvious risks 25.53

Negligent misstatement	valid 4.21
assumption of responsibility	who accepts 4.20
25.55–25.57	auction 4.9
duty of care 25.54	conditional 4.12
breach of 25.54	death of offeror 4.17
liability for 25.54-25.57	definition of 4.3
reliance 25.55-25.57	duration of 4.11
Negotiable instruments	intent 4.3
bills of exchange see Bills of exchange	internet shopping 4.8
cheques see Cheques	lapse of time 4.10, 4.11, 4.14-4.15
definition of 28.1	rejection of 4.16, 4.18
historical development 28.2–28.8	revocation of 4.10, 4.11, 4.13
legal problems 28.5-28.8	communication of 4.13
common law 28.6	statement 4.3
notice problem 28.7	termination of 4.10, 4.17
title problem 28.8	Operation of law
negotiability 28.9-28.14	courts see Court system
practical problems 28.4	creation of trusts 17.8
statutory recognition 28.15	discharge of contract 7.15-7.26
	Options
0	purchase of 4.11
Offences	
Offences	
indictable 2.25, 2.53	P
indictable 2.25, 2.53 summary 2.24, 2.53	Parliament
indictable 2.25, 2.53 summary 2.24, 2.53 Offer	Parliament federal see Federal Parliament
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18	Parliament federal see Federal Parliament House of Representatives 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 state 1.23
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 state 1.23 Parol evidence rule
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 state 1.23 Parol evidence rule application of 5.9-5.10
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 state 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26 performance, by 4.21	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 Senate 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9 exceptions 5.10
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26 performance, by 4.21 postal rule 4.25	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 Senate 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9 exceptions 5.10 operation of 5.9
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26 performance, by 4.21 postal rule 4.25 response to offer 4.29	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 Senate 1.23 Senate 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9 exceptions 5.10 operation of 5.9 purpose of 5.9
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26 performance, by 4.21 postal rule 4.25 response to offer 4.29 right of 4.20	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 Senate 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9 exceptions 5.10 operation of 5.9 purpose of 5.9 Partnership
indictable 2.25, 2.53 summary 2.24, 2.53 Offer acceptance of 4.3, 4.18 behaviour, by 4.21 binding 4.3, 4.19 communication of 4.21, 4.23, 4.25–4.28 conditional 4.19 correspond to offer 4.29 electronic transactions, legal status 4.28 execution of 4.28 form of 4.21 implied 4.22 instantaneous communication 4.26–4.28 method of 4.25, 4.26 performance, by 4.21 postal rule 4.25 response to offer 4.29	Parliament federal see Federal Parliament House of Representatives 1.23 composition of 1.23 law-making body, as 2.2 history 1.7 law-making powers 1.23 legislative powers 1.23 representation 1.23 Senate 1.23 Senate 1.23 Senate 1.23 Parol evidence rule application of 5.9–5.10 basis for 5.9 exceptions 5.10 operation of 5.9 purpose of 5.9

Partnership – cont'd	torts, for 16.26
agreement 16.33	wrongs, for 16.28–16.29
express 16.33	limited liability 16.19
implied 16.33	misapplication of money or property 16.30
property 16.35	'on notice' 16.41
variation of 16.33	partners 16.12, 16.17
bankruptcy 16.42	admission of 16.32
business enterprise 16.2, 16.8-16.49	agreement 16.33
determination of 16.11, 15.14	assignment of share 16.38
commercial relationship 16.10, 16.12	authority of 16.22, 16.24
conduct of business 16.21-16.24	conduct of business 16.21–16.24
dealings 16.21-16.24	death of 16.42
