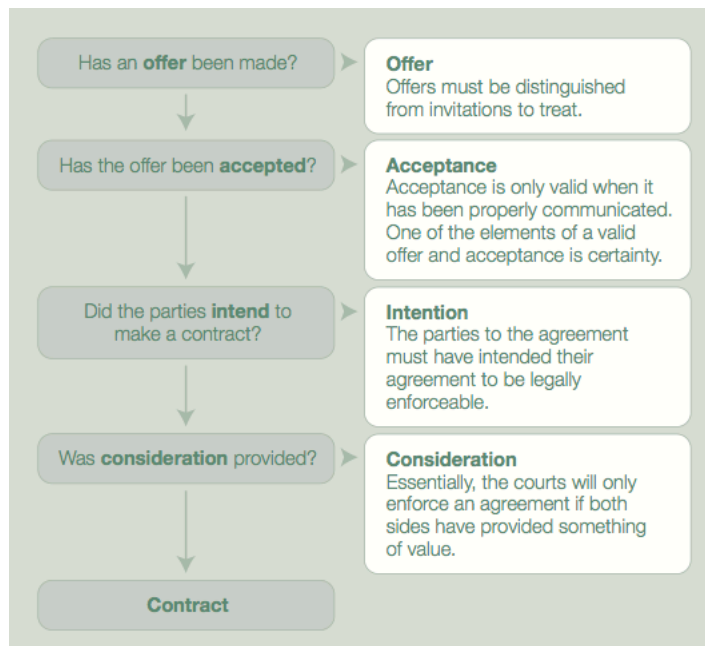


CONTRACT

4 ESSENTIAL ELEMENTS



1. OFFER

Mere Puff = exaggerated claims and assertions about goods and services ([Carlill pg 61](#))

Invitation to treat = invitation to negotiate (advertisements generally do this)

Offer = definite and clear undertaking to be bound contractually

Supplying information = a statement that provides information but does so without indicating that the person intended to make an offer. ([Stevenson Jaques & Co pg 70](#))

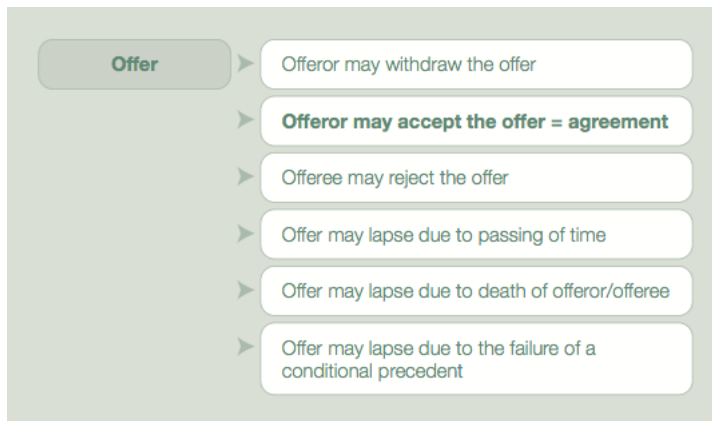
Does a contract have to be in writing?

NO, except for certain contracts such as sale of land

Offer or Invitation to treat?

- Advertisements/Retail/Catalogues ([Boots Cash Chemist pg 64/ Carlill v Carbolic pg 61](#))
- Auctions ([Harris v Nickerson pg 65](#))
- Tenders ([Harvela v Royal Trust pg 66](#))
- eCommerce ([Smythe v Thomas pg 66](#))

Fate of an Offer



Revocation of Offer

An offer is revoked when the offeror formally withdraws the offer.

Revocation of offer must be communicated to offeree. Until offeree becomes aware of revocation, he or she can still accept the offer and create a valid and binding contract.

(Byrne & Co pg 68)

If offer is unilateral, it can create problems. (Mobil Oil Australia pg 69)

Opinions

A promise to keep an offer open for a period of time is not enforceable unless offeree provides consideration. Without consideration, the promise to keep the offer open is unenforceable. (Goldsborough Mort & Co v Quinn pg 67)

Lapse of Offer

An offer will lapse:

- (a) If not accepted within time stated;
- (b) If not accepted within a reasonable time, where no time for acceptance has been stated;
- (c) If a counter-offer is made (Hyde v Wrench pg 70)
- (d) On the death of either party before acceptance. (Carter v Hyde pg 71)

2. ACCEPTANCE

Rules

1. Acceptance of an offer must be communicated
2. Acceptance can be implied from the conduct of the parties (Empirnall Holdings pg 73)
3. Acceptance cannot be inferred from silence or inaction (Felthouse pg 73)
4. No acceptance if offeree is unaware of offer (R v Clarke pg 74)
5. Unilateral contract – communication of acceptance is waived (Carlill pg 61)
6. Acceptance must be unconditional (Masters v Cameron pg 74 - 75)
7. Acceptance must follow conditions or form stated in offer
8. Only the offeree may accept (Carlill pg 61)
9. Acceptance can be revoked at any time prior to acceptance being communicated
10. Acceptance to be made within prescribed/reasonable time (Ramsgate Victoria Hotel Co v Montefiore)
11. Communication of acceptance to be made in regular/authorized manner if made by third person otherwise invalid (Powell v Lee pg 77)

