

CONTRACTFORMATION

TYPE OF CONTRACT?

UNILATERAL CONTRACT	Single promise. One party makes a promise to do something in exchange for performance of some act. <i>Performance</i> of act constitutes consideration and communication of acceptance. Implicit dispensing of need to give notice of acceptance except at time of performance. Normally executed performance (at time of acceptance) (same transaction as promise: completed acceptance and consideration)
BILATERAL CONTRACT	Two promises (an exchange, constitutes consideration for both parties). Normally executory performance (promise to do under contract but has not yet been done).

TYPE OF DUTY:

Contract law doctrines impose upon a person making a contractual promise the obligation to honor that promise (the primary duty) or to compensate in the event that the promise is not performed (the secondary duty).

- **PRIMARY DUTY:** represent or directly serve ends or purpose of law, e.g. contract to perform contractual promises.
- **SECONDARY DUTY:** or remedial obligation is one that arises from the *breach* of primary obligation (serves to protect or enforce primary right)

1. Agreement – Offer and Acceptance

The first issue to consider is whether the [**event/correspondence**] constitutes a legally valid agreement for the purposes of contract formation. This is contingent on the existence of an offer and acceptance.

AGREEMENT – OFFER

In *Gibson*, LORD DIPLOCK stipulated that a conventional offer and acceptance approach should be followed except in the most unconventional cases.

- Given that currently there is nothing to suggest that the case at hand is unconventional, that approach is likely to be following here, OR
- Here, the conventional offer and acceptance approach in *Gibson* is less useful in determining the existence of an agreement, and is likely to be discarded as it was in *Brambles* (e.g. response amounted to nothing more than an expressed dissatisfaction rather than an explicit rejection (*Brambles*)).

Gibson v Manchester City Council [1979]

FACTS: MCC (Conservative) offered to sell council house to tenant who returned completed application form, MCC passed to Labour & abandoned all non-binding contracts.

Held *not* a binding contract, MCC's letter *not an offer* but an INVITATION TO TREAT. No objective intention to be bound at that time.

LORD DIPLOCK: a conventional offer and acceptance approach

An offer must be termed in language which is sufficiently clear (*Gibson*, and *Mobil*).

- LANGUAGE OF COMMAND: which does not give offeree option to accept or reject is **not** an offer (Heydon J in *Brambles*).
- ANNOUNCEMENT OF POLICY = NOT an offer (*AWM*).

[**The offeror**] must indicate they are prepared to be contractually bound immediately upon acceptance, determined objectively according to outward manifestations of their intention (*Storer v Manchester City Council*).

If, from an objective standpoint, nothing to suggest that did not intend to enter a binding promise at time of [**conduct**], rather, appears to resemble an **invitation to enter into further negotiations** ... (*Gibson*).

Carlill v Carbolic Smoke Ball Co [1893]

Well-established in contract law that ADVERTISEMENTS normally do *not* constitute offers. However, can constitute a unilateral offer if it contains terms which suggest a sincere intention to abide by the specificities of the terms stipulated (and enter into an arrangement of this kind).

Wording only need to be reasonably clear to imply terms and not necessarily require notice of acceptance (implicit).

Offers can be made to the WORLD AT LARGE (**unilateral contracts**).

NOTE: can **distinguish** *Carlill* on the grounds that there are no such terms specified by offeror which indicate an intention to enter into an arrangement of this kind.

In *MacRobertson Miller*, a case illustrative of the complexities of establishing a clear 'offer and acceptance', the court discussed the importance of an offer consisting of a promise which is **not illusory** or, in *Mobil Oil*, vague.

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

FACTS: whether ticket offered by airline service constitutes agreement or offer to assume obligations and therefor subject to the Stamp Act.

- BARWICK CJ: No, purchase of ticket is prepayment of reward for act performed at request, with *no promise* to do so (carrier not in contractual relations with intending passenger until provided with seat).
- STEPHEN J: No, tender of the ticket not completion of contract but *merely an offer*. Passenger indicate acceptance by conduct - boarding vehicle or failing to reject offer (acceptance may occur without communication).
- JACOBS J: Accepted authority that tickets constitute offer rather than completed agreement, but the carriers offer is accepted by passenger accepting ticket and paying so could be seen as EXECUTORY CONTRACT.

It can be reasonable inferred from the language used that [**contested offer**] [**was/was not**] intended to be an offer of the kind required for contract formation under the common law (*Brambles*).

REVOCAION OF AN OFFER:

An offer may be revoked before it is accepted (promise to hold offer not contractually binding).

Mobil Oil Australia v Wellcome Intentional Pty Ltd (1998)

FACTS: Mobil proposed tenure for performance scheme whereby franchisee who achieved score would be granted 9 yr renewal, but following policy changes rescinded offer.

HELD: in unilateral agreement acceptance is also consideration and performance, and offeror can revoke offer once offeree commences performance (unless ancillary promise not to).

Promise must *not be vague*.

If NO: it follows, then, that irrespective of whether [**offeree's**] response to the [**advertisement**] could be seen to amount to an acceptance, no legally valid agreement was formed at this point in time (if YES – continue).