

CONTRACT FORMATION

AGREEMENT: OFFER	p.4
<i>Gibson v Manchester City Council</i>	p.4
<i>Carlill v Carbolic Smoke Ball Company</i>	p.5
Ticket cases.....	p.6
<i>MacRobertson Miller Airline Services v Commissioner of State Taxation (WA)</i>	p.6
Offers distinguished from invitations to treat.....	p.7
<i>Pharmaceutical society of Great Britain v Boots Cash Chemists (Southern) Ltd</i>	p.7
<i>Mobil Oil Australia v Wellcome International Pty Ltd</i>	p.8
Termination of an offer.....	p.9
AGREEMENT: ACCEPTANCE	p.10
Relationship between the offer + acceptance.....	p.10
<i>The Crown v Clarke</i>	p.10
Communication of acceptance.....	p.11
<i>Felthouse v Bindley</i>	p.11
<i>Empirnall Holdings v Machon Paull Partners Pty Ltd</i>	p.12
<i>Brambles Holdings v Bathurst City Council</i>	p.13
Method of communication.....	p.15
<i>Brinkibon v Stahag Stahl US</i>	p.15
Correspondence between offer + acceptance.....	p.16
<i>Butler Machine Tool Co v Ex-Cell-O Corp (England) Ltd</i>	p.16
CONSIDERATION (PART 1)	p.18
<i>Australian Woollen Mills v Commonwealth</i>	p.18
<i>Beaton v McDivitt</i>	p.21
Adequacy of consideration.....	p.23
Past consideration.....	p.23
<i>Roscorla v Thomas</i>	p.24
CONSIDERATION (PART 2)	p.24
Existing legal duty rule.....	p.24
<i>Foakes v Beer</i>	p.25
Exceptions to the existing legal duty rule.....	p.25
<i>Williams v Roffey Bros & Nicholls (Contractors) Ltd</i>	p.26
<i>Musumeci v Winadell Pty Ltd</i>	p.27
<i>Wigan v Edwards</i>	p.28
INTENTION TO CREATE LEGAL RELATIONS	p.29
Presumptions: <i>Ermogenous v Greek Orthodox Community of SA Inc</i>	p.29
Commercial transactions: <i>Banque Brussels Lambert SA v Australian National Industries Ltd</i>	p.30
Domestic + Social Agreements: <i>Todd v Nicol</i>	p.31
Government Agreements: <i>Administration of Papua and New Guinea v Leahy</i>	p.32

Preliminary Agreements: <i>Masters v Cameron</i>	p.33
CERTAINTY	p.34
Completeness.....	p.34
Certainty.....	p.34
<i>Council of the Upper Hunter County District v Australian Chilling and Freezing</i>	p.34
Implying objective standards: <i>Biotechnology Australia Pty Ltd v Pace</i>	p.35
<i>Whitlock v Brew</i>	p.38
<i>Hall v Busst</i>	p.39
Illusory Promises.....	p.40
<i>Meehan v Jones</i>	p.40
<i>Godecke v Kirwan</i>	p.42
<i>Placer Development Limited v Commonwealth</i>	p.42
PRIVITY	p.43
<i>Coulls v Bagot's Executor & Trustee Co Ltd</i>	p.44
Non-Application of the Privity Rule.....	p.45
Agency.....	p.45
Assignment + novation.....	p.46
Circumventing the Privity Rule.....	p.46
Remedies available to the promisee.....	p.47
<i>Trident General Insurance Co Ltd v McNiece Bros Pty Ltd</i>	p.48

PROPERTY

GENERAL PROPERTY	p.49
LICENSES	p.50
Contractual licenses	p.50
Contractual licenses revoked + equity.....	p.50
Injunction.....	p.52
Licences + third parties.....	p.52
Property rights + privacy.....	p.53
LEASE	p.54
FIXTURE OR CHATTEL?	p.54
Tenant's fixtures.....	p.57
Chattels annexed without permission.....	p.58
PROPERTY INTERESTS IN CHATTEL	p.58
Torts.....	p.59
Rights of the bailee.....	p.62
POSSESSION OF LAND	p.63
Adverse possession.....	p.64

Property rights.....	p.69
Equitable Interest.....	p.71

EQUITABLE ESTOPPEL

Proprietary estoppel.....	p.75
Promissory estoppel.....	p.76
Elements of Estoppel.....	p.76
Remedy/ relief.....	p.79

AGENCY

Capacity required of principal + agent.....	p.82
Source of an agent's authority.....	p.82
Ostensible authority.....	p.84