definition 16.9	duties of 16.33, 16.36, 16.37, 16.46
determination of 16.14, 16.16	expulsion from 16.38
statutory rules for 16.14–16.15	fiduciary duties 16.37, 16.46
disadvantages 16.49	joint and several liability 16.25
dissolution of 16.40–16.44	liability 16.21, 16.25–16.29, 16.39
after, issues 16.45-16.47	limited 16.20
bankruptcy 16.42	obligations of 16.33, 16.36
court, by 16.44	personal property 16.34
death of partner 16.42	relationship 16.33**
fixed term, for 16.41	representations by 16.32
illegality, for 16.43	retirement of 16.38
'on notice' 16.41	rights of 16.33, 16.36
post-dissolution issues 16.45–16.47	role of 16.33
venture 16.41	trustee 16.30
estoppel, by 16.31	unlimited 16.20
expulsion from 16.38	post-dissolution 16.45-16.47
fixed term 16.41	distribution of profits 16.47
formal 16.2	distribution of property 16.46
gross returns, distribution of 16.14	profits 16.13
illegal 16.43	distribution of 16.47
incorporated limited 16.20	share of 16.14, 16.15
informal 16.2	property of 16.34-16.35
joint ownership of property 16.14	distribution of 16.46
joint venture distinguished 16.53, 16.54, 16.55	regulation of 16.2, 16.18
leaving 16.38	unusual business method 16.22
legal recognition 16.17	venture 16.41
liability under 16.2, 16.21, 16.23	Passing off
contracts, for 16.27	elements of 26.17–26.19
joint and several 16.25	intentional misrepresentation 26.16-26.18
partners, of 16.21, 16.25–16.29, 16.39	proof of 26.17

remedies see Remedies	interference with 26.8
tort 11.10, 26.15	occupier
unlawful interference with business interests	obligations of 20.45
26.15	rights of 20.45
unlikely to mislead 26.19	possessor, rights of 20.38-20.39
what constitutes 11.10	Precedents
Patents	advantages 2.17
definition 21.44	binding 2.10-2.11
employees' claim 21.53	court hierarchy 2.11
grant of 21.51	development of 2.16
infringement of 21.54	disadvantages 2.18
remedies 21.54	disapproving 2.16
inventive step 21.45, 21.48	distinguishing 2.16
manner of manufacture 21.45, 21.46	doctrine of 2.10
case examples 21.46	overruling 2.16
novelty 21.45, 21.47	persuasive 2.14-2.15
obtaining 21.51	protection of 2.16
previous secret use, prohibition of 21.45, 21.50	reversing 2.16
protection of invention 21.43	Prices
requirements for 21.45	fixing 13.6
revocation of 21.55	anti-competitive conduct 13.6
rights 21.52	case examples 13.6-13.8
useful 21.45, 21.49	internationally 13.8
Personal property	resale price maintenance 13.1, 13.19
chattels attached to chattels 20.21-20.22	signalling 13.9
chattels personal 20.19-20.20	Privity of contract
conversion of 20.24	doctrine 4.55-4.56
copyright see Copyright	Product safety
forms of 20.18-20.23	bans 11.39
intermingling 20.23	consumer goods, coverage of 11.38
real property distinguished 20.17	consumer right to 11.38
Personal property securities	death, reporting 11.41
registration 18.61	injury or illness, reporting 11.41
Persons of unsound mind	interim bans 11.39
capacity to contract 4.53	national law 11.38
Possession	permanent bans 11.39
definition of 20.37	product recall 11.40
finders 20.40-20.44	product-related services, coverage of 11.38
another property, on 20.41-20.42	regulation 11.38
employee 20.43-20.44	Promise
obligations of 20.45	broken 4.45
rights of 20.45	remedies see Remedies

statement 4.3, 4.4, 4.5 Pyramid selling characteristics 11.44 distribution hierarchy 11.44 fines 11.44 prohibition of 11.44 fines 11.44 prohibition of 11.44 fines 11.44 prohibition of 11.44 schemes 11.44 prohibition of 11.45 schemes 11.44 prohibition of 11.45 schemes 11.44 prohibition of 11.45 schemes 11.45 prohibition of 11.45 schemes 11.44 prohibition of 11.45 schemes 11.45 schemes 11.44 prohibition of 11.45 schemes 11.4	Promise - cont'd	representation 4.4
penforceability 4.1 obligation 4.1, 4.45 payment for 4.11 voluntary 4.1 Property bankrupt's, divisible between creditors		• • • • • • • • • • • • • • • • • • •
obligation 4.1, 4.45 payment for 4.11 voluntary 4.1 Property bankrupt's, divisible between creditors 27.34 charges see Charges classification of 20.2 origins of 20.3 concept of 20.1–20.3 conversion of see Conversion co-ownership 20.34–20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26-20.28 co-ownership 20.34–20.36 determination of 20.27 right of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 under-insura		
payment for 4.11 voluntary 4.1 Property bankrupt's, divisible between creditors 27.34 charges see Charges classification of 20.2 origins of 20.3 conversion of see Conversion co-ownership 20.34-20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership 20.25 convent of 20.26-20.28 co-ownership 20.25 conversion of 20.26 land, of 20.27 right of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		l
property bankrupt's, divisible between creditors		ſ
Property bankrupt's, divisible between creditors		
bankrupt's, divisible between creditors 27.34 charges see Charges classification of 20.2 origins of 20.3 concept of 20.1-20.3 conversion of see Conversion co-ownership 20.34-20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership 20.2-20.3 ownership 20.26-20.28 concept of 20.26-20.28 concept of 20.26-20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 public Trustee functions of 17.22 trustee company 17.22 puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	-	
charges see Charges classification of 20.2 origins of 20.3 conversion of see Conversion co-ownership 20.34–20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		
charges see Charges classification of 20.2 origins of 20.3 concept of 20.1–20.3 conversion of see Conversion co-ownership 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.36–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 exacts in fee simple 20.31 freehold 20.27 right to airspace 20.13–20.14 rights to substratum 20.15–20.16 tenure 20.4, 20.29–20.33 trespass to see Trespass personal property distinguished 20.17 tenure 20.4, 20.29–20.33 if reehold 20.30–20.32 leasehold 20.30 leasehold 20.35 life estate 20.30 extention of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations	·	
classification of 20.2 origins of 20.3 concept of 20.1-20.3 conversion of see Conversion co-ownership 20.34-20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2-20.3 ownership 20.26-20.28 co-ownership 20.34-20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		R
origins of 20.3 concept of 20.1–20.3 conversion of see Conversion co-ownership 20.34–20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.27 right of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		Real property
concept of 20.1–20.3 conversion of see Conversion co-ownership 20.34–20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance effective functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		emblements 20.11
degree of annexation 20.6–20.7 landlord's 20.10 purpose of annexation 20.8–20.9 tenancy in common 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance effective functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	_	fixtures 20.5-20.10
co-ownership 20.34–20.36 joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 public Trustee functions of 17.22 trustee company 17.22 puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		degree of annexation 20.6-20.7
joint tenancy 20.35 tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2-20.3 ownership 20.25 concept of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		landlord's 20.10
tenancy in common 20.36 definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2-20.3 ownership 20.25 concept of 20.26-20.28 co-ownership 20.34-20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	·	purpose of annexation 20.8-20.9
definition 20.1 intellectual see Intellectual property land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		tenant's 20.10
intellectual see Intellectual property land see Real property 'objects of ownership' 20.2-20.3 ownership 20.25 concept of 20.26-20.28 co-ownership 20.34-20.36 determination of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		land 20.12-20.16
land see Real property 'objects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		Crown interest 20.4, 20.28
robjects of ownership' 20.2–20.3 ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 under-insurance 23.12–23.13 under-insurance 17.22 trustee company 17.22 puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		estate in fee simple 20.31
ownership 20.25 concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 frustration of contract/lease 7.18 leasehold 20.33 life estate 20.32 ownership of 20.4, 20.27 rights to airspace 20.13–20.14 rights to substratum 20.15–20.16 tenure 20.4, 20.29–20.33 trespass to see Trespass personal property distinguished 20.17 tenure 20.4, 20.29–20.33 estate in fee simple 20.31 freehold 20.30–20.32 leasehold 20.33 life estate 20.32 Referral selling prohibition of 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		freehold 20.30-20:32
concept of 20.26–20.28 co-ownership 20.34–20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	•	frustration of contract/lease 7.18
co-ownership 20.34-20.36 determination of 20.26 land, of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	·	leasehold 20.33
ownership of 20.4, 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		life estate 20.32
right of 20.27 right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	·	ownership of 20.4, 20.27
right of 20.25 partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		rights to airspace 20.13-20.14
partnership see Partnership personal see Personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		rights to substratum 20.15-20.16
trespass to see Trespass personal property possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 trespass to see Trespass personal property distinguished 20.17 tenure 20.4, 20.29-20.33 estate in fee simple 20.31 freehold 20.30-20.32 leasehold 20.33 life estate 20.32 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		tenure 20.4, 20.29-20.33
possession of see Possession real see Real property rights 20.25 self-insurance, partial 23.12-23.13 under-insurance 23.12-23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4		trespass to see Trespass
real see Real property rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 tenure 20.4, 20.29–20.33 estate in fee simple 20.31 freehold 20.33 life estate 20.32 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		personal property distinguished 20.17
rights 20.25 self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 estate in fee simple 20.31 freehold 20.30–20.32 leasehold 20.33 life estate 20.32 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations	'	tenure 20.4, 20.29-20.33
self-insurance, partial 23.12–23.13 under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 freehold 20.30–20.32 leasehold 20.33 life estate 20.32 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations	And the second of the second o	estate in fee simple 20.31
under-insurance 23.12–23.13 Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4	3	freehold 20.30-20.32
Public Trustee functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 life estate 20.32 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		leasehold 20.33
functions of 17.22 trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 Referral selling prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		life estate 20.32
trustee company 17.22 Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 prohibition of 11.45 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		Referral selling
