

# Obligations Case Notes

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## 2. Agreement

Gibson v Manchester City Council – House of Lords	
Issue	Distinguish invitation to treat from offer
Facts	Conservative Party had a scheme where tenants of council houses could purchase their homes. Gibson receives in mail an alleged offer form, which he fills out and accepts. Manchester then says the offer was no longer valid.
Held	This was an invitation to treat rather than an offer
Reasoning	Weak wording in 'may be prepared to sell' – not a formal contract It is an invitation to make an application to buy
Ratio	A brochure that invites an application is not an offer

Carlill v Carbolic Smoke Ball Company – English and Wales Court of Appeal	
Issue	Acceptance by performance in unilateral contracts
Facts	Carbolic promised 100 pounds to anyone who used their smoke balls according to instruction, and nonetheless caught influenza. The advert stated the company deposited 1,000 pounds into a bank account to demonstrate their seriousness. Carlill saw the advert, used the ball as directed, but still caught influenza. The company refused to pay, denying that there was an enforceable contract.
Held	This was an enforceable contract
Reasoning	Express promise was binding because there was a deposit and consideration was exchanged This was an open contract – offer made to anyone who performed the condition
Ratio	A contract can be binding if one party makes an offer to the world and another party accepts it by performance

Mobil Oil Australia Ltd v Wellcome International Pty Ltd – Federal Court of Australia	
Issue	Revocation in unilateral contracts
Facts	Mobil said any dealer who performed at a set level for 6 years would be given a franchise for 9 years at no cost. Mobil stopped this scheme so dealers could no longer claim this benefit.
Held	The revocation of the scheme was valid
Reasoning	Any dealer who had not yet completed 6 years of performance had not completed the performance required for the contract to exist Vague and uncertain language 'we have more work to do', 'maybe'
Ratio	Can revoke unilateral contract after performance commences unless there is an implied promise not to revoke

Empirnall Holdings Pty Ltd v Machon Paull Partners Pty Ltd – NSW Court of Appeal	
Issue	Acceptance by silence in contract
Facts	Empirnall hired Machon to do work related to property development, and asked Machon to act as project manager, Machon

	agreed. Machon sent a contract to Empirnall, then sent an email 'we are proceeding in understanding that the conditions of the contract are accepted by you...'
Held	This was a valid contract
Reasoning	A reasonable bystander would view Empirnall's silence as their acceptance of Machon's performance Empirnall had already benefitted from the offer McHugh: 3 step approach <ol style="list-style-type: none"> <li>1. Reasonable opportunity to reject offer</li> <li>2. Takes benefit of it</li> <li>3. Indicate they were to be paid in accordance with offer</li> </ol>
Ratio	Silence can be acceptance if the party does not object and continues to accept services with the reasonable expectation that those services need to be paid for

Brambles Holdings v Bathurst City Council – NSW Court of Appeal	
Issue	Is there agreement in these letters?
Facts	Contract for Brambles to manage Councils' solid waste disposal depot. Brambles started to receive liquid waste at the depot, charged for this and kept the money. Around this time, they enter into a 2nd contract that requires Brambles to pay the Council some profits from the acceptance of commercial waste.
Held	
Reasoning	Apply global perspective rather than offer + acceptance The language of command is not compatible with requirements of an offer Heyden: Acceptance by manifestation of mutual assent or conduct <ul style="list-style-type: none"> <li>• If the traditional approach is not suitable, then it is relevant to ask: Can an agreement be inferred in all the circumstances?</li> </ul>
Ratio	

Brikibon Ltd v Stahag Stahl... - House of Lords	
Issue	Postal acceptance rule
Facts	Brinkibon wished to purchase steel from Stahag, exchanges telexes throughout the course of negotiation, one of which accepted an offer from Stahag. Stahag did not perform this contract.
Held	The acceptance via telex did form the contract
Reasoning	'the contract was made when and where the acceptance was received'
Ratio	If offeror indicates willingness to receive acceptance via telex, then the acceptance is valid once the telex is sent Acceptance is effective upon communication and receipt Not Applicable to emails?