

Contract Law Cases

Offer

***Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd* [2001] FCA 1833 at [369]**

- Parties **not** rigidly compartmentalize their dealings **into a strict “offer” and “acceptance” duality**
- Quotation
 - o The essential question in such cases is whether the parties conduct, including what was said and not said including the evident commercial aims and expectations of the parties, reveals an understanding or agreement or as sometimes expressed, a manifestation of mutual assent which bespeaks an intention to be legally bound to the essential elements of a contract.

***Brambles Holdings Ltd v Bathurst City Council* [2001] NSWCA 61**

- Court found an **implied acceptance** through acting consistently in terms with the offer

***Carlill v Carbolic Smoke Ball Co* [1892] QB 256**

- Operation of the rules of agreement, intention and consideration in the context of **unilateral contracts**
- Facts
 - o An advertisement offered a reward of £100
 - o “to any person who contracts the increasing epidemic, influenza, colds, ... after having used the ball according to the printed direction”
 - o The company was so convinced of the infallibility of its product
 - The advertisement pointed out the company has deposited the sum of £1000 within its bank as “proof of its sincerity”
 - o Mrs Carlill bought a carbolic smoke ball from a chemist shop and used it three times daily for two weeks in accordance with the written instruction
 - o She contracted influenza
 - o Company refused to pay the £100 reward
 - o Mrs Carlill sued for breach of contract
- Issues (company argued that)
 - o Advertisement was not an offer
 - o Even is offer, Mrs Carlill did not validly accept
 - o Even she had, the arrangement was not intended to create legal relations
 - o Even it was, Mrs Carlill provided no consideration
 - o Even a contract was formed, was of no effect as it failed to meet certain statutory requirements
- Decision
 - o Dismissed all arguments
 - o Valid contract had been formed
 - o Mrs Carlill was entitled to the £100
- Implications
 - o The way the Court of Appeal rejected the various arguments advanced to suggest that the advertisement did not constitute an offer
 - o Bowen LJ “It is an offer made to all the world” “It is an offer to become liable to any one who, before it is retracted, performs the condition, and, although the offer is made to the world, the contract is made with that limited portion of the public who come forward and perform the condition on the faith of the advertisement.”