

CONTRACT LAW A

MODULE 1 – FORMATION

- 1. Agreement (Offer + Acceptance)**
- 2. Intention to create legal relations**
- 3. Consideration**
- 4. Certainty**
- 5. Writing Requirement + Capacity**
- 6. Estoppel**

MODULE 2 – TERMS OF THE CONTRACT

- 1. Express Terms**
- 2. Implied Terms**
- 3. Construction of Contractual Terms + Exclusion Clauses**

MODULE 3 – TERMINATION

- 1. Discharge by performance + Agreement**
- 2. Discharge by breach + frustration**
- 3. Remedies: Damages + Rescission**
- 4. Actions for fixed sum & Specific performance**

MODULE 1

CHAPTER 4 - THE FACT OF AGREEMENT

Introduction:

- Existence of a contract between particular persons depends on there being an agreement between them.
- Yet an agreement doesn't create a contract. For that agreement to be a contract it must be one for consideration.
- The parties to that agreement must intend that it have legal effect in the sense that it can be enforced by one party in the event that it is breached by the other. The agreement must also be certain & complete.- the existence of a contract is objectively determined: (FGCT Pty Ltd v Alphapharm Pty Ltd (2004).
- In cases where the existence of the agreement is in question the traditional method for resolving it is to apply the rules of offer and acceptance.
- One looks at the negotiations between the parties and seeks to establish whether one of them has made an offer to the other and whether the latter has subsequently accepted the offer.
- Rules of offer and acceptance tell us the following about any contract that results;
 - When the contract was entered into-th9s can be an important matter because the time for performance of obligations is often determined by reference to the date of the contract
 - Where the contract into-this is important in cases where a contract is entered into between parties in different legal jurisdictions in order to establish which jurisdictions courts will resolve the dispute
 - The express terms of the contract.
- Whether an agreement has been entered into is determined objectively: refer to RTS flexible systems Ltd v Molkerei Alios Muller GmbH & company Kg (2010) (p43).
 - General principles not in doubt
 - Whether there was a binding contract between the parties and if so, what terms depends upon what they have agreed.
 - Depends not on their subjective state of mind, but upon a consideration of what was communicated between them by words/conduct and whether that leads objectively to a conclusion that they intended to create legal relations and has agreed upon all the terms which they regarded or the law required an essential for the formation of legally binding relations.

The offer:

Definition of offer:

- Nielsen v Dysart Timbers Limited [2009], Tipping and Wilson JJ: 'An offer is a statement of the terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive'.

