

# Australian constitution and business law



A.

## Australian Constitution

The Australian Constitution has been established under the Commonwealth of Australia Constitution Act 1900. Australia, under the Australian Constitution Act 1900 operates in a federal system of government. The Federal government makes and enforces laws for the nation and the states government makes and enforces State laws. The National Laws includes laws related to defense, immigration, foreign policy and taxation

The Australian Constitution follows the British ‘ Westminster System’ of government by separating powers between 3 branches of government. The Legislature makes the laws, The Judiciary interprets the laws made by the parliament and the Executive enforces the laws.

The Parliament is the legislative branch of the government. It is the primary source of law for Australia. The Parliament makes laws, which is called the legislation. The other function of the parliament is to authorize the government to spend public money and is to scrutinize the government activities. It also acts as a forum for national issue debates. It is responsible for appropriating money for the day to day operation of the government and to enact laws

The Executive includes Government administrators and regulators; they enforce the laws that the parliament creates. The Executive includes police, defense forces, immigration, social welfare and education agencies. They are

responsible for law enforcement and administration. It is responsible for administering public policy issues.

Lastly, the Judiciary which includes the court system interprets the law system made by the parliament. The other function of the Judiciary is to create laws known as 'common laws'. The court system also resolves civil disputes and handles criminal matters. The High Court is the highest Court in the Australian Court systems.

Under the High Court comes the State Courts and the Commonwealth Courts and under each court comes different other courts which different jurisdiction.

The separation of power divides the power of the government to prevent the abuse of power. The separation of power is such that each arm of the government 'checks and balances' the other arms by making sure that different branches control each other. The separation is done in such a way that, the powers of the branches of government don't overlap. But in the Australian system of government, the powers of the branches of government has been found to overlap sometime. Namely, the legislature and the executive.

There has been a few instances when the legislative power has been delegated to the executive and vice versa. The Australian Constitution in Section 64 require members of the parliament to back the parliament which blurs the line between the legislature and the executive.

'The separation of power is closely associated with the rule of law and the independence of the judiciary' (Gabrielle Appleby, 2017).

It is very important to have an independent Judiciary system without the interference of other branches of the government. The judicial power of making laws can only be exercised by the courts and not the executive, which is stated by Chapter 3 of the Constitution. Only the federal or state courts can exercise federal judicial powers and the state governments cannot interfere with the independence of the federal/state courts.

Therefore the Judicial system is very important in the separation of the power as it prevents the concentration of power. The High Court prevents the interference of state governments into the state courts and helps to maintain the impartiality and a fair judicial process. This is how the separation of power is maintained in the State level.

The two main sources of law are the Legislation which is the Parliament, which makes the national and the commonwealth laws. The Common Laws are made by judges in Courts when they decide certain cases. The common law is developed in areas where the Commonwealth and the national laws are not sufficient. Law of contract, law of trusts and property law are some of the areas where the Common Laws are used. Courts follow special rules when interpreting the legislation. The Common Laws also known as the Doctrine of Precedent. Precedents are set by courts in the hierarchy of courts.

Precedents can be binding or persuasive. The lower courts must follow the higher courts decision on the rule or principle set in an earlier case or from a court with the same jurisdiction. But the superior court may choose to follow or not follow the rule or principle set in an earlier case when the decision

comes from a court of lower jurisdiction. This is how the superior courts keep a balance in the power by jurisdiction.

B.

Issue

Our company Events Management Ltd was working on the acquisition of Rigby Corporate Function Planners. The key points of the acquisition had been agreed to and communicated through email although formal discussion hadn't taken place. Right before the handing over of the rough draft of the contract, the Managing Director of Rigby Corporate Function Planners informed through email that they will be withdrawing from the sale. Is there a contractual agreement between Events Management Ltd and Rigby Corporate Function Planners?

Rule

Contract

It is an agreement between two parties written or expressed to provide a service in exchange for something of equal or similar value. A contract is a legally binding document that enforces you to do or not to do something.

Consideration

It is the value of something that is promised by the promisor or the promisee of the contract in exchange for something of similar value when the parties enter a contract. A consideration may not be just monetary. (Chapple v Nestle)

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## Offer

An offer is a promise for performance in exchange for something by another party. It is an expression of willingness to indulge in a contract with another party with whom the offer is being communicated to. The offer can only be revoked by the offeror. If there is a counter offer by the offeree, then the original offer is terminated.

