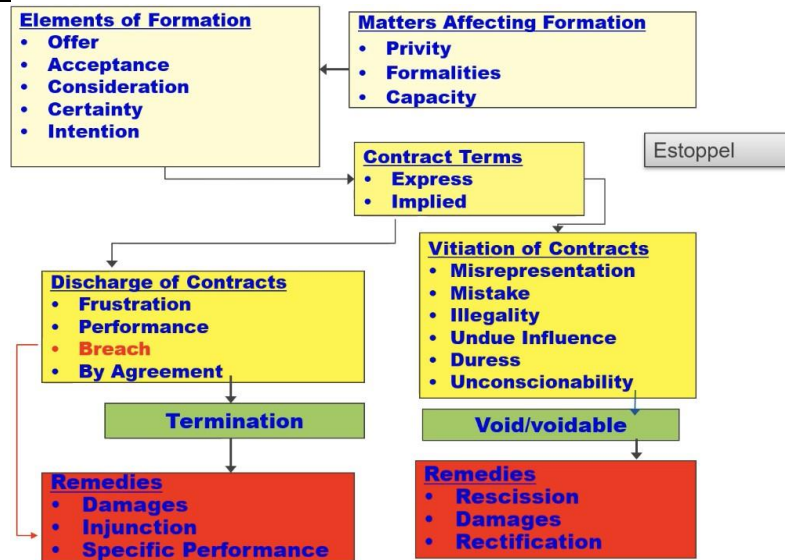


TOPIC 1 – INTRODUCTION TO CONTRACT LAW

WHAT IS A CONTRACT?

A **contract** is an agreement or set of promises that the law will enforce (i.e. for breach of which the law will provide a remedy)

CONTRACT LAW MAP



IS THERE A CONTRACT?

This requires the establishment of 4 material elements:

1. An agreement between the parties, often expressed as ‘offer’ and ‘acceptance’
2. Consideration → each party must give something in return for the other’s promise
3. An intention to create legal relations between the parties
4. The agreement must be complete and certain (i.e. there should not be any doubt as to exactly what each party is obliged to do in terms of the agreement)

Other aspects of affecting formation:

1. Certain formalities required for some types of contract (e.g., in writing and signed)
2. A party must have capacity to contract to be bound (e.g., can’t contract with an animal or child)
3. Privity → only parties to the contract are bound, not someone outside of the contract

TOPIC 2 – OFFER → STEP 1

WHAT IS AN OFFER?

AGREEMENT

- The traditional approach to establishing agreement is through identifying an offer and a corresponding acceptance
 - **Offeror:** Offers are made by one party
 - **Offeree:** Offer accepted by the other party
 - **Agreement:** occurs when acceptance is communicated by the Offeree to the Offeror
- There are limits to this approach and there may be agreement without offer and acceptance

BILATERAL V UNILATERAL CONTRACTS

Bilateral contract – This is most contracts

- 2 parties to the contract “A” and “B”
- Both parties exchange a promise or set of promises for each to do something in the future (e.g. A promises to transfer ownership of his car to B. In return, B promises to pay \$100 to A)
- Both A and B’s promises are **executory** (i.e. to be performed at some point after the contract is formed)

Unilateral contract

“If you do X, then I will do Y” → example of a unilateral contract

- Typically reward scenarios
- 2 parties to the contract “A” and “B”
- Only 1 promise is made (e.g., A promises to pay \$100 to B if B finds A’s lost puppy)

- B accepts A's offer when B performs the stipulated task.
- Contract is formed at same time B performs their obligations under it (no need to give notice of acceptance prior to performance)
- At time contract is formed, A's obligation/promise is **executory** and B's obligation has been executed (i.e. already performed) and the offeree has no further obligations
 - **Carlill v Carbolic Smoke Ball; Mobil Oil v Wellcome**



DEFINITION OF OFFER

- **Offer:** an indication or proposal by one person (the offeror) to another (the offeree) of a willingness to contract on certain, clear (disclosed) terms. This proposal only amounts to an offer if the person making it (the offeror) indicates that an acceptance is invited and that acceptance will conclude the agreement between the parties → **Carlill v Carbolic Smoke Ball**
- **Objective test**
 - The view of a reasonable person in the offeree's position
 - *Would a reasonable person, in the position of the offeree, think that an offer was intended and would be legally binding on acceptance?*

MERE PUFFERY

- A mere puff is not an offer → it is exaggerated sales talk
- Reasonable consumer would not believe it
 - *E.g., red bull gives you wings*

INVITATION TO TREAT

OFFER DISTINGUISHED FROM INVITATION TO TREAT

- An invitation to treat is an invitation to others to make an offer or enter into negotiations. It is not an offer because it lacks sufficient indication of willingness to be bound
 - **Gibson v Manchester Council**

Typical categories of Invitations to Treat

- Most advertisements (e.g., catalogues)
 - But note non-contractual implications (e.g., misleading and deceptive conduct)
- Goods displayed in shops → **Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern)**
- Goods offered for sale online → **S 14B Electronic Transactions Act (Vic) 2000**
- Property declared "on the market" at auctions → **AGC (Advances) Ltd v McWhirter**
- Requests for tenders → **Harvela Investments Ltd v Royal Trust Co of Canada; Hughes Aircraft Systems International v Airservices Australia**

