



BUSINESS LAW NOTES

BTF1010

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HOW TO APPROACH LAW CASES

The case summaries we use allow you to understand the dispute that had arisen, and the court's decision, as well as how that decision might be used as a precedent for later disputes, as well as demonstrating how business practices may need to be modified to ensure compliance with the law.

1. When we are reading legal cases, we need to know what happened in the past cases (the facts)

Identify the main facts (relevant to the courts decisions).

Identify the legal issues that arise from those facts – the issues that the court was called to decide upon; there is an argument for each side of the case.

2. Then we need to know what the outcome was (the decision) and the reasons for the decision (the legal principle, otherwise known as the ratio decidendi).

This allows us to figure out what to do in a case (or in a hypothetical legal problem) that we are currently analysing.

Put your case into context; why are you been asked to read this case? (What sub topic does it relate to and what issue(s) will it address),

How can the legal principal be applied?

HOW TO ANSWER SHORT ANSWER QUESTIONS;

Make sure to follow the IRAC method at all times when answering legal questions

EXAMPLE;

ISSUE; Offer and acceptance (+consideration) = contract

RULE / LAW: Acceptance is effective when communicated- **CASE: Felthouse v Bindley**

Thus, offer can be revoked if revocation is communicated before acceptance is communicated- **Byrne V Vab Tienhoven**

REMEMBER FOR CASE STUDIES THAT THE SECOND NAME is where they have the case action taken against them.

APPLICATION; Here, Ben communicated acceptance to HN (Mary) on the phone first before Mary communicated her revocation of the offer. "Mary **THEN** told him"

CONCLUSION; thus, HN is bound by a valid contract to sell the demo model for \$6,000 to Ben. They must compensate him for this even though they've sold it to Jin Tao.

V. REMEDIES FOR BREACH OF CONTRACT

[CACL 12.10]

A remedy is what is available where the contract is not performed in the way the parties expected.

What are the legal remedies available when there is a breach of contract?

- **Damages:** monetary compensation for loss.
- **Termination:** bringing a contract to an end.
- **Equitable remedies:** specific performance, injunctions.

Damages for breach of contract are awarded to compensate the innocent party for loss caused by the breach given that;

1. Is measurable
2. Was caused by the breach
3. Is not too remote
4. Could not have been avoided or reduced by reasonable actions of the innocent party.

V. Remedies for breach of contract

[CACL 12.40]

HOW TO WORK OUT IF SOMEONE WILL GET MONETARY COMPENSATION FOR THE BREACH OF CONTRACT.

When working out whether damages can be claimed for a breach of contract, we always consider the following four steps:

1. What is the **measure** of damages? [CACL 12.50 – 12.80]

General principle: Where a party sustains a loss by reason of a breach of contract, damages are to be awarded so as to place the innocent party, as far as money can do so, in the same position that they would have been in if the contract had been performed.

This is known as 'expectation damages' (ie. damages based on your expectation that the contract would be performed).

Case: *Robinson v Harman* (CACL 12.50).

BUT: Where it is not possible for the innocent party to demonstrate whether, or to what extent, the performance of the contract would have resulted in profit, they can seek to recover the expenses that they have reasonably incurred in reliance on the breaching party's promise to perform its obligations under the contract.

This is known as 'reliance damages' (ie. costs incurred on the basis of relying on the contract).

Compensation given to the innocent party who may have suffered economic harm for acting in reliance on a party (or the defendant) who failed to meet their obligation.

NOTE: Sometimes even though there was a breach of contract, there might not even be a loss that you have occurred for the contract that didn't go through.

Case: *Commonwealth v Amann Aviation* (CACL 12.60).

A company was able to recover expenditure on aircraft that would have been used for aerial surveillance of the coast, when it was not clear that they would have made a profit under the original contract (but they were expecting to make profit when the contract was renewed).
A good example of how terminating a contract when you are not entitled to is itself a breach of contract (repudiation)!

This case shows that the principle of compensation for expectation losses is not always appropriate; because they didn't know whether they would make a profit.

CASE: *Goldsborough Mort v Quinn* [CA 3.240]

- GM is promised the right to purchase a property within one week at a stated price.
- Goldsborough Mort provides 5 shillings in return for that promise to be kept. In order for a promise to be legally binding, it can be anything of any value.

