February 10, 2010

TRADE PRACTISES AND FAIRNESS IN THE UNIVERSITY RESEARCH BUSINESS ADMINISTRATION IN AUSTRALIA

CHUEN-TAT KANG

Available at: https://works.bepress.com/kangchuentat/9/
TRADE PRACTISES AND FAIRNESS IN THE UNIVERSITY RESEARCH BUSINESS ADMINISTRATION IN AUSTRALIA

Author : Chuen-Tat Kang [*]

Abstract

Universities in Australia are abide to various rules and regulations that guard the administration of the varsities as educational and business institutions. Argument sometimes arises on whether the state statutory organizations could be under jurisdictions of trade practises law in various Australian states. In certain disputable situations, contractual inconsistencies in the interpretation could arises especially among the research staffs and students due to various different interpretation of rights and conditions of awards during the recruitment processes. In order to prevent breaches of contracts in any parties then the research teams, whether of law professions or otherwise, should be cautious about the rights available in every party entering into the contract. The paper has also included Swinburne University of Technology as example in the description of various potential contraventions that once happened in the varsity.

JURISDICTION UNDER COMMONWEALTH AUSTRALIA AND STATE OF VICTORIA LEGISLATION IN AUSTRALIAN VARSITIES[1]

Public university in Australia is normally regulated by various laws and regulations, ranging from international[2], national[3] and state[4] regulations. Previously it was thought by public and university academic of mainly non-law professionals that Commonwealth Australia law could have no place to be applied in state statutory bodies in the universities in the state of Victoria, but this will not be the case.[5] Public universities in Australia are incorporated under the founding statute, with only a variation in the individual university body corporate and politic.[6] Such incorporation of the university will need to comply with Commonwealth Australia Uniform Corporation Act 2001.[7] For the varsity that does not establish Faculty of Law nor posses systematic legal reference for non-law faculty management, inclusive of Swinburne University of Technology Australia as described in this paper, procedural irregularities could be encountered in the PhD termination processes.[8] Funding to Australian university is provided by the federal Australian government the Department of Education, Employment and Workplace Relation (DEEWR) through federal funding legislation.[9] Breaching of student rights by some university staffs members might not be aware among student rights officers sometimes, normally internal advocate of the university, and also the external community grievance organizations.[10]

University in Australia could be incorporated by statute, and can also be concurrently incorporated under the Commonwealth Uniform Corporation Act 2001 or other relevant
legislation, where the availability of the university legislation could provide some form of support.[11] Whether the university was breaching Commonwealth Australia or Victorian state of Australian law based on regional categorization, public laws[12] or private law,[13] any complain commissions, tribunal and law courts could be granted authority to intervene with the university decision-making process when the error of law or abuse of power exist.[14] Rights of the postgraduate research student could be jeopardized if without sufficient knowledge to deal with unfair treatment in the competitive study environment.

UNIVERSITY AS A TRADING ORGANIZATION

Although the major role of the university is to generate new knowledge, servicing to the students in the form of lecture provision, research supervision and facility services, yet the university degree itself has become a commodity, like any other form of physical good, could be sold in the competitive marketing environment comporting with the neoliberal imperative to privatise public goods.[15] For the state of Victoria public university like Swinburne University of technology Australia, the breaches of trade practise law, according to Victorian legislation, could amount to certain degree of damage claimed under Goods Act 1958 (Victoria in Australia), section 57[16] if the dispute concerned mainly the physical aspect of object, or Fair Trading Act 1999 (Victoria in Australia), section 19[17] if the source of the deadlock is related to university service provision.

Australian varsities are renown for attracting many students throughout the world to pursue various professional discipline, but there exists complaints about poor quality of student services provided by certain defected university administration.[18] and Swinburne University of Technology Australia will have similar fate of being complained as other Australian varsities when trade regulations are not complied with the guidelines of Consumer Affairs Victoria in Australia. Even in Australian premium varsity Australian National University, such breaches of the contract by the university[19]

SITUATION WHEN THE UNIVERSITY BREACHES CONTRACT

The university has the authority to take disciplinary action against errant staffs and students for breaching various varsity regulations, but it will be a question for certain Australian universities that breach contract at first instance, and when damages should be awarded to compensate for mental distress arising and to exemplify with punishment on outrageous conduct on administrative staffs involved.[20]. In the decision to terminate the university academic position and postgraduate candidature of master and PhD studies, it will be worthwhile to refer to the court case of Ogawa v The University of Melbourne[21] and Tang v Griffith University[22] where the Australian law court process serve as a remedy against termination of PhD candidature could be a good source of reference for
Australian research university[23] when postgraduate administrative disputes arise partly from contract between the university and the PhD students.