GOODS DISPLAYED IN SHOPS

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd

- Goods displayed in self-service shops are not through that display alone considered an offer. In relation to purchases made in everyday stores, the offer is made by the **customer**, when they take the goods to the cash register, and then acceptance occurs at the cash register by the vendor

GOODS OFFERED FOR SALE ONLINE

S 14B Electronic Transactions Act (Vic) 2000 – Invitation to treat regarding contracts

1. A proposal to form a contract made through one or more electronic communications that:
 - a. Is not addressed to one or more specific parties (*addressed to general parties*); and
 - b. Is generally accessible to parties making use of information systems (*e.g., not individual emails*)

Is to be considered as an invitation to make offers, unless it clearly indicates the intention of the party making the proposal to be bound in case of acceptance.

2. Sub-s (1) extends to proposals that make use of interactive applications for the placement of orders through information systems

PROPERTY DECLARED ON THE MARKET

SAMPLE CASES

OFFER CASES

GIBSON V MANCHESTER COUNCIL - OFFER

FACTS	<ul style="list-style-type: none"> • Council letter to Gibson proposing to sell council housing (of which G is a tenant) • <i>The Corporation (council) may be prepared to sell the house to you for £2,180. If you would like to make a formal application, please complete the enclosed application form.</i> • Gibson completed the application form and returned the form to the Council • Local government election - new local council stopped all proposed sales • Gibson sought to enforce the sale (by specific performance)
ISSUE	Was this an offer to sell for £2,180? Was there acceptance?
DECISION	<ul style="list-style-type: none"> • House of Lords → favour of Council (unanimous) • No reason here to depart from conventional approach of construing the documents to identify a clear offer and acceptance <p>“May be prepared to sell” and “request for formal application” were fatal and make it impossible to construe this letter as a firm contractual offer</p>

CARLIL V CARBOLIC SMOKE BALL - OFFER

FACTS	<ul style="list-style-type: none"> • £100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts a cold, after having used the ball three times daily for two weeks. • £1000 is deposited with the Alliance Bank, showing our sincerity in the matter • Mrs Carlill used the smoke ball as directed for four weeks and still contracted the flu • Claimed £100 reward but carbolic refused to pay <p>Carlill sued for breach of contract</p>
ISSUE	Was there a unilateral contract → she accepted the offer by doing the act of using the ball 3 times a day for 4 weeks → at the time the contract is formed, she has no outstanding obligations - only Carbolic has the outstanding obligation to pay her £100.
DECISION	<p>Mere Puff Held: objective test: would it appear to a reasonable member of the public that an offer was intended? Yes - not a puff because why else was the £1000 deposited?</p> <p>Making an offer to the world at large Held: it is possible to make an offer to the public at large, that's what unilateral contracts are</p> <p>Too vague no time limit Held: advert was not too vague or uncertain: time limit would be by reference to a reasonable time</p> <p>No communication of acceptance Held: acceptance occurs by performance in unilateral contracts. Acceptance need not be notified before performance</p> <p>No consideration Held: consideration was advantage to Carbolic gained by use of the ball to promote sales and determinant to Carlill in her inconvenience in using the ball</p>

PHARMA SOCIETY V BOOTS CHEMIST – I.T.T GOOD IN SHOP

FACTS	<ul style="list-style-type: none"> • Pharmacy and Poisons Act made it illegal to sell drugs except under supervision of a registered pharmacist. Pharmacists were present at check-out but not the shelves
ISSUE	<ul style="list-style-type: none"> • Was having the goods on the shelf an offer capable of acceptance by taking them off the shelf? If so, Boots would have been in breach of the legislation
DECISION	<ul style="list-style-type: none"> • The goods being displayed on the shelves was an invitation to treat • Customers make an offer to buy the goods at the checkout – pharmacist can accept or reject <p>Unworkable to say that taking the goods off the shelf was an acceptance of an offer, this implies the customer could not have a change of mind and return the goods to the shelf before paying for them</p>

AGC V MCWHIRTER – AUCTIONS: Vendor rejected highest bid. That's ok because vendor had not made an offer to sell despite auctioneer declaring the property “on the market.”

HARVELA INVESTMENTS V ROYAL TRUST CO – I.T.T TENDERS

FACTS	<ul style="list-style-type: none"> • Royal Trust sent telex to two other shareholders “inviting” them to make a “single offer” for its shares in A Harvey & Co Ltd • TELEX: From Royal Trust to A Harvey & Co Shareholders: <ul style="list-style-type: none"> • “We invite you to submit any offer you wish to make” → Invitation to treat
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	<ul style="list-style-type: none"> • “If any offer made by you it the highest offer received, <u>we bind ourselves to accept</u>, provided it complied with the terms” → Offer • Harvela submitted an offer of \$2,175,000 • Outerbridge’s offer was for \$2,100,000 or \$101,000 in excess of any other offer
ISSUE	<ul style="list-style-type: none"> • Was this an offer?