

A. Agreement – Offer and acceptance

Invitation to treat

ISSUE:	Whether an expression should be treated as an invitation to treat or an offer
LAW:	- Determined with reference to the particular facts of a case (AWM v Commonwealth)
CASES (apply):	<ul style="list-style-type: none"> - Merchant's circulation of a price list → invitation to treat (Grainger v Gough) <ul style="list-style-type: none"> • Sent to the entire world → unreasonable to be obliged to sell to every customer • Cf. Offer <ul style="list-style-type: none"> ○ Sent to a specific party whom someone intends to enter into legal obligations with ○ Not sent to an indeterminate amount of people - Display of goods in a shop → invitation to treat (Pharmaceutical Society v Boots Chemists) <ul style="list-style-type: none"> • Offer materialises when final products are presented • Cf. Offer <ul style="list-style-type: none"> ○ Must determine whether there is finality → ie. containing all necessary essential terms (price, date, etc)

Agreement – conventional (traditional) analysis of OFFER and ACCEPTANCE

OFFER

ISSUE:	Whether it appears to a reasonable person in the position of the offeree that an offer was intended
LAW:	<ul style="list-style-type: none"> - An offer is an expression of willingness to enter into a contract on specified terms - Must be capable of being accepted or rejected (Brambles Holdings) Cf. An offer using the language of command → NO offer (Brambles)
CASES (apply):	<ul style="list-style-type: none"> - Exchanges of correspondence do not fit typical analysis (ie. standard form letter) <ul style="list-style-type: none"> • May be able to construe as a contract but must look to intention (Gibson v Manchester City)

TERMINATION OF AN OFFER

ISSUE:	Whether an offer is still available for acceptance after being terminated
LAW:	<ul style="list-style-type: none"> - An offer may be revoked at any time before acceptance – it may be: <ul style="list-style-type: none"> • Withdrawn by the offeror • Lapse in time • Rejected by the offeree (counter-offer)
CASES (apply):	- OPTIONS

SAM NOTES – SEMESTER 2 (2016) – PRIVATE LAW

	<ul style="list-style-type: none"> An option (keeping an offer open) for a specified period is NOT binding unless the offeree has provided consideration for that promise (Goldsbrough Mort v Quinn) A grantor cannot repudiate/ revoke the offer within the specified time period If option holder exercises option, and grantor repudiates, may be entitled to specific performance of agreement (Goldsbrough Mort v Quinn) <p>- LAPSE</p> <ul style="list-style-type: none"> Offer available for a set period of time → will lapse at the end of the period No period stipulated → will lapse after a reasonable time has passed (Bartolo v Hancock) Reasonableness depends on: <ul style="list-style-type: none"> Circumstances Nature of the subject matter Form in which the offer is made <p>- REJECTION / COUNTER-OFFER</p> <ul style="list-style-type: none"> An offer that is rejected is no longer available for acceptance (Tinn v Hoffman) A counter-offer is a rejection of an original offer → extinguishes it (Hyde v Wrench) Cf. Mere enquiry for information is NOT a rejection (Stephenson v McClean) <p>- REVOCATION in a UNILATERAL CONTRACT</p> <ul style="list-style-type: none"> An offeror is able to withdraw a unilateral contract at any time before the completion of the task (Mobil Oil) <ul style="list-style-type: none"> This is because the act of acceptance is also the consideration and act of performance
--	---

Unilateral contracts

UNILATERAL CONTRACTS vs CONDITIONAL GIFTS

ISSUE:	Whether a promise should be treated as a unilateral contract or conditional gift
LAW:	<ul style="list-style-type: none"> Unilateral contracts <ul style="list-style-type: none"> Must be an 'offer of a promise for an act' Promise must be made 'in return' for an act (quid pro quo) TEST: Whether the offeror provided an express or implied request for the offeree to undertake the act (AWM v Commonwealth)
CASES (apply):	- If the offeror makes an express request to induce the offeree to perform the act in return for [price/bargain], then a relation of quid pro quo exists between the promise and act (AWM v Commonwealth)

Circumventing the privity rule through ESTOPPEL

ISSUE:	Whether a third party (NOT directly involved in the contract) is able to enforce that contract by means of equitable estoppel
---------------	--

