

CLAW1001 Final Revision

I. Contract

- Types of contract

- Simple contract: oral/wholly or partly writing/implied by conduct
- Formal contract: contracts under seal or deeds
“signed, sealed and delivered”
eg. Insurance, transfer of land, lending contracts
Deed---a contract without the need of consideration, but need special words.
- Contracts express and implied
 - ✓ Express: clearly spoken/stated
 - ✓ Implied: an agreement construed or inferred by the words, conducts and exchanges between parties
- Bilateral & unilateral
 - ✓ Bilateral: each party promises to undertake certain actions in the future
 - ✓ Unilateral: one-way contract. Accepted by conduct
The purchase of the product triggers a unilateral obligation on the other party to provide the bonus
- Option---pay for the extra time in the future for consideration
Nature of the option: options to buy shares in a future time at a price fixed at that time.
Have to pay for the time, or you don't have legally binding contract
- Tender/auction

- Formalities

- Contracts required in writing/ to be evidenced in writing (Appendix 4)
- Put an agreement into a formal deed
 - ✓ A promise made without consideration is not binding unless in a deed form
 - ✓ When an agreement is in deed form, the parties are estopped from denying what has been agreed
 - ✓ Where the parties recreate their simple contract into a formal deed (essentially the same), the simple contract will come to an end

- Elements of a contract (valid and enforceable contract)

- Agreement--- offer by the offeror & acceptance by the offeree

- Intention to contract--- to be legally binding
- Consideration---something of value given in exchange for a promise
(Except for deed)
- Genuine consent
- Legal capacity
- Legality

Once the elements are satisfied, an agreement will be binding whether or not the parties have read and understood the terms

➤ **Agreement**

- **Offer:** intention to be legally bound (a clear statement of the terms)
 - Must be communicated to the offeree (all the terms must be brought to the offeree's notice and followed exactly)
 - May be made to one person/a group of people/ the world at large (*Carlill v Carbolic Smoke Ball Co.*)
 - Distinguished from an '**invitation to treat**'---willingness to consider offers (poster, ads, brochure)
(*Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd*) (brochure: *Grainger and Sons v Gough*)
(display of goods: *Fisher v Bell*)
 - ✓ Calling for bids is an invitation to treat (bids are offers)
 - ✓ Calling for tenders in an invitation to treat
 - NOT a request for information (*Harvey v Facey*)
 - NOT an advertising 'puff'
 - Cross offer: both parties make an offer to each other. No actual acceptance (*Tinn v Hoffman*)
 - ✓ 'Battle of the forms'
 - ✓ The final agreement--- a formally agreement
 - **Termination of an offer**
 - ✧ **Revocation:** a formal withdraw of the offer by the offeror
 - ✓ Occur any time BEFORE acceptance (only be effective: *Byrne & Co v Leon Van Tienhoven & Co*)
 - ✓ An offer can be kept open by deed or supported by an option until the agreed offer period has expired (*Goldsbrough, Mort & Co Ltd v Quinn*)

- ✧ Lapse of offer (*Ramsgate Victoria Hotel Co v Montefiore*)
- ✧ Condition in offer was not fulfilled
- ✧ Death of a party
- **Response from the offeree**
 - ✧ Seek for more information (*Stevenson Jacques & Co v Mclean*)
 - ✧ Make a counter offer (*Hyde v Wrench*)
 - ✧ Reject the offer
 - ✧ Accept the offer (agreement)
- **Acceptance: final and unqualified assent to the terms of an offer made in the manner specified or indicated by the offer**
 - Only the person to whom the offer was made can accept the offer
 - Must be made on the reliance of the offer (*The Crown v Clarke*)
 - **Implied acceptance**--- behavior of the parties indicates the acceptance (*Brogden v Metropolitan Railway Company*) (*Brambles Holdings Ltd v Bathurst City Council*)
 - **Acceptance must be communicated**
 - ✧ Exception: unilateral contact (*Carlill v Carbolic Smoke Ball Co.*)
 - ✧ The postal acceptance rule: when the parties complete acceptance by mail, acceptance will be complete when the letter is posted
even if the acceptance is lost in the post and the offeror never receives it, there is a contract on the date of posting.

