

# 1. Agreement (Offer and Acceptance)

## SUB ISSUE #1: Has an OFFER been made between X and Y?

### LAW

An offer is a definite promise to be **bound on clear terms, inviting acceptance without further negotiation** (*Gibson v Manchester City Council*). It is judged **objectively**, with **language being key** (*Carlill; Gibson*). A valid offer requires a **quid pro quo** (*Australian Woollen Mills v Cth*).

<only insert if you think it might not be an offer as fit category below>

An offer cannot be:

- mere puff (*Carlill v Carbolic Smoke Ball*). <eg advertisement>
- too vague or uncertain. Language must not be equivocal (*Mobil v Wellcome*) (“I will sell for right price”)
- use the language of command (*Brambles Holding Ltd v Bathurst City Council*)  
“Buy now”
- an invitations to treat (*Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd*)

### APPLICATION

In this case,

<insert relevant facts a or b>

- a. Applying an objective test an offer **DOES** exist as  
<select appropriate>
  - i. there was an **intention to be bound** <insert eg of language eg “my offer is”>.
  - ii. There was a definite promise to be **bound on specified terms** <insert facts that show this eg price, subject matter, date> without need for further negotiations
  - iii. there is an **exchange of promises** <insert facts that show quid pro quo eg \$ for property>
- b. Applying an objective test an offer **DOES NOT** exist as  
<select appropriate – can choose more than 1 >
  - i. there was **no intention to be bound** <insert eg of language that was vague or indicates further negotiations will occur > and the offer represented an intention to treat / mere puff / advertisement.
  - ii. There was a no promise to be **bound on specified terms** <insert facts that show this eg missing details of price >
  - iii. It was implied further **negotiations were required** < language vague eg “I will advise you of the precise date in the near future.”>

- iv. there is an not an **exchange of promises** <insert facts that show there was not quid pro quo >

## CONCLUSION

In this case,

<insert applicable a or b based on above application>

- a. It can be concluded that an offer **DOES** exist between X and Y.
- b. It can be concluded that an offer **DOES NOT** exist between X and Y.
  - I. It was implied further negotiations were required < language vague eg *"I will advise you of the precise date in the near future."*>
  - II. there is an not an **exchange of promises** <insert facts that show there was not quid pro quo

## SUB ISSUE #2: Is the offer still **OPEN** to be accepted, or has it been revoked, lapsed or extinguished?

### LAW

An offer can be **revoked before acceptance unless consideration** is given (Goldsbrough Mort).

**Revocation must be communicated** (Dickinson v Dodds).

**Rejection or counter-offer ends the offer** (Tinn; Hyde), but a **request for information does not** (Stevenson).

### APPLICATION

In this case,

<insert relevant facts a or b>

- a. The offer remains **open** as it was not revoked, nor did it lapse or was it extinguished <insert if relevant... **a request for information** does not constitute a rejection>.
- b. The offer was <select revoked OR lapsed OR extinguished, followed by relevant facts>

## CONCLUSION

In this case,

<insert a or b based on application>

- a. The offer remains **open** and therefore is available to be accepted.
- b. The offer cannot be accepted. Therefore, there is no valid agreement in this case. **<DO NOT PROCEED TO ACCEPTANCE. FINISH HERE>**

## SUB ISSUE #2: Has an offer been **ACCEPTED**?

## LAW

Acceptance is an **unqualified agreement to an offer**, judged **objectively** (Brambles; Empirnall). It is generally effective **when communicated** (Brinkibon)  
<select ONE based on facts >

### a. Verbal acceptance provided

Verbal acceptance is sufficient acceptance of the offer on that basis that a reasonable person would conclude that there was a concluded bargain (Brambles Holdings V Bathurst City Council), conduct must be aligned to the acceptance.

### b. No formal written acceptance (Silence)

**Silence** does **not constitute acceptance** of the offer (Felthouse v Bindley) Acceptance can **be implied by conduct** if there is no formal acceptance of the offer (Empirnall v Machon Paul). There is no need for a consensus as to the terms of a contract (Fitness First (Australia) Pty Ltd v Chong). "Where no offer and acceptance can be identified, it is relevant to ask whether an agreement can be inferred – mutual assent has been manifested and whether a **reasonable person in the position of each party would think there was a concluded bargain**" (Brambles Holdings V Bathurst City Council).

### c. If acceptance was provided in writing

If a **method/ mode** is specified by the offeror, the acceptance must use that method. If **not designated** method, **any method** will be effective (Manchester Diocesan Council for Education v Commercial and General Investments Ltd). **When acceptance is received, acceptance is communicated** (Latec Finance Pty Ltd v Knight).

