

**Principles of Business Law Cases**

(WEEK 4) Case	Facts	Principle (ratio decidendi)	Outcome
<p><i>Price v Easton</i> (1833) 4 B &amp; Ad 433</p> <p>Barnewall and Adolphus Reports, King's Bench, 1830–34</p>	<ul style="list-style-type: none"> <li>• A builder agreed with Easton that if he performed work for Easton then Easton would pay price money that the builder owed Price.</li> <li>• The builder performed the work.</li> <li>• Price sought to enforce the contract.</li> </ul>	<ul style="list-style-type: none"> <li>• A contract can only be enforced by a party to the contract.</li> <li>• This is known as 'privity of contract'.</li> </ul>	<p>Price could not enforce the agreement because he was not a party to it. The parties to the agreement were Easton and the builder.</p>
<p><i>Coulls v Bagot's Executor &amp; Trustee Co Ltd</i> (1967) 119 CLR 460</p>	<ul style="list-style-type: none"> <li>• Mr Coulls and a construction company agreed that the company could mine stone from Mr Coulls' property in exchange for paying him royalties.</li> <li>• Mr Coulls died.</li> <li>• Mr Coulls' executor asked the Court to consider whether Mrs Coulls could enforce the contract against the company (and thus receive the royalties).</li> </ul>	<ul style="list-style-type: none"> <li>• <i>Privity of contract</i>: a contract can only be enforced by a party to the contract.</li> <li>• To be a party to a contract, a person must provide consideration to (at least) one of the other parties to the contract.</li> </ul>	<p>Mrs Coulls was <i>not</i> a party to the contract because she had not provided consideration.</p> <p>Therefore, she could not enforce it against the construction company.</p> <p>The royalties were paid into Mr Coulls' estate.</p>
<p><i>Placer Development Ltd v Commonwealth</i> (1969) 121 CLR 353</p>	<ul style="list-style-type: none"> <li>• The Commonwealth stated that it would pay to timber products importers 'an amount ... <i>to be determined by the Commonwealth from time to time</i>' (emphasis added).</li> <li>• Placer, a timber products importer, sought to enforce this alleged promise against the Commonwealth.</li> </ul>	<ul style="list-style-type: none"> <li>• If a promise, when properly analysed, does not in fact require the promisor to do anything, then the promise is 'illusory'.</li> <li>• Illusory promises are not enforceable.</li> </ul>	<p>The alleged promise made by the Commonwealth was illusory because the Commonwealth was able to determine how much it would pay timber products importers — and thus could decide to pay them nothing.</p> <p>Thus, it was not enforceable.</p>
<p><i>Partridge v Crittenden</i> [1968] 2 All ER 421</p>	<ul style="list-style-type: none"> <li>• Partridge put an advertisement in a magazine saying 'Bramblefinch cocks and hens, 25/- each'.</li> <li>• He was prosecuted for the offence of 'offering' wild birds for sale.</li> </ul>	<ul style="list-style-type: none"> <li>• For a promise to constitute a contractual offer, the person making the promise must intend that, if the offer is accepted, a contract will be created.</li> <li>• Advertisements usually do not contain contractual offers because the person publishing the advertisement typically does not intend that acceptance of a promise in the advertisement will result in a contract.</li> <li>• Advertisements instead contain 'invitations to treat' — an invitation from the advertiser to the targets of the advertisement for <i>them</i> to make a contractual offer to the advertiser.</li> <li>• An exception to this is the case of manufacturing companies (see <i>Carlill v Carbolic Smoke Ball Co</i>).</li> </ul>	<p>The advertisement contained an invitation to treat, <i>not</i> a contractual offer.</p> <p>Thus, Partridge was not guilty of the offence.</p>
<p><i>Carlill v Carbolic Smoke Ball Co</i> [1893] 1 QB 256</p>	<ul style="list-style-type: none"> <li>• Carbolic Smoke Company produced 'smoke balls'.</li> </ul>	<p>There are several relevant principles that come out of this case:</p>	<p>Carbolic Smoke Company had intended the offer to be legally binding. This could be</p>

