

# **LAWS1015 - CONTRACTS**

## **CASE TABLE**

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### **TOPICS**

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## Case Table

### Agreement:

Topic	Case	Explanation
Nature of Contract Law	<i>Thorne v Kennedy</i> [2017] HCA	<p><b>Facts:</b> Marriage plans between both parties in place, set short after Ms Thorne is planned to arrive in Aus. Inappropriate contract was signed by Ms Thorne due to the imminence of the wedding. HCA allowed Ms Thorne to get out of the contract as she had less bargaining power and is in a structurally weaker position.</p> <p><b>Decision:</b> There are certain parties that are in structurally or situationally disadvantageous positions → when transactions are being struck you could apply the rules of contract law in a way that further disadvantages them.</p>
Offer - Unilateral Contract	<i>Carlill v. Carbolic Smoke Ball Company</i> (1893)  Situation: Unilateral Contract	<p><b>Facts:</b> Involved an advertisement in a newspaper that was seen by the plaintiff for a Carbolic smoke ball. Proposes 100 pound reward for persons who take it and become ill with the influenza after having taken the ball 3 times daily for 2 weeks. Plaintiff complies with these conditions, falls ill and attempts to claim reward. Defendant said that their private intentions were not for this offer to be accepted it was a mere advertisement.</p> <p><b>Issue:</b> Carlill did not explicitly go to the company and explicitly agree</p> <p><b>Decision:</b> In these situations where an offer to the world is made, where an announcement is made inviting the world to perform what you have asked for in your offer → situation is a “<u>unilateral contract</u>” → We must assess how a <u>reasonable observer</u> will interpret the communication</p>

<p>Offer Offer differentiated from an invitation to treat</p>	<p><i>Pharmaceutical Society of Great Britain v Boots Cash Chemist</i> [1953]</p> <p>Situation: Grocery Store</p>	<p><b>Facts:</b> Products displayed with prices marked at a store → is this an offer from the shopkeeper that you can accept.</p> <p><b>Decision:</b> Courts typically do not treat products and prices displayed as an offer. Checkout is the acceptance. Customer makes offer at the set price and checkout employee accepts the offer → contract is concluded at that point</p>
<p>Offer differentiated from a provision of information</p>	<p><i>Seppelt &amp; Sons Ltd v Commission for Main Roads</i> (1975) 1 BPR 9147</p>	<p>The fact that the word 'offer' is used is not in itself conclusive Subsequent conduct of the parties must be taken into account to determine if it is an offer or not</p>
<p>Agreement</p>	<p><i>MacRobertson Miller Airline Services v. Commissioner of State Taxation</i> (WA) (1975)</p> <p>Situation: Ticket</p>	<p><b>Decision:</b> When you receive the terms and conditions printed on a ticket, that is when the airline was making the offer. Courts said that by receiving the terms, the party is accepting the terms through conduct.</p>
<p>Offer Duration of offers and effective revocation of an offer</p>	<p><i>Goldsbrough Mort v. Quinn</i> (1910)</p> <p>Situation: inducing</p>	<p><b>Facts:</b> 10 Feb: "I hereby grant Goldsbrough the right to purchase the whole of my hand within a week from this date at the price of ..." 12 Feb: Quinn repudiates the offer alleging it was a mistake 14 Feb: Goldsbrough accepted the offer <b>Issue:</b> Can the offer be revoked considering Quinn states he would keep the offer open?</p> <p><b>Decision:</b> In order to bind the person to keep the offer open, which they have the right to revoke at any time prior to acceptance, you must pay a separate consideration.</p>
<p>Third parties - revocation of offers</p>	<p><i>Dickinson v. Dodds</i> (1876) 2 Ch D 463</p>	<p>Revocation of an offer is not effective until it is communicated. Third party can communicate revocation Promise to keep offer open is not binding (without consideration, see above case)</p>
	<p><i>Mobil Oil Australia v. Wellcome International</i> (1998)</p>	<p><b>Facts:</b> 1991 Incentive scheme for its franchisees → achieve higher performance and efficiency standards. "if you achieve 90 each year for 6 years, we will</p>