The timing of acceptance will depend on the method of communication. For postal acceptance, accepted when posted (Henthorn)(Brinkibon Ltd v Stahag Stahl Und mbH).

For **email and other electronic forms**, acceptance is when it has been dispatched, that will be either:

- when it is no longer in the control of the sender (**when message sent**) **OR**
- if **it fails to leave the systems**, it is dispatched (accepted) **when received** (eg when email arrives) (s13 Electronic Transactions Act 2000).

<Acceptance is when person accepting hits "send" unless IT systems stuffs up then when received>

For acceptance **via post**, the postal where acceptance is deemed to be effective at the time and place that the letter of acceptance is posted (Henthorn v Fraser) "acceptance is completed as soon as it is posted".

## APPLICATION

In this case,

<insert relevant facts a or b>

- a. The offer **was accepted** by X. There was unqualified assent to the terms of the offer when X accepted the offer <insert facts that support acceptance eg language /posted letter /sent email>. The acceptance was communicated <insert facts that detail form of communication and timing base on email or post>.

- b. There was **no formal acceptance** of the offer **but** applying an **objective test a reasonable person** would conclude **based on the conduct** of X that there **was acceptance** <insert facts that detail conduct/action/behaviour that implies acceptance>.
- c. There was **no acceptance** of the offer as <select relevant>
  - i. There was **no communication** of the offer and silence doesn't mean acceptance, therefore no acceptance.
  - ii. The **communication was not sufficient** as <insert facts that show it was late, or not correct method>.

# 5. Privity

## ISSUE Have the requirements of privity been satisfied?

### INTRO?

A valid contract creates rights and obligations between the parties who made it (Taddy v Sterious; Tweddle v Atkinson). In this case, assuming a valid agreement exists, the issue is whether a **third party** can enforce the contract or is bound by its terms under the doctrine of privity

### LAW

The doctrine of privity of contract states that only parties to a contract can enforce its terms or be bound by obligations under it (Taddy v Sterious; Tweddle v Atkinson). This principle generally prevents third parties from enforcing contractual promises made for their benefit, except in specific situations.

< select if relevant>

- **3<sup>rd</sup> party beneficiary**
- **Acting as “agent”**

<p><b>Joint promise</b></p> <p><b>EG</b> X and Y as joint recipients” ”payment to X and Y”</p> <p><b>3<sup>rd</sup> party beneficiary</b> “for the benefit of X” “X shall receive benefit”</p>	<p><b>&lt;Write this&gt;</b></p> <p>In the case of <b>joint promise</b>, the parties must be <b>directly named in</b> the contract as <b>recipients</b> of a promise. They must be active parties to the agreement, <b>paying consideration</b>. (Coulls)</p> <p>In comparison, a <b>third-party beneficiary</b> is not a direct party to agreement but intended to benefit from it. <b>Jackson v Horizon Holidays Ltd</b> The third party did <b>not provide any consideration</b> for the contract.</p> <p><b>Joint Promise:</b> Where <b>X and Y</b> are both named recipients of a promise (e.g., “payment to X and Y”), they must be active parties in the</p>	<p>Look For: Who provided consideration? Does the contract specify that the third party is meant to benefit? Did they pay consideration?</p> <p><b>&lt;Write this&gt;</b></p> <p>In this case, the contract involved <b>&lt;insert details of parties and promises&gt;</b>. <b>&lt;select&gt;</b></p> <table><tr><td><p><b>Joint promise (mentioned in contract and paid \$)</b></p></td><td><p><b>X</b> who is a joint promise as they are actively involved in agreement and named as recipient of promise. On that basis the elements of privity are satisfied and <b>X</b> can <u>sue to enforce the promise</u>.</p><p><b>✔ Privity</b> <b>X and Y</b> are named as joint recipients in the</p></td></tr></table>	<p><b>Joint promise (mentioned in contract and paid \$)</b></p>	<p><b>X</b> who is a joint promise as they are actively involved in agreement and named as recipient of promise. On that basis the elements of privity are satisfied and <b>X</b> can <u>sue to enforce the promise</u>.</p> <p><b>✔ Privity</b> <b>X and Y</b> are named as joint recipients in the</p>
<p><b>Joint promise (mentioned in contract and paid \$)</b></p>	<p><b>X</b> who is a joint promise as they are actively involved in agreement and named as recipient of promise. On that basis the elements of privity are satisfied and <b>X</b> can <u>sue to enforce the promise</u>.</p> <p><b>✔ Privity</b> <b>X and Y</b> are named as joint recipients in the</p>			

