

Topics In Order of Addressing in Question:

1. Formation

2. Enforceability

3. Terms and Interpretation

4. Performance

5. Termination

6. Remedies

INTRODUCTION

FORMATION

ISSUE: AGREEMENT

RULE:

Offer:

- ✓ Specific proposition/promise – containing essentials of the proposed agreement with a willingness to be bound
 - *Harvey v Facey* 1893 – must be more than just supply of information
- ✓ A reasonable/ordinary person must think there is an offer – objective manifestations are what matters – consideration of conduct and communication between parties
 - *Carlill v Carbolic Smoke Ball* 1893
 - *Brambles Holdings Ltd v Bathurst City Council* 2001
- ✓ No form requirements
- ✓ Must be communicated directly to offeree or authorised agent of offeree by the offeror or authorised agent of the offeror
 - *Cole v Cottingham* 1937
 - *Banks v Williams* 1912
- ✓ Must be proposed to another legal entity although not limited to a single person – can be made to world at large
- ✓ Should convey a willingness to be bound as well as the “price” sought by the offeror in return for their offer i.e. “I will do this if you do this, how does that sound?”
- ✓ Should be a proposal that warrants consideration by the other party with opportunity to choose between acceptance and rejection.
 - *Brambles Holdings Ltd v Bathurst City Council* 2001
- ✓ May stipulate a specific method of acceptance
 - *Howard Smith and Co Ltd v Varawa* 1907
- ✓ Offeror cannot impose contractual liability by stipulating that silence is indicative of acceptance
 - *Felthouse v Brindly* 1862

- *Empirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd 1988*
- ACL – regulates aggressive marketing techniques

<i>United Dominions Trust (Commercial) Ltd v Eagle Aircraft Serviced Ltd 1968</i>	
Bilateral Contract Offer	Unilateral Contract Offer
<p><i>'Each party undertakes to the other party to do or to refrain from doing something, and in the event of his failure to perform his undertaking, the law provides the other party with a remedy.'</i> – p 82</p>	<p><i>'Under contracts which are unilateral – which I have elsewhere described as if contracts – one party, whom I will call "the promisor", does or refrains from doing something on his part if another party, "the promise", does or refrains from doing something, but the promise does not himself undertake to do or refrain from doing that thing.'</i> – p 83</p>
	<ol style="list-style-type: none"> 1. Has the offeror expressly or impliedly requested the doing of an act by offeree? 2. Has offeror stated a price for the promise [or other consideration]? 3. Was offer made in order to induce the doing of the act? <i>Australian Woollen Mills 1954</i> 4. Are the terms identified with sufficient certainty? <i>Carlill v Carbolic Smoke Ball 1893</i>

Uncertainty of presence of offer when:

- **Invitation to treat** (invitation for offers e.g. auction) – preliminary to an offer
 - *Pharmaceutical Society of GB v Boots 1953* (self-service)
 - *Payne v Cave 1789*
 - *Smythe v Thomas [2007] NSWSC 844* (ebay auction)

- *Patridge v Crittenden* 1968 (sale advertisement)
- *Rooke v Dawson* 1895 (scholarship advertisements and subsequent applications)