By providing the money, itself was a legally binding contract and they weren't allowed to revoke during that week. Q then seeks to revoke the offer before the week has expired then GM 'accepts' within the week and sues Q.

CONCLUSION: Even though the revocation was communicated first, they were bound by the promise to keep the contract open.

When does an offer lapse?

[CA 3.280 – 3.320]

An offer will lapse: **[Revoking means withdrawing an offer]**

- If not accepted within a reasonable time. (where no time of acceptance was mentioned)
- If not accepted within the time stated.

EXAMPLE: *I'll sell you my BTF1010 book within the next week, the promise to keep it open for a week isn't binding, that just means I can revoke it. But until I revoke it, it can still lead to a binding contract. If you accept before I've changed my mind, then there still can be a contract.*

- If a **counter-offer** is made. (Proposal back that changes the term of the offer)

A lapsed offer can't be accepted, so can't lead to a legally binding contract!!

ACCEPTANCE



RULES FOR ACCEPTANCE

1. Acceptance must be communicated to the offeror

By express words, in writing, by conduct or (in the case of unilateral contracts, like in the *Carlill* case) by performance (since the right to communication of acceptance is waived)

2. Acceptance may be implied by conduct

3. The offeror cannot make the offeree's silence a method of acceptance

You cannot assume that by sending our offer to someone and then not hearing back, suggesting that an offer has already been accepted because they haven't refused. (Cannot trap someone with silence)

4. Acceptance must be unconditional

Mirror image rule; the offer acceptance must exactly match the offer. Must be unconditional and must exactly match up. If it doesn't then there's not contract.

5. Acceptance must follow the conditions (if any) in the offer...

6. Only a party to whom the offer was made can accept

7. Acceptance can be revoked at any time prior to the acceptance being communicated

1. What is the **measure** of damages? [CACL 12.50 – 12.80]

General principle (WRITE THIS OUT FIRST): Damages for BOC is to place AP in the position as if the contract was performed.

This is known as 'expectation damages' (ie. damages based on your expectation that the contract would be performed).

- **CASE: Robinson V Harman**

Sometimes even though there was a breach of contract, there might not even be a loss that you have occurred for the contract that didn't go through.

Sometimes the performance of a contract may not have even resulted in a profit. They can seek to get compensation to innocent party who has suffered economic harm for acting in reliance on a party who failed to meet their obligation (reliance damages)

- **CASE: Commonwealth v Amann Aviation**

2. Was the loss **caused** by the breach? [CACL 12.90 – 12.95]

Damages can only be recovered where the loss suffered is actually *caused* by the breach (we call this question *causation*).

- Did the breach of the contract cause the loss?

The test is the 'but for' test – but for the breach, would the loss have been incurred? (In other words – did the loss arise because of the breach, or because of something else and it would have arisen anyway?)

CASE: Reg Glass v Rivers Locking Systems

3. Is the loss **too remote** from the breach? [CACL 12.98 – 12.140]

Even if damages are caused by a breach, they can only be recovered if they are not too remote. The loss must be reasonably foreseeable at the time of contracting.

- There are limitations to what you can recover.
- **CASE: Hadley v Baxendale**

DAMAGES ARE RECOVERABLE FOR;

- **The loss is one that arises naturally or directly from the breach; O**

EG/ if a \$25,000 loss of profit arising from having to close his business for a month as it arose naturally from the breach.

- **The loss was reasonably within the contemplation of the parties at the time of the contract. CASE: Victoria Laundry v Newman Industries**

Remember that this is in cases such like; not being able to claim damages in the case where they accepted the \$25,000 contract to supply bread for an event. The defendant didn't know as it was not within the contemplation of the parties at the time of the contract

4. Is the loss one that the innocent party should have taken steps to avoid, by way of **mitigation**? [FOR INNOCENT PARTY]

The innocent party must take reasonable steps to mitigate (ie. limit) the loss you suffer.

- **CASE: Payzu v Saunders**

A person suing for damages for breach of contract is only required to act reasonably in mitigating their loss and is not required to take undue steps, expose himself or herself to risk or spend money which they cannot afford simply to reduce the amount of loss.

EG/ Jerry trying to find an alternative supplier, has taken reasonable steps to mitigate his loss, so can therefore claim damages.