CONTRACT FORMATION

- **Definition**: A contract is a **legally enforceable agreement** between two or more parties (people or companies).
- **Legal effect**: Parties become legally obliged to honour the promises.
- **Discharge of obligations**: Usually by **voluntary performance**.
- **Breach**: If a party fails to perform, they are in **breach of contract**. Remedies include:
    - **Damages**: Monetary compensation for loss.
    - **Specific performance**: Court orders the breaching party to fulfil their promise.
    - **Injunction**: Court orders a party to stop breaching behaviour.

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3. The Objective Approach

- Courts assess contract formation **objectively**, not subjectively.
- **Not about actual intention** ("Did the party secretly want to be bound?").
- **Instead**: Would a **reasonable person**, in the shoes of the other party, interpret the words and conduct as intending to be legally binding?
- Example: If someone shakes hands on a deal and says "we have a deal," even if internally they didn't intend to commit, the law may hold them bound.

Key principle: Behaviour and communication matter more than hidden intentions.

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4. Executory/Bilateral vs. Unilateral Contracts

Bilateral Contracts

- **Definition**: Both parties make **promises**.
- Formed at the exchange of promises.
- Each party has obligations to perform later.
- Example: A builder promises to construct a house, homeowner promises to pay $500,000. Both still owe performance.

Unilateral Contracts

- **Definition**: Only **one party's performance** remains outstanding after acceptance.
- Formed only when the requested act is performed.
- Example: "$1,000 reward if you return my lost dog." The offeror promises payment, but the offeree accepts only by actually returning the dog.

Executory contracts: Another word for contracts where performance remains outstanding.

WHAT MAKES A CONTRACT VALID?

- Look for:
    1. Was there **agreement** (offer + acceptance)?
    2. Was there **intention** to be legally bound?
    3. Was there **consideration** (or deed)?
    4. Were the terms **certain**?
    5. Did parties have **capacity**?
- Apply the **objective approach** in your analysis.

If any of these are missing, the agreement will not constitute a valid, enforceable contract.

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1. CAPACITY

General Rule

A contract is valid only if each party has **legal capacity** to acquire rights and assume obligations.

- **Adults (18+)**: full capacity.

- **Corporations**: full capacity under *s 124 Corporations Act 2001 (Cth)*.

- **Minors / people with mental incapacity**: limited or qualified capacity.

Cognitive Disability

A person is bound unless:

1. They were **incapable of understanding** the general nature/effect of the transaction, **and**
2. The other party **knew or ought to have known** of this lack of understanding.

Effect: Contract is **voidable**, not void.

Minors

General Rule

Minors' contracts are generally unenforceable, except where:

1. The contract concerns **necessaries**, or
2. It is a **beneficial employment contract**.

Case: ***Scarborough v Sturzaker (1945) 70 CLR 141***
Facts: 16-year-old bought a new bicycle to ride to work after trading in his old one.
Issue: Was the new bike a necessity?
Decision: Yes — required for employment.
Principle: Necessities depend on lifestyle and actual needs at the time.

Case: ***Hamilton v Lethbridge (1912) 14 CLR 236***
Facts: Minor articled clerk bound by 5-year employment contract with restraint clause.
Decision: Binding — overall beneficial (training and experience outweighed restraint).
Principle: Employment contracts are valid if **beneficial as a whole**, even with some limitations.

Summary

Category	Rule	Key Cases	Enforceable When

Adults / Corporations	Full capacity	—	Always
Cognitive Disability	Voidable if lack of understanding known	—	Understanding + knowledge test
Minors	Limited capacity	*Scarborough* ; *Hamilton*	Necessaries / beneficial employment

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2. AGREEMENT (OFFER, ACCEPTANCE & CERTAINTY)

Core Rule

A valid agreement requires:

1. **Offer**
2. **Acceptance**
3. **Certainty of terms**

Courts use an **objective test**:

> Would a reasonable observer think the parties intended to be legally bound?