Puff advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 techniques 11.45 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations		prohibition of 11.45
advertisement 10.6, 10.7 Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 Register of Personal Property Securities maintenance 18.61 security interest, registration on 18.61 Regulations	· -	techniques 11.45
Australian Consumer Law provisions 11.9 defence 4.5 exaggeration 4.4 maintenance 18.61 security interest, registration on 18.61 Regulations		Register of Personal Property Securities
defence 4.5 exaggeration 4.4 security interest, registration on 18.61 Regulations		maintenance 18.61
exaggeration 4.4 Regulations	·	security interest, registration on 18.61
procedure 25		Regulations
non-specific 4.4	non-specific 4.4	procedure 2.5

Remedies	conspiracy 26.32
Australian Consumer Law, non-compliance 11.51	determination of 7.38
bailment breach 22.19–22.20	exemplary 26.24, 26.26
contractual 22.19	heads of 7.42
non-contractual 22.19	liquidated 7.48
third parties, against 22.20	measure of 7.40
tort 22.19	mitigation of 7.46
breach of confidence 21.76	nominal 7.38
breach of contract 7.33–7.49	pecuniary 26.32
damages 7.38-7.48, 26.24	penalties 7.48
discharge for 7.27–7.28	proof for 7.38
injunction 7.36-7.37, 26.24	punitive 26.24
procuring breach, for 26.24	purpose of 7.39
restitution 7.34, 7.49	remoteness of 7.43-7.45
specific performance 7.35, 7.37	substantial 7.38
types of 7.34	debt 27.3-27.13
breach of contract for sale of goods 8.27,	guarantee 27.5
8.30-8.57	legal action 27.14-27.24
action for price 8.44, 8.45	lien 27.4
buyer, of 8.50-8.56	repossession 27.11-27.13
damages 8.46-8.47, 8.51, 8.53, 8.54	reservation of title 27.6
lien 8.32-8.35, 8.39	security 27.8-27.10
recovery of price 8.52	detinue, for 26.14
repudiation of contract 8.51	dispute resolution schemes see Dispute
seller's personal remedies 8.44-8.49	resolution
specific performance 8.55	equitable 2.38-2.39
stoppage in transitu 8.32, 8.36-8.39	estoppel see Equitable estoppel
tort, in 8.56	injunction 2.38, 7.36-7.37
unpaid seller 8.31–8.49	specific performance 2.39, 7.35, 7.37
breach of guarantee 10.49–10.50	false representation 6.4
breach of warranty 8.53	infringement of copyright 21.23-21.24
damages 8.53	infringement of patent 21.54
broken promise 4.45-4.47	infringement of trade mark 21.68
conspiracy 26.32	injunction 7.34
damages 26.32	intimidation 26.26
conversion, for 26.12	damages 26.26
copyright infringement 21.23-21.24	misrepresentation, for 6.4, 6.6
court system, outside 3.1	damages 6.6
damages 7.34, 7.38-7.48	rescission of contract 6.5, 6.6
aggravated 26.26	passing off 26.20, 26.21
assessment date 7.47	damages 26.20, 26.21
award of 7.38	injunction 26.20, 26.21
causation for 7.41	patent infringement 21.54

Demostics contid	17.1
Remedies - cont'd	mergers 13.1
penalties under the ACL 11.51–11.57	misuse of market power 13.1, 13.17
adverse publicity orders 11.52	price fixing 13.1, 13.6
criminal sanctions 11.55	resale price maintenance 13.1, 13.19
damages 11.57	resellers, limiting 13.1
determination of 11.56	understandings 13.5, 13.6
infringement notices 11.53	arrangements restricting dealings 13.5
injunctions 11.54	authorisation 13.24
repossession 12.29-12.31	contracts restricting dealings 13.5
accounting for proceeds 12.31	exclusionary provisions lessening competition
disposal of repossessed goods 12.30	13.5
rescission of contract 6.5, 6.6, 6.19, 6.27	forms of conduct 13.2
partial 6.27	notification 13.25
restitution 7.34, 7.58	penalties 13.21-13.23
termination of contract, for 7.33-7.49	agreements 13.24
trade mark infringement 21.68	cartel behaviour 13.11–13.12
unconscionable conduct 6.27	case examples 13.21, 13.22, 13.23
ACL, under 6.32	size of contravening company 13.22
Contracts Review Act 1980 (NSW), under, 6.33	prohibition of 13.2
legislative 6.32-6.33	regulation 13.1
