

INDEX

[1.0] MAKING AN OFFER

[2.0] ACCEPTANCE

[3.0] TERMINATING AN OFFER

[4.0] UNILATERAL CONTRACT

[5.0] CONSIDERATION

[6.0] ESTOPPEL

[6.1] Common Law Estoppel

[6.2] Equitable Estoppel

[6.3] Remedies

[7.0] CREATING LEGAL RELATIONS

[7.1] Objective Approach

[7.2] Presumptions

[7.3] No presumptions

[7.4] Preliminary Agreement

[8.0] FORMALITIES

[8.1] Agreement in Writing

[8.2] Signature

[9.0] EQUITY

[9.1] Part performance

[10.0] CAPACITY

[10.1] Minors

[10.2] Mentally Incapacitated

[10.3] Intoxicated Persons

[11.0] CONTRACTUAL TERMS

[11.1] Express Terms

[11.2] Oral Statements

[11.3] Parole Evidence Rule

[11.4] Contra Perferentum

[11.5] Implied Terms

[11.6] Implied in Fact

[11.7] Implied in Law

[11.8] Implied in Custom

[12.0] CONSTRUCTION

[12.1] General Principles

[12.2] Objective Intention

[12.3] Parol Evidence Rule

[12.4] Commercial Consequences

[12.5] Subsequent Conduct

[13.0] EXCLUSION CLAUSES

[13.1] Contra Proferentum

[13.2] Exempting Liability

[14.0] PERFORMANCE

[14.1] Ways to End Contract

[14.2] Standards of Proof

[14.3] Order of Performance

[14.4] Good Faith

[15.0] TIME OF PERFORMANCE

[15.1] Order of Performance

[16.0] CONDITIONAL OBLIGATIONS

[16.1] Presumption of Entirety

[16.2] Substantial Performance

[16.3] Partial Performance

[18.0] TERMINATION FOR BREACH

[18.1] Right to terminate

[18.2] Conditions

[18.3] Intermediate

[18.4] Warranty's

[18.5] Identifying a Condition

[18.6] Time Stipulation

[18.7] Time of Performance

[19.0] REPUDIATION

[19.1] Two Aspects

[19.2] Mutual Agreement

[19.3] Repudiation

[20.0] ANTICIPATED BREACH

[21.0] SIMULTANEOUS PRECEDENT

[21.1] Basis for Termination

[22.0] EXPRESS RIGHT TO TERMINATE

[23.0] ELECTION

[23.1] Two Requirements

[23.2] Consequences

[24.0] CONSEQUENCES OF TERMINATION

[25.0] RESTITUTION

[25.1] Deposits

[25.2] Quantum Meruit Restitution

[26.0] FRUSTRATION

[26.1] Examples

[26.2] Tests

I. FORMATION

[1.0] Making an Offer

- There is an offer when a reasonable (ordinary) man thinks there is
 - * Carlil v Carbolic Smoke Ball

Who offers?

- Numerous different ways to offer
 - * Eg. You offer to buy something when taking to register (Pharmaceutical Society of G.b v Boots)
 - * Computers can Offer and Accept (Electronic Transactions Act (SA) s.9)

No Offer

- a. Invitation to treat
 - * Boots: Articles displayed in store)
 - * Having car for sale: invitation to do business
- b. Policy
 - * Australian Woolen Mills v Commonwealth
 - Government not intending to create legal relations
- c. Command/Request
 - * Being told to do something does not amount to offer
 - * If cant say no then not offer (Brambles 2001)
- d. Puff (or jest)
 - * Clear to reasonable person it was just talk and not offer
 - * Leonard v PepsiCo Inc.
- e. Auction
 - * Generally invitation to treat
 - * ACCEPT: Auction without reserve
 - (Barry v Davies 2000)
 - * Going to give to highest bidder

[2.0] Acceptance

- a. Needs to assenting to the terms of the offer and corresponding with the offer
 - i. Hyde v Wrench (1840)
 - ii. BUT: Manifestation on general terms of the contract not specific
 - 1. Fitness First Pty v Chong (2008)
- b. Reasonable man/women/ objective approach
 - 1. Taylor v Johnson
 - a. Smith v Hughes: Subjective approach used to gain remedy through estoppel
- c. Must be in conscious response to offer
 - i. Meeting of the minds
 - 1. Clark v Crown (1927)