

## Week 2 – Contract Law

The requirements for the formation of a contract are:

### **1. Offer**

- an offer is the expression to another of a willingness to be bound by the stated terms
  - there must be a clear indication that the offeror intends to be bound by the offer
- an offer must include all the terms → cannot leave anything to be negotiated
- some statements cannot constitute an offer:
  - mere puff (i.e. a statement that is ‘sales talk’ – exaggerated, over simplification, general and not specific statements) – the court will consider the likely effect the statement has upon the potential customer (*Carllill v Carbolic Smoke Ball Co*)
  - invitation to treat (i.e. a statement of an interest in doing business e.g. advertisement flyers, online catalogues, product on selves) (*Pharmaceutical Society v Boots Cash Chemists*)
  - a call for tenders is usually an invitation to treat unless the tender specifically states otherwise (*Spencer v Harding*)
  - auctions are generally invitations to treat until the hammer drops → then the offer is made (*Payne v Cave*)
  - conditional offers cannot be accepted unless and until the condition is satisfied (e.g. subject to finance offers)
  - options are a particular type of limited offer, and is only an offer to do the thing the option covers at the specific point that the option agreement says that option is exercisable. Once the option lapses, so does the offer.
- an offer can be terminated:
  - by the offeror before acceptance (*Routledge v Grant*)
  - by lapse of time (*Ramsgate Victoria v Montefiore*)
  - by rejection by the offeree (*Stevenson Jaques v McLean*)
    - counter offer is a rejection (*Hyde v Wrench*)
  - death of offeror or offeree prior to acceptance (*Coulthart v Clementson*)

### **2. Acceptance**

- Acceptance of an offer is the expression, by words or conduct, of assent to the terms of the offer in the manner prescribed or indicated by the offer. Thus acceptance may be express or implied (*HBF Dalgety v Morton*)

## Week 6 – Partnerships and Joint Ventures

### Partnerships

Section 5(1) of the *Partnership Act 1891* (Qld) defines partnership as ‘the relation which subsists between persons carrying on a business in common with a view to profit.’

Partnerships are a type of unincorporated business association, meaning they have:

- no separate legal personality (i.e. the partnership is not a separate legal person) (*Income Tax Commissioners for City of London v Gibbs* [1942] AC 402)
- no perpetual succession
- unlimited liability of partners – partners are liable for the debts incurred on behalf of the firm (see ss 5, 6, 9, 10, 12 *PAct*)

A partnership agreement is not required to be in writing and may be oral, partly written/partly oral or completely writer.

Some common law criteria to help in determining whether a partnership exists (*Canny Gabriel v Volume Sales*):

- intention
  - the courts will apply the definition of a partnership in a ‘substance over form’ approach, so mere labelling oneself as a joint venture rather than a partnership will not prevent a partnership from arising.
- sharing of net losses
  - if sharing losses, then this is indicative of a partnership. If it’s a situation where one party could make a profit and the other could make a loss, that’s indicative of a joint venture.
- role in management of decision-making
  - If they’re managing the activity together rather than just contributing their own aspect, then it is indicative of a partnership.
- contributions of capital

To determine whether someone is an employee or independent contractor, Australian courts apply the multi-factor (or indicia) test (*Hollis v Vabu*). Apply all the relevant factors to come to a conclusion based on a balance of probabilities:

- Is the work being performed skilled or unskilled? Where work is unskilled this may be a strong indicia of employment.
- Strong indicia of employer/employee relationships are the level of control over the organisation has over the worker
  - Can the worker choose their own hours or does the organisation set them?
  - Can the worker choose their own schedules or does the organisation choose them?
  - Are there set start and finish times imposed on the worker?
  - Is pay and leave controlled by the organisation?
- Is the worker required to wear a uniform?
- Does the worker provide his or her own tools and equipment?
- Is the worker obligated to work exclusively for the employer?

### Casual & Permanent Employees

In Australia, two main types of employment are recognised: permanent and casual. Generally casual employees have significantly fewer protections available to them at law, and this is reflected in the higher hourly rate usually paid in particular:

- No entitlement to annual, sick or long service leave
- Generally no entitlement to protection from unfair dismissal.

Casual employment is informal, uncertain and irregular in its arrangement (giving it the characteristic of being casual) (e.g. employer can elect to offer employment on particular day or days, employee can elect to work) (*Reed v Blue Line Cruises*)

The fact that a contract states the employment is casual is a factor to take into account, however it is not determinative. In *Williams v MacMahon*, Williams was expected to be available to work on an ongoing basis in accordance with a roster that was stable and organised. He worked 12 hour shifts on a 7 day on, 7 day off basis for a considerable period of time. As a result of this, the employer did not need to contact him regularly to organise rosters or check availability. Therefore, the Court held that he was a permanent employee.