ESSAY NOTES

Classical Contract Theory	p.88
Tort vs Contract + consideration.....	p.89
Privity.....	p.89
Contractual vs Property rights.....	p.90
Numerus Clausus Principle.....	p.90
Equity + contractual license.....	p.91
New property.....	p.92
Property law VS people + their bodies.....	p.92
Human embryos + Exercised human tissue.....	p.93
Privacy.....	p.95
Fixtures + Chattels.....	p.95
Land + Justifications for the rule of adverse possession.....	p.96
Why Contractual licenses are not a property right?.....	p.96
Formalities.....	p.97
Estoppel.....	p.97
CL vs equitable estoppel.....	p.98
Fusion of CL estoppel + equitable estoppel?.....	p.99
Promissory vs Proprietary distinction?.....	p.99
Equitable estoppel + part performance.....	p.100
Agency.....	p.101

CONTRACT FORMATION

AGREEMENT: OFFER

- the manifestation of willingness to enter into a bargain
- an offer must be in the form of a proposal for consideration which gives the offeree an opportunity to choose between acceptance + rejection (*Brambles Holdings Ltd*)
- crucial issue= whether it would appear to a reasonable person in the position of the offeree that an offer was intended (*Carlill*)
 - does not matter whether the offeror in fact intended to make an offer, the court determines the offeror's intention objectively

Gibson v Manchester City Council [1979] 1 WLR 294

Facts	<ul style="list-style-type: none">• Manchester City Council, then controlled by the Conservative Party, adopted a scheme allowing tenants of council housing to purchase the freehold title to their homes• Council wrote a standard form letter to Gibson saying that the Council 'may be prepared to sell the house...' at a nominal price + asked Gibson to complete an application form if he wished to buy the house<ul style="list-style-type: none">- Gibson did so (leaving the purchase price blank)• before formal contracts were prepared, local government elections were held in which control was passed to the Labour party + the scheme was abandoned• Council denied there had been a binding contract
Prior proceedings	<ul style="list-style-type: none">• trial judge + court of appeal: was a binding contract + ordered specific performance
Judgment	<ul style="list-style-type: none">• no reason to depart from the conventional approach (a contract being offer + acceptance)<ul style="list-style-type: none">- Court of appeal erred by departing from this conventional approach- is NOT an exceptional case• first letter relied upon is NOT a contractual offer<ul style="list-style-type: none">- reasons:<ul style="list-style-type: none">- words "may be prepared to sell"- is an invitation, not to accept the offer, but 'to make formal application to buy'- is a letter seeking out the financial terms on which it may be the council will be prepared to consider a sale + purchase in the due course• second letter<ul style="list-style-type: none">- letter was acknowledged by Gibson by his letter to the corporation, in which he asked the corporation to 'carry on with the purchase as per my applications already in your possession'- cannot be an unconditional acceptance of... unless there was a contractual offer by the corporation available on acceptance<ul style="list-style-type: none">- was none• was an invitation to treat<ul style="list-style-type: none">- used the words 'may be prepared' (must be imperative language)- application filled in sent would be the offer (Gibson would have been the offeror)
Outcome	<ul style="list-style-type: none">• appeal allowed (no contract)
Takeaway	<ul style="list-style-type: none">• would a reasonable person consider the statement to be intended as an offer?

Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256

Facts	<ul style="list-style-type: none"> • Ds manufactured a device called a 'Carbolic Smoke Ball', which was claimed to prevent colds + influenza • placed following advertisement in a number of newspapers <ul style="list-style-type: none"> - '100 pound reward will be paid by the CSB Company to any person who contracts the increasing epidemic influenza, colds, or any ideas caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. 1000 pounds is deposited with the Alliance Bank, shewing our sincerity in the matter' • P purchased a smoke ball from a chemist on the faith of the advertisement + used it in accordance with the manufacturer's directions from 20 Nov 1891 until 17 Jan 1892, when she contracted influenza
Prior proceedings	<ul style="list-style-type: none"> • trial judge: P was entitled to recover the 100 pounds <ul style="list-style-type: none"> - D appealed
Lindley LJ	<ul style="list-style-type: none"> • are not dealing with any inferences of fact <ul style="list-style-type: none"> - are dealing with an express promise to pay 100 pounds in certain events - distinct promise expressed in language which is perfectly unmistakable • was not mere puff <ul style="list-style-type: none"> - advertisement said '1000 pounds is deposited with the Alliance Bank, shewing our sincerity in the matter' • it is not made with anybody in particular <ul style="list-style-type: none"> - this is common to the words of all advertisements offering rewards <ul style="list-style-type: none"> - are offers to anybody who performs the conditions named in the advertisement - any anybody who performs the condition accepts the offer • this offer is a continuing offer <ul style="list-style-type: none"> - was never revoked • if notice is required, the person who makes the offer gets the notice of acceptance contemporaneously with his notice of performance of the condition <ul style="list-style-type: none"> - however, in a case of this kind, the person who makes the offer shews by his language + from the nature of the transaction that he does not except + does not require notice of the acceptance apart from notice of the performance • language is vague + uncertain in some respects <ul style="list-style-type: none"> - particularly: that the 100 pounds is to be paid to any person who contracts the increasing epidemic after having used the balls three times daily for two weeks - no time is fixed from the language <ul style="list-style-type: none"> - meaning I prefer, is that the reward is offered to any person who contracts the epidemic or other disease within a reasonable time after having used the smoke ball - what is reasonable? <ul style="list-style-type: none"> - a reasonable time may be ascertained in a sense satisfactory to a lawyer: find out from a chemist what the ingredients are, find out from a skilled physician how long the effect of such ingredients on the system could be reasonably expected to endure so as to protect a person... etc • D's must perform their promise

Bowen LJ	<ul style="list-style-type: none"> • same opinion- appeal dismissed • must read this advertisement in its plain meaning, as the public would understand it <ul style="list-style-type: none"> - that if anybody, after the advertisement was published, used three times daily for two weeks... then caught the cold, s/he would be entitled to the reward - long long is this? <ul style="list-style-type: none"> - may mean that the protection is warranted to last during the epidemic - more probably it means that the smoke ball will be a protection while it is in use - has some difficulty with Lindley LJ's reasonableness of time but does not need to consider it further • is not a contract made with all the world (which would not be possible) <ul style="list-style-type: none"> - is an offer made to all the world (is possible) • an acceptance of an offer made ought to be notified
Outcome	<ul style="list-style-type: none"> • contract (D's must perform their promise)
Takeaway	<ul style="list-style-type: none"> • an offer can be made to an individual or the whole world

Ticket cases

- courts are concerned to identify offer + acceptance for the purpose of deterring **WHEN**, rather than **WHERE**, a contract was formed between parties
- a ticket did not record the term of an agreement, but rather the terms of an offer which was subsequently accepted by conduct (*MacRobertson Miller Airline Services*)

MacRobertson Miller Airline Services v Commissioner of State Taxation (WA) (1975) 133 CLR 125

Facts	<ul style="list-style-type: none"> • Passengers would contact MacRobertson to select their flight and seat, and would then be handed a ticket <ul style="list-style-type: none"> - a condition printed on the ticket provided that the airline reserved the right to abandon any flight or cancel any ticket booking • In the event of a cancellation, the passenger would obtain a refund, but the airline would otherwise face no liability.
Prior proceedings	<ul style="list-style-type: none"> • was necessary for stamp duty purposes to determine whether the ticket so issued was 'an agreement or ant memorandum of agreement' <ul style="list-style-type: none"> - Supreme Court of WA found it was - airline appealed
Barwick CJ	<ul style="list-style-type: none"> • issuing airline operator does not by the terms of the ticket assume or offer to assume any obligation to carry the intended passenger <ul style="list-style-type: none"> - exemption of the ticket in this case fully occupies the whole area of possible obligation, leaving no room for the existence of a contract of carriage • if the airline operator has been able, ready + willing to carry the passenger... but the passenger does not show up, the airline operator may claim to have earned the fare <ul style="list-style-type: none"> - entitlement of the airline company to retain the prepaid fare is dependent on the actual performance of carriage • issue of a ticket by an airline operator neither constitutes an agreement nor a memorandum of an agreement <ul style="list-style-type: none"> - issue of the ticket is mainly a receipt for the payment of the fare - prepayment of the fare payable for an actual carriage performed • appeal allowed

Stephen J	<ul style="list-style-type: none"> a document containing a written offer which is subsequently accepted orally or by conduct does not thereby become either an agreement or a memorandum thereof <ul style="list-style-type: none"> ticket is the offer + the contract is made upon acceptance of that offer by the passenger, usually by conduct acceptance of the offer occurs either <ul style="list-style-type: none"> when the passenger has by actual conduct intimated his acceptance of the offer <ul style="list-style-type: none"> for instance by immediately boarding the vehicle or, absent of any such conduct, when a reasonable time has passed during which the passenger has had an opportunity of reading the ticket conditions + had not rejected the offer <ul style="list-style-type: none"> what is a reasonable time is a question of fact at date of issue the ticket was not an agreement or any memorandum of agreement
Outcome	<ul style="list-style-type: none"> appeal allowed
Takeaway	<ul style="list-style-type: none"> may be difficult to apply the offer/acceptance analysis to all forms of transaction