SAM NOTES – SEMESTER 2 (2016) – PRIVATE LAW

LAW:	- Equitable estoppel prevents injustice arising from a party relying to his or her detriment on an expected benefit or entitlement arising from a contract to which he or she is not a party
CASES (apply):	<p>- The following elements must be proved (<u>Trident Insurance</u>):</p> <ul style="list-style-type: none"> • Beneficiary induced by a promisor to assume that he/she will receive a benefit under a contract between the promisor and promisee • Beneficiary relies on that assumption in such a way that he/she will suffer detriment if NOT fulfilled • Beneficiary may be entitled to assert an ESTOPPEL against the promisor <p>- Additionally, a person may incur a burden under a contract to which he/she is NOT a party</p> <ul style="list-style-type: none"> • Representor who is NOT a party to a contract may be liable where he/she induces a relying party to act on the faith of an assumption that the representor will abide by the terms of the contract

Application of these principles using the facts of Trident Insurance:

<u>Trident Insurance</u>	
FACTS	<pre> graph TD A((A Trident Promisor)) --> B((B Blue Circle Promisee)) B --> C((C McNiece Third party)) </pre>
Different ways of pleading the facts	<p><u>AGENT RELATIONSHIP</u></p> <ul style="list-style-type: none"> • B (agent) acts on behalf of C (third party) in the contract between A and B • Thus, C is able to indirectly enforce that contract through the agent B <p><u>TRUST RELATIONSHIP</u></p> <ul style="list-style-type: none"> • A (principal) and B (trustee) make promise to confer benefit to C (third party beneficiary) • B holds the benefit in trust for C • Thus, C is able to indirectly enforce the contract by compelling B to enforce the contract <p><u>ESTOPPEL RELATIONSHIP</u></p> <ul style="list-style-type: none"> • C (third party, relying party) led by A (representor) to believe that it would have a benefit conferred by B (ie. insurance policy that B had with A) • C relied on that belief detrimentally (ie. failing to obtain their own insurance cover) • Thus, C may be entitled to claim the benefit by way of estoppel

B. Property VS contractual rights

Licences

MORE SPECIFICALLY – CONTRACTUAL SITUATION

ISSUE:	Whether a contractual licence gives rise to a proprietary interest ?
LAW:	- TEST: Whether equity would command specific performance (Cowell v Rosehill Racecourse)
CASES (apply):	<p>- Equity would not intervene to grant a proprietary interest to 50,000 people watching 'a spectacle'</p> <p>- If there is ONLY contractual rights and NO proprietary interest</p> <ul style="list-style-type: none"> • Able to eject a 'ticketholder of a spectacle' using no more reasonable force than necessary (Wood v Leadbitter) • NO breach of contract but still ejected → revocation still enforceable but the ejected person may enforce his contractual rights against personam through an action of damages (Cowell v Rosehill Racecourse) <p>- Equity may still intervene to prevent a contractual licensor from revoking a licence, despite the licensee having no proprietary interest (Heidke v Sydney City Council; Verrall v Great Yarmouth Borough Council) → even in a contractual sense, able to receive specific performance or injunction</p> <p>- TEST (in a purely contractual sense):</p> <ol style="list-style-type: none"> (1) Damages are inadequate (2) Contract is executory (not yet executed / fully performed) (3) There has NOT been a breach of the contractual licence

EFFECT WITH THIRD PARTIES

ISSUE:	Whether rights in a contractual licence can be exercised over third parties?
LAW:	- Licences do NOT come within the class of recognised proprietary interests (numerus clausus principle) and thus, cannot be enforced over third parties (Georgeski)
CASES (apply):	<p>- If the contract gives nothing but personal obligations, then this does not create a proprietary interest in the land (King v David Allen)</p> <ul style="list-style-type: none"> • A third party has the right to refuse to uphold the contract [and thus, they are able to eject the licensee since they would be trespassing] <p>- Cf. If the contract grants a proprietary interest (ie. easement), then this is enforceable against third parties (since property rights are enforceable in rem) (King v David Allen)</p>

Remedies

ISSUE:	Provided that the elements of estoppel are satisfied, whether the plaintiff is entitled to simply monetary compensation (protecting a <u>reliance interest</u>) or alternatively, whether he/she can be awarded specific performance (protecting an <u>expectation interest</u>)
LAW:	- The relying party has a prima facie entitlement to have the relied upon assumption made good through an award of specific performance (<u>Commonwealth v Verwayen; Giumelli</u>)
CASES (apply):	<p>- However, there are TWO reasons why another form of relief (ie. monetary compensation) should be granted:</p> <ul style="list-style-type: none"> • Impossible/impractical to grant specific performance → may cause hardship to a third party (<u>Giumelli</u>) • Minimum equity/proportionality → remedy must NOT be disproportionate to the detriment (<u>Jennings v Rice; Delaforce v Simpson Cook</u>)

SAMPLE