


# CONTRACT LAW SUPER NOTES

## Key:

- = general statements of law.
-  = optional statements of law. Only include these when they relate directly to the facts at hand.
- Red writing in italics* = case authority for a statement of law.

I have included relevant information from pertinent **cases** throughout, which can be found in boxes like this one.

You can use these to add to your answer as markers love when you apply the facts of past cases to the facts at hand! You can analogise to these cases to argue that the same outcome will apply (if the circumstances are similar) OR that a different outcome will occur (if the circumstances are different).

## Table of Contents

<b>VALID &amp; BINDING CONTRACT .....</b>	<b>2</b>
<b>AGREEMENT .....</b>	<b>2</b>
<b>INTENTION TO CREATE LEGAL RELATIONS.....</b>	<b>10</b>
<b>CONSIDERATION.....</b>	<b>11</b>
<b>EQUITABLE ESTOPPEL .....</b>	<b>13</b>
<b>PRIVITY OF CONTRACT.....</b>	<b>14</b>
<b>CAPACITY.....</b>	<b>16</b>
<b>MINORS.....</b>	<b>16</b>
<b>MENTAL INCAPACITY .....</b>	<b>17</b>
<b>BANKRUPTS.....</b>	<b>18</b>
<b>FORMALITIES.....</b>	<b>18</b>
<b>MISREPRESENTATION.....</b>	<b>22</b>
<b>MISTAKE.....</b>	<b>25</b>
<b>PRE-CONTRACTUAL ORAL STATEMENTS.....</b>	<b>28</b>
<b>INCORPORATION OF WRITTEN TERMS.....</b>	<b>29</b>
<b>IMPLIED TERMS .....</b>	<b>30</b>
<b>GENERAL APPROACH TO INTERPRETATION.....</b>	<b>31</b>
<b>I: SIGNIFICANCE OF TERMS .....</b>	<b>31</b>
<b>II: TYPES OF TERMS .....</b>	<b>33</b>
<b>EXCLUSION CLAUSES.....</b>	<b>36</b>
<b>RESTRAINT OF TRADE .....</b>	<b>37</b>
<b>UNFAIR TERMS .....</b>	<b>38</b>

## VALID & BINDING CONTRACT

= AGREEMENT + INTENTION + CONSIDERATION

### AGREEMENT

#### 1. Was there an offer?

- Offer = the expression to another of a willingness to be bound by the stated terms *Australian Woollen Mills v Commonwealth*

👉 The following are considered to be offers:

- Automatic vending machines *Thornton v Shoe Lane Parking*
- A notice at the entrance of an automatic car park *Thornton*

👉 Invitations to treat are **not** offers. Invitations to treat include:

- Advertisement of goods for sale in a catalogue or through a circular *Grainger v Gough* or in a newspaper or magazine or periodical *Partridge v Crittenden*
- Goods displayed in shops *Pharmaceutical Society of Great Britain v Boots Cash Chemists* (placing order will be the offer)
- Usually, an announcement inviting tenders unless the announcement indicates that the lowest tender will be accepted *Spencer v Harding*. Thus each tender submitted is an offer, which the party calling for tenders is free to accept or reject *Blackpool & Flyde Aero Club v Blackpool Council*. However, each case must be determined on its facts: *Hughes Aircraft Systems International v Airservices Australia*
- An auctioneer's requests for bid *Payne v Cave AGC (Advances) v McWhirter* and the advertisement of an auction sale *Harris v Nickerson*
- One factor the courts will consider in determining whether an advertisement is an offer or an invitation to treat is its likely effect upon the potential customer.
- *Carlill v Carbolic Smoke Ball Co*

👉 A mere statement of the price of which someone would contract if they decided to sell does **not** amount to an offer *Harvey v Facey*

👉 Mere puff does **not** amount to an offer – must consider how a reasonable person in the position of the offeree would interpret the advertisement *Manufacturers Material Insurance v John Boardman Insurance Brothers* (consider vagueness of stmt etc)

👉 Supply of information (responses to enquiries) does **not** amount to an offer *Harvey v Facey*

👉 A proposal to form a contract through electronic communication that isn't addressed to a specific party and is accessible to parties making use of info will be treated as an invitation to treat UNLESS communication indicates that P intends to be bound upon acceptance.

👉 Auctions with a reserve price: auctioneer's call for bids is an ITT; each bid is an offer ∴ agreement forms when auctioneer accepts bid and sells property to bidder *Harris v Nickerson*

👉 Auctions w/o a reserve price: property sold to highest bidder ∴ contract is formed between auctioneer and highest bidder *Warlow v Harrison* (knocking down highest bidder is breach)

👉 An offer to supply goods for a period up to a certain amount *as required* is a standing offer. The offer is accepted *each time* an order is placed, giving rise to a series of independent contracts. The standing offer can be withdrawn or revoked at any time prior to an acceptance. Once revoked no further acceptances are valid unless the offer is renewed. *Colonial Ammunition Co. v Reid (1900)*; *Great Northern Railway v Witham*