The relationships between the university and the postgraduate PhD research students are to be bounded by contractual law and industrial relation regulation.[24] In such unjust situation, the purported termination of contract, whether in the form of employment, scholarships and candidature in the context of varsity will constitute wrongful repudiation of the contract without being able to fulfil the conditions under which termination is allowed.[25] Sufficient evidences will be required to justify various reasons towards the termination according to Australian law, whether under Federal Commonwealth or State of Victoria legislation.[26]

LITIGATION AGAINST THE UNIVERSITY

Requesting the assistance from law court to settle disputes will never be desired by anyone who demand quick and efficient solution, but in some situations where one or more parties are reluctant to negotiate further peacefully, about the limits on legislative, executive and judicial power established by the constitution of Australia, such internal varsity disputes, maybe in the form between the citizens and governments, governments or citizens themselves, must be resolved by the law court, when the internal dispute resolution mechanism might not be well-functioning instead.[27] The jurisdiction of High Court of Australia to enforce observance of the rule of law by the officers of Australian Commonwealth government and state of Victoria statutory bodies, cannot be taken away by any political parliamentarian, varsity administrative officers and other parties with certain objectives, conferred by section 75 of the Constitution Act of Australia, when the High Court of Australia hear the appeal from the lower courts about the reluctance of university as a state statutory body to settle the disagreement formally based on existing university regulations.[28]

DEFENCE AGAINST UNFAIR TERMINATION OF CONTRACT

Contractual relationships between the university and the members, that could be staffs and students, could be terminated by any party involved. In certain situation of complexity, one or both parties may have excuse for not performing the contract agreed initially although it might appear that both parties are in breach. The seriousness of breach could be a difficult topic to justify subjectively, when the part A, usually the university administrative staff that breached the contract of performance at first instance by imposing impossibility to achieve the target, withdraw the contract of funding against B the subordinate.[29] One example for graduate research students will be the withdrawal of research scholarships and termination of candidature by the research supervisors for non-compliance with ethics and quality, where in reality the defected university itself did not prepare sufficient facility and services for researchers, in addition to workplace relationships problem in the research teams, that could delay the
performance of specific task due to poor managing skills among the research group leaders. Every party, no matter who should be blamed, will retain the rights to sue for damages prior to formal contract termination.[30] Mutual contract breachung of parties could be unintentional and insignificant until the disputes brought formally to under proper law court processes for analysis.[31]

COMPENSATION CLAIM FROM UNIVERSITY THAT BREACHES CONTRACT

In Common law, there are three possibilities that could be awarded to the university staffs and students that suffered due to contract breaches of the university by treating the mental distress incurred as (a) non-pecuniary damage to non-compensable head (b) non-pecuniary damage to a compensable head, subject to the evidence of damage and the operation of the causative, remote and mitigative limiting doctrine (c) non-pecuniary damage to non-compensable head, with the possibility to award damages under special circumstances subject to the conditions in (b).[32] University counselling anf health services, in such situation of contractual disputes, could play important role in the determination of the degree of damage caused to the innocent party suffered due to contract breach, with confirmation of the diagnosis from professional psychiatrist according to various Australian mental health acts.[33]

MENTAL DISTRESS WHEN UNIVERSITY BREACHES CONTRACT

Performance of work and studies, especially related to open-ended research studies, are very subjective and will vary from one employer to the other. In the context of PhD research studies particularly, the research supervisors reserved the rights to terminate the studentships under the supervision if the research progress deemed unsatisfactory in view of professional judgment, influenced by personal human factors. If the contract of research studies are terminated, it will be uncertain whether the research supervisor, assumed as plaintiff, can recover the entire expenses, had there been no breach in the contract of research if the actual performance exceed assumed benefit.[34] University, that represents the research supervisors as staffs, could not be avoided the responsibility of reliance damages against the affected subordinates when the termination was placed voluntarily and wrongfully.[35] The contractual relationships between the graduate students and the university administrative staff member has also been investigated. Such contractual binding agreement could be opened or implied, ranging from employment, scholarships, financial assistance, facility usage etc.[36] Clearly drafted job offer agreement could at least prevent further legal disputes when any contractual parties unaware and neglect the conditions applied in the document formally, where it is necessary to frequently remind each other.

