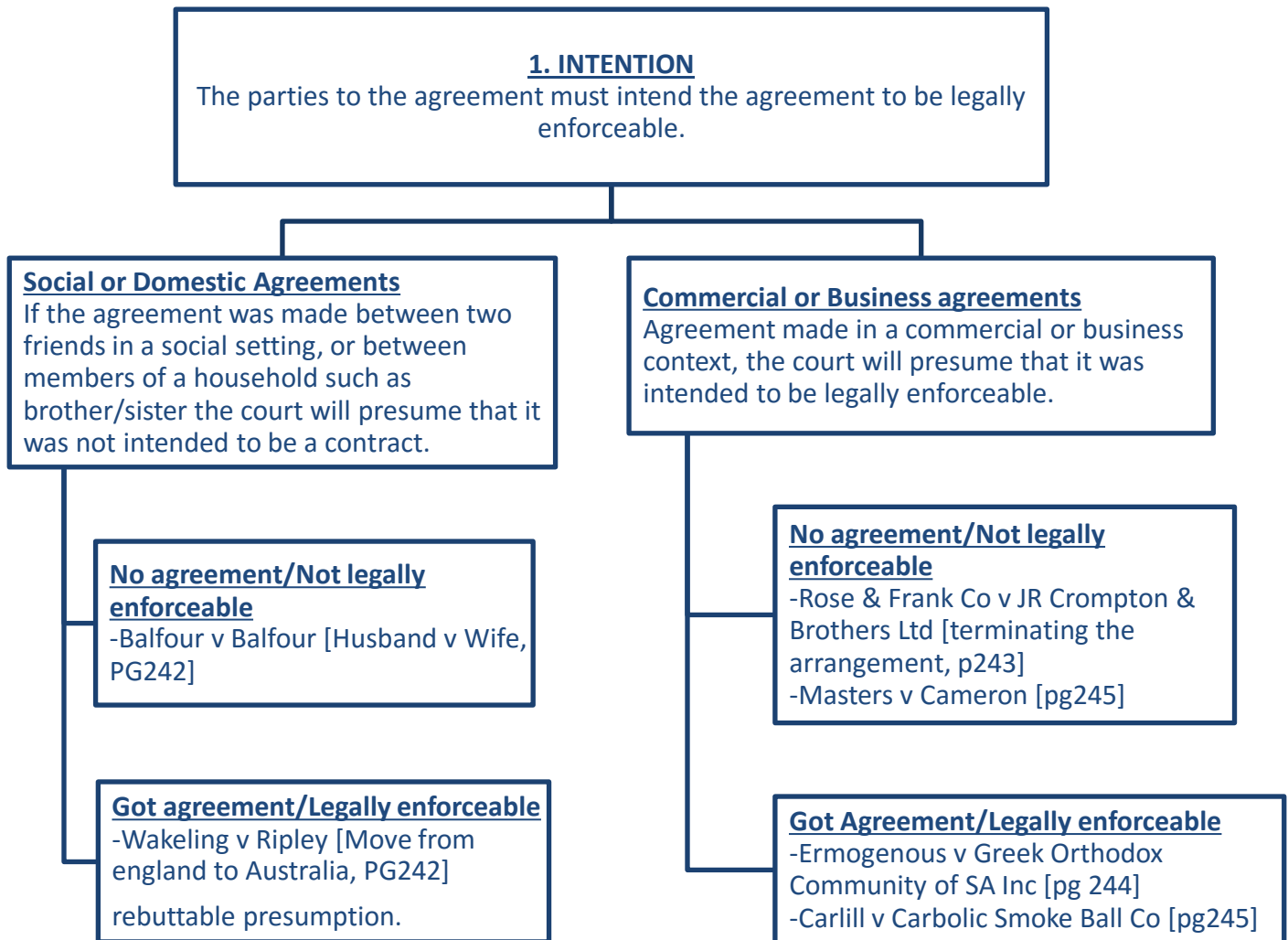


## Chapter 5: Contract Formation Flowchart



## 2. Agreement

- An agreement is a meeting of minds, and exists when two or more people share understanding and intention.
- If arrangements are still being negotiated, there is no agreement and no contract.
- One Person (the offeror) has made an offer.
- Another person (the offeree) has accepted the offer.
- The offeree has communicated their acceptance of the offer to the offeror

### Offer

A person makes an offer when they express a willingness to immediately enter into a contract with the person to whom the offer is directed.

### ACCEPTANCE

- offeree indicates by words or by action that they are willing to immediately enter into a legally enforceable contract with the offeror on the terms offered
- Acceptance must be communicated to the offeror.

### LEGALLY ENFORCEABLE/GOT OFFER

- Goldsborough Mort & Co Ltd v Quinn [p233]**  
[offeree paid the offeror to keep the offer open, Cannot revoke the offer because the offeree paid the offeror to keep the offer open.
- Carlill v Carbolic Smoke Ball Co [pg234]**  
An advertisement is usually not an offer; instead, it is an invitation to treat. Got offer because the wording that CSBC used entered legal relations.
- Smythe v Thomas [p236]**  
Auction, the bid was an offer.