## Acceptance

It is the action of agreeing to receive or undertake something is called acceptance. The power of acceptance lies in the offeree. Once the acceptance has been communicated the offeree will be bound. The acceptance must also not be different from the offer in any terms of contract proposed in the offer.

(Hyde v Wrench)

## Withdrawal from the Offer

The parties can only withdraw from the offer before the acceptance is communicated. The offeror can withdraw from the offer only before the acceptance is received .

In *Byrne v Leon van Tienhoven*, the offer was posted to the offerees who accepted it by post prior to receiving the letter revoking the offer; the revocation failed as the offer had been accepted before it was received.

Samantha had already begun the obligations related to the contract and started to

prepare the legal document and draft for the contract to take place.

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## Postal Rule

The Postal rule can be simply states that when a party communicates their acceptance of an offer by post, their acceptance takes effect as soon as the letter is posted.

(Adams v Lindsell)

## Analysis

- |  |   |
|--|---|
| 1. Elements                                | Application   |
|  | The offer was communicated clearly                                |
| 2. The offer must be communicated clearly. | and the major terms of the offer was also communicated via email. |
| 3. There must be a valid consideration.    | The purchase price of \$750, 000 which was                        |

agreed to by  
 the  
 Managing  
 Director.  
 (White V.  
 Bluett)

4. The            The key  
 promisor        points of the  
 made a          contract had  
 clear            already  
 representati    been agreed  
 on or            to. Although  
 promise as      some minor  
 to future        details had  
 intentions      not been  
 under the        agreed on.  
 contract        The main  
                   details of  
                   the deal had  
                   already  
                   been agreed  
                   on. The  
                   managing  
                   director of  
                   Rigby



Corporate  
 Function  
 Planners  
 had already  
 agreed on  
 the intention  
 of the  
 contract and  
 agreed to  
 the  
 consideration.

5. The person Events  
 to whom the Management  
 representative Ltd would  
 on or be at a  
 promise was disadvantage  
 made (the e as they  
 promisee) have  
 relied on the already  
 statement spent

and would be considerable  
 materially time and  
 resources  
 disadvantaged if after the  
 the promise was

not kept                      communicat  
ion of  
acceptance  
by the  
Managing  
Director of  
Rigby  
Corporate  
Function  
Planners.  
Event  
Managemen  
t Ltd might  
have also  
already  
allocated  
the budget  
for the  
purchase: a  
sum of  
\$750, 000  
which could  
have been  
used for  
other  
acquisitions

which will  
 put them at  
 a  
 disadvantage  
 as the  
 opportunity  
 cost was not  
 capitalized.

6. It would be unconscionable (unfair) for the promisor to break the promise  
 As the offer and the acceptance had already been communicated among the parties.  
 It would be unfair for the Managing Director of Rigby Corporate Function Planners to

withdraw  
from the  
sale as the  
terms of the  
sale, the  
date of the  
transition  
and the  
mechanism  
of the  
transition  
had all been  
agreed to  
and Events  
Managemen  
t Ltd had  
already  
allocated  
resources  
for the  
transition.

7. The Postal Rule  
The Postal  
rules states  
that the  
acceptance

takes effect  
as soon as  
the letter  
gets posted.

In this case  
the email  
accepting  
the offer  
had already  
been posted  
and it had  
already  
been  
acknowledg  
ed by the  
offeror  
(Event  
Managemen  
t Ltd)

On doing a reasonable person test, we can see that Rigby Corporate  
Function Planners

cannot just withdraw from the contract as an agreement as already been  
reached and

according to the Electronic Transactions Act 1999, it is already a legally binding contract as

the acceptance has already been communicated through an electronic media. (Commonwealth and State legislation regulating transactions completed electronically)

The date of transition and the effect of the contract has already been agreed upon.

This is unlike *Rose & Frank Co v Crompton & Bros Lt* case where the parties had stated that they are not legal bound by any contract and that the deal between the parties was just because of mutual understanding.

Conclusion

Samantha and Events Managements Ltd should take legal action against Rigby Corporate

Function Planners. Even though there is no legal written contract between the two companies, there is acceptance of the offer of sale by the Managing Director of the company. There is written proof of the acceptance in the email where the terms of the sale were also communicated and is enforceable by the Postal Rule. A contract does exist, among the parties since all the elements of the contract are met. Although some minor details of the contract had not been finalized, the main details of the contract had already been agreed on.

Also, Samantha and her company Events Management Ltd would be at a

disadvantage as they had already spent considerable time and resource after that acceptance of the offer .

Therefore, a contract does exist and there is sufficient ground for the contract to be enforced by the court.

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