UNIVERSITY AS A CORPORATION FOR GRADUATE RESEARCH STUDIES
Many arguments have been raised to determine whether the university could be treated as a corporation under Trade Practises Act 1974 (Commonwealth Australia).[37] For example, University of Western Australia once successfully challenged Australian Industrial Relation Commission (AIRC) that the Australian varsity could be classified as a "trading corporation", under the jurisdiction of fair trading law but not only limited to the role of the said "institution" provided under Higher Education Funding Act 1988 (Commonwealth Australia).[38] Trade activities available inside the university campuses, for example, selling books, preparing cafeteria service, providing parking, venue renting and short course offerings etc, are involved by most staffs and students in the educational businesses. University is deemed to be eligible to be prosecuted under section 82 and section 87 of Trade Practises Act 1974 (Commonwealth Australia) if the educational programs, inclusive of postgraduate research studies towards the conferment of master and doctorate titles, contains deceptive element and administrative faults that could jeopardize the future career and welfare of the students enrolled.[39]

The enrolled graduate research student in Australian varsities have to be aware that there will be no perfection of any university in every aspect of studies, and many disputes have to be ended up in law courts besides unreported cases of complaint and grievance organizations both inside the university and outside the learnt community.[40] Other relevant scope of liability that ned to be beared by the graduate research student could be as below but not limited to the facts : (a) Facutal error : advertise interview and counsel students on the availability of research facility and professional support when in fact there is none or insufficient.[41] (b) Prediction inaccuracy : enrol research students with promise to graduate within 4 years, latter terminating the candidature followed by delaying the graduation ceremony; provide financial assistance at the beginning to recruit students to conduct research, and then reduce 50% of the wages or higher reduction in order to obtain certificate of postgraduate research studies.[42] (c) Celebrity advertising : Some professors do visit overseas agencies of education outside Australia about the multicultural student facilities available in Australian varsity with world class standard management alumni support, that in fact not available.[43] (d) Non-disclosure of important information : Provide 3 years research scholarships as living cost to research students without covering material and instrument for experiments, and request the researcher to complete the project on-time without prior notification and preparation (e) Groundless opinion : Defame the reputation of research students by merely based on hearsay about research incapability as an excuse in termination.[44]

THE IMPOSSIBILITY OF THE PERFORMANCE OF CONTRACT

Certain contract between the university and staff members or students drafted initially might consist of errors. In this situation where the research supervisors have difficulties to communicate with the subordinates in certain irreconcilable differences, the contracts between the superior and inferior could be terminated earlier due to the impossibility of performance. If the unforeseen circumstances resulted to the impossibility of the contract
execution, then both parties must decide whether "on the true construction of the contract one or other party has undertaken responsibility for the subsistence of the assumed state of affair.[45] However, further disputes usually arises when either or both parties failed to negotiate the remedies in some complicated situations, where the resolutions to vary the agreement could not be reached sometimes.

When the mistakes arises from the university, managed by the professional director that neglect important contractual requirement, then the subordinates reserve the rights to sue for damages in economic loss. There are five different pathways in which the director, professor as a research supervisor can be personally liable: (1) duty of care - skill and diligence (2) Financial misconduct - improper salary (3) fiduciary duty - loyalty, conflict of interest, good faith (4) subordinate suits - class action, application to court on behalf of the company (5) securities law - disclosure, insiders' liability.[46]

LIABILITY OF UNIVERSITY RESEARCH SUPERVISORS

Research administrative staffs, especially those research group leaders with the title of professor or associate professor, should bear their own individual liability of their negligence rather than merely relying on the shield of the university when being prosecuted, when it is very difficult to quantify the liability of negligence for research supervisors in legal disputes. The author agrees with a view of a judge that "By no stretch of the imagination can it be sensibly argued that the law on this subject is clear and straightforward."

