

Table of Contents

Contract Law	9
Offer	10
The Rules	10
Identification of an Offer	10
Recipients of Offers.....	11
Termination of an Offer	11
Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256.....	Error! Bookmark not defined.
Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd (1953) 1 QB 401.....	Error! Bookmark not defined.
Options.....	Error! Bookmark not defined.
Goldsborough Mort & Co Ltd v Quinn (1910) 10 CLR 674 – also used in frustration	Error! Bookmark not defined.
Dickinson v Dodds (1876) 2 Ch D 463	Error! Bookmark not defined.
Australian Woollen Mills Pty Ltd v The Commonwealth (1954) 92 CLR 424	Error! Bookmark not defined.
MacRobertson Miller Airline Services v Commissioner of State Taxation (WA) 1975) 133 CLR 125.....	Error! Bookmark not defined.
Gibson v Manchester City Council [1979] 1 WLR 294.....	Error! Bookmark not defined.
Stevenson Jacques v Mc Lean (1880) 5 QBD 246	Error! Bookmark not defined.
Mobil Oil Australia Ltd v Wellcome International Pty Ltd (1998) 81 FCR 475	Error! Bookmark not defined.
Tickets	Error! Bookmark not defined.
Acceptance.....	Error! Bookmark not defined.
Definition of Acceptance.....	Error! Bookmark not defined.
Rules:.....	Error! Bookmark not defined.
Felthouse v Bindley (1862) ER 1037.....	Error! Bookmark not defined.
R v Clarke (1927) 40 CLR 227	Error! Bookmark not defined.
Butler Machine Tool Co Ltd v Ex-Cell-O Corp (England) Ltd (1979) 1 All ER 965	Error! Bookmark not defined.
Brinkibon Ltd v Stahag Stahl und Stahlwarenhandels-gesellschaft mbh [1983] 2 AC 34.....	Error! Bookmark not defined.
Certainty.....	Error! Bookmark not defined.
Elements	Error! Bookmark not defined.
Upper Hunter County District v Australian Chilling and Freezing Co Ltd (1968) 118 CLR 429.....	Error! Bookmark not defined.
Whitlock v Brew (1968) 118 CLR 445	Error! Bookmark not defined.
Biotechnology Australia Pty Ltd v Pace (1968) 15 NSWLR 130 – also used in incompleteness.....	Error! Bookmark not defined.
Principles from Biotechnology Australia Ltd v Pace (1968) by Kirby J → important!	Error! Bookmark not defined.
Incompleteness.....	Error! Bookmark not defined.
Coal Cliff Collieries Pty Ltd v Sijehama Pty Ltd (1991) 23 NSWLR 1	Error! Bookmark not defined.
Illusory Promises	Error! Bookmark not defined.
Meehan v Jones (1982) 149 CLR 571	Error! Bookmark not defined.
Masters v Cameron (1954) 91 CLR 353 – also can be used in intention/capacity.....	Error! Bookmark not defined.