Offers distinguished from invitations to treat

- invitation to treat = an invitation to others to make offers or enter into negotiations**
 - e.g an indication by the owner of property that s/he might be interested in selling at a certain price (*Harvey v Facey*)
- whether particular conduct amounts to an offer is a question to be decided on the facts of each case (*Australian Woollen Mills Pty Ltd*)
 - and there are no firm rules about whether particular types of conduct necessarily do or do not amount to an offer (*Carlill*)

Pharmaceutical society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401

Facts	<ul style="list-style-type: none"> Boots was a self—service chemist <ul style="list-style-type: none"> customer would collect the items they wished to purchase, then take them to the cashier cashier would then tell them the total price + the customer would pay A pharmacist would supervise the transaction to prevent a customer from buying certain drugs without the necessary prescription. Issue: relevant law made it illegal to sell certain drugs unless the sale was under the supervision of a pharmacist
Somervill LJ	<ul style="list-style-type: none"> contract is not completed until the shopkeeper, or someone on his behalf, accepts that offer was supervision in the sense required by the act <ul style="list-style-type: none"> customers are entitled to return articles selected from the shelves therefore there is not an offer at this stage no a contract until the cashier has accepted the offer purchase is not complete once the customer picks up the drugs- but rather on the approval of the pharmacist
Birkett LJ	<ul style="list-style-type: none"> is incorrect to say that the shopkeeper is making an offer to sell every article in the shop to any person who might come in mere fact that a customer picks up a bottle of medicine from the shelves in this case does not amount to an acceptance of an offer to sell <ul style="list-style-type: none"> is an offer to buy
Takeaway	<ul style="list-style-type: none"> An offer must be distinguished from an invitation to treat

Revoking offers

Goldbrough Mort v Quinn

- **offers are able to be revoked at any time prior to acceptance**
 - is the case even where an offeror has promised not to withdraw an offer before a particular date
 - **is, however, different where the offeree has provided consideration for the promise not to withdraw the offer**
 - its effect is its a conditional contract e.g must pay consideration + exercise the right of the contract within the time period

Unilateral contracts

- **unilateral: a contract in which the offeree accepts the offer by performing his or her side of the bargain**
 - **performance of that act is all that is required of the offeree**
- **bilateral contract: an exchange of promises**
 - e.g sale of a house
 - house seller agrees to the deliver the title to the house in exchange for the agreed sale price
 - house buyer agrees to pay the specified sales price in exchange for the title to the house
 - while unilateral only one party is ever under a contractual obligation
- **unilateral contract is different from a conditional gift (*Australian Woolen Mills Pty Ltd v Commonwealth*)**
 - e.g If A say to B in Melbourne, 'I will pay you \$1000 on your arrival in Sydney', this alone does not establish the existence of a contract on B's arrival in Sydney
 - B must establish that the money was to be paid in return for B's arrival in Sydney
 - an offer can lead to a binding agreement only if the offer identifies the terms of the proposed agreement with sufficient certainty
 - must be a relation of quid pro quo (this for that) between the offeree's act + the offeror's promise

Mobil Oil Australia v Wellcome International Pty Ltd (1998) 81 FCR 475

Facts	<ul style="list-style-type: none">• Mobil's general manager presented at a franchisee convention + proposed an incentive scheme known as 'the Circle of Excellence'<ul style="list-style-type: none">- told the franchisees that any franchisee who achieved a score of 90% or more in the Circle of Excellence judging for six consecutive years would receive a free 9 year renewal of their franchise without costs- brochures were handed out• following management + policy changes, Mobil announced in 1994 that it would not grant renewals free of charge on the basis proposed, but would discount the renewal fees of any franchises who scored 90% or better in 1992 and 1993• 154 franchisees commenced proceedings against Mobil, claiming relief on the basis of breach of contract, equitable estoppel or misleading or deceptive conduct
Prior Proceedings	<ul style="list-style-type: none">• Wilcox J held that Mobil had made no offer of a one for one extension<ul style="list-style-type: none">- but upheld the contract claim based on the 9 for 6 proposal- ordered Mobil to grant a 9 year extension of each of those franchises without charge• Mobil appealed