

CONTENTS

OFFER & ACCEPTANCE 3

Offer3

 Rules3

 Termination of offer4

Acceptance5

 Postal acceptance rule6

Battle of the forms.....6

 Last shot doctrine.....6

 Higher status doctrine6

 Global synthesis approach6

INTENTION TO CREATE LEGAL RELATIONS..... 7

 Family, social and domestic agreements7

 Commercial agreements7

 Government agreements8

 Promotional offers8

 Presumptions.....8

CAPACITY..... 8

 Minors8

 Persons suffering mental disability9

 Bankrupts9

 Corporations9

 Aliens9

CONSIDERATION..... 10

 Quotes & Examples10

 Principles10

 ‘Sufficient’ consideration11

 Deeds12

ESTOPPEL 13

Equitable estoppel..... 13

 Promissory estoppel.....13

 Proprietary estoppel14

 Elements of equitable estoppel14

 Relief.....15

Common law estoppel..... 16

 Estoppel by deed16

 Estoppel by judgement16

 Estoppel by conduct.....16

CERTAINTY AND COMPLETENESS..... 17

Certainty 17

 Court is hesitant to void.....17

 Voidable situations18

Completeness 19

Essential terms of a contract..... 19

Requirements of writing in contracts..... 20

 Contracts for sale of land20

EXPRESS TERMS 21

Terms and representations 21

 Terms of a contract21

Incorporation of terms by signature.....	23
Incorporation of terms by notice.....	24
Incorporation of terms by prior dealings	25
Parole evidence rule.....	26
Entirely written contract	26
Exceptions to parole evidence rule	26
Collateral contracts.....	27
Elements	27
Collateral contract with a third party	27
<i>IMPLIED TERMS.....</i>	27
Terms implied in fact.....	28
Formal contracts	28
Informal contracts	29
Terms implied by law	29
Terms implied by statute	29
Terms implied by common law	29
Terms implied by custom	30
Implied terms of good faith.....	30
<i>CONSTRUCTION</i>	31
Intention/interpretation.....	31
Objective determination of intention	32
Principles of construction.....	32
Parole evidence rule.....	33
Prior negotiations.....	33
Post-contract conduct.....	33
Exceptions.....	33
Exclusion clauses.....	34
Legal drafting.....	34
<i>DISCHARGE OF CONTRACTS.....</i>	34
Discharge by performance	34
Order of performance	34
Duty to cooperate.....	35
Obstruction of performance.....	35
Level of performance required to discharge a contract	35
Discharge by agreement	36
Discharge by abandonment.....	36
Discharge pursuant to a term of the original contract.....	36
Discharge by subsequent agreement.....	37
Discharge of executed/executory contracts	37
Waiver.....	38
Discharge by breach	38
Failure to perform contractual obligations	38
Breach of a time stipulation	39
Contractual right to terminate	39
Repudiation	39
Effect of termination.....	39
Restrictions on right to terminate	39
Discharge by frustration	40
Elements of frustration	40
Frustrating events.....	41
Fault	42
Effect of frustration.....	43

OFFER & ACCEPTANCE

General quotes about contracts

For there to be a contract, there must be an (a) agreement on essentials of sufficient certainty to be enforceable, (b) an intention to create legal relations and (c) consideration. – Mance LF, *Modahl v British Athletic Federation Ltd*

“The courts... have long recognised that the business dealings between commercial people do not always fit readily within the offer and acceptance framework...” – Sloss J, *Ancor Ltd v Barnes*

Offer

“A statement of terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive.” – Tipping and Wilson JJ, *Dysart Timbers Limited v Nielson*

Determining if an offer has been made - “The correct approach is to ask whether [the offeree] ... acting reasonably, would understand that [the offeror] was making a proposal to which he intended to be bound in the event of an unequivocal acceptance.” – Crest Nicholson (Londinium) Ltd v Akaria Investments Ltd

Rules

- There must be a will or intent of the offeror to be bound in contract by the terms. A statement that lacks will or intent is not an offer (and possibly a supply of information or invitation to treat).
- The offer must be communicated to the offeree/their agent by the offeror/their agent. If the offeree learns of the offer from an unauthorised person, there is no offer.

Counter-offer

An offer by the offeree to the original offeror. This removes the original offer from the table.

Offer to the world at large

An offer made to the world at large - where it was stipulated what needs to be done by the offeree to constitute acceptance - is an offer to a person. A following of the stipulated rules shows acceptance of the offer.

Carlill v Carbolic Smoke Ball Co

Company placed an advertisement in the newspapers offering a reward of £100 to any person who, having used their Carbolic Smoke Ball for two weeks as prescribed, contracted influenza. They further stated they had deposited £1,000 in a special bank account as evidence of its sincerity. Mrs Carlill purchased the ball and used it for eight weeks before contracting influenza, but Carbolic argued there was no contract. **HELD** an offer can be made to the world at large if there are certain things the offeror needs to do to pose acceptance. Carlill presented the receipts and medical chips as required, therefore Carbolic were required to pay.

Invitation to treat

A “request to others to make offers or to engage in negotiations with a sale in mind”. – J W Carter, *Contract Law In Australia*, 6th ed, 2013 pg 46

Person B becomes the person to make an offer, in which person A accepts if they are willing.

Also known as a supply of information, as in the person was supplying the information of a potential price.

“There is a radical distinction drawn ... between the mere quotation of a price and an offer to sell and deliver.” – *Re Webster*, Barwick CK

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd

Boots operated a self-service pharmacy, whereby customers proceeded to checkout where a registered pharmacist handled the transaction. PS claimed this method of selling the drugs was an offer and led customers to believe they could have it without a prescription, with Boots arguing it was only an offer once money was accepted at counter. **HELD** that the display was not an offer and that the offer was made by the customer and accepted by a registered pharmacist. It is instead an *invitation to treat* the customer.

A mere supply of information is not an offer.

Harvey v Facey - 'The lowest price he is prepared to consider is 900 pounds'. The court found this is not an offer, but a mere supply of information of his lowest possible offer to get the ball rolling. He is seeing if there is a decent counter-offer.