

CONTRACTS EXAM NOTES

FOR A CONTRACT TO EXIST, YOU MUST HAVE:

1. Offer (as opposed to “invitation to treat”)
2. Acceptance
3. Consideration (exchange of promises)

OTHER ISSUES/REQUIREMENTS:

1. Intention to create legal relations
2. Capacity
3. Legality (if the subject of the contract is illegal then the contract does not exist)

FORMATION – OFFER

- *Gibson v Manchester City Council* [1979] 1 WLR 294 [2.15]
- *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256 [2.25]
- *MacRobertson Miller Airline Services v Commissioner of State Taxation (WA)* (1975) 133 CLR 125 [2.35]
- *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401 [2.60]
- *Goldsborough Mort & Co Ltd v Quinn* (1910) 10 CLR 674 [2.110]
- *Mobil Oil Australia Ltd v Wellcome International* (1998) 81 FCR 475 [2.145]

OFFER

- An offer is a statement made by an offeror with an intention to be bound by specific terms.
- An offer is only effective once it is communicated to the offeree.
- A proposal only amounts to an offer if the person making it indicates that they are inviting acceptance and if they receive it, the agreement will conclude.
- Heydon JA suggested in obiter that an offer must take the form of a proposal for consideration, which gives the offeree an opportunity to choose between acceptance and rejection – ***Brambles Holdings Ltd v Bathurst City Council***

LECTURE NOTES:

WHAT IS AN OFFER?

An offer is a statement with an intention that you will be bound to enforce that promise.

How do I find that intention?

- Detail
- Language
- Context

Nature of the person making the comment

The contract is **CVCSBO** is known as a “unilateral” contract.

UNILATERAL CONTRACT: A unilateral contract is only unilateral in the sense that, because one party has performed his or her obligations by the time of the formation, only one party is ever under contractual obligation.

It is a contract in which the offeree accepts the offer by performing his or her side of the bargain. As the High Court has explained, “the consideration on the part of the offeree is completely executed by the doing of the very thing which constitutes acceptance of the offer.” The offer is accepted by performing an act, and the performance of that act is all that the contract requires of the offeree. By the time the contract is formed, the offeree has already performed all his or her obligations.

BILATERAL CONTRACT: At the time of formation, the obligations of both parties remain to be performed. In other words, in a bilateral contract, the obligations of both parties are executory (yet to be performed) at the time of formation.

OBJECTIVE ASSESSMENT

- In order for the courts to determine whether there has been a valid offer, the test is that an offer must normally be interpreted in the sense that it would reasonably be understood by an ordinary person – ***Carlill v Carbolic Smoke Company (1893)***.
- An offer is not valid if the language of the offer is vague and/or not specific in communicating the offer to enter an agreement. – ***Gibson v Manchester City Council* [1979]** House of Lords, Lord Diplock.

IDENTIFYING AN OFFER

An offer should NOT BE CONFUSED WITH:

1. Invitations to treat or negotiate
2. Puffery
3. Supply of Information
4. Counter-offers

Invitations to Treat

- An invitation to make offers or enter into negotiation
 - o EG: The owner of a property indicating their interest in selling at a certain price

SHOP SALES: *Pharmaceutical Society of Great Britain v Boots Cash and Chemists (Southern)* [1953] QBCA.

- The court ruled products on display or on a shelf in a shop as an **INVITATION TO TREAT**
- An offer is made by the customer, once they have selected the goods and taken them to the sales counter
 - o Up to this point, the customers are able to return goods to the shelves, so a contract cannot be made
- The offer is accepted and a contract is made when the shop takes payment, **NOT BEFORE**

AUCTIONS: Holding a public auction is usually regarded as an **INVITATION TO TREAT**. The auctioneer has not made an offer to sell, but has merely invited offers from those who attend the auction.

- Each bid constitutes an offer
- The fall of the hammer constitutes acceptance

This means no contractual claim can arise if the auction is cancelled. A bidder is entitled to withdraw his or her bid before it is accepted, and the auctioneer does not have to sell to the highest bidder. Common law position: Sales of Goods Act

This becomes more complicated when an auction is held “without reserve”.

SEE TEXTBOOK PAGE 54 IF NEEDED

TENDERS: A tender process involves each interested party submitting a single bid without knowing what other bids have been made. It is used for the sale of commercial or residential property. A call for written tenders constitutes an **INVITATION TO TREAT**. Each tender constitutes an offer.

PUFFERY: “Advertising or sales presentations relying on exaggerations, with little or no credible evidence to support its vague claim”

In *Carlill v Carbolic Smoke Ball Co*, the court ruled that an offer is not mere puffery if the language was not so vague that you could not construe it as a promise. There was clear intention in the advertisement by reference to the language used, and the money deposited indicating sincerity. This statement made with sincerity conveys an offer.

SUPPLY OF INFORMATION: A supply of information is not an offer.

COUNTER-OFFERS: A modification of an offer which implicitly rejects an original offer and makes it no longer available for acceptance. The traditional method for the battle of forms mentioned in *Butler Machine Tool Co Ltd v Ex-Cell-O Corp* is followed in Australia.

RECIPIENT OF OFFERS

An offer will only be effective when (all of its terms) is communicated to the offeree. An offer cannot be accepted unless the acceptor is aware of the existence of the offer and its terms – *Carlill v Carbolic Smoke Ball Co [1893]*, *MacRobertson Miller Airline Services v Cmr State Taxation (WA) (1975)*.

TICKET CASES = Tickets for Passenger Transport

The courts have usually regarded the issue of the ticket as an offer which can be accepted or rejected by the passenger after the passenger has had a reasonable opportunity to consider the conditions on the ticket.

If one is handed a ticket or another document with terms, and they keep the ticket or document, then they are bound by those terms.

ISSUE IN *MacRobertson Miller Airline v Commissioner of State Taxation (WA) [1975]*:

Whether an airline ticket issued by MMA was chargeable with stamp duty as an “agreement” or a “memorandum of agreement” = formal outline of an agreement between the two entities. MMA first quoted the fare and availability and then issue a ticket in return for the fare. The ticket contained a condition about giving the airline the right to cancel a flight or cancel a booking with no liability. THE COURT HELD THAT THE TICKET DID NOT RECORD THE TERMS OF AN AGREEMENT BUT AN OFFER WHICH IS ACCEPTED BY CONDUCT.

The court in varying judgements said that a contract was not made when a ticket was ISSUED, rather that is a receipt.

The offer is made by the customer in taking a seat. The acceptance is made through the execution of the service.

Barwick CJ said that it is similar to a unilateral contract. The customer taken the seat is an offer and the airline, in accepting the offer through the execution of the service, was allowed to keep the money paid for the ticket as a reward, otherwise they return the money.