

Formation

Smith v Hughes

Minds must be at ad idem for there to be a contract.

Would a reasonable person think an agreement had been reached?

Carlill v Carbolic Smokeball

An offer can be made to the whole world.

Pharmaceutical Society v Boots

A sale was not effected when customer has taken goods from shelf, but only when at the cash desk a buyer's offer to buy was accepted by the acceptance of the cash price. (Advertisement/goods in shopping window invitation to deal unless condition with it performed see *Errington*)

Dickinson v Dodds

Revocation - retract

An offer to sell without consideration (*nudum pactum*) given in exchange can be withdrawn at any time - [93]

Byrne v Van Tienhoven

Revocation

A revocation will not be effective unless, and until, it is communicated to the offeree – postal rule does not apply in revocation cases.

Crown v Clarke

Offeree's conduct must occur in response to the offer. – Conduct must be in fact/relied upon the proclamation by the offeror.

Butler Machine Tool v Ex-Cell-O Corp

To amount to acceptance, the words or conduct of the offeree must, expressly or by implication, indicate assent – where counter offer given the last document acknowledged by implication/expressly (without objection) will win the battle of the forms – [50]

Maxitherm Boilers v Pacific Dunlop

Where there are lots of documents exchanged. It is necessary to consider the communications between parties as a whole to determine when a contract is made and on whose terms

Felthouse v Bindley

Generally, acceptance of an offer will not be effective unless and until it is communicated. To be operative communication of acceptance must be communicated to offeror (exception waived/estoppel...).

Carlill v Carbolic Smokeball - unilateral – communication of acceptance

The offer impliedly dispensed with the need for notification of acceptance, and anyone who performed the condition accepted the offer.

Empirnall Holdings v Machon Paull

Silence alone cannot be treated as assent. HOWEVER, where silence is combined with other factors (taking benefit of an offer) the outcome may be different, especially where the offeree's conduct can be characterised as acceptance by conduct (some payment). – [100]

Brinkibon v Stahag Stahl und Stahl

For telex (instantaneous communication): the contract was made when and where the acceptance was received (by telex).

Note, for postal rule, if letter does not make it to addressee then agreement still valid, unless it is not delivered because of offeree's fault (thus no acceptance) *Bressan v Squires*

Clarke v Dunraven

When applying to enter a race, applicants dealt with the organizer and not each other. However, when doing so they agreed with organisers to be bound by race rules. Thus, there is contract between applicants in the terms of the race rules.

Brambles Holdings v Bathurst City Council – no offer and acceptance present

Acceptance by conduct and extrinsic evidence and construction – Council requested higher fees be charged so it could gain benefit, Brambles raised points in response and began charging higher fees but did not pay council. Held: letter did not amount to rejection and its conduct in charging higher fees was an unequivocal acceptance of offer. – [40]

Errington v Errington

Unilateral contract – a promise of the house in return for their act of paying the installments, it cannot be revoked if the couple acts on the performance of the act (paying installments).

Council of Upper Hunter Country v Australian Chilling and Freezing

Vague or ambiguous - If a contract has more than one meaning it will not be void for uncertainty (the court will want to solve the parties commercial agreement). Question of construction, of ascertaining the intention of the parties, and applying it.

Biotechnology v Pace

Illusory agreements - where performance of a party's promises is entirely a matter for that party's discretion – such contracts are void – [34] (investment scheme did not exist yet)

Coal Cliff Collieries v Sijehama

Agreement to negotiate a contract – uncertainty

Courts will not enforce an agreement to agree. But where parties wish to extract commitment from each other but cannot finalise terms can also be agreement to negotiate: In case of agreement to negotiate it may be enforceable (provided consideration and other terms), but present case was too illusory or too vague and uncertain to be enforceable (as court not expert).

Life insurance Co of Australia v Phillips

Severance

If uncertainty afflicts only part of an agreement it may be possible to sever that part from the rest and leave the remainder enforceable.

Masters v Cameron

Agreement subject to formal contract

Agreement was made subject to preparation of a formal contract of sale. Oferee made 'deposit' on house, later denied there was a contract. Held: document to not constitute a binding contract, as it was a record of terms where signatories agreed for the negotiation of contract (the subject to make formal contract – was not fulfilled). 'Deposit' was a deposit upon making of final contract. – [186]

Meehan v Jones

Agreement subject to finance – (ALSO uncertain/illusory – [188])

Special condition contained 'this contract is executed by parties subject to finance'. Finance was arranged and completion called for. Held: Condition was satisfied therefore binding. NOT illusory just because power of contract in purchaser. Not uncertain because 'subject to satisfactory', satisfactory meant subjective meaning.

Consideration

Australian Woolen Mills v Cth