partial rescission 6.27	understandings restricting dealings 13.5
rescission of contract 6.27	Romalpa clause
Repossession	contract of sale 27.6
debt default 27.11	protection of supplier 27.7
letter of demand 27.12-27.13	reservation of title 27.6-27.7
recovery of goods 27.11	
Representation	S
false see False representation	Sale of goods
misrepresentation see Misrepresentation	acquisition, distinguished 11.2
partners, by 16.32	agency 8.18
price 11.49	mercantile agent 8.19
silence 6.2	auction see Auction
statement 10.7	buyer in possession, by 8.24
Restrictive trade practices	coercion 11.43
anti-competitive conduct 13.1	common law, under 8.21
acquisitions substantially lessening	contract see Sale of goods contract
competition 13.20	court order 8.20
anti-competitive agreements 13.1	delivery of goods 8.37
arrangements 13.5, 13.6	non-delivery, damages for 8.54
boycotts 13.1	description, by
-	'bought by description' 10.29
cartel behaviour 13.1, 13.10-13.16	implied conditions 10.25, 10.29
contracts 12.3	door-to-door 11.42
exclusive dealing 13.1, 13.18	1

estoppel 8.17	fault, assessment of 8.11
goods see Goods	passage of 8.10, 8.12
harassment 11.43	Sale of Goods Acts 10.1, 10.3, 10.19, 10.20
inertia selling 11.46	consumer protection dimension of 10.21
lay-by 11.50	consumer protection limitations 10.32
legislation, consumer protection dimension of 10.21	implied warranties/conditions 10.22-10.29,
'market overt', in 8.25	10.31
merchantable quality	non-excludable consumer guarantees
'bought by description' 10.29	10.33
non-delivery 8.54	sample, by
open market, in 8.25	implied conditions in contracts 10.31
passage of property 8.12	seller in possession, by 8.23
acceptance of goods 8.13	seller's right to sell goods, implied condition
ascertained goods 8.13	10.22
deliverable state 8.13, 8.14	statutory power, under 8.21
determination of 8.12	stoppage in transitu 8.32, 8.36–8.39
ʻon approval' 8.14	effect of 8.39
passage of risk 8.10, 8.12	implementation of 8.38
requirements for 8.13	right of re-sale 8.32, 8.41–8.43
rules for 8.13	right of retention 8.40
'sale or return basis' 8.14	transfer of property 8.1–8.25
specific goods 8.13	'nemo dat' rule 8.16
physical force 11.43	'nemo dat' rule exceptions 8.17-8.25
price 8.6-8.8	non-owner, by 8.16-8.25
ascertaining 8.7	United Kingdom Sale of Goods Act 1893, 10.3,
establishing 11.48	10.19
independent valuation 8.8	unsolicited selling 11.42
reasonable 8.7, 8.8	ACL provisions 11.42
representations 11.49	voidable title, under 8.22
third party 8.8	Sale of goods contract
pyramid selling 11.44	auction 8.57
referral selling 11.45	barter contract, distinguished 8.3
rejection of goods 8.46, 8.51	breach of see Breach of contract
re-sale, right of 8.32, 8.41-8.43	commercial leasing agreement, distinguished
reservation of right of disposal 8.15	8.3
retention of goods, right of 8.32, 8.40	conditional 8.15
retention of title 8.15	contract for provision of services, distinguished
right to sell 8.16	8.3
risk 8.10	contract for work and labour, distinguished 8.3
agreement for 8.10	contract of sale, definition 8.2
bearer of 8.10	distinguished from other dealings 8.3
definition 8.10	elements 8.1
	1

Sale of goods contract - cont'd	Shares
form of 8.9	allotment 18.45, 18.52
hire purchase contract, distinguished 8.3	application for 18.45
money consideration 8.6-8.8	buy-backs 18.57
repudiation of 8.51	employee 18.57
requirement for 8.1, 8.6	identical offers 18.57
Romalpa clause 27.6-27.7	minimum holding 18.57
terms of 8.26-8.27	on market 18.57
breach of 8.27	selective 18.57
conditions 8.27	deferred 18.50
express 8.26	dividends 18.58-18.59
implied 8.26, 8.28-8.29	payment restrictions 18.59
warranties 8.27	hawking 18.51
unconditional 8.14	holding 18.45
Security interests	issue of 18.45, 18.52
perfected 18.61	nature of 18.46
company insolvency and 18.61	options 18.54
