

LLB 120 LAW OF CONTRACTS A

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Is there a contract?

- Formation: elements of a binding contract
- Can the contract be enforced? Or is there:
 - a formality problem? (eg is writing required?)
 - a capacity issue?
 - a privity problem? (eg for a 3rd party beneficiary?)
- If you find a problem with contract formation or enforcement, is an alternate source of rights/remedies available?

I Formation of Contract

Contract – exchange of promises voluntarily entered into by two parties.

Agreement - stage at which the negotiations between the parties are complete

O+A formula identifies 'ad idem' – joining of individual wills to create binding obligations

- **Offer** - Clear indication by 1 person to another of a willingness to enter into a contract on certain terms

a. Offer must demonstrate willingness to be bound (words/conduct) w further negotiation & binding agreement made upon acceptance *son v MCC; Carlill; Pharmaceutical Society v Boots*

- **Preliminary negotiations/** supply of information
 - *Harvey v Facey* [1893] - telegram did not constitute either an offer or an acceptance; merely supply of information. A person merely supplying information in response to an enquiry is not making an offer
 - *Gibson v Manchester City Council*
- **Mere puff** *Carlill* '£100 reward will be paid by Smoke Ball Company to any person who contracts.. influenza... after having used the ball three times daily for 2 weeks...£1,000 is deposited with the Alliance Bank, Regent Street, shewing our sincerity in the matter.' Found ad wasn't "mere puff" as defendant had explicitly stated money to make payments. Est ads can constitute offer to the world.

- A bilateral agreement requires a promise in exchange for a promise.
- A unilateral agreement requires a promise in exchange for performance – *Carlill* – ad could be offered to whole world & could be accepted by any person who performed the conditions on faith of advertisement.

- **Invitation to treat**
 - *Pharmaceutical Society v Boots Cash Chemists* – Display of gs was not offer to sell goods; constituted an invitation to treat. Customer would offer to buy the product when they took then item to the cash register, at which point was located a pharmacist who could either accept or reject the offer. Ads are usually considered to be invitations to treat.
 - *Payne v Cave, Fisher v Bell*
Gibson v Manchester – invitation to treat as words 'may be prepared to sell' were a notification of price rather than a distinct offer and purchase price was a step in negotiations for contract. 2 offers, identical in terms, made at the same time or which cross in the past, will not create a contract because neither offer counts as an informed acceptance of the other.
MacRobertson Miller Airline Services - No agreement is formed when the ticket is simply purchased. Passenger makes the offer, accepted by conduct of Plaintiff by performance (carrying passenger).

AND

b. Propose exchange of commitment in return for p from promisee (bilateral contract) or completed performance of an act by the promisee (unilateral contract) *Carlill; Australian Woollen Mills v Cth*

- **Mere statement of policy**
- **Mere conditional gift**
 - *Carlill v Carbolic*
 - *Australian Woollen Mills v Cth* - Buying the wool was merely a condition precedent to entitlement to the subsidy. There must be a relationship of quid pro quo between the statement and the Act. Here there was no promise offered in consideration of doing an act.

These two aspects of offer are determined objectively:

– How a reasonable (or ordinary) person, in the position of the person to whom the communication is made (i.e. the offeree), would construe it (*Carlill*). Must to a reasonable person seem that an offer was intended (decided by court).

- **Termination of an offer** (was offer still open to be accepted?)

An offer ceases to exist at the time of purported acceptance if it has been: