

OBLIGATIONS (LAWS50025)

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CONTRACT – AGREEMENT

FORMATION OF CONTRACTS

Four requirements for a contract to come into existence:

1. Parties must reach **agreement**
2. Each party must provide **consideration** in return for obligations undertaken by other party
3. Must appear objectively that parties **intend** the agreement to **create legal relations**
4. Agreement must be **complete** and **certain**

TYPES OF CONTRACTS

Bilateral Contract	<ul style="list-style-type: none">• Contracts involving both parties making promises• Promise constitutes the consideration for both parties
Unilateral Contract	<ul style="list-style-type: none">• Contracts involving a single promise• One party makes a promise to do something in exchange for the performance of an act• Performance of act constitutes both the consideration and the effective communication of the acceptance• Performance = acceptance → communication as well

PERFORMANCE

All conduct is classified as executory right up until the point of performance.

- Executed performance: when the conduct is performed, completed or executed
- Executory performance: promising to do something in the future (hasn't yet been done)

AGREEMENT

Traditionally approach to agreement conceptualised as:

- An offer made by one party
- Offer is accepted by the other party

In some situations offer and acceptance may not be obvious → look at the conduct of parties to determine if agreement exists (*Brambles*)

OFFER AND ACCEPTANCE

- Identify an offer made by one party and acceptance of that offer by the other
- Contract comes into existence when acceptance of an offer has been communicated to the offeror
- Courts do recognise a contract can be made where parties reach agreement without:
 - Express acceptance of an offer (*Empirnall*)
 - Identifiable offer and acceptance (*Brambles*)

OFFER

Invitation to treat (or deal) is where one party is inviting the other to make an offer → can be rejected

THE NATURE OF AN OFFER

- Involves an intention to be contractually bound immediately upon acceptance
- Intention to enter contract determined objectively → per outward manifestations of their intention
 - Doesn't matter whether offeror actually intended to enter into contract

- Offeror will be bound if it appears to a reasonable person in offeree's position that offeror was offering to enter into a contract
- Whether particular conduct amounts to an offer is to be decided on facts of each case (*AWM*)
- No firm rules about whether particular types of conduct necessarily amount to an offer (*Carlill*)

REVOCATION OF AN OFFER

- An offer may be revoked at any time before its accepted
- A promise to hold an offer open for specified period is not contractually binding
- Offeror can revoke offer before the period for acceptance has expired → provided offer has not been accepted already
- Unilateral offer can be revoked before acceptance even if performance has commenced (*Mobil Oil*)

TERMINATION OF AN OFFER

- If there's a contract, offer ends after contract comes into force
- Revocation
- Offer lapses eventually after reasonable time has passed
- Death → offer is binding unless death is known at (or before) the time of acceptance
- Rejection and counter-offer
 - Offer ends the moment it's rejected, even if offeree wants to later accept
 - Counter-offer is a rejection of the original offer

CASE SUMMARIES

<i>Gibson</i>	<ul style="list-style-type: none"> • Language of an offer must be clear • Traditional framework of "offer and acceptance" should be used to determine agreement in most cases
<i>Carlill</i>	<ul style="list-style-type: none"> • Offers can be made to the world at large • Performance is acceptance in unilateral contract cases → notice isn't required • Consideration is anything of value stipulated by offeror as price for the promise
<i>MacRobertson Miller</i>	<ul style="list-style-type: none"> • An offer cannot be illusory • Offer and acceptance is complicated in ticketing cases
<i>Mobil Oil</i>	<ul style="list-style-type: none"> • An offer must not be too vague or uncertain • An offer may be revoked before acceptance → even if performance has commenced (unilateral) • An offer must have the language of commitment • There's no universal rule with regards to revocation of a unilateral contract

ACCEPTANCE

- Acceptance is a unqualified assent to the terms of an offer → requires affirmative response to offer
- Only those to whom the offer is directed can accept it
- Acceptance must occur in response to the offer, on the same terms
- Determined objectively → look at outward manifestations of an intention to accept

METHOD OF ACCEPTANCE

- Person making offer can stipulate a particular method of acceptance
- Bilateral contract → acceptance given through exchange of promises

- Unilateral contract → performance is acceptance and communication is unnecessary (*Carlill*)
- Silence of inaction cannot constitute acceptance (*Felthouse*)

COMMUNICATION OF ACCEPTANCE

- Acceptance generally has effect only when communication is actually received by offeror
- An offer can be communicated through conduct (*Empirnall*)
- Modifications to general rule:
 - Postal acceptance rule
 - Electronic Transactions Act

POSTAL ACCEPTANCE RULE

- Acceptance may be effective as soon as it's posted
- Offeror must have intended that an effective acceptance could be made in this way
- Means the contract is made when acceptance is posted → even if it's received later or lost
- Postal acceptance rule doesn't apply to revocation of an offer

ELECTRONIC TRANSACTIONS ACT

- Applies to electronic communication in form of data, text, images or sound (**s3**)
- **s13A**: time of receipt is when it's capable of being retrieved → provided address is designated address
- If address is not the designated one, two conditions are required (**s13A**)
 - Knowledge that it's been sent to that address
 - Capability of being retrieved

s13 Time of Dispatch	Unless otherwise stated between originator and addressee, time of dispatch of electronic communication is: <ol style="list-style-type: none"> Time it <u>leaves</u> system under control of originator (or party sending on their behalf), OR Time it is <u>received</u> by addressee
S13A Time of Receipt	<ol style="list-style-type: none"> Time of receipt is time when it becomes <u>capable of being retrieved</u> by addressee at an address designated by them, OR For a different address than specified, when its capable of being retrieved and addressee has become aware it's been sent to that address
S13B Place of Receipt	Communication taken to have been dispatched at place of originator's business, and taken to be received at place of addressee's business