Consideration.....	Error! Bookmark not defined.
Formal Contracts v Simple Contracts.....	Error! Bookmark not defined.
Definition	Error! Bookmark not defined.
Elements	Error! Bookmark not defined.
Australian Woollen Mills Pty Ltd v The Commonwealth (1954) 92 CLR 424	Error! Bookmark not defined.
Beaton v McDivitt (1987) 13 NSWLR 162	Error! Bookmark not defined.
Rules of Consideration.....	Error! Bookmark not defined.
Sufficiency Rule: Consideration need not be adequate but must be real/sufficient	Error! Bookmark not defined.
Thomas v Thomas (1842).....	Error! Bookmark not defined.
Chappell & Co Ltd v Nestlé Co Ltd [1960] AC 87 (consideration can be ‘nominal’)...	Error! Bookmark not defined.
Rule: May be executed, executory but cannot be past consideration	Error! Bookmark not defined.
Roscorla v Thomas (1842) 2 QB 234	Error! Bookmark not defined.
Re Casey’s Patents; Stewart v Casey [1892] 1 Ch 104	Error! Bookmark not defined.
Rule: Consideration cannot be illusory or vague	Error! Bookmark not defined.
Placer Development Ltd v The Commonwealth (1969) 121 CLR 353	Error! Bookmark not defined.
Dunton v Dunton (1892)	Error! Bookmark not defined.
Rule: Existing obligation is not good consideration.....	Error! Bookmark not defined.
Glasbrook Bros Ltd v Glamorgan County Council [1925] AC 270	Error! Bookmark not defined.
Popiw v Popiw [1959] VR 197	Error! Bookmark not defined.
Stilk v Myrick (1809).....	Error! Bookmark not defined.
Hartley v Ponsonby (1857).....	Error! Bookmark not defined.
Wigan v Edwards (1973) 47 ALJR 586– exception to the rule	Error! Bookmark not defined.
Williams v Roffey Brothers & Nicholls (Contractors) Ltd [1991] 1 QB 1.....	Error! Bookmark not defined.
Musumeci v Winadell Pty Ltd (1994) - Aus	Error! Bookmark not defined.
Rule: Part payment is not good consideration	Error! Bookmark not defined.
Pinnel's Case (1602)	Error! Bookmark not defined.
Foakes v Beer (1884) 9 App Cas 605	Error! Bookmark not defined.
Rule: Forbearance can constitute good consideration.....	Error! Bookmark not defined.
Rule: Simple contracts must have consideration!!	Error! Bookmark not defined.
Rule: Must move from the “promisee” but need not flow to the promise.....	Error! Bookmark not defined.
Coulls v Bagont’s Executor & Trustee Co Ltd (1967) 119 CLR 460 – move from the promise (also used in privity)	Error! Bookmark not defined.
Equity and Consideration.....	Error! Bookmark not defined.
Intention	Error! Bookmark not defined.
Intention to create legal relations	Error! Bookmark not defined.
Rose And Frank Co v J R Crompton and Bros Ltd [1923] 2 KB 261	Error! Bookmark not defined.
Jones v Padavatton [1969] 2 All ER 616	Error! Bookmark not defined.
Banque Brussels Lambert SA v Australian National Industries Ltd (1989) 21 NSWLR 502 Error! Bookmark not defini	

Ermogenous v Greek Orthodox Community of SA Inc (2002) 209 CLR 95.....	Error! Bookmark not defined.
Administration of Papua New Guinea v Leahy (1961) 105 CLR 353	Error! Bookmark not defined.
Todd v Nicol [1957] SASR 72	Error! Bookmark not defined.
Formalities	Error! Bookmark not defined.
Form of Contracts	Error! Bookmark not defined.
Evidenced in writing.....	Error! Bookmark not defined.
Recognising a signature	Error! Bookmark not defined.
Doctrine of Part Performance.....	Error! Bookmark not defined.
Effect of non-compliance	Error! Bookmark not defined.
Pirie v Saunders (1960) 104 CLR 149	Error! Bookmark not defined.
Fauzi Elias v George Sahely & Co (Barbados) Ltd [1983] 1 AC 646	Error! Bookmark not defined.
Regent v Millett (1976) 133 CLR 679	Error! Bookmark not defined.
Morris v Baron & Co (1918) AC 1	Error! Bookmark not defined.
Ogilive v Ryan (1976) 2 NSWLR 504.....	Error! Bookmark not defined.
Privity of Contract.....	Error! Bookmark not defined.
Definition	Error! Bookmark not defined.
Rules.....	Error! Bookmark not defined.
Privity of Estate.....	Error! Bookmark not defined.
Exceptions	Error! Bookmark not defined.
Trident General Insurance Co Ltd v McNiece Bros Pty Ltd (1988) 165 CLR 107	Error! Bookmark not defined.
Agency.....	Error! Bookmark not defined.
Trusts.....	Error! Bookmark not defined.
Assignment.....	Error! Bookmark not defined.
Tolhurst v The Associated Portland Cement Manufacturers (1900) Ltd [1903] AC 414.....	Error! Bookmark not defined.
Pacific Brands Sport & Leisure v Underworks Pty Ltd (2006) 19 FCR 395	Error! Bookmark not defined.
Statutory provisions.....	Error! Bookmark not defined.
Conveyancing Act 1919 (NSW) s36(c).....	Error! Bookmark not defined.
Insurance.....	Error! Bookmark not defined.
Statute.....	Error! Bookmark not defined.
Beswick v Beswick [1968] AC 58	Error! Bookmark not defined.
Wilson v Darling Island Stevedoring & Lighthouse Co Ltd (1956) 95 CLR 43	Error! Bookmark not defined.
NZ Shipping Co Ltd v A M Satterthwaite & Co Ltd (The Eurymedon) [1975] AC 154	Error! Bookmark not defined.
Port Jackson Stevedoring v Salmond & Spraggon (Aust) (The 'New York Star') (1978) 139 CLR 231	Error! Bookmark not defined.
Express Terms	Error! Bookmark not defined.
Pre-contractual Statements.....	Error! Bookmark not defined.
JJ Savage & Sons Pty Ltd v Blakney (1970) 119 CLR 435	Error! Bookmark not defined.

