

## Life of a contract

### A. FORMATION

- i. Agreement
- ii. Consideration
- iii. Capacity
- iv. Intention to create legal relations
- v. Genuine consent
- vi. legality

### B. TERMS

- vii. Specific meaning of such, and parties' understanding of such

### C. PERFORMANCE

- viii. Actions of parties in accordance with agreement
- ix. Breach of contract → Damages
  1. Discharge by breach

### D. (FRUSTRATION)

- x. supervening events that radically change contract

### E. DISCHARGE OF OBLIGATIONS

## 1. FORMATION

a. Agreement = Offer + Acceptance

### OFFER

An offer is a contract in search of a yes. It confers power on the offeree to bind the offer or as soon as they express acceptance → the offeror at a certain risk.

- Any proposition is an offer if it shows a party's intention to be legally bound immediately upon acceptance of the proposal. Such an intention is met where an offer has been made in clear and unequivocal terms.  
(*Gibson v Manchester City Council*)
- An offer can be made by words and/or conduct. The existence of an offer is ascertained by asking whether a reasonable third party would conclude an offer had been made. This objective test takes into account:
  - The express conduct or words used by the parties rather than their subjective intentions.
  - Whether the terms are sufficiently complete so that acceptance is enough to constitute a contract.
- An offer must be communicated to the offeree and received, otherwise the offer is ineffective. Thus, one cannot receive an offer from a third party; the offer must be communicated by the offeror or an authorised agent of offeror to offeree. (*Henthorn v Fraser*)
- However, it is not necessary for an offer to be made to be a specific person or a class or group of people. An offer can be made made to "all the world", in which case the offeree is regarded as a member of the general public (*Carlill v Carbolic Smoke Ball Co*)

- When an offer is made, the terms of the proposed contract must be communicated to the offeree. (*Thornton v Shoe Lane Parking*)
- However, an offer can be made in general terms, leaving the precise terms of the contract to be settled later. (*Masters v Cameron*)
- The fact that the word 'offer' is used is not in itself conclusive (*B Seppelt & Sons Ltd v Commissioner for Main Roads*).
- An offer must be distinguished from an 'invitation to treat', which can be described as any part of the negotiation process that invites further bargaining, rather than acceptance.

*Invitation to treat* = invitation to make an offer/negotiate

- e.g. auctions, tenders, tickets for travel; shop displays and catalogues, rewards and prizes.
- E.g. 'Please quote us price per tonne'
- E.g. 'We can supply canned peaches at \$500 per tonne. Cans are in 150g, 400g and 850g and your order would consist of a fair distribution between these sizes'
  - No commitment, just statement of abilities
- More detailed = more likely party is making an offer

*Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd [1953]*

- Held: Where goods are placed on shelves (allowing customers to freely choose them, before being paid at the exit counter), the offer is made by the customer to the cashier at the register.
  - Displaying goods with price (in store or in advertisement) = invitation to treat (generally)
    - Even the case where the word *offer* is used.
  - Each individual customer who presents to pay for goods is making an offer (*Pharmaceutical society of Great Britain v Boots's Chemist*)
    - Not a dispute between customer and shopkeeper
    - Issue was about identifying the magic moment
    - Boots had decided to go self-service and there was a storekeeper who could refuse sale, but was this too late?
    - If displaying the goods was an offer then each time they picked it up would constitute an acceptance. Also, customer would have no right to substitute a different article which she/he preferred.
    - Offer and acceptance happens at the register
  - Shopkeeper free to accept or reject customers' offers.
    - Because advertising is less than an offer, it is reserving the right to refuse service, it is not a contract in search of a yes.
  - But if it says it will sell to 'the first 15 customers' then it will probably constitute an offer
- Look at the intention, i.e. whether they intend to be bound.

*Carlill v Carbolic Smoke Ball Co.*

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## REVOCATION

- Generally, offers can be revoked prior to acceptance provided notification is received, unless:
  - Express or implied agreement not to revoke: an 'option'
- Revocation only effective upon communication to offeree
- Must be revoked BEFORE acceptance.
- Unlike acceptance, does not have to come from any authorized agent. However, should be 'credible'.
  - In *D v D*, court was satisfied that D knew that has been revoked. Test is whether a reasonable person would know that had been revoked.
  - Are either of the parties acting upon assumption of revocation/purporting to accept → conduct

### *Dickinson v Dodds (1876)*

- Dickinson decided to accept on 11 June but did not advise Dodds immediately. Later on the 11th Dickinson was informed by a third party that Dodds had sold to someone else. Dickinson then purported to accept the offer. Dodds replied that it was too late - the property had already been sold.
- HELD: No particular form of revocation is required.
  - All that is required is that the offeror in some way conveys (directly or indirectly) to the offeree that s/he had changed his or her mind about the offer.
  - There was no question that this had occurred here - Dickinson knew Dodds was no longer prepared to sell before purporting to accept. *The promise to keep the offer open was not binding because it was not supported by consideration.*
- Dodds actively offering to others = further evidence of revocation.

