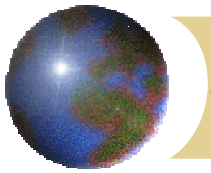


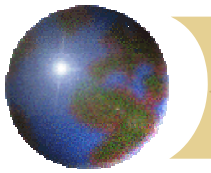
# *Chp. 5: The Employm. Contract*

- Overview
  - Contracts of & for service(s)
  - Formation & content of employment contracts
    - The 4 sources of contractual arrangements
  - Variation & termination of empl. Contracts
  - ECA & legal precedent
    - What areas were the key ones?
    - What will the effects be under the ERA?



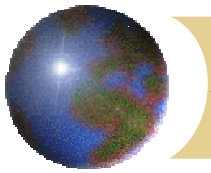
## *Contracts of & for service(s)*

- When employment contracts (or agreements under the ERA) are mentioned it is normally contracts of service (employees)
- Contracts for services cover: independent contractors, consultants, etc. (# employees)
- OF or FOR? see table 5.1 for key features
  - Definitions in ERA & legal precedent set the key hallmarks for the NZ distinction



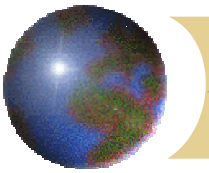
## *Contracts of & for service(s) II*

- Labour market changes have blurred the distinctions (see flexibility, pp 156-165)
- Tests to distinguish the 2 contract types:
  - Control test, organisation test, business test, mixed test (see pp 98-99)
- Advantages of the 2 contract types (see p. 97)
  - OF service: protection of employment legislation
  - FOR services: tax deductions, entrepreneurial rewards (including: could be start of a successful business)



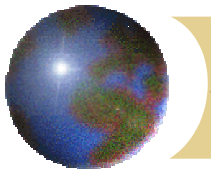
# *Employment contract contents*

- Formation: offer & acceptance (behaviour can be enough & importance of true representation)
  - Genuine consent & 'good faith'
- Content: the contract/agreement itself
  - Collective and/or individual agreement?
  - Implied terms (fundamental responsibilities)
  - Legislation: there several Acts involved
  - Custom & practice (workplace practices)



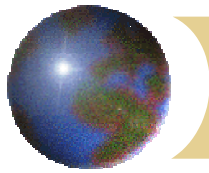
## *Variation & termination*

- Variation: what type of contract/agreement?
  - Expire of CEAs or fixed-term IEAs
- Golden rule: both parties have to agree
  - What is the workplace reality re: variation?
- Termination
  - Adequate (^reasonable^) notice
  - Sufficient cause
  - Procedural fair



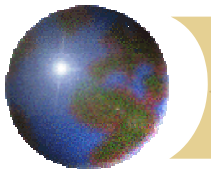
# *Termination*

- Justification: misconduct, capacity (performance issues) & economic reasons
  - Performance: more crucial in the post-1991 era
  - Organisational restructuring & redundancies
- Procedural fairness (notoriety under the ECA)
  - Proper investigation
  - Inform employee & hear 'the other side'
    - Could allow the employee to rectify behaviour over time
  - Don't make any conclusion before the end



## *Termination II*

- Summary ('instant') dismissal
  - Should only happen in rare circumstances
  - Serious misconduct, wilful disobedience, serious neglect of duty, gross incompetence
- Constructive dismissal
  - Employee resigns but in unfair circumstances
    - Resign or be dismissed, employer 'leaning' on employee to resign, employer breaches contract



## *Legal precedent under ECA*

- What were the key areas – see p. 111
  - Many legal decisions will influence ERA era
    - Employee or contractor, redundancy, holidays, casual & fixed-term employees, undue influence.
  - ERA will overrule/change some legal decisions
    - Union matters (ERA promotes unions + registration)
    - harsh & oppressive contracts & procedural fairness (good faith will set new benchmarks)
- ERA will generate new legal decisions