👉 Tickets bought prior to carriage may form contracts in diff ways

- Passengers offers to pay, accepted by carrier when they accept money and issue ticket
- Passenger offers to pay, carrier makes counteroffer by issuing ticket w new terms, passenger accepts CO if they don't return ticket after having reasonable time to consider terms *Thornton v Shoe Lane Parking*

## 2. Was the offer communicated?

- An offer is effective **when** and not until it is communicated to the offeree or his/her agent by the offeror or his/her agent *Taylor v Laird*
- Within the terms of the offer the offeror may expressly or impliedly prescribe the method of communicating acceptance. Failure to adopt that method is at the offeree's risk. However, in an appropriate case an equally expeditious method of communication may be acceptable *Tinn v Hoffman & Co*
- 👉 Offers can be made to the world at large *Carlill v Carbolic Smoke Ball Co*
- 👉 An offeror can waive communication of acceptance. In such a case it must be shown:
  - (i) That there is an express or implied intimation from the offeror that a particular mode of acceptance will suffice – and that the particular mode does not involve communication; and
  - (ii) There must be some overt act or conduct on the part of the offeree which evidences an intention to accept and which conforms to the mode of acceptance indicated by the offeror*Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256*

## 3. Was the offer still on foot?

- An offer can be terminated at any time before it has been accepted. Once an offer has been accepted, the offer is irrevocable. *Great Northern Railway Co v Witham*
- 👉 Where the offer takes the form of an option (for example where there is consideration to keep the offer open) then the offer cannot be terminated before the time of the option has expired. *Goldsborough Mort v Quinn*
- 👉 Offer can be terminated in a number of ways:
  - Withdrawal by the offeror  
Before acceptance, an offer can be freely revoked unless a promise by the offeror to keep it open for a fixed period is supported by consideration or under seal. *Routledge v Grant*  
Revocation of an offer is ineffective until communicated by the offeror or his/her agent *and received* by the offeree *Byrne v Van Tienhoven*
  - In the case of an offer made to the world at large, revocation of the offer may be effectively communicated by using the same means as communication of the offer, even if someone who saw the offer does not see the revocation *Shuey v United States*
  - In the case of certain unilateral contracts, an offer may not be withdrawn after the promisee has begun to perform the necessary conditions to enable acceptance of the contract to be completed. This is because commencing to perform is acceptance of an implied offer not to withdraw the express offer. *Abbott v Lance*  
This means not withdrawn with impunity: if the offeror attempts to withdraw there will be breach of the implied contract not to withdraw *Mobil Oil Australia v Lyndel Nominees Pty Ltd (1998) 153 ALR 198 at 228.*
  - Rejection by the offeree: Rejection may be express or implied. *Stevenson Jaques & Co v McLean*

A counter-offer amounts to rejection by the offeree.

- By lapse of time


An offer must be accepted within the time prescribed or, if there is no time prescribed, within a reasonable time. *Ramsgate Victoria Hotel Co v Montefiore* What amounts to a reasonable time is a question of fact depending on circumstances – the matters that are taken into account are the nature of the subject matter and the means used to communicate the offer. *Buckley J in Manchester Diocesan Council for Education v Commercial and General Investments Ltd*

- By failure of a condition subject to which the offer was made *McCaul (Aust) Pty Ltd v Pitt Club Ltd*

- **By death**

An offeree cannot accept an offer after he or she has had notification of the death of the offeror *Coulthart v Clementson*

If the *offeree* dies, it appears that he or her personal representative cannot accept the offer on behalf of her or his estate – the offer lapses automatically. *Reynolds v Atherton*

 A standing offer can be withdrawn or revoked at any time prior to an acceptance. Once revoked no further acceptances are valid unless the offer is renewed. *Colonial Ammunition Co. v Reid (1900)*; *Great Northern Railway v Witham*

#### 4. Was the offer accepted?

- Acceptance of an offer is the expression, by words or conduct, of assent to the terms of the offer in the manner prescribed or indicated by the offer. Thus acceptance may be express or implied. *HBF Dalgety v Morton [1987] 1 NZLR 411*
- A person cannot accept an offer which has not been properly communicated. *Taylor v Laird (1856) 156 ER 1203*
- Requirement for the acceptance to be valid (as well as 5. ... communicated):
  - (a) The offeree must assent to the terms of the offer.
    - An offeree must intend to accept the offer, so the acceptance must be in reliance on the offer rather than some other reason *R v Clarke*
    - The acceptance must also correspond with the offer, meaning that they do not introduce new terms. A counteroffer is not an acceptance and causes the original offer to terminate *Hyde v Wrench*
    - A purported acceptance that departs from the terms of the offer but only in a minor, non-material way may be effective and not amount to a counter-offer. *Turner Kempson v Camm*
    - A mere enquiry will not amount to acceptance and it will not cause the offer to terminate. *Stevenson Jaques v McLean*
    - Acceptance must be unqualified. A conditional assent is not acceptance, as where an offer is accepted 'subject to the preparation of a formal contract', or is 'subject to contract' where no binding contract is intended until the formal contract is executed *Masters v Cameron* – see further below in *Certainty*

#### 5. Was acceptance effectively communicated?