registration 18.61	ordinary 18.50
unperfected 18.61	payment for 18.53
company insolvency and 18.61	preference 18.50
unregistered 18.61	redeemable 18.50
Separation of powers	purchase of 18.45, 18.56
doctrine 1.5, 1.22	financial assistance for 18.56
Service guarantee	own shares 18.56
due care and skill 10.44	redeemable preference 18.50
fitness for particular purpose	register 18.47
10.45	rights attached to 18.45
services without 10.47	share capital 18.45, 18.48–18.49
supply, reasonable time for 10.46	base, maintenance of 18.55
Shareholders	issued 18.48
financial report 19.2	uncalled 18.49
meeting 19.3	types of 18.50
notice of 19.4	Sole trader
procedures 19.4	business enterprise 16.2-16.7
proprietary company 19.1	definition 16.4
protection of 19.5-19.7	operation 16.6-16.7
Corporations Act, under 19.6–19.7	advantages 16.7
public company 19.1	disadvantages 16.7
register 18.45, 18.47	legal aspects 16.6
rights of 18.45	limited life 16.6
small 19.5	no separate entity 16.6
status of 18.45, 19.1	sale of 16.6

taxation 16.6	Tenders
unlimited liability 16.6	acceptance of 4.7
regulation of 16.5	call for 4.7
resources 16.2	contractual liability 4.7
risks 16.2	invitation to treat 4.7
sole proprietor 16.3	submission of 4.7
Sources of law	Termination of contract
case law 1.9	agreement, by 7.10
history 1.6	breach of contract see Breach of contract
judge-made 1.6, 1.9, 1.10, 1.11	discharge, by 7.11–7.14
legislation 1.11	breach 7.27–7.28
origins 1.6	intent for 7.28
parliamentary 1.6	mutua! 7.12
primary 1.6	operation of law 7.15–7.26
secondary 1.6	frustration 7.16–7.20
Statement	conditions for 7.17
advertisement see Advertisement	consequences 7.19
contractual force 5.6	doctrine 7.17
invitation to treat 4.3	land, leases and contracts 7.18
mere puff 4.3, 4.4, 4.5	statutory reform 7.20
offer 4.3	illegality 7.21-7.26
sales talk 4.3	common law 7.25
untrue see Misrepresentation	consequences 7.26
States	statutory 7.22-7.24
independence 1.29	insurance contract see Insurance contract
law-making powers 1.28	novation or substitution 7.14
responsibilities 1.29	operation of law 7.15-7.26
Syndicates	performance, by 7.1–7.9
definition 16.58, 16.59	divisible contracts 7.9
liability under 16.58	entire performance rule 7.3, 7.9
members 16.58	exact 7.2
relationship 16.58	exceptions to performance rule 7.5–7.9
taxation of 16.59	prevention of 7.32
	ready, willing and able rule 7.8, 7.32
Т	refusal 7.32
Takeovers	strict 7.2
company 19.33	substantial 7.7
off-market bids 19.39	time for 7.4
on-market bids 19.40	release 7.13
procedures 19.37-19.40	remedies see Remedies
application 19.37	statutory illegality 7.22-7.24
prohibited behaviour 19.41	express 7.23
regulation of 19.35–19.36	implied 7.24

Termination of contract – cont'd	legal wrong
substitution or novation 7.14	loss or damage, no 24.5
waiver 7.13	not caused by 24.2
Terms of contract	liability of partners 16.26
agreement for 5.6	limitation of liability 24.22
alteration of 5.7	remedies see Remedies
ambiguous 5.23	vicarious liability 24.14-24.21
classification of, for breach 7.30	Trade marks
consent to 5.4	brand identification 21.56
construction of 5.22	certification of 21.65
e-commerce 5.21	collective 21.67
exclusion clauses 5.25-5.26	defensive 21.66
consumer transactions 5.27	definition of 21.57
express 5.7-5.8	distinguish goods and services 21.60
collateral contracts 5.11	features of 21.57
implied 5.12-5.17	infringement of 21.68
business efficacy 5.13	remedies 21.68
custom or trade usage 5.14	intended use 21.59
good faith 5.17	product recognition 21.56
informal contracts 5.15	registration of 21.61
statute, by 5.16	benefits of 21.62
incorporated 5.18-5.21	process 21.63
dealings, from 5.20	removal of 21.64
electronic communication 5.21	sign 21.57, 21.58
notice, by 5.19	unregistered 21.61
process of incorporation 5.19	use of 21.59
rule in <i>L'Estrange v Graucob</i> 5.18	Trading trust
