

LAWS1150 Problem Question Template

(1) Licenses

Step	Legal Test (as will be outlined in exam)	Notes
1	<p>Revocation of Licenses</p> <p>A license arises where ownership is not granted, but permission is given by one person to another to do an act on the licensor's land which would otherwise constitute a trespass.</p> <ul style="list-style-type: none"> • Bare license – arises where there is no contractual relationship, nor a grant of proprietary interest in the land: Wood v Leadbitter <ul style="list-style-type: none"> ○ Contract Law: May be revoked at will ○ Property Law: May be revoked at will (licensor retains full bundle of rights) • Contractual license – arises after the creation of a contract, but does not grant a proprietary interest in the land: Cowell v Rosehill Racecourse <ul style="list-style-type: none"> ○ Contract Law: May not be revoked during the contract, only when contract ends or is breached ○ Property Law: May be revoked at will (licensor retains full bundle of rights) • License coupled with proprietary interest – arises where the license is granted in addition to a property right: Australian Softwood Forests Pty Ltd v Attorney-General (NSW) <ul style="list-style-type: none"> ○ Contract Law: May not be revoked during term of contract, only when there is a breach of contract ○ Property Law: May not be revoked during contract, unless revocation has been allowed 	
2	<p>Licenses and Equity</p> <ul style="list-style-type: none"> • A right to view a spectacle is not a proprietary interest: Cowell v Rosehill Racecourse Ltd • A contractual license may be revoked at will, but this may render the revoker liable in damages for breach of contract. The revocation will be valid if the force used is reasonable, otherwise there may be a battery: Cowell v Rosehill Racecourse Ltd 	

	<ul style="list-style-type: none"> ○ Equitable remedies may be available to enforce the rights and obligations of a contractual license: Evatt J (Dissenting), Cowell v Rosehill Racecourse Ltd (<i>Majority held that equity was not available</i>) • Where there are no express or implied terms allowing revocation, damages will be inadequate and equity will provide a remedy: Heidke v Sydney City Council • Where an implied term provides that a contractual license cannot be revoked before completion or valid termination, a remedy will not be available in remedy to enforce the revocation: Hounslow v Twickenham. • Where there is a breach of an express of implied term barring revocation, equitable remedies may be provided: NSW Rifle Association Inc v Commonwealth <ul style="list-style-type: none"> ○ Equitable remedies are generally available where damages will be inadequate. ○ However, equity will generally not intervene: <ul style="list-style-type: none"> ▪ To compel the performance of personal services: Hill v C A Parsons & Co Ltd ▪ Where such a decree would involve difficulties for a court in supervising/monitoring performance: J C Williamson Ltd v Lukey & Mulholland ○ Equitable remedies are provided on a discretionary/flexible basis ○ A court will not grant an injunction to prevent wrongful revocation of a contractual license in respect of contract for which the decree of specific performance is not available: Graham H Roberts v Maurbeth Investments 	
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(2) Property Rights and Privacy

1	<p>Privacy, Spectacle and New Property Rights</p> <ul style="list-style-type: none"> • In Victoria Park Racing v Taylor, the court held that the act of viewing someone else's land, including a spectacle, does not intrude upon an occupier's natural rights arising from the land. • The court also adopted a conservative approach in recognising a new form of property right ('quasi-spectacle'), rejecting it as it did not fall within any existing category of proprietary rights, i.e. <i>numerus clausus</i> • In assessing whether a new property right should be created in a novel case, the court considered: <ul style="list-style-type: none"> ◦ Latham CJ – rejected the notion that a spectacle involved a 'quasi-proprietary right' which the law should protect, as there was no prior precedent or legal principle which provided a basis for this. ◦ Dixon J – alluded to the concept of <i>numerus clausus</i> and the failure of the right to fall within an existing, recognised category of proprietary rights. ◦ Evatt J (Dissenting) – held that the law should evolve to create some sort of remedy given the injustice of the facts, even though such a remedy did not exist. Represented a notable departure from judicial approach of majority. • In Australian Broadcasting Corporation v Lenah Game Meats, the court held that Australian law does not recognise a general right to privacy (such as a tort of invasion of privacy): <ul style="list-style-type: none"> ◦ Gleeson CJ – there were existing remedies which satisfied what was required. Furthermore, there was no clear distinction between what was 'private' and 'public', so the court should be cautious given the lack of precision surrounding the concept of 'privacy.' • However, the door remains open for a future tort dealing with privacy: <ul style="list-style-type: none"> ◦ In ABC v Lenah, Gummow, Hayne, Callinan and Rich JJ indicated that the judgment in Victoria Park did not necessarily stand in the way of the development of such a tort. 	<ul style="list-style-type: none"> • Evatt J (Dissenting) – cautioned against too rigid a view of nuisance.
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	<ul style="list-style-type: none"> ○ In <i>Grosse v Purvis</i>, Skoien DCJ held the defendant liable in tort for invasion of privacy. Cited <i>ABC v Lenah</i> as a judicial starting point for development and possible elements of such a tort. ○ In <i>Hosking v Runting</i> (NZCA), court approved comments of Gleeson CJ in <i>ABC v Lenah</i>, in favour of protecting a right to privacy. 	
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Overview of Acceptance