There are many different ways, as understood by experienced researchers, that the research team superiors, especially in science and technology fields, could provide unclear and sometimes misleading suggestions about the research methodology and techniques that could not be performed without sufficient material, instrument and professional staff support. Laboratory conditions with physical and political restrictions sometimes could retard the progress of research studies towards completion on time. However, not all research supervisors are aware of such professional liability posses on them, leading to potential breaches of contract between or within the university and the research institute involved, leading eventually to research project failure. Subsequently the subordinate may brought an action against the university when the research contract was prematurely terminated by the party originally in fault that seriously breach the contract precede the subordinate breaches milder than the superior.[48] The director or the superior could be personally liable to the third party the plaintiff rather appointing the university as a sole defendant.[49]

In the case of Watts v Morrow,[50] Bingham LJ observed: "A contract-breaker is not in general liable for any distress, frustration, anxiety, displeasure, vexation, tension or aggravation which his breach of contract may cause to the innocent party. This rule is not, I think, founded on the assumption that such reactions are not foreseeable, which they surely are or maybe, but on consideration of policy". The university research supervisor could terminate the contract of the subordinates, whether staffs or students under supervision. However, when insufficient research facilities and supports are given
to subordinates, not as promised in the recruitment and enrolment processes, the termination on the ground of lack of working progresses could cause non-pecuniary damages to the subordinates, that could be in the form of PhD award for PhD students and future careers for every affected subordinate. The application of *Watts v Morrow* principle could entitle the victim to damages for discomfort caused by the termination of contract, under the similar situation of *Farley v Skinner*. [51]

**CONTRACT TERMINATION – THE POSSIBLE REMEDY IN THE CASE OF UNIVERSITY GRADUATE RESEARCH STUDIES**

In the situation when the plaintiff, A, as a university, prosecute the defendant B, either as a staff member or graduate student, there could be two possibilities of the breaches: (i) Termination at law where B is in serious breach (ii) Termination at law where A is in serious breach. [52] The former breach (i) could be far more simple by just issuing the letter of termination of contract to B by A when significant breaches are observed. However, the situation will become complicated when A breaches contract precedes B, and the seriousness of breaches will need directions from the arbitrator, under mutual obligations concept regardless of the co-operation provided by the other party. [53]

When breach (ii) occur in the university administration, for example, by not providing appropriate supervision to research students, delaying the enrolment and graduation processes, paying lower salary to the subordinates even through oral agreement and simply altering the conditions of contractual award without prior approval from party B, letter terminate the research contracts on the grounds of slow research progress, dishonest research data and methodology application and other unreasonable accusations without good justification and sound evidence, neither A nor B could rely on the other’s conduct as amounting to repudiation when the dispute concerned was the effect of their mutual obligation owned to one another. [54] Certain judgments disallowed that a party in serious to terminate whereas contrary principle is still available. [55]

It will be less possible for a well-managed university in Australia, ranked top in the overall performance evaluation, to seriously breach the contract that jeopardize the rights of the staffs and students, in comparison to the poorly-performed and under-developing varsities, unless such good universities intended themselves towards deterioration. [56] There is not many excuses to blame the well-organized university A that terminate the the contract of B, where it is normal for A to breach non-seriously in the agreement with sufficient legal administrative support. There must be a direct causal relationship between the non-compliance and failure to complete if non-compliance with a contractual obligation is to be taken away the defaulting party’s right to terminate. [57]

**MENTAL DISTRESS FOR CONTRACT BREACHING CAUSED BY RESEARCH SUPERVISORS**
When the staffs and students did not perform well in the work assigned, then they are liable to be terminated of employment and candidature for breaching the contract between them and the university that required the subordinates to perform the duty up to acceptable level of standard and quality, that is needless to be repeated again as the conditions of employment and awards for those who receive stipends or other forms of financial support through the university. However, severe mental distress could be caused to the subordinates when wrong instructions are given by the university at first, leading to inefficiency and physical inconvenience that could make the university liable to pay compensation.[58] Damages for injured feelings cannot be recovered as a result of contract breaching since the degree of sufferings caused could be difficult to quantify, laid down in Addis v Gramophone Co Ltd.[59] University is deemed to provide convenient study and research environment for all researchers towards advancement. If the affected subordinates failed to enjoy peace of mind, sentimental benefit and pleasure due to the improper management of the research administration, maybe outdated research facilities and unwelcoming personnel, then that could be an exception to the Addis rule,[60] where awards could be made to the victims, anonymous to the cases where a negligent solicitor failed to obtain a non-molestation order[61] and where a wedding photographer failed to perform his duty.[62]