But PAR is about acceptance. When an offer is set through the post, the offer is not made until the offeree has read the letter.
 - **Conditional acceptance ('subject to contract')**
 - ✧ Acceptance which is made 'subject to' of conditional upon the occurrence of a specified event
 - ✧ Not a 'final and unqualified assent to the terms of the offer'
 - ✧ Truly 'conditional' depends on whether the parties intended to be bound by what they agreed until/unless th condition was met (*Masters v Cameron*)
- **Intention to create legal relations**
 - Business agreements: presumptions that parties DID intend to create a legally enforceable agreement
 - Commercial agreements
 - ✧ Two main ways to show that the legal relations are not intended in a

commercial arrangement:

- i. An express stipulation in the agreement that it was not intended to be enforceable in a court of law.

(Rose and Frank Co v Crompton and Bros Ltd)

(Jones v Vernon Pools Ltd [1938] 2 All ER 626)

- ii. Document needs to be interpreted in context:

(Souter v Shyamba Pty Ltd)

(Le Mans Grand Prix Circuits Pty Ltd v Iliadis)

(Edwards v Skyways Ltd)

- Administrative arrangements: a government department or authority takes some action, the action will only give contractual obligations if there was clear intention that the agreement is enforceable, otherwise it's not.
- Letters of comfort: statement of intention given to a creditor by a third party as a substitute for a guarantee
 - ✧ Generally intended to be non-binding
 - ✧ Creates moral obligation for the parent company rather than a legal one
 - ✧ May be legally binding (depends on the words used in the documentation)
 - ✧ *(Kleinwort Benson Ltd v Malaysia Mining Corporation Bhd)*
 - ✧ *(Commonwealth Bank of Australia Ltd v TLI Management Pty Ltd)*
- Voluntary and charity arrangements
 - ✧ No intention to create legal relations
 - ✧ *(Teen Ranch Pty Ltd v Brown) (Dietrich v Dare)*
 - ✧ *(Ermogenous v Greek Orthodox Community of SA Inc)*
- Social or domestic agreements
 - Assumes that the parties did not intend their agreement be legally binding.
 - Husbands and wives
 - ✧ The courts will be prepared to find the necessary intention to create a contract existed if the surrounding circumstances suggest that the contract was intended to be legally binding. Eg, a promise made after the parties have separated or ended the marriage.
 - ✧ *(Meritt v Meritt) (Balfour v Balfour)*
 - Other family arrangements
 - ✧ If one party has changed their position significantly in reliance on the

agreement or arrangements, and this has serious consequences, it may suggest that there is a binding agreement.

✧ *(Wakeling v Ripley) (Riches v Hogben)*

- Competitions and lotteries

✧ *(Simkins v Pays) (Trevey v Grubb)*

➤ **Consideration and Estoppel**

▫ **Consideration**

- Must exist if a simple contract is to be enforceable
- Price paid by the promisee for the promisor's promise
- A benefit to the promisor; or a detriment to the promisee
- Rules:

✧ Must move from the promisee (unnecessary back to the promisor)

"privity of contract" ---only a person who is a party to a contract can sue or be sued in contract

(Dunlop Pneumatic Tyre Company v Selfridge)

✧ Must not be past *(Roscorla v Thomas)*

Exception: past acts or forbearance at the request of the present promisor and at the time there was an understanding of the parties

✧ Must not be vague or illusory *(White v Blutt)*

✧ Must be sufficient but need not to be adequate *(Chappell & Co Ltd v Nestle Co Ltd)*

Insufficient consideration:

- Performance of a public duty *(Collins v Godefroy)*
Contra---doing more than required *(Glasbrook Bros Ltd v Glamorgan County Council)*
- Performance of an existing contractual duty *(Stilk v Myrick)*
Contra---extra payment *(Hartley v Ponsonby)*
- Part payment of an existing debt *(Pinnel's case)*

➤ **Promissory Estoppel**

- Prevents a party from enforcing their strict contractual rights
- Estopped from reneging on promise--- *Central London Property Trust Ltd v High Trees House Ltd*

Estopped from denying a contract existed--- *Waltons Stores (interstate) Ltd v Maher*