Dick Bentley Productions Ltd v Harold Smith (Motors) Ltd [1965] 1 WLR 623 (English Court of Appeal)	Error! Bookmark not defined.
Hoyt's Pty Ltd v Spencer (1919) 27 CLR 133 – can be used in parol evidence (estoppel?)	Error! Bookmark not defined.
Couchman v Hill [1947] KB 554 (UK)	Error! Bookmark not defined.
Oscar Chess Ltd v Williams [1957] 1 WLR 370	Error! Bookmark not defined.
Sheppard v Council of the Municipality of Ryde (1952) 85 CLR 1	Error! Bookmark not defined.
Incorporating Terms into a Contract	Error! Bookmark not defined.
Signature	Error! Bookmark not defined.
L'Estrange v F Graucob Ltd [1934] 2 KB 394	Error! Bookmark not defined.
Toll (FGCT) Pty Ltd v Alphapharm Pty Ltd (2004) 219 CLR 165	Error! Bookmark not defined.
Exclusions to signature rule	Error! Bookmark not defined.
DJ Hill and Co Pty Ltd v Walter H Wright Pty Ltd [1971] VR 749	Error! Bookmark not defined.
Petelin v Cullen (1975) – also used in mistake	Error! Bookmark not defined.
Curtis v Chemical Cleaning and Dyeing Co [1951] 1 KB 805	Error! Bookmark not defined.
Notice	Error! Bookmark not defined.
Thornton v Shoe Lane Parking Ltd [1971] 2 QB 163	Error! Bookmark not defined.
Causer v Browne (1952) VLR 1	Error! Bookmark not defined.
Acceptance of Ticket	Error! Bookmark not defined.
Course of Dealing	Error! Bookmark not defined.
Implied Terms	Error! Bookmark not defined.
Custom or Trade Usage	Error! Bookmark not defined.
Con-Stan Industries of Australia v Norwich Winterthur Insurance (1986) 160 CLR 226	Error! Bookmark not defined.
Hutton v Warren (1836)	Error! Bookmark not defined.
Implied by fact	Error! Bookmark not defined.
Formal contracts	Error! Bookmark not defined.
Byrne v Australian Airlines Ltd (1995) 185 CLR 411 – important	Error! Bookmark not defined.
Codelfa Constructions Pty Ltd v State Rail Authority of NSW (1982) 149 CLR 337 ...	Error! Bookmark not defined.
The Moorcock (1889) 14 PD 61 (implication by fact)	Error! Bookmark not defined.
Informal Contracts	Error! Bookmark not defined.
Terms Implied by Law	Error! Bookmark not defined.
Construction and Extrinsic Evidence	Error! Bookmark not defined.
Parol Evidence Rule	Error! Bookmark not defined.
Exclusion Clause	Error! Bookmark not defined.
A matter of construction	Error! Bookmark not defined.
Photo Production Ltd v Securicor Transport Ltd [1980] AC 827	Error! Bookmark not defined.
Darlington Futures Ltd v Delco Australia Pty Ltd (1986) 161 CLR 500	Error! Bookmark not defined.
Four corners rule	Error! Bookmark not defined.
Council of the City of Sydney v West (1965) 114 CLR 481	Error! Bookmark not defined.