CASE SUMMARIES

<i>Empirnall Holdings</i>	<ul style="list-style-type: none"> • Acceptance must be communicated → can be communicated through conduct • Silence combined with other circumstances may constitute acceptance • Test is whether a reasonable bystander would regard the conduct as signalling acceptance • Court can find a contract exists where offeree takes the benefit of an offer
<i>Brambles</i>	<ul style="list-style-type: none"> • Conventional approach of "offer and acceptance" is not always appropriate • An offer can be accepted through conduct • An offer cannot use the language of command (<i>obiter</i>)
<i>Brinkibon</i>	Postal acceptance rule does not apply to instantaneous forms of communication
<i>Felthouse</i>	Cannot impose obligations by stating silence will be taken as acceptance

CONTRACT - CONSIDERATION

Doctrine of consideration requires that something be given in return for a promise in order to make it binding.

- Involves an exchange of valuable promises
- Each party's promise provides consideration to support the promise made by the other
- Promise must be supported by consideration to be enforceable

TYPES OF CONSIDERATION

Consideration may be:

- Doing an act → unilateral contract
- Promising to do an act → bilateral contract

CONSIDERATION v CONDITION

Distinguish between:

- The price paid for the promise (consideration); and
- A condition that must be satisfied before being entitled to that promise

NATURE OF CONSIDERATION

- Consideration as defined as:
 - Something the law regards as **valuable**;
 - Which is given in **return** for a promise; and
 - Can be seen as the agreed **price** of the promise
- Involves giving up a freedom the party would otherwise enjoy, or doing something they aren't obliged to do

There are two aspects to consideration:

- a. Benefit/detriment requirement → must be a benefit to promisor and/or detriment to promisee
- b. Bargain requirement → must be given as part of exchange (quid pro quo)

BENEFIT/DETRIMENT REQUIREMENT

Lush J in *Currie v Misa* states a valuable consideration may consist in:

- Some benefit accruing to one party, OR
- Some detriment experienced by the other (promisee)

Just having a party suffer a detriment meets the requirement, but one a party gaining a benefit is not sufficient

'BARGAIN' REQUIREMENT

- The act (benefit/detriment) must be offered as part of an exchange (quid pro quo) (*Beaton*)
- Not sufficient that show the act resulted from mere reliance on the promise (*Australian Woollen Mills*)

ADEQUACY AND SUFFICIENCY

ADEQUACY OF CONSIDERATION

- Consideration must be sufficient, but need not be adequate
- Sufficiency means consideration must be something the law regards as valuable

- Courts will not inquire whether the value of consideration is equal or even proportionate → peppercorn principle (*Chappel v Nestle*)

SUFFICIENCY OF CONSIDERATION

- Consideration must be legally sufficient → something the law regards as valuable
- Examples of insufficient consideration:
 - Past consideration
 - The "existing legal duty" rule

PAST CONSIDERATION (INSUFFICIENT)

- Past consideration is not sufficient consideration (*Roscorla*)
- Something given gratuitously or in return for another consideration before a promise is made cannot constitute good consideration for the promise
- Only exception is for promises to pay for services requested

PROMISES TO PAY FOR SERVICES REQUEST

- Exception to the past consideration rule
- Where services are performed in circumstances which raise an implication that they are to be paid for
- Then performance of those services will constitute good consideration for a subsequent promise to pay for them

CASE SUMMARIES

<i>Australian Woollen Mills</i>	<ul style="list-style-type: none"> • Presence of a request, implied or express, does not in itself establish a contract (no quid pro quo) • Reliance on a promise is not sufficient to satisfy the bargain requirement
<i>Beaton v McDivitt</i>	Requirement of quid pro quo (bargain) is needed in order for there to be consideration
<i>Woolworths v Kelly</i>	Reasons why courts don't consider the adequacy of consideration
<i>Roscorla</i>	Past consideration is not sufficient consideration (for promises made after the contract is formed)

BEATON v McDIVITT (1987)

<i>Judges</i>	<i>Consideration?</i>	<i>Frustration?</i>	<i>Conclusion</i>
<i>Young J (trial)</i>	<ul style="list-style-type: none"> • Bargain requirement not satisfied • Consideration requirement met because of <u>reliance</u> 	Yes: contract frustrated because rezoning never eventuated	Contract formed but contractual obligations brought to an end (frustration)
<i>Kirby P</i>	<ul style="list-style-type: none"> • Bargain and benefit/detriment requirements not satisfied • No 'reliance exception' to bargain requirement 	N/A	No contract

<i>McHugh</i> <i>JA</i>	Sufficient consideration (coming onto and working the land)	No: contract not frustrated (implied duty to cooperate)	Contract formed → obligations owed
<i>Mahoney</i> <i>JA</i>	Sufficient consideration (coming onto and working the land)	Yes: contract frustrated as reasonable time elapsed since possible rezoning	Contract formed but obligations brought to an end (frustration)