

CONTRACT LAW

Definition of Contract

- an agreement or set of promises that the law will enforce

Key elements in a contract:

- the need for a promise or promises
- need for promise to be between two or more legally capable people ("parties to the contract")
- need for the promises to create an obligation
- need for that obligation to be enforceable at law

The court looks at:

- whether the agreement is a contract, and if so, is it legally valid and enforceable
- if yes, what are the rights, duties, and obligations of the parties

Sources of contract law:

- common law, as developed from the 1200s
- supplemented by principles of equity from the 1400s, so case law rich area of the law
- judicature acts
- supplemented by statute (Competition and Consumer Act 2010 (Cth) which has ACL)
- international law (eg: International Sale of Goods (CISG))

Classification of Contracts

- bilateral and unilateral contracts (relevant when considering formation of contract issues)
- simple and formal contracts (relevant when we are looking at consideration)
- void, voidable, unenforceable and illegal contracts (relevant when looking at vitiating factors impacting on contract formation and also when looking at remedies)

Types of Contracts

- unilateral
- bilateral - both of the parties have an obligation to perform (this is most contracts)
- multilateral - contracts involving more than two parties

Note in relation to simple contracts

- forms of simple contract: written, partly written and partly oral, wholly oral, implied
- certain simple contracts are required to be in writing
- simple contracts require consideration

Formation of Contract:

Agreement:

- usually consists of an identifiable offer and an identifiable acceptance
- but courts can also examine the acts and conduct of the parties to infer a "meeting of minds" of the parties

Rules of acceptance are used to find:

- WHEN the contract was entered into
- WHERE the contract was entered into
- the EXPRESS TERMS of the contract

Offer

- an offer is a clear statement of the terms on which an offeror is prepared to be contractually bound, thus an offer needs:
 1. statement by offeror containing stated terms (express or implied)
 2. statement made to another person
 3. must be promissory in nature

To whom can an offer be made?

- the nature of an offer may vary depending on whether it is made to:

- one person
- an identified group of people
- the world at large

Offers can be distinguished from:

- mere puffery, eg: *Leonard v Pepsico Ltd* 88 F Supp 2d 116 (1996)
- mere supply of information, eg: *Harvey v Facey* [1893] AC 552
- invitation to treat, which represents the negotiations stages before an offer is made

Offers v invitations to treat?

- **advertisements** — eg: *Partridge v Crittenden* [1968] 2 All ER 421, *eBay International AG v Creative Festival Entertainment Pty Ltd* (2006) 170 FCR 450 (internet advertisements)
- **display of goods** in a shop — *Pharmaceutical Society (GB) v Boots Cash Chemists (Southern) Ltd* [1952] 2 QB 795
Fisher v Bell [1961] 1 QB 394
- **auctions** — *Warlow v Harrison* (1859) 120 ER 925, *Smythe v Thomas* [2007] NSWSC 844 (eBay auction)
- **tenders** — *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1
Wenzel v Australian Stock Exchange Ltd (2002) 125 FCR 570

Offers must be communicated

- all terms of the offer must be brought to the notice of the offeree. Communication must be by offeror/someone authorised by the offeror
- acceptor must be aware of offer's existence and its terms — *Fitch v Snedaker* (1868) 38 NY 248, *R v Clarke* (1927) 40 CLR 227
- motive of the acceptor is immaterial — *Williams v Carwardine* (1883) 172 ER 1101
- cross-offers = two offers, but not acceptance, therefore no contract — *Tinn v Hoffman & Co* (1873) 29 LT 271
- an offer can be made: to a single person, to an identified group of people, to the world at large