	<p>contract who have provided consideration. This satisfies privity, allowing them to enforce the contract. (<i>Coulls v Bagot's Executor &amp; Trustee Co</i>).</p> <p><b>Third-Party Beneficiary:</b> A third party benefits from the contract without providing consideration or being a direct party (e.g., "for the benefit of X" or "X shall receive benefit"). Such a third party generally cannot enforce the contract. (<i>Jackson v Horizon Holidays Ltd</i>).</p>	<p>contract (e.g., "payment to X and Y") and have provided consideration by actively participating in the agreement, then privity exists. As in <i>Coulls v Bagot's Executor</i> (1908), joint promisees who provide consideration can sue to enforce the contract.</p>	
		<p>3<sup>rd</sup> part beneficiary (not pay \$)</p>	<p>X is a third party beneficiary and therefore <u>cannot sue</u> to enforce the promise.</p> <p><b>✗ Not Privity</b> X is a third-party beneficiary (e.g., the contract states "for the benefit of X" or "X shall receive benefit") but did not provide any consideration or become a party to the contract, then X generally cannot enforce the contract. This was confirmed in <i>Jackson v Horizon Holidays Ltd</i> (1975), where a third party beneficiary was denied enforcement rights due to lack of consideration and privity.</p> <p>CONCLUSION</p> <p>Whether X can enforce the contract depends on their status as joint promisee with consideration (<i>Coulls</i>) or third-party beneficiary without consideration (<i>Jackson</i>).</p> <p><input checked="" type="checkbox"/> Privity (joint promise with consideration) ✗ No privity (third-party beneficiary without</p>

			consideration)
<b>Agent</b>  <b>Acting as “agent”</b>	<p>&lt;Write this&gt;</p> <p><b>The privity rule does not apply</b> if a person promised a benefit under a contract can show that one of the parties involved in the contractual negotiations entered into the contract as his or her <u>agent</u>.</p> <p>In the case of <b>acting as an agent</b> they must have authority to do so (<b>Port Jackson Stevedoring</b>). It is necessary to show that the principal expressly or impliedly consented to the agent acting on their behalf and that the agent was not solely acting on her/her own behalf (<b>Port Jackson Stevedoring</b>), and principal had knowledge that agent was acting for them (<b>Trident</b>)</p>	<p>Look for &lt;Write this&gt;</p> <p>In this case the contract involved a 3<sup>rd</sup> party acting as an <b>agent</b>, and <b>&lt;does have OR does not have&gt;</b> the authority to act on <b>X</b> behalf. <b>this case...</b></p> <div style="border: 1px solid black; padding: 5px;"> <p><input checked="" type="checkbox"/> <b>Privity – authority to be agent and acting in that capacity (not from personal perspective)</b></p> <ul style="list-style-type: none"> <li>In this case, a third party (<b>name</b>) acted as an agent in the contractual negotiations (<b>e.g., negotiating on behalf of a company, signing contracts with client authority</b>).</li> </ul> <p>🧠 Legal Principle: Where a party acts as an agent with the principal’s express or implied authority, and the principal consents and knows the agent is acting on their behalf (<b>Port Jackson Stevedoring; Trident General</b>), privity exists, allowing enforcement by the principal.</p> </div> <div style="border: 1px solid black; padding: 5px;"> <p><b>✗ Not Privity – no authority</b></p> <p><b>✗</b> If the agent lacks <b>authority (e.g., acts without consent, exceeds given powers)</b>, no privity arises, and the principal cannot enforce the contract.</p> </div> <p><input checked="" type="checkbox"/> Therefore, if authority is established, privity applies; if not, it does not.</p> <p><input checked="" type="checkbox"/> <b>Privity – authority to be agent and acting in that capacity (not from personal perspective)</b></p> <p><b>✗ Not Privity – no authority</b></p>	
<b>3<sup>rd</sup> party not stipulated in contract (eg RSPCA)</b>	<p>A <b>non-contracting party</b> can obtain privity to a contract and enjoy a benefit conferred in the contract to them if (<b>Port Jackson Stevedoring</b>) if the contract</p>	<p>The contract involved a 3<sup>rd</sup> party acting as a <b>noncontracting party</b>, and it <b>&lt;is clear OR unclear&gt;</b> that there is a benefit intended to be conferred on them as <b>&lt;insert facts that show this&gt;</b>.</p>	

	<p>makes it clear that there is a benefit intended to be conferred on the noncontracting party.</p>	<p>However a third party acting as a <b>noncontracting party</b>, is not entitled to enforce the contract.</p> <p>In this case the third party &lt; insert NAME&gt; cannot seek &lt;insert concerns – are they seeking payment?&gt; as they are not a party to the contract</p> <p><b>✗ Not Privity</b></p>
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## CONCLUSION

In conclusion, the doctrine of privity **would / would not apply** so that the third party <can / cannot> seek to enforce the contract and <demand OR obtain payment>.