A. Offer

A definite, promissory statement showing willingness to be bound if accepted.

Case: ***Placer Development Ltd v Commonwealth (1969) 121 CLR 353***
Facts: Govt promised subsidy "at a rate to be determined."
Decision: Not binding — illusory promise.
Principle: No valid offer where one party retains total discretion.

B. Invitation to Treat

An **invitation to treat** is merely an invitation to negotiate or make offers.

Type	Case	Principle
Shop displays	*Pharmaceutical Society v Boots (1953)*	Goods on shelves = invitation; offer made at register.
Advertisements (general)	*Partridge v Crittenden (1968)*	Ads usually invitations to treat.
Reward advertisements	*Carlill v Carbolic Smoke Ball Co (1893)*	Specific, definite, promissory ads can be offers.

Exam tip: Use wording — if the ad uses definite language ("we promise £100") and shows sincerity (e.g. bank deposit), it is an **offer**, not an invitation.

C. Acceptance

Must be a **clear and unconditional "yes"** mirroring the offer.

Case: *Masters v Cameron (1954) 91 CLR 353*
Facts: Sale of land "subject to contract acceptable to solicitors."
Decision: No contract; intention was to be bound only after signing.
Principle: "Subject to contract" = no binding agreement unless category 1 or 2 (see below).

Category	Effect
1	Final agreement; formality later → binding
2	Binding, but conditional on event/signing
3	No intent until signed → not binding

D. Communication of Acceptance

Method	Rule	Cases
General	Must be communicated	—
Post	Effective on posting (if reasonable)	*Henthorn v Fraser (1892)*
Instantaneous (email, telex)	Effective on receipt	*Brinkibon v Stahag Stahl (1983) ; Electronic Transactions (Vic) Act 2000*

Unilateral contracts	Performance = acceptance	*Carlill v Carbolic Smoke Ball Co (1893)*

E. Termination of Offer

- **Revocation** before acceptance.
- **Lapse** after expiry date or reasonable time.
- **Rejection** or **counter-offer** ends the offer.

F. Certainty

Contracts must contain terms clear enough to enforce.
Vague agreements (“we’ll agree later”) are unenforceable.

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3. CONSIDERATION

Rule

A promise must be supported by **something of value** (benefit or detriment).
Courts do not assess fairness, only **existence**.

Case: *Thomas v Thomas (1842) 2 QB 851*
Facts: Widow allowed to live in husband’s house for £1 rent per year.
Decision: Binding — £1 sufficient consideration.
Principle: Consideration need not be adequate, only sufficient in law.

Case: *Stilk v Myrick (1809) 2 Camp 317*
Facts: Captain promised extra pay if sailors worked after others deserted.
Decision: Unenforceable — already contractually bound.
Principle: Performing an existing duty is not valid consideration.

Modern Exception – *Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723*
Facts: Landlord reduced rent after leasing nearby space to competitor.

Decision: Binding — landlord gained **practical benefit** of retaining tenant.
Principle: A **practical advantage** can count as consideration if it benefits the promisor.

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4. INTENTION TO CREATE LEGAL RELATIONS

Rule

The parties must **intend** their agreement to be legally binding.
Intention is assessed **objectively**.

Context	Presumption	Key Cases	Principle
Domestic / Social	No intent	*Balfour v Balfour (1919) ; Cohen v Cohen (1929)*	Family arrangements usually non-contractual.
Commercial	Intention presumed	*Esso Petroleum v Customs & Excise (1976)*	Promotions and business deals presumed binding.
Modern Australian approach	Contextual, not presumption-based	*Ermogenous v Greek Orthodox Community (2002)*	Assess all facts (payment, structure, relationship).

Integration Case – Carlill v Carbolic Smoke Ball Co (1893)

- **Offer:** Reward ad was definite and sincere.
- **Acceptance:** Using the smoke ball = performance.
- **Consideration:** Purchase and inconvenience.
- **Certainty:** Terms clear and specific.
- **Intention:** Bank deposit showed real intent.