### *Goldsbrough, Mort v Quinn (1910)* (NATURE OF OPTION)

- There was an option to purchase some real property GM issued by Quinn.
- Quinn was paid 5 shillings to keep the offer open for a set period.
- So Quinn thereby had a legal duty to keep the offer open but he revoked the offer before acceptance, before the option was exercised.
- The issue was not that he had breached but what might follow.
- It depends on whether we consider the option a mini-contract prior to the main contract or whether the option was part of the overall contract (a conditional contract)
  - If all Quinn did was breach a mini-contract, GM is confined to damages
  - But if it was a conditional contract, then damage is for specific performance.

General Rule: IF AN OFFEREE HAS NOT PROVIDED CONSIDERATION, THERE IS NO OBLIGATION ON AN OFFEREE TO KEEP AN OPTION OPEN  
NB: unilateral contracts – even part performance can exclude offeror from revocation

## Rejection v Revocation

### Stevenson, Jaques & Co v McLean (1880)

- D made offer to P
- P wanted to negotiate mode of payment. *"Please wire whether you would accept 40 for delivery over 2 months, if not, longest time limit."*
- Not a rejection of offer (nor counter offer) but mere 'inquiry' that should have been answered' [moral or legal?]
- Cf. Hyde v Wrench (1840): D had offered his estate for £1000. P offered to pay £950. When this was refused, P then purported to agree to pay the full £1000. P could not claim the estate, because his original counter-offer had put an end to D's offer.

### Revocation in Unilateral Contracts:

- What happens if one accepts the offer and commences the relevant course of conduct but the offer is withdrawn before the conduct is completed?

### Mobil Oil v Wellcome

- There's no universal principle governing revocation of unilateral offers
- Although in some cases there may be an 'implied ancillary unilateral contract' in which the 'offeror promises not to revoke once the offeree' commences performance, that is not the same as saying that the original offer cannot be revoked (hmm)
  - Did the offeror know that the conduct had commenced?
  - Is the act detrimental to the offeree?
  - Did they understand that they commence performance at one's own risk?
  - Are you really performing something you wouldn't have done otherwise?

**\*\*Offer and acceptance are not the only means of determining if parties have reached an agreement. Won't always be the best way e.g. signed document by the parties – don't discuss offer and acceptance. Parties behaving as if there is a contract – probably have reached agreement. \*\***

## b. Intention to create legal relations

For a valid offer there must be evidence that a party is willing to enter into a contract on clearly defined terms with no further negotiations. Hence there is an inherent requirement of an intention to contract. Objective Test.

In general, presumptions are of little authority. However, only will really be an issue if it is a family situation. Look to the nature of the transaction:

- Generally done between family members? E.g. sale of business N, but sale of car Y
- Requires 'expertise'? Then may rebut presumption of non commercial.

Presumptions:

1. the presumption in the context of family, social or domestic agreements: Balfour v Balfour [1919] 2 KB 571;
  - a. rebuttal of the presumption in the context of family, social or domestic agreements: Jones v Padavatton [1969] 2 All ER 616;
2. the presumption in the context of commercial arrangements: Esso Petroleum Ltd v Commissioners of Customs and Excise [1976];
  - a. the future of presumptions as a means of establishing contractual intention: Ermogenous v Greek Orthodox Community of South Australia Inc (2002).

#### Balfour v Balfour [1919]

- Give 30 pounds to wife for maintenance
- Held (Atkin LJ): merely an ordinary domestic arrangement between husband and wife, with mutual promises in such situations not containing the necessary intention to be legally bound
- 'The consideration that really obtains for them is that natural love and affection which counts for so little in these cold Courts'

#### Jones v Padavatton [1969]

- Jones, wanted her daughter to become a barrister in England and then return to Trinidad, and promised to pay her \$200 per month if she did this. Padavatton did this; Jones paid her bar tuition fees and £42 per month.
- No agreement was reached about how long this arrangement would continue.
- Jones proposed that she would purchase a house in which Padavatton could live. Jones subsequently sought possession of the house.
- HELD: not intention here, but recognized presumption can be rebutted.
  - Dankwerts LJ: house was extension of mother's financial assistance to daughter, and not stiff contractual agreement
  - Salmon LJ: social situation agreements is not a presumption of law, but of fact. Found intention here based on detriment to daughter, and that she would otherwise have been destitute in London. However, in favour of mother on other grounds – vague and uncertain terms.
- NB. Most likely decided differently nowadays because of detriment to daughter (cite Salmon LJ's judgment)

#### Esso Petroleum Ltd v Commissioners of Customs and Excise [1976];

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