separate documents, from 5.19	assets, ownership of 16.64
interpretation of 5.1	co-operatives 16.67
knowledge of 5.4	creation of 16.63
pre-contractual statements as 5.7–5.8	franchises 16.66
sale of goods see Sale of goods contract	structure of 16.64
uncertain 5.24	taxation of 16.63, 16.64
unfair 6.36, 11.17	trustee 16.64
Tort	manager appointed by 17.4
business, unlawful interference with 26.15	role of 17.4
civil liability see Civil liability	unit trusts 16.65, 17.4
contract and 24.11-24.13	dividends, payment of 17.4
crime and 24.6–24.10	public 17.4
definition 24.1	unit holders 17.4
lawful business conduct 24.3	Trespass
malice, effect on 24.4	goods, to 26.2, 26.3-26.7

land, to 26.2	discretionary trusts 17.2, 17.3
persons, to 26.2	family trusts 17.2
assault 26.2	private 17.9
battery 26.2	retirement trusts 17.2
Frial see Criminal trial	trading trusts see Trading trusts
Fribunals	unit trusts 17.2
arbitral 3.14	use of 17.3
award 3.18	family trusts 17.2, 17.6
jurisdiction 3.15	control of 17.6
proceedings, conduct of 3.17, 3.18	income splitting 17.6
consumer claims 3.5	tax minimisation 17.6
legislation 3.6	parties to 17.1
courts, distinguished from 2.20	rectification of 17.12
Financial Ombudsman Service as domestic 3.31	revocation of 17.12
inferior 2.20, 3.8	superannuation trusts 17.5
jurisdiction 3.4	operation of 17.5
overview 2.20	regulation of 17.5
small claims 3.4	termination of 17.11
legislation 3.6	trading see Trading trust
operation of 3.5	trust deed 17.1, 17.11
Trusts	trustee 17.1, 17.13-17.17
alteration of 17.11	appointment of 17.14
court, by 17.11	bankruptcy 27.37–27.40
beneficiaries 17.1, 17.11	breach of trust 17.18
rights of 17.11, 17.20	duties of 17.15
breach of 17.18	legal position 17.13
charitable 17.1, 17.7	liability of 17.18
creation of 17.10	powers of 17.16
enforcement of 17.7	Public Trustee 17.22
express form 17.7	rights of 17.19
preferential tax treatment 17.7	termination of trusteeship 17.17
written 17.7	trustee companies 17.21, 17.22
composition of 17.1	types of 17.2–17.7
creation of 17.1	unit trusts see Trading trust
charitable trusts 17.10	voidable 17.12
express trusts 17.9	winding up 17.12
operation of law, by 17.8	,,
rules for 17.9, 17.10	Unconscionable conduct
will, by 17.1	
definition 17.1	application of doctrine 6.25
discretionary trust 17.2, 17.3	Australian Consumer Law provisions 11.18
express 17.2-17.3	business consumers 11.18
creation of 17.9	business loans and spouses 6.28

Unconscionable conduct - cont'd **Unfair contracts** case example 11.18 determination of 6.36 commercial pressure 6.19 void 6.35 consumer protection 11.18 **Unfair dismissal** contract, entry into 6.24 meaning 9.30 doctrine of 6.18 protection from 9.30 financial services 11.18 **Unjust contracts** guarantees and mortgages 6.28 consumer contract 12.23 legislative regulation 6.29-6.33 determination of 12.23 procedural unfairness 6.18 Unjust enrichment prohibition of 14.6 prevention of 7.49 remedies see Remedies special disadvantage 6.26 Vicarious liability test for 6.25 consequences 24.19 unconscionable dealing 6.24 course of employment, in 24.17 Understanding defence ..., 24.18 competition, affecting 13.5 employer-employee relationship 24.15 dealings, restricting 13.5 establishment of 24.16 definition 13.5 recovery from employee 24.20-24.21 exclusionary provisions lessening competition employment status, determination of 24.16 13.5 liability for acts of others 24.14 price fixing 13.6 principal and agent 24.14 Undue influence tort 24.14 abuse of power 6.21 actual 6.23 W business loans and spouses 6.28 Warranty contract, entry into 6.21-6.22 breach of 8.27 guarantees and mortgages 6.28 damages 8.53 pressure 6.21 express warranty of goods, guarantee 10.42 presumption of 6.21, 6.22 false representation 11.33, 11.34 relationship of parties 6.21, 6.22 term of contract 8.27