Principle: All contract elements met — unilateral contract binding.

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5. PRIVITY

Doctrine of Privity

Only those who are **parties** to a contract can sue or be sued under it.

Case: ***Price v Easton (1833) 4 B & Ad 433***
Facts: Builder contracted with Easton to pay Price (third party). Easton didn't pay.
Decision: Price couldn't enforce — not a party.
Principle: Third-party beneficiaries lack enforcement rights.

Case: ***Coulls v Bagot's Executor (1967) 119 CLR 460***
Facts: Contract between Mr Coulls and O'Neil Constructions for royalties payable to "Mr and Mrs Coulls."
Decision: Only Mr Coulls was a party; Mrs Coulls had no separate rights.
Principle: Signing or benefiting doesn't make someone a contracting party.

Summary – Privity

Rule	Effect	Cases
Only parties can enforce	Outsiders cannot sue	*Price v Easton*
Benefit ≠ contractual right	Must be named as party	*Coulls v Bagot's Executor*

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6. ESTOPPEL

Function

Estoppel prevents a party from going back on a promise where it would be **unconscionable** to do so.

Requirements

1. Clear promise or representation.
2. Reliance by the promisee.

3. Detriment suffered as a result.
4. Unconscionability in allowing withdrawal.

Case: ***Waltons Stores (Interstate) Ltd v Maher (1988) 164 CLR 387***
Facts: Maher demolished building and began construction expecting Waltons to sign lease; Waltons delayed then withdrew.
Decision: Waltons estopped — must compensate as if bound.
Principle: Estoppel prevents unconscionable withdrawal of an induced belief; operates even without consideration.

Purpose

Estoppel acts as a **fairness safety net** where:

- No formal contract exists, but
- Reliance and detriment make enforcement just.

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7. EXAM SUMMARY — BUILDING A VALID CONTRACT

Element	Legal Test	Key Authorities	Common Pitfalls
Capacity	Party legally able to contract	*Scarborough*, *Hamilton*	Minor not bound unless necessity/beneficial
Offer	Clear, promissory, not discretionary	*Placer*, *Carlill*	Illusory or vague "offers" fail
Acceptance	Unqualified, communicated, mirror offer	*Masters v Cameron*, *Henthorn*, *Brinkibon*	Silence ≠ acceptance
Consideration	Something of value exchanged	*Thomas*, *Stilk*, *Musumeci*	Past or existing duty ≠ valid
Intention	Objective intent to be bound	*Balfour*, *Esso*, *Ermogenous*	Family/social promises often non-binding
Certainty	Terms must be clear	—	"Agreement to agree" unenforceable

Reasoning: Seller not expert; no intention to guarantee; buyer (dealer) in better position to know.
Principle: Where the speaker lacks special knowledge, statement likely a non-binding representation.

Case 3 – Handbury v Nolan (1977)

Facts: At cattle auction, auctioneer said cow "tested pregnant"; cow was infertile.
Decision: Statement **was** a contractual term.
Reasoning:

- Made just before sale.
- Auctioneer in position of knowledge.
- Buyer reasonably relied on it.

Principle: Statements in serious commercial contexts by knowledgeable parties are binding promises.

Takeaway Table

Case	Binding?	Why
Van den Esschert	Yes	Important issue; relied on
Oscar Chess	No	Representation; seller lacked expertise
Handbury v Nolan	Yes	Promissory; expert statement relied upon

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5.5 IMPLIED TERMS – OVERVIEW

What They Are

Terms not written or spoken but **imposed by law**, **by statute**, or **by necessity** to make the contract workable and fair.

Types:

1. **By law** (universal or generic)
2. **By statute** (e.g. *Goods Act 1958 (Vic)*)
3. **By fact (ad hoc)** — to fill specific gaps