

LAWS50026: OBLIGATIONS

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Semester 1, 2019

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Agreement

<i>Gibson v Manchester City Council (1979)</i> – House of Lords	
Issue	<i>Offer to treat, formal O+A</i>
Material Facts	<ul style="list-style-type: none"> ● D proposed to sell council house to P in a letter which said: <ul style="list-style-type: none"> ○ <i>If you would like to make formal application to buy your council house, please complete the enclosed application form and return it to me as soon as possible.</i> ● P sent in application form with purchase price left blank ● After election, different party took over the council and decided to only go forward with finalised contracts (which excludes P's contract) ● D claims P does not have valid contract ● Trial & appeal = there was a contract
Held	Appeal allowed. There was no formal offer
Reasoning	<ul style="list-style-type: none"> ● The documents provided show no evidence of a formal offer and acceptance ● The letter from the council merely shows an invitation to a contract, and cannot be regarded as a formal offer
Ratio	Only in exceptional cases should judges be departing from the conventional approach of finding an offer and acceptance.

<i>Carlill v Carbolic Smoke Ball Co (1893)</i> – UK Court of Appeal	
Issue	<i>Unilateral contract, acceptance by performance</i>
Material Facts	<ul style="list-style-type: none"> ● D published an advertisement claiming to pay \$100 to anyone who contracts influenza after using their product ● P used the product and contracted influenza ● D has not paid P and claims the contract is not valid
Held	Appeal allowed There was an offer and acceptance - unilateral contract
Reasoning	<ul style="list-style-type: none"> ● The advertisement showed features of a formal offer ● P demonstrated agreement and consideration by using the product ● D did not require a notification of acceptance from P
Ratio	If other elements are satisfied, it may be a contract if: <ul style="list-style-type: none"> ● A makes an offer to the world; and ● B accepts by performance.

<i>MacRobertson Miller Airline Services v Commissioner of State Taxation (1975)</i> – HCA	
Material Facts	<ul style="list-style-type: none"> ● D claims that P needs to pay stamp duty to D regarding P's ticket fares ● D claims that tickets issued by P are agreements
Held	Appeal allowed. There was no agreement
Reasoning	<ul style="list-style-type: none"> ● The ticket does not represent a contractual agreement ● The agreement starts when the airline allocates a seat for the passenger

Mobil Oil Australia v Wellcome International (1988) – FCA

Issue	<i>Revocation, unilateral contracts</i>
Material Facts	<ul style="list-style-type: none"> ● P offers their franchises (incl D) a 9-for-6 scheme (9 years tenure for 90% performance over the next 6 years) ● P retracts the offer 4 years in, after some companies have already begun the behaviour to accept the terms ● Trial = judge held P to grant D 9 years tenure
Held	Appeal allowed. There was a valid offer and revocation.
Reasoning	<ul style="list-style-type: none"> ● A unilateral contract was offered where the agreement only occurs after behaviour has been completed ● Therefore since D did not complete 6 years, agreement was not reached and no contract exists ● There is no universal rule that you cannot revoke an offer in a unilateral contract. ● Revoked judgment allowing D tenure
Ratio	In a unilateral contract, revocation of an offer is permitted even once performance has commenced.

Empirnall Holdings v Machon Paull Partners (1988) – NSWCA

Issue	<i>Silence as acceptance</i>
Material Facts	<ul style="list-style-type: none"> ● A hired R as a property project manager ● After work commenced, R sent A a draft contract but was neither signed nor returned by A, after being told that A's director does not sign contracts. A continued to pay R for services despite this ● R sent a second letter stating that no response held the assumption that the terms were agreed upon ● Was there a contract in the draft agreement sent by R?
Held	Appeal dismissed <ul style="list-style-type: none"> ● There is an agreement
Reasoning	<ul style="list-style-type: none"> ● A reasonable bystander would regard the conduct of the offeree, including his silence, as signalling that the offer has been accepted ● A took the benefit of the offer with knowledge of its terms and R's reliance on payment being made in return.
Ratio	Silence from a party can constitute as acceptance if that party does not object and continues to accept services where there is a reasonable expectation that those services need to be paid for.

Brambles Holdings v Bathurst City Council (2001) – NSWCA

Issue	<i>Agreement unclear</i>
Material Facts	<ul style="list-style-type: none"> ● R hired A to manage R's waste disposal ● R claimed A retained more money than what was agreed upon through a series of letters and took to trial where R won. A claims there was no binding contract
Held	Appeal dismissed. <ul style="list-style-type: none"> ● There is a contract
Reasoning	<ul style="list-style-type: none"> ● The September letter was an offer ● A accepted the terms of the offer when they raised prices at the request of R ● There was consideration since A gains benefits <p>Heydon JA:</p> <ul style="list-style-type: none"> ● Language of command may make it unlikely to be an offer ● Cannot apply the usual O+A analysis here, but an agreement can still be identified
Ratio	Offers cannot use the language of command.