Davis v Pearce Parking Station Pty Ltd (1954) 91 CLR 642.....	Error! Bookmark not defined.
Normal meaning of the exclusion clause.....	Error! Bookmark not defined.
Thomas National Transport Pty Ltd v May & Baker Pty Ltd (1966) 115 CLR 353	Error! Bookmark not defined.
Classification of Contract Terms	Error! Bookmark not defined.
Classification of Contractual Terms	Error! Bookmark not defined.
Warranty	Error! Bookmark not defined.
Condition.....	Error! Bookmark not defined.
Intermediate Terms	Error! Bookmark not defined.
Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26	Error! Bookmark not defined.
Luna Park Ltd v Tramways Advertising Pty Ltd (1938) 61 CLR 286	Error! Bookmark not defined.
Associated Newspapers Ltd v Bancks (1951) 83 CLR 322	Error! Bookmark not defined.
Cehave NV v Bremer Handelsgesellschaft mbH (The Hansa Nord) [1976] QB 44....	Error! Bookmark not defined.
L Schuler AG v Wickman Machine Tool Sales Ltd [1974] AC 235 – termination/breach important case	Error! Bookmark not defined.
Ankar v National Westminster Finance Ltd (1987) 162 CLR 549	Error! Bookmark not defined.
Performance, Breach and a Right of Termination; Termination of Contract: By Agreement and Failure of Contingent Condition.....	Error! Bookmark not defined.
Breach and Right to Terminate	Error! Bookmark not defined.
Termination by Agreement.....	Error! Bookmark not defined.
Cutter v Powell [1795] 101 ER 573	Error! Bookmark not defined.
Government of Newfoundland v Newfoundland Railway Co [1883] 13 App Cas 199.....	Error! Bookmark not defined.
Koompahtoo Local Aboriginal Land Council v Sanpine (2007) 233 CLR 115.....	Error! Bookmark not defined.
McDermott v Black (1940) 63 CLR 161	Error! Bookmark not defined.
Hoenig v Isaacs [1952] 2 All ER 176	Error! Bookmark not defined.
Bolton v Mahadeva [1972] 1 WLR 1009	Error! Bookmark not defined.
Repudiation.....	Error! Bookmark not defined.
Repudiation based on words or conduct.....	Error! Bookmark not defined.
Repudiation based on Inability	Error! Bookmark not defined.
Repudiation Test:.....	Error! Bookmark not defined.
Technical	Error! Bookmark not defined.
Bowes v Chaleyer (1923) 32 CLR 159.....	Error! Bookmark not defined.
Universal Cargo Carriers Corp v Citati (1957) 2 QB 401.....	Error! Bookmark not defined.
Carr v J A Berriman (1953) 89 CLR 327	Error! Bookmark not defined.
Progressive Mailing House v Tabali (1985) 157 CLR 17	Error! Bookmark not defined.
Frustration	Error! Bookmark not defined.
Consequences of Frustration	Error! Bookmark not defined.
Scott v Avery	Error! Bookmark not defined.
Codelfa Construction Pty Ltd v State Rail Authority NSW (1982) 149 CLR 337	Error! Bookmark not defined.

Davis Contractors Ltd v Fareham UDC [1956] AC 696	Error! Bookmark not defined.
Embiricos v Sydney Reid & Co [1914] 3 KB 45	Error! Bookmark not defined.
Maritime National Fish Ltd v Ocean Trawlers Ltd [1935] AC 524 – Privy Council, Canada	Error! Bookmark not defined.
Appleby v Myers (1867) LR 2 CP 651	Error! Bookmark not defined.
Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32	Error! Bookmark not defined.
Taylor v Caldwell (1863) (absolute impossibility/total failure of consideration)	Error! Bookmark not defined.
Jackson v The Union Marine Insurance Co Ltd (commercial frustration).....	Error! Bookmark not defined.
Krell v Henry [1903] (disappearance of the basis of the contract)	Error! Bookmark not defined.
Simmons v Hay (1964)	Error! Bookmark not defined.
Goldsbrough Mort & Co v Carter	Error! Bookmark not defined.
Time Stipulations and Delay	Error! Bookmark not defined.
At Common Law	Error! Bookmark not defined.
In Equity	Error! Bookmark not defined.
Holland v Wiltshire (1954) 90 CLR 409.....	Error! Bookmark not defined.
Canning v Temby (1905) 3 CLR 149.....	Error! Bookmark not defined.
Bunge Corporation New York v Tradex Export SA Panama [1981] 1 WLR 711.....	Error! Bookmark not defined.
Louinder v Leis (1982) 149 CLR 509	Error! Bookmark not defined.
Laurinda Pty Ltd v Capalaba Park Shopping Pty Ltd (1989) 166 CLR 623	Error! Bookmark not defined.
Affirmation and Consequences.....	Error! Bookmark not defined.
Rawson v Hobbs (1961) 107 CLR 466.....	Error! Bookmark not defined.
Tropical Traders Ltd v Goonan (1964) 111 CLR 41.....	Error! Bookmark not defined.
Legione v Hateley (1983) 152 CLR 406 (estoppel/equity).....	Error! Bookmark not defined.
Heyman v Darwins Ltd [1942] AC 356.....	Error! Bookmark not defined.
Reliance and Estoppel.....	Error! Bookmark not defined.
Definition of promissory estoppel	Error! Bookmark not defined.
Walton Stores (Interstate) Ltd v Maher (1988) 164 CLR 387.....	Error! Bookmark not defined.
Principles abstracted from Walton v Maher.....	Error! Bookmark not defined.
Vitiating Factors: Undue influence, unconscionable conduct	Error! Bookmark not defined.
Undue Influence.....	Error! Bookmark not defined.
The Effect of Undue Influence	Error! Bookmark not defined.
Third parties.....	Error! Bookmark not defined.
Johnson v Buttress (1936) 56 CLR 113.....	Error! Bookmark not defined.
Garcia v National Australian Bank (1998) 194 CLR 395	Error! Bookmark not defined.
Unconscionability.....	Error! Bookmark not defined.
Commercial Bank of Australia v Amadio (1983) – ‘special’ disadvantage	Error! Bookmark not defined.
Statutory Inroads	Error! Bookmark not defined.
Unfair Contract Terms.....	Error! Bookmark not defined.
Vitiating Factors	Error! Bookmark not defined.