(Casebook, 70-73) / (Textbook, 71-74)

- Acceptance is an **unqualified assent to the terms of an offer** – there is debate as to whether acceptance must require actual or objective consensus:
 - **Subjective approach** – whether there was an actual consensus between the parties, or a ‘meeting of the minds’
 - **Objective approach** – whether a reasonable person in the position of the offeree would believe that they were assenting to the terms of an offer, even if there was no real consensus between the parties.
- Courts have held that the objective approach is the correct approach, especially since the subjective approach, when coupled with estoppel achieves the same result.
 - ‘The clear trend in the decided cases and academic writings has been to leave the objective theory in command of the field’ (*Taylor v Johnson*, 1983, HCA)
 - ‘It is not the subjective beliefs or understandings of the parties about their rights and liabilities that govern their contractual relations. What matters is what each party by words and conduct would have led a reasonable person in the position of the other party to believe.’ (*Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd*, 2004, HCA)
- An **exception arises to the general objective approach**, in relation to unilateral contracts. While it is usually clear whether an offeree has accepted an offer in the case of bilateral contracts, because acceptance and performance are concurrent in unilateral contracts, issues may arise as to whether an offeree’s act was made in acceptance or for some independent reason.
 - This was explored in *The Crown v Clarke*, where the HCA adopted a subjective approach without abandoning the objective approach to formation generally. The court held that evidence of subjective intention should be considered in unilateral contracts where communication of acceptance was dispensed with.

The Crown v Clarke (1927) 40 CLR 227 – High Court of Australia

Facts: A £1000 reward was offered for information leading to the arrest and conviction of the person who murdered two police officers.

Clarke and Treffene were arrested and charged with one of the murders, but Clarke gave a statement which led to his own release and the arrest of a man named Coulter. He later also gave evidence which led to the conviction of Treffene and Coulter.

Clarke claimed the reward, but the Crown refused to pay it to him on the basis that he did not make the statement with a view to claim the reward.

Clarke admitted in evidence that, although he had seen the reward notice, he made the statement in order to clear himself of the murder charge cf. claiming the reward. He gave no consideration to the reward until after the men were convicted.

Clarke claimed the Crown was under a contractual obligation to pay him the reward.

Issue: Whether there was a unilateral contract requiring the Crown to pay Clarke the reward

Legal Reasoning:

- The HCA adopted a subjective approach in this case without abandoning the objective approach to formation generally.
- The court held that while an offeree's conduct is normally assessed by reference to external manifestations (i.e. the objective approach), performance of a requested act will not give rise to a unilateral contract, if the evidence establishes that they were not acting on the faith of the offer.
- HCA unanimously held that there must be a consensus of minds or wills between the parties before a contract can exist. By requiring actual consensus and allowing Clarke's actual intentions to override his apparent intentions, the HCA decided the case on the basis of subjective evidence of intention.
- Had the court taken a purely objective approach, they would only have looked at the external manifestations of intention and imputed an agreement on the basis of Clarke's conduct.
- Court held that an offer was available and Clarke had performed the required obligation, but had not actually accepted the offer. While acceptance and offeree performance are concurrent in one act, in a unilateral contract, the court looked at the constituent elements of acceptance and performance separately to reach this conclusion.

Isaacs ACJ

- Performance in unilateral contracts is the implied method of acceptance. Isaacs ACJ observed that *'acceptance is essential to contractual obligation,*

because, without there is no agreement, and in the absence of agreement, actual or imputed, there is no contract.'

- *'But acceptance and performance of condition, as shown by the judicial reasoning quoted, involve that the person accepting and performing must act on the offer.'*
- A person must act on the faith of the offer, not simply fulfil the condition. Otherwise, there is no contractual obligation.

Higgins J

- The starting point is usually a presumption that you intended to accept the offer. However, Clarke's admission that he had given evidence to avoid conviction, rather than accept the offer was evidence of **subjective intention** not to accept the offer.
- Therefore, Clarke's subjective evidence had nullified this presumption.

Starke J

- Mere performance of the conditions in the unilateral contract is not conclusive as it may be performed by a person who has no knowledge of the offer, i.e. because of the nature of unilateral contract, we need to know whether they have performed the obligations on the faith of the offer.
 - *'In my opinion, the true principle applicable to this type of case is that unless a person performs the conditions of the offer, acting upon its faith or in reliance upon it, he does not accept the offer and the offeror is not bound to him.'*
- Treated unilateral contracts as an **exception to the general objective rule**. Where the offeror has dispensed with the requirement for communication of acceptance, evidence of subjective intention may be considered.
 - *'Hence the statements or conduct of the party himself uncommunicated to the other party are admissible to show the circumstances under which an act, seemingly within the terms of the offer, was done and the inducement which led to the act.'*

Ratio:

- A unilateral contract will be made only where the acts required for acceptance are performed on the faith of the offer.
- Where the offeror dispenses with the requirement for communication of acceptance, evidence of subjective intention may be considered.