

LAWS50026: OBLIGATIONS
Exam Notes
Semester 1, 2019

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1. The Law of Obligations

1.1 CONTRACTUAL OBLIGATIONS

For a breach of contract claim:

1. There is a contract
2. Breach of contract
3. Entitlement to remedy

1.2 ELEMENTS OF FORMATION

Agreement	Through offer and acceptance
Consideration	Provided something in return for the promises made
Intention	Intention for their agreement to have legal consequences
Certainty	Terms of their agreement must have sufficient certainty & completeness
Capacity	Both parties must have the legal capacity to make a contract
Formality	Compliance with any applicable formal requirements

Remedies available

- **Damages:** to put the plaintiff in the position they would have occupied if the contract had been performed
- **Specific performance:** available where damages would not provide an adequate remedy
- **Injunction:** to restrain an anticipated breach of contract

1.3 RESTITUTION

Concerned with the obligation to restore unjust gains. Two most common restitutionary actions:

- **Payment for services** - Recover reasonable remuneration for services provided in circumstances that make it unjust not to pay for them
- **Claim for money had and received** - Recover money paid to another party in circumstances that make it unjust to retain the payment

1.4 EQUITABLE OBLIGATIONS

A body of principles and remedies that rectified inadequacies and injustices in the common law. Equity may intervene in some cases on the basis that it would be unconscionable or wrongful.

Equitable estoppel: When one person causes harm to another through inconsistent behaviour where non-contractual promises and representations have been relied upon

1.5 STATUTORY OBLIGATIONS

Wrongs that consist of the breach of a duty imposed by statute.

Misleading and deceptive conduct: Contraventions of the *Australian Consumer Law* s 18: A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

1.6 MAKING A CLAIM

- Does A have enforceable contractual rights against B?
- Can A sue B for misleading conduct?
- Can A assert an estoppel against B?
- Can A sue B in restitution?

2. Agreement

2.1 TEST FOR AGREEMENT

Traditional approach to establishing an agreement is to identify:

1. an offer made by one party; and
2. acceptance of that offer by the other party.

A contract comes into existence when acceptance of an offer has been communicated to the offeror.

Agreement can be inferred without the traditional O+A formula. Agreement can be inferred through analysis of the conduct of both parties. However it is only in exceptional cases should judges be departing from the conventional approach of finding an offer and acceptance (*Gibson*).

2.1.1 Offer

i. The nature of an offer

Conduct only amounts an offer if the offeror indicates that they are prepared to be bound immediately upon acceptance. Whether a statement is an offer is determined objectively, using the reasonable person test.

- The offeror will be bound if it appears to a reasonable person in the offeree's position that the offeror was offering to enter into a contract.

Characteristics of an offer:

- It must be capable of immediate acceptance (*Gibson*)
- It must not be vague and uncertain (*Mobi*)
- It must not be an invitation to treat (*Gibson*)
- It must not be a mere puff (*Carbolic Smoke Ball*)
- It should not use the language of command (Heydon JA in obiter in *Brambles*)

ii. Revocation of offers

An offer can be revoked any time before it is accepted.

In a unilateral contract, this means that revocation is permitted even once performance has begun (*Mobil*).

However revocation is not permitted if performance has been completed or if there is an implied ancillary contract not to revoke.

- Need an actual implied suggestion that they will not withdraw - use factual analysis.

If no implied ancillary promise and they revoke the offer when there has been part performance, turn to estoppel.

2.1.2 Acceptance

i. Bilateral & unilateral contracts

Contract	Acceptance and Performance	Executed or Executory	Examples
Bilateral	Acceptance and performance are two separate events.	Contract is executory = obligations of both the offeror and offeree remain to be performed	<i>Empirnall</i> ; Agreement <i>Brambles</i> ; Agreement
Unilateral	The same conduct constitutes acceptance and performance by the offeree.	Offeree's obligations are executed at the time of formation. Offeror's obligations remain executory.	<i>Carbolic Smoke Ball</i> ; Agreement <i>Mobil Oil</i> ; Agreement.

ii. Conduct constituting acceptance

Acceptance occurs when the offeree gives unqualified assent to the terms of an offer. Law is generally concerned with whether the offeree has manifested an intention to accept the offer, rather than whether they actually intended to accept the offer.

Objective approach: outward manifestation of intention. Whether a reasonable bystander would regard the conduct of the offeree as signalling acceptance.

Subjective approach: true consent of the parties is essential to a valid contract (ie. *consensus ad idem* = agreement on the same thing).

- Objective theory requires an external manifestation of assent; usually a question of fact (*Empirnall*)
- Acceptance can be through silence (*Empirnall*)
- Acceptance can be implied by conduct (*Brambles*)

iii. Method of acceptance

Offerors can stipulate a particular method of acceptance. Valid acceptance must comply with these requirements
In a unilateral contract, communication of acceptance is unnecessary (*Carlill*).

Postal acceptance rule: Where the offeree accepts by post, the offer is deemed to be accepted when the letter is posted (Mentioned in *Brinkibon*)

Instantaneous communications:

The contract is formed when and where acceptance is received (*Brinkibon*); *Electronic Transactions Act 2000* (Vic)

- **s 13A(1):** time of receipt at a designated address is the time when the electronic communication becomes capable of being retrieved by the addressee
- **s 13A(2):** time of receipt at a non-designated address is when both **(i)** the communication has become capable of being retrieved and **(ii)** the address has become aware that the communication has been sent to that address

Designated electronic addresses must be expressly stated; *Guide to the Enactment of the UNCITRAL Model Law on Electronic Commerce* (1996)

- **Art 102(2):** a designated address needs to be specified by the offer, and cannot be an indication of address on a letterhead is not regarded as express designation. When acceptance is not through a designated address, receipt is deemed to be when the offeror retrieves the acceptance.