### NO OFFER

- Ramsgate Victoria Hotel Co Ltd v Montefiore [pg233]**  
Termination/Withdrawal of offer due to lapse
- Dickinson v Dodds [pg233]**  
Revoked by the offeror  
Offeror is entitled to revoke their offer.
- Patridge v Crittenden [pg236]**  
[Invitation to treat, not offer for sale, it's invitation to treat]
- Haervey v Facey**  
mere supply of info, expression of interest.
- Pharmaceutical Society v Boots Cash Chemist**  
-invitation to treat
- Hyde v Wrench**  
-counter offer destroys original offer.

### GOT AGREEMENT

- Boyd v Holmes [pg238]**  
accepted offers and that was previously accepted effectively by silence can amount to an indication of acceptance
- Carlill v Carbolic Smoke Ball Co [pg238]**  
Unilateral contract: A contract where acceptance of the offer and performance by the offeree are achieved by the same act.
- Adams v Lindsell [pg239]**  
Postal rule: An offeree's acceptance is effective and a contract is formed as soon as the offeree posts the letter of acceptance.

### NO AGREEMENT

- Powell v Lee [p237]**  
no acceptance until the offeree communicates their acceptance to the offeror.
- R v Clarke [p238]**  
The court explained that a person cannot accept an offer by conduct unless they are acting in reliance on the offer. aware of the offer or reward
- Bryne & Co v Leon Van Tienhoven & Co [p239]**  
it does not apply to offers and revocations. [withdrawal] revocation not effective until communicated.

### **3. CONSIDERATION**

An agreement is not a contract unless both parties to the agreement have paid, or promised to pay, a price, called **consideration**.

#### **CONSIDERATION PROVIDED**

**-Carlill v Carbolic Smoke Ball Co [p246]**

Consideration includes any act of the plaintiff from which the defendant derives a benefit

**-Thomas v Thomas [pg247]**

Consideration need not be adequate

**-IPEX Software Services Pty Ltd v Hosking [p249]**

Payer expected a legally enforceable promise to be made at a later date - legally enforceable.

**-Hartley v Ponsonby [p250]**

Promisee does something beyond their legal or contractual duty: promise will be enforceable

#### **NO CONSIDERATION/INSUFFICIENT**

**-White v Bluett [p248]**

[father and son] Vague promise

**-Placer Development Ltd v Commonwealth [p248]**

Consideration payable by the Commonwealth was too vague

**-Roscorla v Thomas [p248]**

Consideration paid by the promisee before the promise was made.

**-Stilk v Myrick [p249]**

Prior legal obligation: if the promisee was already legally obliged to the fulfillment: insufficient consideration

**-Foakes v Beer [p250]**

Part payment of a debt is not sufficient consideration for a promise by the creditor to waive payment of the balance of the debt.

**-Glasbrook Bros v Glamorgan County Council**

public duty owed by law= not a good consideration.

#### **PRACTICAL BENEFIT TEST**

**-Musumeci v Windadell Pty Ltd [p252]**

According to the practical benefits test/adequate consideration/legitimate reasons for not performing their obligations/altering the contract

#### **Promissory Estoppel – deals with representations/promises to future matters.**

Doctrine of promissory estoppel: The principle that a promise will be legally enforceable even if the promisee has not provided consideration for the promise, as long as certain requirements are satisfied.

- 1.The promisor intended the promisee to rely upon a clear and unambiguous promise.
- 2.The promisee has, in fact, relied upon the promise by changing their circumstances, and if the promisor does not keep their promise, the promisee will suffer a material disadvantage/ detriment.
- 3.It would be unconscionable (unfair) for the promisor to break their promise.

**-Central London Property Trust Ltd v High Trees House Ltd [p253] – SHIELD**

**English version of defense to stop action on preexisting contract.**

Prevent a party to a contract from enforcing contractual rights.

**-Waltons Stores (Interstate) Ltd v Maher [p253] – SWORD**

**Australian doctrine of promissory estoppel, enforce non-binding promise.**

Prevent a party from denying that a contract exists in the first place.

D.P.E is like a shield

**-Giumelli v Giumelli [p254]**

stop the promisor from breaking the promise because the promisee relies upon the promises. [Damages]

#### **4. Lack of Capacity**

Contract will be enforceable if both of the parties have legal capacity.

**Minor [below 18]**

#### **Persons lacking intellectual capacity**

-intellectual disability, insanity, intoxication.

#### **UNENFORCEABLE**

**-Hart v O'Connor [p269]**

Party of unsound mind whose affliction and incapacity is not apparent by the other party will be judged same standards as a contract made by a person of sound mind.

#### **Contracts for necessities:**

Can't be enforced because it is not necessary and the contract was for the provision of money.

#### **NO CONTRACT:**

**-Bojczuk v Gregorczewicz [p267]**

#### **Beneficial contracts of service:**

The contract benefits the minor, therefore it's enforceable against the minor.

#### **THERE'S CONTRACT:**

**-Hamilton v Lethbridge [p268]**

#### **Continuing interest/obligation**

-Obligation such as repaying money, the contract is voidable by the minor.  
-Enforceable against minor unless they terminate the contract before 18.

#### **VOIDABLE CONTRACT**

**-Corpe v Overton [p268]**

#### **RESTITUTION**

-An order of the court that seeks to restore the parties to their original position.