

## TOPIC 1 - INTRODUCTION

### WHAT IS A CONTRACT?

An agreement or set of promises that the law will enforce (ie the law will provide a remedy if breached) (Coote, 1988)

→ Contract law is about which promises are enforceable and attract a legal remedy?

⇒ Contract law addresses the concepts, principles, rules used to determine the existence and content of binding promises and their enforcement or defeasibility in a market economy + considerations of underlying policy

### CHARACTERISTICS OF CONTRACT LAW

- Parties create their own obligations (as parties voluntarily enter into contracts and impose obligations on themselves)
- Contract is an everyday occurrence of the life of individuals
- Contract underlies almost all commercial and economic activities (contract law underlies and enables transactions to operate efficiently and smoothly)
- Contract law is foundational of all commercial law subjects
- Freedom of contract: people in the marketplace are free to enter into any type of contract or agreements that they like and the law will not regulate those transactions (e.g. a person can sell their Porsche for \$25)
- Free consent that creates an obligation is at the center/heart of contract law
- Contracts can be between individuals/companies/corporations/family members  
E.g. Hannah's Biscuit Scenario: Contract is between Hannah and Pierre's Patisseries Pty Ltd (the company - not Pierre as an individual)  
⇒ A contract is not always self-containing or comprehensive → always good to consider possible risks/obligations/terms (ie. possible renewals, exclusivity obligations, etc.) that can be included for each party
- Entire agreement clauses: clauses included in the contract that exclude all oral or written agreements, communications, or negotiations beyond the contract and is not binding on the parties
- Contracts can take different forms (oral, written, unsigned.) except in certain situations where formalities of written contracts are required (interests in land, company shares)

### THEORIES OF CONTRACT LAW

1. Classical contract theory  
A contract is an expression of joint will of the parties engaged in a transaction .  
→ According to this theory:
  - Obligations are voluntarily assumed;
  - Facilitates the freedom of the parties to create their own private law
2. Moral obligation (Charles Fried)  
Contracts are based on the moral obligation to keep a promise  
→ Liberal individualist perspective
3. Consensual understanding (Randy Barnett)  
A contract and its legal enforcement is based on the parties' consent to transfer its entitlements
4. Economic efficiency (Michael Trebilcock): Contract is a mechanism facilitating economically efficient exchanges
  - Prevent opportunistic behaviour
  - Set default rules → save effort + negotiations
  - Fill gaps in contracts
  - Address market failures (misinformation; improper pressure)
5. Social understanding
6. Critical Legal Theory: Contracts are a set of contradictory formal rules that serve an ideological function of political and social issues.
7. Feminist perspectives
8. Contract as Social relations (Ian Mcneil): The behaviour to parties of a contract is affected by the social relations between the parties (ie trust) and the broader social context in which the contract is made.

9. Contract as Regulations (*Jean Braucher; Hugh Collins*): Contract law plays a regulatory role in determining their validity, language interpretation, conduct of the parties and filling in substantial gaps in agreements; + 'private law of contract' gives rights to the parties and allows them to enforce those rights in courts.
10. Contract as Obligations: Contract law is part of the law of obligations when seen its doctrinal context

