

Contract Law Exam Notes

Offer:

An offer is an expression to another of a willingness to be bound by the stated terms

It often involves a promise to do/not do something (an act) and a condition that the party whom the offer is presented to (offeree) 'agrees' to do/not do something else.

Offers may be 'express' or 'implied'

The supply of information does not constitute an offer – *Harvey v Facey (1893)*

An offer can be made to whom the offeror intends – excluding specific restrictions

Australian Woollen Mills Pty Ltd v The Commonwealth

Bilateral Contracts

Under Bilateral Contracts each party undertakes to the other party to do or to refrain from doing something, and in the event of his/her failure to perform his/her undertaking, the law provides the other party with a remedy.

United Dominions Trust Ltd v Eagle Aircraft Services Ltd

Unilateral Contracts

Under unilateral contracts the promisor undertakes to do or to refrain from doing something if another party, the promisee, does or refrains from doing something, but the promisee does not at the time of the offer undertake to do or to refrain from doing that thing.

United Dominions Trust Ltd v Eagle Aircraft Services Ltd

The position in such cases is simply that the consideration on the part of the offeree on the part of the offeree is completely executed by the doing of the very thing that constitutes acceptance of the offer.

Australian Woollen Mills Pty Ltd v The Commonwealth

Acceptance:

Requirements of Acceptance

Acceptance of an offer is the expression, by words or conduct, of assent to the terms of the offer in the manner prescribed or indicated by the offer. Thus acceptance may be expressed or implied

HBF Dalgety v Morton

There are two requirements to satisfy for valid acceptance to occur:

1. The offeree must agree to accept the terms of the offer
2. This information must be communicated to the offeror.

Acceptance must correspond to Offer

Offeree must have knowledge of and act in reliance to an offer

The offeree must have knowledge of the terms of the offer at the time of purported acceptance. Acceptance is not valid if two identical offers are made or if a party performs the act of acceptance without knowledge of the offer.

Tinn v Hoffman

A Counter Offer is not Acceptance

If a counter offer is made, the original offer is rejected and the counter offer can then itself be accepted or rejected. Once a counter offer is made and the original offer rejected, the offeree can no longer accept the original offer

Hyde v. Wrench

A purported acceptance that departs from the terms of the offer but only in a minor non-material way may be effective and not amount to a counter offer

Turner Kempson v Camm

Acceptance must be Unqualified

If there is an agreement on all terms of the offer, and the parties intend to be bound immediately, this would be considered unqualified acceptance of the offer.

Masters v Cameron

Mere Inquiry does not Constitute Acceptance

After receiving an offer, an offeree may want further clarification of one or more terms. This inquiry can at most, only communicate interest but not acceptance nor rejection of an offer.

Stevenson Jaques v McLean

Notification to the Offeror of the Fact of Acceptance

The offeree must communicate acceptance of the offer to the offeror and agreement is not complete until such communication is affected.

Powell v Lee

Soares v Simpson

Method of Acceptance

What is an appropriate method of acceptance in any given situation will depend on each situation, whether the offeror has outlined a specified method of acceptance with in the offer, or if it is not stipulated, the appropriate method of acceptance will depend on the intention of the parties as derived from the particular facts. Whether acceptance has occurred depends on whether the offeree has complied with the requirements for the method of acceptance for the particular situation.

a) Method of Acceptance Stipulated by Offeror

The offeror may stipulate how acceptance should take place (eg. the performance of an act, return post etc.). If acceptance does not occur in this way, generally there is no agreement.

Although, if the offeree accepts in a manner that is more advantageous for the offeror, then the acceptance will be valid

Tinn v Hoffman

Also, if the method of acceptance was inserted for the convenience of the offeree, the offeree may waive the benefit of the clause and accept in a different way

Or even if a manner of acceptance is prescribed in the offer, on the true construction of the terms in the offer, this may not be the only method of acceptance that will be effective

Manchester Diocesan Council for Education v Commercial & General Investments Ltd

Equitable Estoppel

The Doctrine of Equitable Estoppel states that a promise not supported by consideration could give rise to rights in circumstances where it would be unconscionable conduct for the promisor to renege on the promise. An estoppel may arise from pre-contractual negotiations

Waltons Stores (Interstate) Ltd v Maher

For equitable estoppel to apply there must be unconscionable conduct by one party. (Unconscionable conduct denotes a creation or encouragement by the defendant in the other party of an assumption that a contract will come into existence or a promise will be performed and for the other party to have relied upon that assumption to his or her detriment to the knowledge of the first party).

Waltons Stores (Interstate) Ltd v Maher

Milchaus Investments Pty Ltd v Larkin

However, a different result may apply where the parties subsequently execute a formal contract that is expressed to constitute the whole of the contract between the parties, but where one party asserts that the other is estopped from relying on rights created by the written contract due to an assumption formed during negotiations

Skywest Aviation Pty Ltd v Commonwealth

The elements of estoppel must be positively proved and will rarely if ever be inferred

Chellaram & Co v China Ocean Shipping Co

Elements of Estoppel

Assumption or Expectation

There must be a clear and unambiguous assumption or expectation by Party A that a contract will come into existence or that a promise will be fulfilled.

Waltons Stores (Interstate) Ltd v Maher

Encouraged or Induced

A clear and unambiguous representation may be implied from words used or be adduced from a failure to speak, where there was a duty to speak, or from conduct.

Thompson v Palmer

Waltons Stores (Interstate) Ltd v Maher

If a party acts upon mere hope rather than a belief induced or encouraged by the other party, it will not be sufficient grounds for estoppel

Lorimer v State Bank of New South Wales

Chellaram & Co v China Ocean Shipping Co

If an unauthorized statement is made to the knowledge of the principle in circumstances where the principal knows or ought to know that the statement is being relied upon, a failure to deny the statement is in fact authorized and may reasonably be relied upon by the other party.

Corpers (No. 664) Pty Ltd v NZI Securities Australia Ltd

Reliance