Rescission.....	Error! Bookmark not defined.
Mistake.....	Error! Bookmark not defined.
McRae v Commonwealth Disposals Commission (1951) 84 CLR 377	Error! Bookmark not defined.
Pukallus v Cameron (1982) 43 CLR 447.....	Error! Bookmark not defined.
Svanosio v McNamara (1956) 96 CLR 186	Error! Bookmark not defined.
Goldsborough Mort and Co Ltd v Quinn (1910) 10 CLR 674.....	Error! Bookmark not defined.
Taylor v Johnson (1983) 151 CLR 422	Error! Bookmark not defined.
Cundy v Lindsay (1878) 3 App Case 459	Error! Bookmark not defined.
Lewis v Averay [1972] 1 QB 198.....	Error! Bookmark not defined.
Petelin v Cullen (1975) – see summary above.....	Error! Bookmark not defined.
Solle v Butcher [1950] 1 KB 671	Error! Bookmark not defined.
Misrepresentation	Error! Bookmark not defined.
Statutory Provisions.....	Error! Bookmark not defined.
Edgington v Fitzmaurice (1885) 29 Ch D 459.....	Error! Bookmark not defined.
Accounting Systems 2000 (Developments) Pty Ltd v CCH Australia (1993) 114 ALR 335.....	Error! Bookmark not defined.
Holmes v Jones (1907) 4 CLR 1692	Error! Bookmark not defined.
Termination for Breach.....	Error! Bookmark not defined.
Performance	Error! Bookmark not defined.
Severable Contracts	Error! Bookmark not defined.
Quality of Performance.....	Error! Bookmark not defined.
Accord and Satisfaction.....	Error! Bookmark not defined.
Capacity.....	Error! Bookmark not defined.
Introduction	Error! Bookmark not defined.
Minors.....	Error! Bookmark not defined.
Statutory Law	Error! Bookmark not defined.
Exceptions.....	Error! Bookmark not defined.
Presumptively Bound.....	Error! Bookmark not defined.
Presumptively Binding Categories:	Error! Bookmark not defined.
Meaning of ‘benefit’	Error! Bookmark not defined.
Non-Presumptively Binding Contract	Error! Bookmark not defined.
Consequence of Not Fitting into Presumptively Binding Category	Error! Bookmark not defined.
Summary	Error! Bookmark not defined.
The Common Law	Error! Bookmark not defined.
General Rule.....	Error! Bookmark not defined.
Sui Juris.....	Error! Bookmark not defined.
Exceptions.....	Error! Bookmark not defined.
Valid Contract.....	Error! Bookmark not defined.
Voidable Contracts.....	Error! Bookmark not defined.