MODULE 3 - TERMINATION

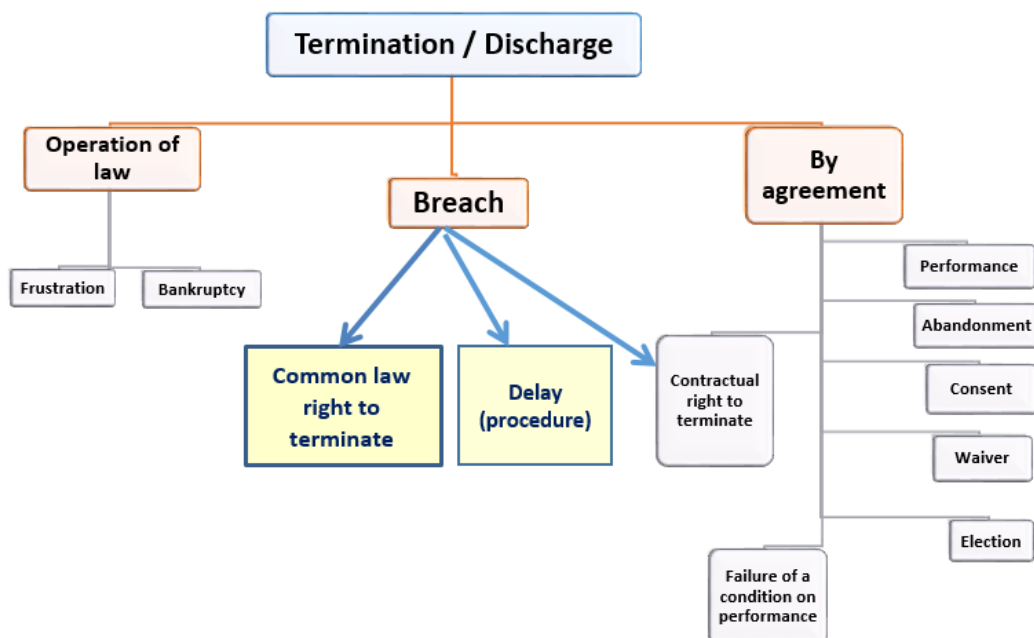
CHAPTER 22 – DISCHARGE BY PERFORMANCE

INTRODUCTION TO DISCHARGE

Discharge means that a party is excused from further performance of that contract.

Contracts can be terminated/discharged in the following circumstances:

- By agreement or contractual right
 - By abandonment or waiver
 - By election
 - By consent of the parties (accord and satisfaction, substituted agreement)
 - By performance on both sides
 - For non-fulfilment of a contingent condition of formation or performance
 - By the exercise of an express contractual right to terminate.
- By operation of law (eg, frustration or bankruptcy)
- For breach of an essential term, for repudiation and arguably for a serious breach of a so-called 'intermediate' or 'innominate' term



TIME FOR THE PERFORMANCE OF OBLIGATIONS

- The time at which obligations are to be performed is governed by the contract. Whether a time limit is of the essence of a contractual provision is a question of interpretation.

CASE SUMMARIES

Agreement:

R v Clarke (1927) 40 CLR 227

TOPIC: Acceptance of Offers and Reliance

COURT: High Court of Australia

FACTS: The Western Australian Government offered a reward of 1000 euro for information leading to the arrest and conviction of the murderers of two police officers. Clarke, who knew of the offer, gave information at the trial of those charged with the murders that led to their convictions, thereby satisfying the conditions of the reward. Clarke stated: 'When I gave evidence in the Criminal Court I had no intention of claiming the reward. I first decided to claim the reward a few days after the appeal had been dealt with. Inspector Condon told me to make an application. My motive was to clear myself of the charge of murder. I gave no consideration and formed no intention with regard to the reward.' Clarke then claimed the reward.

ISSUE: The issue before the High Court was whether Clarke's actions in satisfying the terms of the reward amounted to an acceptance of the offer of the reward.

DECISION: The High Court (Issaacs ACJ, Higgins and Starke JJ) found in favour of the Crown, on the basis that at the time he gave the information, Clarke did not have it in his mind to claim the reward. His decision was to do so subsequently. Thus, Clarke's providing of the information required by the reward proclamation was not a valid acceptance of the offer of the reward, and he was not entitled to claim it.

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256;

TOPIC: Offers or Invitation to treat - Promotional Materials

COURT: Court of Appeal in England

FACTS: The Carbolic Smoke Ball Co produced the Carbolic Smoke Ball, a medicinal preparation. It placed an advertisement in newspapers offering a reward of 100 euro to any person, who having used the medication as prescribed for two weeks, nevertheless, contracted influenza. The advertisement further stated that the company had deposited 1000 euro in a special bank account as evidence of its sincerity in this matter. Mrs Carlill purchased the medication and used it as prescribed for eight weeks before contracting influenza. On the basis that the offer of a reward and her conduct in response to the offer constituted a contract, Carlill sued to recover the 100 euro reward. Carbolic argued that there was no contract between itself and Carlill.

ISSUE: This case involved a number of issues in relation to whether the reward offer was an offer in law and whether it had been accepted by Carlill's conduct. It also raised the question of whether Carlill had provided consideration for the promise of the reward.

DECISION: The court of Appeal (Lindley, Bowen and A L Smith LJJ) unanimously ruled in favour of Carlill, and ordered that Carbolic pay the reward.