	<ul style="list-style-type: none"> <li>• The smoke balls were supposed to prevent influenza.</li> <li>• The company published an advertisement in a newspaper offering to pay £100 to anyone who purchased the smoke balls and nonetheless caught influenza.</li> <li>• Carlill purchased the smoke balls and used them and caught influenza.</li> <li>• She sought to enforce the offer made by the company in the advertisement.</li> </ul>	<ol style="list-style-type: none"> <li>(1) An agreement is only legally enforceable if the parties intend it to be legally binding. What the parties' intentions are is determined <i>objectively</i>. The Court does not consider what they were thinking when the agreement as made — what was happening in their own minds. Rather, it considers what a reasonable person who looked at the parties' objective conduct would think.</li> <li>(2) If a person makes a promise that is conditional upon another person doing something (such as purchasing smoke balls), this can give rise to a contract. The contract is referred to as a 'unilateral contract'. The consideration provided by the person who performs the relevant act (in this case, Carlill) is the performance of that act. This is referred to as 'executed consideration'.</li> <li>(3) A contractual offer must be made to a specific person or identified group of persons. This group can be as large as 'everyone in the world'.</li> </ol>	<p>inferred from the fact that the advertisement stated that £1000 had been deposited in a bank account for the purpose of making the £100 payments.</p> <p>The persons to whom the offer was made were sufficiently identified.</p> <p>The offer therefore gave rise to a unilateral contract.</p> <p>Thus, the company was obliged to pay £100 to Carlill.</p>
<p><i>Masters v Cameron</i> (1954) 91 CLR 353</p>	<ul style="list-style-type: none"> <li>• Cameron agreed to sell her farm to Masters.</li> <li>• The written agreement, which was signed by both parties, stated that it was 'subject to the preparation of a formal contract of sale'.</li> </ul>	<ul style="list-style-type: none"> <li>• An agreement is only legally enforceable if the parties intend it to be legally binding.</li> </ul>	<p>In this case, the parties did <i>not</i> intend the agreement to be legally binding unless and until a formal contract of sale was prepared. Thus, the agreement was not legally enforceable.</p> <p>In other cases where a written agreement states that it is 'subject to a formal contract being prepared', it might be that: (1) the parties do intend to be immediately bound by the agreement; or (2) the parties intend to be bound by the agreement but not to have to perform their contractual obligations until the formal contract is signed.</p>
<p><i>Henthorn v Fraser</i> [1892] 2 Ch 27 Law Reports, Chancery Division, 1891–</p>	<ul style="list-style-type: none"> <li>• Fraser offered to sell certain properties to Henthorn for £750.</li> <li>• Henthorn posted a letter to Fraser accepting the offer.</li> <li>• Before Fraser received Henthorn's letter but after it had been posted, Fraser attempted to withdraw the offer.</li> </ul>	<ul style="list-style-type: none"> <li>• If it is within the contemplation of the parties that the post will be used as a means of communicating the acceptance of an offer, then the offer is accepted at the time the letter communicating its acceptance is posted, <i>not</i> at the time the letter is received by the person who made the offer.</li> <li>• This is called the 'postal acceptance rule'.</li> </ul>	<p>Henthorn had accepted Fraser's offer when he posted the letter of acceptance. This was prior to Fraser's attempt to withdraw the offer.</p> <p>Thus, a binding contract had been formed and Fraser was obliged to sell Henthorn the properties.</p>

<p><i>Brinkibon Ltd v Stalwharenhandels-gesellschaft</i> [1983] 2 AC 34</p> <p>Law Reports, House of Lords, Appeal Cases, 1891–</p>	<ul style="list-style-type: none"> <li>• Brinkibon, a company in London, sent a telex to Stalag, a company in Vienna, accepting a contractual offer that Stalag had made to it.</li> <li>• It was necessary to determine whether the offer had been accepted (and thus a contract created) in London or in Vienna.</li> </ul>	<ul style="list-style-type: none"> <li>• If a telex or fax is sent communicating the acceptance of an offer, then the offer is accepted at the time the telex or fax is received at the offeror's end.</li> </ul>	<p>The offer was accepted when the telex communicating its acceptance was received by Stalag in Vienna.</p>
<p><i>Balfour v Balfour, Cohen v Cohen and Merritt v Merritt</i></p>	<ul style="list-style-type: none"> <li>• See the table for week 3.</li> </ul>		
<p><i>Esso Petroleum Co Ltd v Commissioners of Customs and Excise</i> [1976] 1 All ER 117</p>	<ul style="list-style-type: none"> <li>• Esso promised to give motorists who purchased over four gallons of Esso petrol a commemorative coin.</li> <li>• The Commissioner of Customs and Excise argued (for reasons that need not concern us) that the promise constituted a contractual offer.</li> <li>• Esso argued that it merely indicated the (non-binding) intention to make a 'gift' to motorists.</li> </ul>	<ul style="list-style-type: none"> <li>• If an agreement or a promise is made in a commercial context, it will usually be inferred that the parties intended the agreement or promise to be legally binding.</li> </ul>	<p>The promise to give the coins to motorists constituted a contractual offer.</p>
<p><i>Ermogenous v Greek Orthodox Community of SA Inc</i> (2002) 209 CLR 95</p>	<ul style="list-style-type: none"> <li>• The Greek Orthodox Community of SA invited Ermogenous to become the head of the Greek Orthodox Church in Australia.</li> <li>• He accepted the offer.</li> <li>• When his appointment as head of the church finished, he sought to be paid out for the leave that he had accumulated pursuant to the agreement between him and the church.</li> <li>• The church argued that the parties had not intended to be legally bound by the agreement.</li> </ul>	<ul style="list-style-type: none"> <li>• An agreement is only legally enforceable if the parties intend it to be legally binding.</li> </ul>	<p>In this case, the parties did intend the agreement to be legally binding.</p> <p>This could be inferred from the fact that the Greek Orthodox Community of SA was incorporated (or, in other words, was a distinct legal entity capable of entering into contracts) and also from the fact that it provided monetary and other economic benefits to Ermogenous pursuant to the agreement.</p>
<p><i>Thomas v Thomas</i> (1842) QB 851</p>	<ul style="list-style-type: none"> <li>• Mrs Thomas entered into an agreement with her deceased husband's executors pursuant to which she could live in a house that he had owned for the remainder of her life in return for paying them £1 a year.</li> <li>• The question arose whether Mrs Thomas had provided valid consideration.</li> </ul>	<ul style="list-style-type: none"> <li>• An agreement will only give rise to a legally enforceable contract if all of the parties to the agreement provide 'consideration'.</li> <li>• This is known as the 'doctrine of consideration'.</li> <li>• Consideration can be a thing (such as money) or a promise to do something. It does not have to be equivalent in value to the benefit that the party is receiving from the contract — it must simply be of <i>some</i> value.</li> <li>• 'Consideration need not be adequate - just sufficient' (<i>Ipex</i>)</li> <li>• good consideration need only be 'sufficient in law'</li> <li>• consideration need NOT be 'commercially adequate'</li> <li>• As a general rule, courts will NOT question the adequacy of consideration, reflecting the idea</li> </ul>	<p>Mrs Thomas had provided valid consideration in the form of the yearly £1 payment.</p> <p>Thus, she could enforce the agreement.</p>

