

LAW1111 Contract Law Course Notes

Basic Contractual Terms:

- Breach party to do something - Order for specific performance;
- Breach party to desist in doing something - Injunction;
- Bilateral - Both parties have obligations;
- Unilateral - Only one party has obligations;
- Executory - Something someone obliged to do but not yet done;
- Parol Promise - Informal agreement reached by word of mouth;
- Consideration - 'Motivating' reason.

1. Offer and Acceptance
2. Consideration
3. Estoppel
4. Formalities of Contract
5. Intention to Create Legal Relations
6. Terms of Contract
7. Parol Evidence Rule
8. Incorporation of Terms
9. Construction of Terms
10. Exclusion Clauses
11. Implied Terms
12. Privity
13. Uncertainty/Completeness

1. You will find that some questions require you "focus" on certain matters. Other questions will ask you to "confine" your discussion to certain matters.
2. There is a subtle difference between the two. "**Confining**" your attention is a stronger instruction and marks will not be awarded for a discussion of matters outside the scope of those matters. When you are asked to "**focus**" on certain matters, the examiner considers that that is where the bulk of the marks will be gained but also has not precluded you from a discussion of matters that may be *ancillary to or related to* the matters which you are asked to "focus" on.

1. Offer and Acceptance

Electronic Transactions Act – if designated email when in info system, if not when actually comes to attention. (notifications, acceptance, revocation)

Offer

- Nielsen v Dysart Timbers Ltd: [Offer is] a statement of terms upon which offeror prepared to be bound if acceptance communicated whilst offer remains alive.
- Harvey v Facey: statement of price or lowest price that something will be sold for is not an offer nor implied contract if accepted.
- Leftkowitz v Great Minneapolis Surplus Store: where offer is clear, definite and explicit and leaves nothing to negotiate it constitutes an offer.
- Pattinson v Mann: further expands on Leftkowitz; the absence of reference to matters that would be expected in negotiations indicates **no** concluded bargain.
- Storer v Manchester City Council: letter (with accompanying contract) amounted to offer as evinced intention to be bound as soon as offeree signed and returned it.
- Carlill v Carbolic Smoke Ball Co: advertisement that suggested a reward would be paid for consumption of smoke ball was not **mere puff** as Carbolic had lodged \$ at the bank for that purpose.
- Pharmaceutical Society v Boots Cash Chemists: display of goods not an offer; merely invitation to treat.
- Large store = picking up item should be held as acceptance of offer, unrealistic to suggest otherwise. Unless shopowner, then they may have authority to be the offeree in that case.

Acceptance

- Household Fire & Accident Insurance Company v Grant: *consensus ad idem* (meeting of the minds) is at the heart of contract formation.
- Paal Wilson & Co A/S v Partenreederei Hanna Blumenthal: defined to mean the intention of each party as communicated to and understood by the other should coincide.
- Empirnall Holdings v Machon Paull Partners: any acceptance must be unambiguous - understood as such by reasonable person.
- Day Morris Associates v Voyce: is final unqualified expression of assent to terms of offer.
- R v Clarke: acceptance given upon faith or reliance on the offer. Present in the offeree's mind when acceptance takes place (Higgins J).
- Turner Kempson v Camm: acceptance must correspond with the offer; adding or altering existing terms does not.
- Boreland v Docker: may be okay where deviation solely in favour of the offeror.
- Laidlaw v Hillier Hewitt Elsley: conduct may amount to acceptance where character and circumstances of it indicate intent to contract on terms alleged.
- Tinn v Hoffman & Co: acceptance must be communicated so requisite assent may be reached, duly unfair if offeror bound by acceptance not known to him.
- Carlill: offeror may dispense with need for communication ... this may be express or implied.
- Henthorn v Fraser: acceptance occurs when acceptance is posted, not received.
- Butler Machine Tool v Ex-Cell-O Corp: offer and acceptance are sometimes fiction and the greater the evidence of reliance and further down the road toward implementation, more likely court will find there is a contract.
- Olivaylle v Flottweg: postal rule does not apply to e-mail communications.

Termination

- Hyde v Wrench: if offeree responds with counter-offer than original offer is rejected.
- Powierza v Daley: subtle difference between counter-offer and request for further information; test was what effect statement would have had on reas. person in offeror's position.
- Byrne v Van Tienhoven: revocation not effective upon posting it, when received.
- Dickinson v Dodds: revocation must be communicated to offeree (need not be offeror just reliable)

SAMPLE

2. Consideration (price paid for the promise)

- *Thomas v Thomas*: for consideration to exist the promisee must promise or do something that is of value in the eyes of the law.
- *Balfour v Balfour*: **either** some right, interest, profit or benefit accruing to one party; **or** some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.
- *AG for England and Wales v R*: law does not judge adequacy, merely sufficiency of consideration and recognises some tangible benefit to the promisor may suffice.
- *Dunlop Pneumatic Tyre Company v Selfridge & Company*: act or forbearance of one party or promise thereof is the price for which promise of other is bought and the promise thus given for the value is enforceable.
- *Australian Woollen Mills v The Commonwealth*: **consideration must be bargained for: the promisee's promise or act must be given at the request of the promisor.**

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