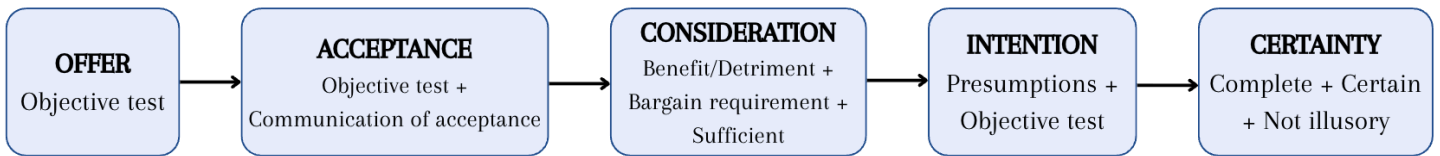
## ELEMENTS OF CONTRACT LAW

✿ CONTRACT FORMATION	<p>4 MATERIAL ELEMENTS:</p> <ol style="list-style-type: none"> <li><b>1. Agreement:</b> Offer + Acceptance</li> <li><b>2. Consideration:</b> Each party must give something in return for the promises made by the other</li> <li><b>3. Intention:</b> Objective intention that the agreement is to create legal relations between the parties</li> <li><b>4. Certainty:</b> Complete and certain agreement (no doubt on what each party is obliged to do in the T&amp;Cs of the agreement)</li> </ol> <p>⇒ Satisfying all 4 requirements: Parties reached a consensus, that they have struck a bargain involving an exchange, that they intend their actions to have legal consequences &amp; they have identified their respective obligations with sufficient precision.</p> <p>→ If all 4 elements are satisfied and 2 parties entered into a contract, a party cannot simply change their mind and decide to terminate the contract (= breach of contract → other party is entitled to remedies)</p>
✿ RELEVANT FORMATION FACTORS	<ul style="list-style-type: none"> <li>• <b>Formalities:</b> Certain formalities required for some types of contracts (Guarantees/Interests in land → Contracts have to be in written form)</li> <li>• <b>Privity:</b> Only parties to the contract are bound</li> <li>• <b>Capacity:</b> Parties must have the capacity for the contract to be bound (minors/intoxicity)</li> </ul>
✿ CONTRACT TERMS	<ul style="list-style-type: none"> <li>• Expressed terms <ul style="list-style-type: none"> <li>+ Incorporation/identification</li> <li>+ Construction</li> </ul> </li> <li>• Implied terms</li> </ul>
✿ Australian Consumer Law	<p>Does the ACL apply?</p> <p>→ Unfair terms + Consumer guarantees</p>
✿ ESTOPELL	<p>If there is no contract, is there estoppel?</p> <p>Alternative doctrine that works side by side with contract law</p>

## CONTRACT A CASES

✿ CASE/CITATION	✿ SUMMARY	
	FACTS	DECISION - PRINCIPLE
<i>Gibson v Manchester City Council</i>	<ul style="list-style-type: none"> <li>Gibson was a tenant in community housing owned by Manchester Council (backed by the Liberal party)</li> <li>Manchester Council was selling off council assets and making them available for tenants to purchase and be property owners.</li> <li>Letter → Gibson: 'The Corporation 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.'</li> <li>Gibson completed the application form and sent it off to council</li> <li>Before any contract was formed, new local council was elected that was controlled by the Labour party → terminated the asset scheme (would only proceed with cases where there was already a legal binding contract)</li> </ul> <p>⇒ ISSUE: Did the letter amount to an offer to sell the property for £2,180?? G: yes, + was accepted when he sent the application to the council Council: No</p>	<p><b>DECISION:</b> The House of Lords found in favour of the council on the basis that they could not identify an offer and acceptance. &gt;&lt; Court of Appeal: for Gibson</p> <p>→ <b>PRINCIPLE:</b> Courts will tend to apply the conventional approach and need to identify an offer and acceptance except in exceptional circumstances, and that is an objective test.</p>
<i>Carlill v Carbolic Smoke Ball Co</i>	<ul style="list-style-type: none"> <li>D manufactured and sold 'Carbollic Smoke Ball' device which was claimed to prevent colds &amp; influenza.</li> <li>Advertisement said that £100 would be rewarded to anyone who had a cold/influenza after using the device as instructed: '<i>£1000 is deposited with the Alliance Bank, Regent Street, shewing our sincerity in the matter</i>'</li> <li>P used the device and contracted influenza → D refused to pay → P sues saying there was a contract</li> </ul>	<p>The English Court of Appeal held that a contract had been formed between the P and D. Arguments:</p> <ol style="list-style-type: none"> <li>1. D: No promise was intended and the advertisement was a 'mere puff' → Court held that the statement relating to the bank deposit made it clear that a promise was intended</li> <li>2. D: No offer had been made to any particular person &gt;&lt; C: Offer was made to the whole world and could be accepted to any person who performed the conditions on the ad</li> <li>3. D: P had not notified acceptance of the offer &gt;&lt; C: An offer that calls for performance of particular conditions may be accepted by performance of those conditions.</li> <li>4. D: The agreement was uncertain bc it failed to determine a period of time which the disease should be contracted &gt;&lt; C: A reasonable construction must be placed on the ad → sufficiently certain</li> <li>5. D: P had supplied no consideration for D's promise → C: use of the smoke ball is good consideration for the promise</li> </ol>
<i>Australian Woolen Mills Pty Ltd v Commonwealth</i>	<ul style="list-style-type: none"> <li>P (AWM) claimed that a unilateral contract had arisen out of Cth's wool subsidy scheme that it would subsidise purchases</li> </ul>	<p><b>DECISION:</b> The High Court held that there was no contract between the parties, as AWM failed to establish a quid pro quo relationship + that</p>