		<p>the parties best know what they want to exchange (Kirby P in <i>Woolworths v Kelly</i>).</p> <ul style="list-style-type: none"> <li>• Freedom of contract</li> <li>• In short, consideration need NOT be of equal value to the promise it supports, but needs to have some value recognised by law</li> <li>• \$1 million house can be bought for a peppercorn</li> <li>• <b>Exception:</b> the doctrine of consideration does not apply to written agreements executed as deeds. To 'execute' a contract is simply to sign it. There are certain requirements for an agreement to be executed as a deed. For instance, it must say that it has been 'signed and sealed' by each of the parties.</li> </ul>	
<i>Stylk v Myrick</i> (1809) 170 ER 1168	<ul style="list-style-type: none"> <li>• Two men deserted from a ship.</li> <li>• The captain promised the remaining sailors that they would share the deserters' pay if they helped to get the ship back home.</li> <li>• When the ship returned home, the shipowner refused to honour the agreement.</li> <li>• The sailors sought to enforce the agreement against the shipowner.</li> </ul>	<ul style="list-style-type: none"> <li>• <b>Doctrine of consideration:</b> an agreement will only give rise to a legally enforceable contract if the parties to the agreement provide 'consideration' (unless the agreement is executed as a deed).</li> <li>• If a person promises to do something that they are already legally obliged to do, this is not valid consideration.</li> <li>• Similarly, the performance of an act in the past is not valid consideration. It is known as 'past consideration'.</li> </ul>	<p>The agreement was <i>not</i> a legally enforceable contract because the sailors had not provided valid consideration in exchange for the promise made by the captain.</p> <p>Rather, they had merely promised to do what they were already contractually obliged to do — to help the ship get back home.</p>
<i>Musumeci v Winadell Pty Ltd</i> (1994) 34 NSWLR 723	<ul style="list-style-type: none"> <li>• Musumeci leased a shop from Winadell.</li> <li>• Musumeci told Winadell that the shop was no longer viable and asked Winadell to reduce the rent.</li> <li>• Winadell agreed to reduce it by 30%.</li> <li>• Winadell later sought to argue that the agreement concerning the rent reduction was not a legally enforceable contract because Musumeci had not provided consideration in exchange for the promise to reduce the rent.</li> </ul>	<ul style="list-style-type: none"> <li>• The same principles as those applied in <i>Stylk v Myrick</i>.</li> <li>• But, a new <i>exception</i>: if a person promises to do something that they are already legally obliged to do, and this promise confers a 'practical benefit' on the other party, then this constitutes valid consideration.</li> </ul>	<p>The agreement to reduce the rent was a legally enforceable contract because Musumeci had provided valid consideration in the form of the promise to keep the shop going (and to keep renting the shop space). This promise conferred a 'practical benefit' on Winadell because it got to keep its tenant.</p>