Torts and Contracts.....	Error! Bookmark not defined.
Mental Incapacity	Error! Bookmark not defined.
Intoxicated Persons.....	Error! Bookmark not defined.
Gibbons v Wright (1954) 91 CLR 423	Error! Bookmark not defined.
Statutory Guarantees.....	Error! Bookmark not defined.
Illegality.....	Error! Bookmark not defined.
Definitions.....	Error! Bookmark not defined.
Contracts Prohibited at Common Law	Error! Bookmark not defined.
Contracts Involving to Commit a Crime, a Tort or a Fraud on a Third Party	Error! Bookmark not defined.
Yango Pastoral Co Pty Ltd v First Chicago Ltd (1978).....	Error! Bookmark not defined.
Contracts Prejudicial to the Administration of Justice	Error! Bookmark not defined.
A v Hayden (1984) 156 CLR 532	Error! Bookmark not defined.
Contracts that Promote Corruption in Public Life	Error! Bookmark not defined.
Wilkinson v Osborne (1915) 21 CLR 89.....	Error! Bookmark not defined.
Contracts which Promote Sexual Immorality	Error! Bookmark not defined.
Andrews & Parker [1973] Qd R 93	Error! Bookmark not defined.
Contracts to Defraud the Revenue	Error! Bookmark not defined.
Alexander v Rayson [1936] 1 KB 169	Error! Bookmark not defined.
Contracts Infringing the Laws of a Foreign Country	Error! Bookmark not defined.
Restraint of Trade (ROT)	Error! Bookmark not defined.
Nordenfelt v Maxim Nordenfelt Guns & Ammunition Co Ltd [1894] AC 535.....	Error! Bookmark not defined.
Amoco Aust Pty Ltd v Rocca Bros Motor Engineering Pty Ltd (1973) 133 CLR 288...	Error! Bookmark not defined.
Esso Petroleum Ltd v Harper’s Garage (Stourport) Ltd (1968) AC 269.....	Error! Bookmark not defined.
Contracts Prohibited by Statute.....	Error! Bookmark not defined.
Re Mahmoud and Ispahani [1921] 2 KB 716.....	Error! Bookmark not defined.
St John Shipping Corporation v Joseph Rank Ltd [1957] 1 QB 267.....	Error! Bookmark not defined.
The Consequences of Illegality	Error! Bookmark not defined.
Unenforceability	Error! Bookmark not defined.
Non-Retrieval	Error! Bookmark not defined.
Illegal as Formed	Error! Bookmark not defined.
Illegal as Performed	Error! Bookmark not defined.
Modern Exceptions	Error! Bookmark not defined.
Effect of Finding a Contract Void	Error! Bookmark not defined.
Bowmakers Ltd v Barnet Instruments [1945] 1 KB 65	Error! Bookmark not defined.
George v Greater Adelaide Land Development Co Ltd (1929) 43 CLR 91.....	Error! Bookmark not defined.
Thomas Brown & Sons Ltd v Fazal Deen (1962) 108 CLR 391.....	Error! Bookmark not defined.
Fitzgerald v F J Leonhardt Pty Ltd (1997) 189 CLR 215	Error! Bookmark not defined.

Contract Law

A contract is a legally binding promise or agreement; whether oral or written; between 2 or more parties; the breach of which sounds in a legal remedy.

Exceptions: Illegality, immorality, formalities.

Distinguish: Puffery, offer to treat.

Unintentional contracts.

Doctrine

1. Contracting parties should be free to agree to whatever they wish;
2. People should be free to decide whom they contract;
3. Courts are very reluctant to interfere with the private agreements of citizens.

Uncertainty

1. If the court thinks there are several interpretations available, the court chooses which is the most appropriate.
2. Where terms have been left out, the courts are quick to step in and imply certain terms, in order to save it.
 - a. i.e. residential tenancy. If you leave out the rent that has to be paid, rather than invalidating the contract, the court will look at the industry standard and determine the appropriate rent.
3. If you have a term that would otherwise invalidate the contract, the court will sever that term and try to save the rest of the contract.

Contract law as Civil Law

1. Consensual agreement by the parties to be bound by terms;
2. Voluntarily entered into;
3. Transfer of a benefit;
4. Allocation of risk;
5. Penalties in the event of breach.

Torts Law:

1. Duty imposed by the State upon citizens;
2. Duty of care;
3. Prevention of harm;
4. Compensate injured parties;
5. Independent of the wishes of the parties.

Restitution:

1. Duty imposed by the State upon citizens;
2. Duty to restore a benefit to a wronged party;
3. Prevent unjust enrichment;
4. Independent of the wishes of the parties.

Formation of Contract

Offer

- An offer is a statement by the offeror;
- That s/he is willing to enter into a legally binding agreement;
- With the offeree.
- On specific terms.
- Case example: **Carlill v Carbolic Smoke Ball**

(*Consensus ad idem*) – (there must be a) meeting of the minds.