12. POSTAL ACCEPTANCE RULE

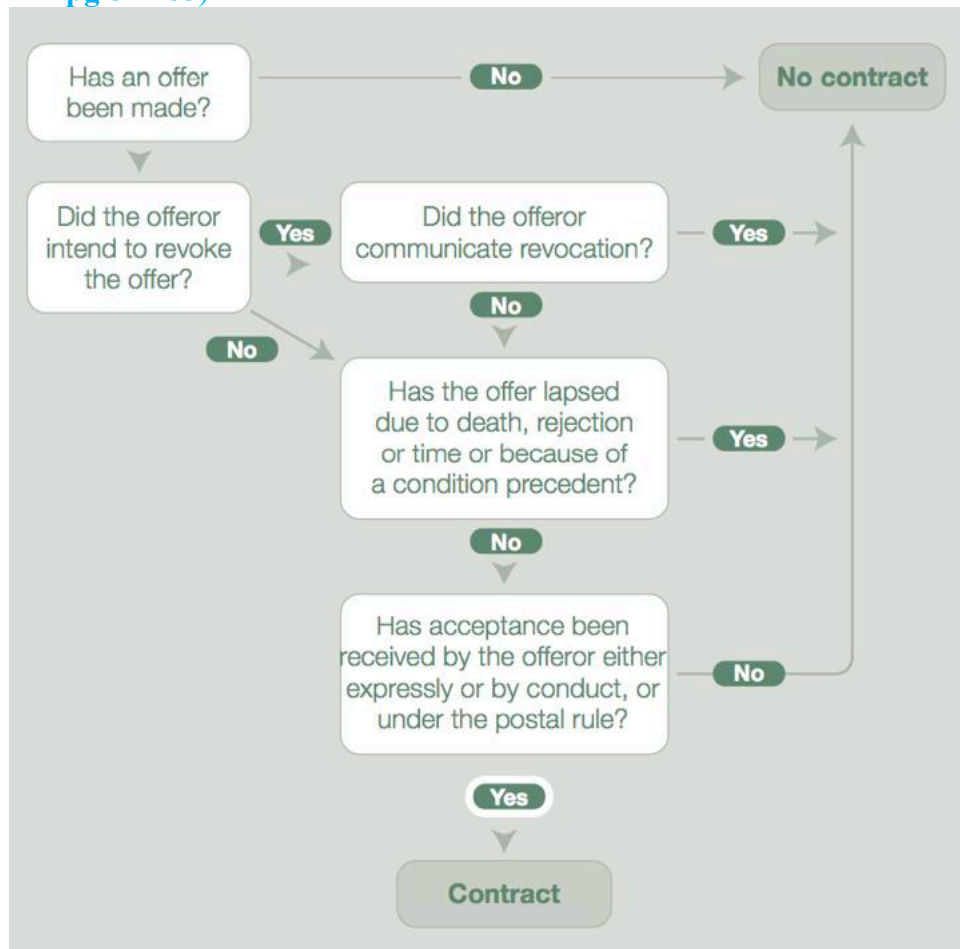
13. Electronic or instantaneous communications (no acceptance until offeror is aware of receiving email) ([Brinkibon Ltd pg 80](#))

Postal Acceptance Rule

- only applies where post is valid method of acceptance
- under the rule, acceptance occurs when letter of acceptance is posted (which creates binding contract at time of posting) ([Adams v Lindsell pg 78](#))
- only applies to acceptance

Agreement must be certain

Cannot be unclear, ambiguous or contradictory ([Australian Chilling, ANZ v Frost, Booker Industries pg 84 - 85](#))



3. INTENTION TO BE LEGALLY BOUND

Because it is unusual for parties to expressly state that it is their intention to be legally bound. 2 loose presumptions have evolved to assist the court. The presumptions are not strict but form part of the surrounding circumstances from which it will be determined whether the contract was formed. ([Ermogenous v Greek Orthodox pg 90](#))

***SOCIAL OR DOMESTIC AGREEMENTS**

The view is the parties did not intend to make a contract.

In marriages, it is regarded as not intended to be legally binding ([Balfour v Balfour pg 90](#))

In de facto relationships, they're more likely to be enforceable ([Merrit v Merrit pg 91](#))

In many family arrangements, it is suggested that the parties did not intend to create a binding agreement. (Todd v Nicol pg 91 – 92/Ashton v Pratt pg 92)

*COMMERCIAL AGREEMENTS

Courts generally prefer to enforce commercial agreements (Rose & Frank Co pg 94)

*Letters of Comfort

Letter of comfort is an assurance about a debt, short of a legal guarantee, given to a bank by a third party. (Banque Brussels Lambert SA pg 96)

*Government Policy Proposals

When the government enters into an agreement, it is bound by the normal law of contract. In other words, there is a presumption that the parties to such a contract intended to make a binding contract and it is enforceable by and against the government. (Australian Woollen Mills pg 97)

4. CONSIDERATION

Consideration is something of some recognised legal value provided in return for a promise.

RULES OF CONSIDERATION

1. Consideration must be sufficient but need not be adequate (Thomas v Thomas pg 101)
2. Consideration must not be illusory (this occurs when there is no objective way of evaluating the promise) (White v Bluett pg 102)
3. Consideration may be executed or executor but cannot be past (Anderson v Glass pg 103)
4. Exception to the past consideration rule (Pao On v Lau Yiu Long)
5. Consideration may consist of a promise to refrain from taking legal action (Wigan v Edwards pg 104)
6. Performing an existing obligation (at law or under contract) is not good consideration (Collins v Godefray pg 104/Glasbrook v Glamorgan pg 104/Foakes v Beer pg 105)

A Modern Approach: The “Practical Benefit” Test

The general principle that the promisee is not getting anything more than he/she is legally entitled to. If the contract needs to be amended, there must be a consideration. (Williams v Roffey pg 106 – 107/Musumeci v Winadell pg 107)

Promissory Estoppel

Promissory Estoppel is when someone relies on the promise even though they haven't provided the consideration yet. E.g. A promises B \$10 to wash their car. B agrees and buys a bucket and sponge. A says that they don't need the car wash. A may still owe the money for the bucket and sponge. (Walton Stores v Maher pg 109 – 110)

