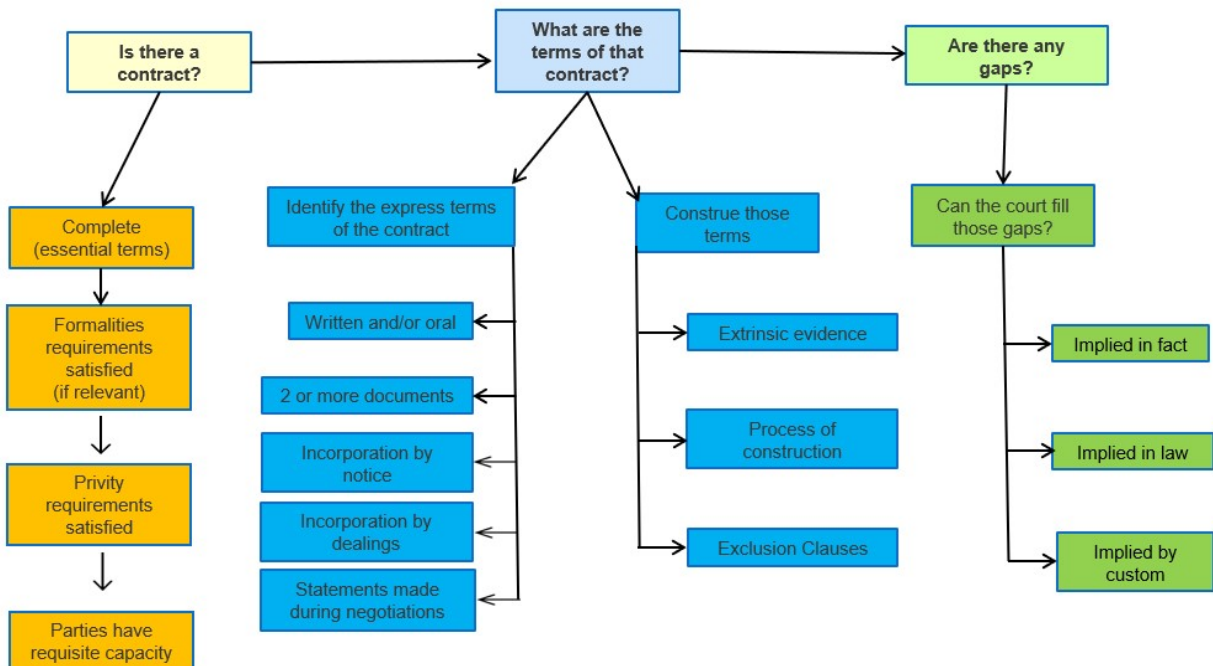


LAW2101 SUMMARY NOTES

- 1. CONTRACT FORMATION.....2**
 - 1.1 Offer.....2
 - 1.2 Acceptance.....3
 - 1.3 Consideration.....5
 - 1.4 Intention8
 - 1.5 Certainty.....11
- 2. FORMALITIES.....14**
- 3. PRIVACY.....16**
- 4. CAPACITY.....18**
- 5. ESTOPPEL.....19**
- 6. EXPRESS TERMS.....21**
 - 6.1 INCORPORATION.....21
 - 6.2 STATEMENTS DURING NEGOTIATIONS.....22
 - 6.2 EXCEPTIONS.....23
- 7. CONSTRUCTION.....27**
- 8. IMPLIED TERMS.....29**
 - 8.1 IN FACT.....29
 - 8.2 IN LAW.....30
 - 8.3 BY CUSTOM.....30
 - 8.4 GOOD FAITH.....31
- 9. AUSTRALIAN CONSUMER LAW....32**
 - 9.1 UNFAIR TERM.....32
 - 9.2 CONSUMER GUARANTEES.....33



1. CONTRACT FORMATION

P may seek to obtain a remedy from D, regarding _____. P can take legal action against D in contract / tort (*Hill Van Erp*) / estoppel (p18).

P may have a claim against D in a breach of contract, regarding_____.

1. As P will want to enforce the contract. D will argue that there is no enforceable contract.
2. D will seek to rely on the EC, whilst P will seek to prove that D cannot rely on it.

1.1. OFFER - Clear and unequivocal (*Gibson*)

- P must therefore prove that a reasonable person (RP) would believe that an offer was intended, and that acceptance would be binding (*Gibson*).

1.1.1. Offer objectively intended

- **Objective** and outward manifestations (*Carbolic*).
- **Not a “mere puff”** in that the offer is to be taken seriously or literally (*Carbolic* - 100P reward for contracting diseases after using it 3x/day for 2 weeks, with 1000P being deposited in a bank “*to show sincerity*” in the matter) - *is it specific?*
- **Promissory statement** - “*may be prepared to sell the house*”, whereby “*may*” is not promissory, but allows an **invitation to treat** (*Gibson*).
- Does not have to be to a **particular person** - can be made to whole world (*Carbolic*).
- **Uncertainty may = invitation to treat**
 - “*come to agreement on everything that was material*” (*Gibson*)
 - **periods of time** - can be a “reasonable” amount (*Carbolic*)
 - **price** - *Manchester City Council’s letter left the \$ blank, & did not amount to offer* (*Gibson*)
- If **conduct and language is clear** that they **intended to be bound**, it is **irrelevant whether terms are left blank** (*Storer* - *dates on lease termination and mortgage repayments were left blank & still amounts to offer*).

Invitations to Treat (ITT) - Invitations to negotiate/make offer is not an offer (*Boots*)

Shop sales - The display of goods for sale, whether on a shelf, in a window or online, are ordinarily regarded as ITT, and not an offer (*Boots* - *Pharmaceutical Society argued that display of goods = offer, and taking a good off the shelf = acceptance (ie. sale without supervision)*).

- **Goods for sale online** - not addressed to a particular person = ITT, **unless** clearly indicated that they are bound upon acceptance (*ETA 2000 s 14B*).

Tenders - A call for tenders (ie. written bids) = invitation to treat, with each tender = offer.

- **Unless conditions are stipulated**, which makes the call for tenders an offer and the submission acceptance (*Investments Royal*).

Investments Royal

“whichever is higher”

Facts: D1 **promised to accept the highest bid**. D2 bid “\$101,000 in excess of another, whichever is higher”.

Held: The referential bid was invalid. When a person calling for **tenders can stipulate conditions to govern the process and they will be bound by them**.

Hughes Aircraft

tendering process not complied with

Held: CAA breached by **failing** to evaluate tenders in accordance with **confidentiality**; **accepted late change** by another tenderer; based on the particular facts of this case.

Ticket Cases - A ticket containing T&Cs generally = offer, which is accepted when the offeree has reasonable opportunity to read the condition and boards the plane/boat (*MacRobertson per Stephen*).

- Alternatively, ticket = ITT: customer offers by presenting self for travel and the airline accepts (*per Barwick*)

Auctions - holding a public auction = ITT, whereby a bid is an offer which may be accepted by auctioneer (*McWhirter*).

- Announcement that an auction will be held without reserve (ie. “*on the market*”) doesn’t alter the general rule.

Advertisements - (except those which promise a reward – *Carbolic* - “*show sincerity*” = money in bank, *Boots*)