## CONTRACT FORMATION



## OFFER

### ✳ OBJECTIVE TEST

The issue is whether [offeror] (offeror) has made an offer to [offeree] (offeree). Pursuant to *Gibson* and *Carlill Carbolic Smoke Ball*, an objective test applies to determine whether an offer was made. Thus, it must be proven that a reasonable person in the position of [offeree] would believe that an offer was made, and would be binding upon acceptance.

- + OTF, it is evident that an offer will clearly be made out, as [facts].
- + Contentious: OTF, this is contentious, as [facts] make an offer not evidently clear. Here, a reasonable person may have assumed that [what RP would assume].
  - **Unilateral contract**  
[Party arguing offer] may argue that the offer made by [party] gave rise to a unilateral contract, in which acceptance would be via performance.
  - **Mere puff**  
[Party arguing no offer] may argue that [alleged offer] was not a genuine offer but rather a mere puff (Carbolic Smoke Ball). [Party arguing no offer] may contend that 'offer' was not intended to create legal relations, as any reasonable person would understand [it/quote/subject] as an exaggeration for advertisement rather than take it literally.  
On balance, it is likely that [alleged] offer [will/will not] be found to be a mere puff
  - **Invitation to treat**  
[Party arguing no offer] may argue that the 'offer' was merely an invitation to treat as it lacked sufficient willingness to be bound. [Party arguing no offer] may contend that similarly to [case law], the [alleged offer] [relevant argument]

Shop sales	Display items are only invitations to treat. An offer is only made when the customer presents an item to the cashier, which is bound if the cashier accepts the offer ( <i>Pharmaceutical Society of Great Britain</i> )
Auctions	The auctioneer merely invites offers from those present at the auction, and each bid constitutes an offer. The auctioneer communicates acceptance of the final bid by the fall of the hammer. The auctioneer is not obliged to sell to the highest bidder
Tenders	A call for a tender is an invitation to treat in which each tender constitutes an offer, the offeror may accept or decline
Tickets	Tickets are an offer to which the passenger can accept or reject the terms on the ticket
Electronic transactions	A proposal to make contract through electronic communications which is generally acceptable to everyone using those information systems are invitations to make offers (unless it clearly indicates the intention to be bound if accepted)

- **Revocation**: Even if an offer has been established, [party arguing no offer] may argue that the offer has been terminated, and therefore any subsequent acceptance is not effective. OTF, [party arguing no offer] may contend that [facts]
  - An offer may be revoked before acceptance (*Dickinson*), except for when consideration has been given in return for a promise to hold that offer open (*Goldsborough Mort*)
  - **Unilateral contracts**: Generally, a unilateral offer can be revoked before acceptance, however a remedy may be available under an implied contract not to revoke/estoppel (*Mobil Oil v Wellcome*)
  - An offer will lapse on a death of the offeror (*Fong v Cilli*)