

Topic 4: Overview of the law of contract: making the contract – agreement

What is a contract?

Contract = an **agreement** that is **enforceable** at law

Different types of contracts:

- Simple contracts/deeds; formal requirements
- Unilateral/bilateral contracts

Agreement

- Agreement

May without identification of offer and acceptance:

***Brambles Holdings Ltd v Bathurst City Council* (2001) 53 NSWLR 153**
(PPT25)

Agreement must be certain and complete, an uncertain or incomplete agreement is unenforceable:

***G Scammell & Nephew Ltd v Ouston* [1941] AC 251** (PPT57)

***Whitlock v Brew* (1968) 118 CLR 445** (PPT57)

- Offer:

A clear statement of the terms on which an offeror is prepared to be contractually bound

A mere request for information:

***Harvey v Facey* [1893] AC 552** (R11 P163, PPT28)

An invitation to treat:

***Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd* [1953] 1 QB 401** (R11 P168, PPT31)

Advertising:

***Grainger & Sons v Gough* [1896] AC 325** (R11 P169, PPT30)

Exception: advertisement may be an offer in certain circumstances

***Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256** (R11 P170, PPT33)

Internet transactions:

***Smythe v Thomas* [2007] NSWSC 844** (R11 P174, PPT35)

- Termination of an offer:

By **revocation** – when the offeror withdraws the offer

Before acceptance:

Is the offeror bound by a promise to keep the offer open for a specified time?

No - can still revoke the offer **any** time before acceptance

***Routledge v Grant* (1826) 130 ER 920** (R11 P177, PPT37)

Separate contract to keep an offer open (an option):

unless offeree gives 'consideration' for the promise to keep the offer open for a certain time (option contract)

***Goldsborough Mort v Quinn* [1910] 10 CLR 674** (R11 P179, PPT37)

Communication of a revocation of an offer by a **reliable** third party can be effective

***Dickinson v Dodds* (1876) 2 Ch D 463** (R11 P178, PPT39)

Revocation of an offer must be communicated

***Byrne v Van Tienhoven* (1880) 5 CPD 344** (R11 P177, PPT38)

Revocation and unilateral contracts: