

## **Table of Contents**

Terminology of contract law.....	2
<b>Topic 1: Contract Formation .....</b>	<b>3</b>
1. Agreement.....	3
2. Consideration .....	Error! Bookmark not defined.
3. Intention to Create Legal Relations .....	Error! Bookmark not defined.
4. Certainty.....	Error! Bookmark not defined.
5. Formalities/ Past Performance.....	Error! Bookmark not defined.
<b>Topic 2: Parties.....</b>	<i>Error! Bookmark not defined.</i>
1. Capacity.....	Error! Bookmark not defined.
2. Privity .....	Error! Bookmark not defined.
<b>Topic 3: Terms of the Contract.....</b>	<i>Error! Bookmark not defined.</i>
1. Express Terms .....	Error! Bookmark not defined.
2. Construing Terms.....	Error! Bookmark not defined.
3. Implied Terms (Gap – Fillings) .....	Error! Bookmark not defined.
<b>Topic 4: Termination .....</b>	<i>Error! Bookmark not defined.</i>
1. Discharge By Performance .....	Error! Bookmark not defined.
2. Termination By Agreement .....	Error! Bookmark not defined.
3. Termination for Breach .....	Error! Bookmark not defined.
4. Termination for Delay .....	Error! Bookmark not defined.
5. Termination for Repudiation.....	Error! Bookmark not defined.
6. Discharge By Frustration .....	Error! Bookmark not defined.
<b>Topic 5: Vitiating Factors.....</b>	<i>Error! Bookmark not defined.</i>
1. Misinformation.....	Error! Bookmark not defined.
Misrepresentation.....	Error! Bookmark not defined.
Australian Consumer Law s 18 .....	Error! Bookmark not defined.
Mistake.....	Error! Bookmark not defined.
2. Abuse of Power.....	Error! Bookmark not defined.
Duress.....	Error! Bookmark not defined.
Undue Influence .....	Error! Bookmark not defined.
Unconscionable Conduct.....	Error! Bookmark not defined.
Statutory Unconscionable Conduct.....	Error! Bookmark not defined.
Third Party Impropriety.....	Error! Bookmark not defined.
Wives' Equity.....	Error! Bookmark not defined.

**Topic 6: Remedies ..... Error! Bookmark not defined.**

1. **Termination/Recession ..... Error! Bookmark not defined.**
2. **Election..... Error! Bookmark not defined.**
3. **Actions for Debt..... Error! Bookmark not defined.**

**Terminology of contract law**

- **Offeror:** Person who makes the offer
- **Offeree:** The party that receives the offer
  - o Can elect to accept/reject or counteroffer
- **Counteroffer:** Occurs when a different proposal made by the Offeree to the Offeror
  - o In respect to the counteroffer, the original titles are swapped
- **Formal contracts:** Arise where the parties have recorded their agreement in a written document
  - o Sometimes called a deed
- **Simple/Informal contracts:** Arise when the parties do not record their agreement in a formal written document
  - o **Can be made orally or in writing (or both)**
- **Bilateral Contracts:** Arise where the parties make promises to each other
  - o All parties' promises are executory
  - o All parties are to perform their promises (contractual obligation) at some point after the agreement is formed
- **Unilateral Contracts:** Arise when only one Party (offeror) makes a promise, and the other party (offeree) accepts by performing the tasks
  - o Offeree's promise (contractual obligation) has been executed
  - o Offeror's promise remains executory

## Topic 1: Contract Formation

- Start with the 4 essential elements of formation (must be present in order for a legally binding contract to come into existence)
  1. Agreement (Offer and acceptance)
  2. Consideration
  3. Intention
  4. Certainty (Clear what the parties have agreed)

### 1. Agreement

#### 1.1 Offer

##### 1. Introduction

##### Nature of an Offer

- Must be made to another/others
- Can be an individual/group or the public/world at large

##### How to we decided whether an offer has been made

- The word 'offer' is not conclusive of existence of offer
- The courts use the objective standard
  - o Asking whether a reasonable person in the offeree's position would perceive that an offer was intended (*Cooke J per Meates v Attorney-General*)
- The facts of any given scenario can lead to consideration of whether an offer has been made
  - o Contract can someone be made without an identifiable offer and acceptance

- What types of manifestations (statement or conduct) constitutes an offer?
- What of the offeror's outward manifestation is different from his or her actual intentions?

### *Carlil v Carbolic Smoke Ball Company*

- **Facts:** Advertisement in a newspaper saying they will provide 100 pounds will be paid if the Carbolic Spoke Ball who contracts the influenza, cold etc. after having used the ball three times daily for two weeks. The plaintiff purchased the item and used as instructed yet still contracted influenza
- **Defendant's argument:** Offer to the whole population and as soon as she had read it, she followed the instructions and thus placing her in a contract with the company
- **Response:** Was not an offer, was not legally binding (no promise), did not communicate her acceptance of the offer, lack of consideration to support the contract, the advertisement was vague and so was not a contract
- **Court:** Advertisement contained a promise and therefore an offer to anyone who performed the instructions, the deposit to the bank showed certainty, why would they act this way if they did not intend to carry out the reward. Unilateral contract: she performed the terms of the contract as presented in the advertisement.

### *Gibson v MCC CASE*

- **Facts:** Gibson applied to the council asking the price and mortgage terms of his council house
  - Council wrote back saying that they "may be prepared to sell the house for 2,180 pounds" but he would have to complete the enclosed application to make formal application
  - Gibson completed the form and accepted the purchase price, except tried to express that the price should be cheaper due to a fault pathway, however closed with "I now wish to purchase my house"
  - Before contracts were prepared, change in the council and failed to uphold Gibson's request
  - Gibson argued that they had a binding contract to uphold

- **Gibson's Argument:** The council's letter was an offer to sell, and his response was an acceptance of the offer, therefore, creating a binding contract
- **Defendant's argument:** Return of application was the offer (he was offering to buy), offer was never accepted by the council and therefore, no binding contract
- **Court:** Whether in the correspondence between the party whether there was a legally enforceable contract for the sale of the house
  - o Words in the letter by the counsel "may be prepared" and "if you would like to make a formal application", meant that this was not an offer to sell but rather an invitation to treat
  - o Therefore, no contract