Universally, the law related to mental distress caused by contract breaching, whether related to the context of university could be in an uncertain state of chaotic because the approach utilized could be unprincipled and create unfair results, similar to the nature of disputes in fact especially related to progress performance evaluation.[63] University rules and regulations are necessary to provide certainty and clarity for employer and employee in order to comply with the contract and prevent breaches, but when they begin to create inconsistencies with injustice, then the application and validity of the regulations could be questionable even if the university rules are well-designed, causing more mental distresses to all parties involved when the innocents are sacked for being blamed for contract breaching, etc.[64] Detailed evaluation on the contract breaching among university community “can make you head spin” as in Farley v Skinner,[65] even the concept of the dispute settlement was simple.[66]

VOLUNTARINESS OF UNIVERSITY CONTRACT – THE LIMITATION

Contract of research studies drafted by the university, as usually defined by many contemporary contract literature, bear the voluntary and autonomy obligation, influenced by the classical view of contract applied since 19th century.[67] Many subordinates like the lenient administrative approach that could be friendly and welcoming, enhancing the open research with more freedom of thinking without strict obligation to rigid rules. However, there exist limit in the voluntariness in the contract performance when unforeseeable dispute situations arises that might require all contractual parties to abide to certain compulsory contractual terms.[68] In order to perform the rights drafted under the contract voluntarily, there will be such a requirement to adjust the performer of the
contract from time-to-time, with frequent updates in order to suit to different newly arisen situations that could be unexpected while drafting the contractual document.[69] Non-performance terms available either in oral or written contract, that will usually assumed to be fulfilled voluntarily, could cause problematic confusion to the contract administrators on the key focus of the initially drafted conditions and terms of contract. In order to avoid breaching of university contract, standard form of contractual terms are usually applied as estimated by W. David Slawson in year 1971.[70] Similar to any other forms of scriptures, certain contractual terms could be easily misunderstood and consist of ambiguities with diversified interpretation, then legal process will be required to clarify the read and unread terms available to the contract, especially related to money matters in the university scientific research administration that could attract more attention to every contractual parties, with possible of the involvement of law courts and tribunals.[71]

LAW OF TORT AGAINST UNIVERSITY FOR BREACHING CONTRACT DUE TO PROFESSIONAL

Human beings are inclined towards making mistakes and there is also no exception for university professors and subordinated research staffs that could be engaged in professional negligence as well.[72] This aspect of professional negligence has also been described in the decision of Hedley Bryne and Co Ltd v Heller and Partner Ltd, [FOOTNOTE : [1964] A. C. 465] with the following description :

“…the existence of foreseeable harm, caused to the plaintiff by the defendant where the two were in a special relationship with each other, created by the assumption of responsibility by the defendant…”.

It is a duty for the superior to provide accurate instructions and guidelines to subordinates. Nevertheless such breaches of contract by the superior sometimes are difficult to be judged when typical standard rulings are not available.[73] It is not only limited to university professor, but for any other professionals in different sectors, that could be made liable to economic losses if there is “the application of special skill for other’s assistance that rely on such equivalent relationships in a contract with interests and responsibilities on another”. [FOOTNOTE : Summary of Stanton, “New Directions in Professional Negligence Law” [1995] Credit and Finance Law 153 at 154]

CLAIMING RESEARCH GRANT – APPROPRIATENESS IN THE CONTEXT OF AUSTRALIAN UNIVERSITIES

Universities in Australia obtained huge amount of financial support to operate research institutes and conduct many high quality researches for the Australian federal government. The funding obtained could be in the form of research grant, student scholarships and amenities support. Good universities will be able to properly manage
funding but there exist unfair practises in the distribution of the financial resources, that made the defected university to be liable to be punished under Trade Practises Act 1974 (Commonwealth Australia).[74] under the civil claim list, as well as Criminal Code Act 1995 (Commonwealth Australia) under criminal list. In the United States of America (USA), there exist provision of federal USA statute, named False Claim Act (FCA), that intends to “combat fraud against the federal USA government”. Such legislation allows research team members of any staffs or students to sue on behalf of the USA government with the award of portion of the damage. However, such practices has not been observed in Australia where alternative legislations are rather applied to control the financial action of the research grant management in varsities.

FUNDAMENTAL BREACHES OF CONTRACTS IN THE CONTEXT OF AUSTRALIAN VARSITY

University is an institution of higher learning that produces professionals from different fields, inclusive of law, commerce, management etc that are directly related to the administration of the university. However well-managed an organization, there exist fundamental breaches where the doctrine was an agglomeration of disparate lines of authority, where some concerned with certain types of term and others with breaches of certain kinds.[76] Corrective procedures could be more immediate and effective for well-managed varsities than those subquality counterparts in order to prevent further problematic disputes.[77] During the termination of research contract of employee and research students, unfair terms available in addition to unsound reasonings could be criticized in the situation when the contracts consist of error of laws or not properly executed as initially agreed.[78] Certain termination could be deliberate acts of the employers or research team leaders to remove unfavourable subordinates regardless of the provision of the contractual terms with diversified interpretation.[79] whereas others could be the disciplinary issues of subordinates where the removal could prevent further losses and disturbances to research project operations.

COMMENT ON THE UNIVERSITY STUDENT SERVICES OF ADVOCATE

Many universities do provide internal advocates to assist the undergraduate and postgraduate students to settle disputes with the university administration where theoretically the position of the student lawyer should be impartial, but it is not in reality when politically influence of the varsity sometimes may retard the fair judgment of the university-employed advocates. These issues has also been indirectly justified the situation where a person or organization could not form contract within the varsity to be fully independent even if acting in different capabilities traditionally.[80] Such “two-party rules” has also been applicable in any goods or services transaction.[81] However, there exist opposite views that the university-salaried advocates for students could act as both the university employee, at the same time, act as observer and solicitor for the students to challenge certain unfair decision and procedural irregularities of the university wherever appropriate. Unfortunately such dual-functional university advocate seldom be
encountered in any Australian varsity student associations.[82] Then it will be a question whether the student fees paid to the university could be appropriately spent on advocacy services when needed with impartiality.

[*] GJS Intellectual Company Australia, community legal researcher  
Address : PO Box 6263, Dandenong, Victoria VIC 3175, Australia  
Mobile : +61-(0)405421706  E-mail : chuentat@hotmail.com


[8] See Ogawa v The University of Melbourne in High Court of Australia, Tang v Griffith University in Supreme Court of Queensland in Australia

[9] In year 2009, via Higher Education Support Act 2003 (Commonwealth Australia)

[10] example is Victorian Civil and Administrative Tribunal (VCAT), Equal Opportunity and Human Rights Commission of Victoria (VEOHRC), Administrative Appeal Tribunal (AAT), Ombudsman – Commonwealth and states in Australia etc

[11] This essay is related to Swinburne university of Technology Australia; Commonwealth Australia Uniform Corporation Act 2001 could also be used concurrently with Bond University Act 1987 (Queensland in Australia), Australian Catholic University (Victoria) Act 1991 (Victoria in Australia) etc

[12] administrative law, namely Administrative Decision (Judicial Review) Act 1980 (Commonwealth Australia) or the equivalent state law of Administrative Law Act 1978 (Victoria in Australia) etc

[13] Mainly on contract law, may arise from Trade Practises Act 1974 (Commonwealth Australia) or the equivalent Fair Trading Act 1999 (Victoria in Australia)


[16] Part I – Sale of goods, Division 6 – Actions for breach of the contract, Remedies of the seller : Damages for non-delivery (1) Where the seller wrongfully neglects or refuses
to deliver goods to the buyer the buyer may maintain an action against the seller for damages for non-delivery
[17] Part 2 – Unfair practices: Accepting payment without being able to supply as ordered (1) A person who in trade or commerce, accepts payment or other consideration for the supply of goods or services, and who «...» supplies goods or services that are materially different from the goods or services to which the agreement to supply related – is guilty of an offence and liable to a penalty of no more than «...» (d) 1200 penalty units, in the case of body corporate

[18] Example is: Kwan v University of Sydney Foundation Program P/L & Ors (General) [2002] NSWCTTT83 (* May 2002), applying Consumer Claims Act 1998 (New South Wales) and Fair Trading Act 1987 (New South Wales)

[19] Fennell v Australian National University [1999] FCA 989 (22 July 1999) in Federal Court of Australia] could have been challenged successfully, although the application is initially dismissed, with certain facilities and programs advertised could not be provided by Swinburne University of Technology Australia as well during the enrolment of PhD studies program.