		<p>guarantee you another 9 years no costs just renewal".  Legal effect of this communication → tear-off slip "i accept the challenge to exceed 90 to qualify". 1996: Mobil abandons circle of excellence judging.</p> <p><b>Decision:</b> Fed court judges said the statement was not sufficiently specific in order to be an offer because it was indicating that the scheme was still in a rudimentary stage, that there was more that needed to be done.</p> <p>No uniform rule that these unilateral offers /contracts cannot be revoked by the offeror → even if this case were to be interpreted as an offer for a unilateral contract, the offeror would have been free to revoke the offer even if the franchisees had began their performance</p>
Telegram communication	<i>Stevenson, Jacques &amp; Co v McLean (1880)</i>	<p><b>Facts:</b></p> <ul style="list-style-type: none"> <li>- Telegram communication.</li> <li>- D offers 2 sell iron to P for cash.</li> <li>- P inquires whether D will accept an amount over 2 months, if not, the longest limit D allows.</li> <li>- D does not respond. Later that day, sells iron to someone else.</li> <li>- P later accepts offer → D says it's been sold.</li> <li>- P sues D for breach of contract</li> </ul> <p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>- Lush J: P's telegraphic enquiry is NOT rejection, but a mere enquiry. Not a counter-offer.</li> <li>- Revocation not effective until it reaches P.</li> <li>- P accepted b4 revocation --&gt; contract --&gt; D breached it.</li> </ul>
Acceptance distinct from performance	<i>R v Clarke (1927) 40 CLR 227</i>	<p><b>Decision:</b></p> <p>Acceptance must be distinct from performance "essential mental assent and essential communication of that assent"</p> <p>The performance must be done in the faith of in reliance upon the offer</p>
Acceptance Communication of	Felthouse v. Bindley Acceptance by Silence	<p><b>Facts:</b> Offeror writes the offeree → If i hear no more, I assume that it is accepted". Offeror does not hear back → has the offer been accepted?</p>

acceptance		<p><b>Issue:</b> Can silence be interpreted as acceptance?</p> <p><b>Decision:</b> Courts will typically not regard silence as sufficient acceptance. Does not want to bind people to unwanted offers</p>
Agreement	<p><i>Empirnall Holdings v. Machon Paull (1988)</i></p> <p>Acceptance by Conduct</p>	<p><b>Facts:</b> Empirnall argues that there has not been effective acceptance of the offer given to them by Machon Paull and therefore there is no legally binding contract between the parties</p> <p><b>Issue:</b> Presents some problems for the “magic moment” → not an explicit time where the contract comes into being</p> <p><b>Decision:</b> At some point you receive the terms and if you do not refuse/reject the terms → it is assumed through conduct combined with silence → you have generally accepted. Interaction between parties → would a reasonable observer interpret this as an agreement to the terms?</p>
Agreement	<p>Brinkibon v. Stahag Stahl (1983)</p>	<p><b>Facts:</b> Acceptance of an offer for the sale of steel bars by a London buyer accepting the seller's terms sent to the Austrian seller via telex from London to Vienna. Where was the acceptance effective?</p> <p><b>Decision:</b> Instantaneous communications - acceptance is effective when RECEIVED by the offeror</p>
Agreement/Formation	<p>Electronic Transactions Act 2000 (NSW)</p>	<p>Acceptance via electronic systems.</p> <p>If an address <u>has</u> been designated for receiving communications → Acceptance is effective when the email is retrieved by the addressee</p> <p>If an address has <u>NOT</u> been designated → communication is effective when it can be retrieved by the addressee and when the addressee has become aware it was sent to that address</p> <p>These are <b>default</b> rules → they can be displaced by expressed agreement from both contracting parties</p>

		Most rules of contract law can be regarded as default rules
Agreement/Formation	<i>Brambles Holdings v. Bathurst City Council (2001)</i>	<p><b>Facts:</b> 8 year relationship between parties which is evolving. Changes introduced throughout relationship. Increased fees suggested to Brambles for change work . Unspecified communication re extra money. Takes 5 years for council to realise the money it is owed → sued on the basis of contractual entitlement</p> <p><b>Decision:</b> Acceptance must be unequivocally referable to the offer that was made. Doesn't have to be a formal offer and acceptance</p>
	<i>Sagacious Procurement Pty Ltd v Symbion Health Ltd formerly Mayne Group Ltd [2008] NSWCA 149</i>	<p><b>Decision:</b> Giles JA: There is not to be a binding contract until the conclusion of ongoing negotiations, including taking into account the trial period results, and execution of a formal contract.</p>
Acceptance Correspondence between offer and acceptance	<i>Butler Machine Tool Co v Ex-Cell-O Corp (England) Ltd [1979]</i>	<p><b>Decision:</b> Under the common law, you apply the last accepted t&amp;cs → prevails over previous. Counteroffer kills the first offer</p>
Postal acceptance Rule	<i>Bressan v Squires [1972] 2 NSWLR</i>	<p><b>Decision:</b></p> <ul style="list-style-type: none"> <li>- The act of posting could = acceptance.</li> <li>- Parties need to contemplate that post is a possible or permitted mode of acceptance for this exception to apply (don't need to contemplate that act of posting has legal consequence of accept).</li> </ul>
Acceptance by email	<i>Olivaylle v Flottweg (2009) 255 ALR 632</i>	Permits acceptance by email
The Postal Rule	<i>Wardle v Agricultural and Rural Finance Pty Ltd [2012]</i>	<p><b>Decision:</b> The postal rule cannot automatically be extended to different legal transactions, such as payment of a debt</p> <p>The court states that it is open to the parties to a contract to agree on a case by case basis that a debt is to be paid <b>by</b> placing payment in the post (in effect creating a postal rule for payment by agreement).</p>

		However, where the parties have simply agreed that the post may be used <b>for the purposes</b> of making payment, payment is not completed simply by placing the means of payment in the post.
	<i>Australian Consumer Law, ss 41-43</i>	