The key principal is that an offer is an expression of willingness to contract on the terms stated in the offer. Whether there is an offer depends on whether a reasonable person in the position of the offeree would consider that an offer was made. Offers need to be distinguished from other communications such as invitations to treat.

A clear offer and unequivocal acceptance indicates the moment the contract comes into being. Essentially, the tools of offer and acceptance require a clear indication by the offeror to be bound – the offeror makes an offer to contract. The agreement is reached when that offer is followed by an unqualified assent by the offeree to that offer.

The law is not concerned with the thoughts of the parties; rather, it is only interested in the objective evidence. The documentation, conduct, words, etc. may be interpreted as demonstrating an intention to be bound (**Australian Woollen Mills P/L v Commonwealth (1954) 92 CLR 424**).

The Rules

- An offer can be bilateral (i.e. agreement made between two people or a group of people) or unilateral (i.e. an offer made to the world at large) (**Carlill**).
- The offer must be definite → the test is **objective** – i.e. would a reasonable person in the position of the offeree believe that an offer was intended and that a binding agreement would be made upon acceptance?
 - Motive of an acceptor is immaterial due to the objective test.

Identification of an Offer

The following are not offers:

- Invitations to treat; the invitation to make an offer.
(**Pharmaceutical Society of Great Britain v Boots Cash Chemists**), can also see (**MacRobertson Miller Airline Services v Commissioner of State Taxation**)
- Puffery (**Carlill v Carbolic Smoke Ball Co**)
 - Puffery is an insincere statement; i.e. Pizza hut is the greatest pizza in the world.
 - The court will try to construct the offer objectively; they will try to view the offer and see if a reasonable person would see it as legitimate.
- Supply of Information (**Stevenson Jacques and Co v McLean**), (**Butler Machine Tool Co Ltd v Ex-Cell-O Corp**)
 - The mere asking of information is not an offer. 'Would you be willing to accept the same price paid over a two year period?' does not amount to an offer.
- Counter offers (**Butler Machine Tool Co Ltd v Ex-Cell-O Corp**), (**Stevenson Jacques and Co v McLean**) can also see (**Turner Kempson & Co P/L Camm**).

Recipients of Offers

An offer will be effective when all of its terms are communicated to the offeree. The acceptor must be aware of all of the terms and the offer (**Carlill v Carbolic Smoke Ball Co**, **MacRobertson Miller Airline Services v Cr State Taxation (WA)**).

Termination of an Offer

Offers last a reasonable period of time, unless a time is specified in the offer, or it is revoked or rejected.

- Revocation
 - An offer is revoked when it is withdrawn and it may be revoked at any time before acceptance, provided it is brought to the notice of the offeree prior to acceptance (**Dickinson v Dodds**). A revocation of an offer is ineffective until it is communicated to the offeree.
 - The offeror does not have to specifically communicate the revocation. It is efficient if the offeree learns of the revocation from a third party where a reasonable person would treat that communication seriously.
 - Where offer is to a specific offeree, indirect communication may suffice. (**Dickinson v Dodds?**)
 - The offeror is not bound by a promise to keep an offer open for a period of time unless it is embodied in a deed or is supported by consideration (such as an option) (**Goldsbrough Mort and Co Ltd v Quinn**).
 - If the offer is global, then the offeror must use appropriate means to communicate the revocation to all potential offerees (**Mobil Oil Australia Ltd v Wellcome International**).
 - The notion that there is a general principle preventing revocation of offers in exchange for acts (unilateral contracts) has been rejected by the Full Federal Court → Mobil Oil Australia Ltd v Wellcome International Pty Ltd
- Rejection
 - An offer may be rejected, either expressly OR through inference from the offerees actions (such as making a counter offer, already buying a different computer, etc) (**Stevenson Jacques and Co v McLean**).
 - A request for information about an offer is not a contract (**Stevenson Jacques and Co v McLean**).
- Lapse of Time
 - If there is no time period stipulated in the offer, it will end after the expiration of a reasonable amount of time. This is dependent on the contract; perishables, for example, have a shorter lapse.
- Non-occurrence of a condition
 - When the contract is dependent on a condition that is not met. For example, Kerry offers to buy Barts racehorse for \$950,000 as long as it is in sound condition, but the horse later becomes unsound. If Bart tries to accept this offer *after* the horse loses its condition, the acceptance is ineffective. (**Meehan v Jones**), (**Financings Ltd v Stimson**). Subject to finance, etc.