[21] [2005] FCA 1139 (22 August 2005) in High Court of Australia

[22] [2003] QSC 22 (14 February 2003) in Supreme Court of Queensland

[23] that has been quoted for Swinburne University of Technology Australia PhD appeal

[24] Australian Industrial Relation Commission (AIRC) did not agree the existence of such employment relationship in Mr Chuen-Tat Kang v Swinburne University of Technology Australia – PR 974771 [2006], AIRC 775 (4 December 2006)


[26] Evidence Act 1995 (Commonwealth Australia) or Evidence Act 1958 (Victoria in Australia)


[28] Commonwealth of Australia Constitution Act, section 75: Original jurisdiction of High Court (of Australia) – In all matters (1) arising under any treaty;...the High Court (of Australia) shall have original jurisdiction


[30] McDonald v Dennys Lascelles Ltd (1933) 48 CLR 457 at 477


[33] Mental Health Act: 1986 (Australian Capital Territory), 1990 (New South Wales), 2000 (Queensland), 1986 (Victoria), 2009 (South Australia), 1996 (Western Australia), 1996 (Tasmania)

110 US 338, 346-7 (1884), Bradley J concluded that: "The party who voluntarily and wrongfully puts an end to a contract and prevents the other party from performing it, is estopped from denying that the injured party has not been damaged to the extent of his actual loss and outlay fairly incurred."


Trade Practises Act 1974 (Commonwealth Australia), Part VI-Enforcement and Remedies, section 82: Actions for damages; section 87: Other orders

Example: ambiguous advertising in Fennel v Australian National University [1999] FCA 989; Matthews v University of Queensland [2002] FCA 414 (8 April 2002) regarding university misrepresentation


Contravene Trade Practises Act 1974 (Commonwealth Australia), section 52

See Ogawa v The University of Melbourne in High Court of Australia and Federal Court of Australia, multiple cases

Orr v University of Tasmania [1957] HCA 32 in High Court of Australia, sexual relationships


Green Cartridge v Cannon (1996) 34 I. P. R. 614 at 651


Lord Brandon affirmation on the decision in Bremer, related to the Hannah Blumethal [1983] 1 A. C. 854 at 909

Example of termination disallowed: [2005] N.S.W.S.C. 818 at [92], per White J.; Wight (1987) 11 N.S.W.L.R. 470 at 478-487, per McHugh J. A.

Example of world class university comparison: Webometric, Times...
[58] Example : Hubbs v London and South Western Railway Co (1875) LR 10 QB 111, 122, Blackburn J in failure to deliver to correct destination
[59] Example : Hubbs v London and South Western Railway Co (1875) LR 10 QB 111, 122, Blackburn J in failure to deliver to correct destination
[60] [1909] UKHL1, [1909] AC 488 (HL)
[62] Diesen v Samson (1971) SLT (Sh Ct) 49
[65] [2001] UKHL 49
[66] Andrew J Bowen “Watts v Morrow and the Consumer Surplus” (2003) 1 SLT 1
[74] Also apply Fair Trading Act 1999 and Goods Act 1958 for the state of Victoria in Australia – for Victorian universities
[76] Brian Coote, “The Second Rise and Fall of Fundamental Breach” (1981) 55 ALJ 788 at 791; Exception Clause in Chapter 8
[78] Taylor v Liverpool and Great Western Steam Co [1894] P226 at 237; and Nugent v Smith (1896) 1 CPD 423, as examples
[81] Example : Williams v Scott [1900] AC 499
[82] Example : Rowley Holmes & Co v Barber [1977] 1 WLR 371, departure from traditional assumption