

## MID SEMESTER NOTES

### Offer

- Applying objective promissory intention test to advertisement (*Carlill; Gibson; Markholm*): is there willingness for the offeror to be contractually bound without further negotiations?
- Yes if promissory language with distinct mode of acceptance – first come first served
- *Harvey v Facey*: no willingness/implied promise to sell = NO OFFER = NO CONTRACT
- *Gibson v Manchester*: ‘may be prepared to sell’ = **invitation to treat** = mere solicitation to induce offers = NO CONTRACT
- *Carlill*: Offer to the world = accepted upon performance = unilateral contract
- *Markholm*: two contract analysis: 1) unilateral process contract intended by invitation to treat in newspaper ad; 2) bilateral contract: the offer of the applicant the council becomes bound to accept = CONTRACT
- *Harvela*: referential bid is not an offer, it is inconsistent with the terms of the invitation. To accept it would be in a breach of contract of the process contract between invitor and legitimate offeree giving a certain price
- *Lefkowitz*: if stated ‘first come first served’ = specific terms = OPERATIVE OFFER validly accepted

### Invitation to Treat

- Accessible by all: auctions, newspaper ads, priced good, sale catalogues
- Unless stated intention to be bound in case of acceptance, not offer
- *Carlill* and *Gibson* are invitations to treat
- *Fisher v Bell*: advertisement on shop windows (invitation); offer when you BUY

Framework contract: paying to keep an offer open for a certain period

Option contract: irrevocable – like the option to buy land after 10 yrs in seminar prep

Process contract: Tendering process to be on letter terms

### Offers Auctions

- Sale of Goods Act 1896 (Qld): Normal rule for bidding: bidder (buyer) makes offer, Binding When accepted by seller
- *Harris v Nickerson*: advert for Auction → auction cancelled → no offer

### Offers and Tenders

- *Blackpool*: if tender submitted before dateline as stated in invitation = entitled to be considered, not automatically accepted

### Revocation of Offers

- *Dickinson*: offer revoked before acceptance, communicated to offeree by third party

# FINAL EXAM NOTES

## Certainty and Completeness

- Must be certain in its legal essentials – **parties, subject matter, price, principal undertakings**
- Uncertainty = unclearness (vague) / incompleteness (bare agreement to agree)
- Complexity ≠ uncertainty
- If there's **intention to be immediately bound (beyond negotiations)**, courts will uphold validity of agreements
- If contracts **largely performed** by 1 or both parties, courts will enforce
- **Severance** = uncertain part ignored, rest of contract enforced – depends on parties' intentions
- **Biotech**: staff scheme *illusory* as unspecified amount of money; *no external standard* of comparative measurement/market criteria to ascertain content → uncertain as *no express or implied promise*

### Reference to non-existent terms

- **Fitzgerald**: *absurd* to say that parties, *having agreed on everything essential, intended* that the agreement be nullified if effect could not be given to cl 8 (that referred to a document that didn't exist and hence *severable*) → valid contract

### "Subject to Finance"

- **Meehan**: finance clause was *condition subsequent* (conditions merely affecting already-formed contract's performance), not conditions precedent (to performance/completion/ formation of contract); condition was inserted for benefit of plaintiff and he has a choice → valid contract

### Terms incompletely expressed

- **Whitlock**: clause void for uncertainty bc there was *no mechanism to find rent and period of lease* (essential); arbitrator could not decide the terms for them; *whole contract void* bc severing would change the nature of agreement

## Consideration

- A bargain (**quid pro quo** - the legal “price” of a promise at the request of the promisor in return for the promise); something of value in the eye of the law, **moving from the promisee**; it may be of some **benefit to the promisor** or some **detriment to the promisee**
- Detriment induced by a promise = consideration
- Consideration ≠ past consideration, illusory consideration, performance of pre-existing duties

### Past Consideration

- **Roscorla**: Buying the house was no consideration as the transaction preceded the giving of the warranty by defendant → no consideration for warranty

### Exception to Past Consideration Rule

- Act done at promisor’s request, parties understood at the start that act was ultimately to be paid for, payment legally enforceable  
→ **Re Casey’s Patents**; **Pao On v Lau Yiu Long**

### Consideration to be in exchange for promise

- **Beaton v McDivitt**: B’s consideration was farming the land at McD’s request, but contract frustrated bc 7 years passed and land had not been rezoned in accordance to the parties’ expectation at the time of contract formation; **dissent**: B had given no consideration for McD’s promise to transfer the land; lack of specificity as to what B was required to do; extremely one-sided nature of arrangement in favour of B.
- **Aus Woollen v Cth**: No relation of quid pro quo; no ‘request’ of invitation could be found on Commonwealth’s party for P to buy the wool → no consideration

### Consideration must move from the promisee

- But it need not move to promisor; privity rule: only a person who is a party to a contract can sue on it

## Promissory Estoppel

- Estoppel: a doctrine that **enforces non-contractual (gratuitous) promises**, need not be supported by consideration
- **Promissory estoppel**: to prevent an **unjust departure by the promisor** from an assumption or expectation held by the promisee, as a result of the promisor's promise, that, unless the assumption were adhered to, or the expectation fulfilled, would **cause detriment/material disadvantage to the promisee**

### Promissory Estoppel as a restraint on the enforcement of contractual rights (by promisor)

- **High Trees**: promised reduction was temporary only → *bound to pay amount of original rent as full occupancy resumed*; rent forgone between 1940-1945 not payable as it would have been *prevented in equity from acting inconsistently* with its promise (i.e. suing)
- **Je Maintiendrai**: cannot demand back rent

### Promissory Estoppel to create rights that didn't exist (offensive use)

- **Waltons Stores**: defendant *estopped from denying implied promise to complete contract formalities*; W knew M was exposed to detriment, *unconscionable of M's inaction* to induce M to continue in their assumption – W had a duty to *communicate within a reasonable time*

### To establish an equitable estoppel, it is necessary for P to prove that:

1. **P assumed** that a particular legal relationship **then** existed between P and D, or
2. **P expected** that a particular legal relationship **would** exist between them and, in the latter case, that D would not be free to withdraw from the expected legal relationship;
3. **D induced** P to adopt that assumption or expectation;
4. P acts or abstains from acting in **reliance** on the assumption or expectation;
5. **D knew** or **intended** him to do so;
6. **P's** action or inaction will occasion **detriment** if the assumption or expectation is not fulfilled (**silence can induce** adoption of an assumption); and