

LAW5002 Principles of Contract Law A Exam Notes

Topic Covered

I Formation of Contract – Is there a contract?

- A. Offer
- B. Acceptance
- C. Consideration
- D. Intention to create legal relations (ITCLR)
- E. Certainty

II Matters affecting **formation** and **enforcement** of contracts

- F. Capacity
- G. Formalities – Part Performance
- H. Privity/parties
- I. Estoppel

III What is the contract? – **Terms and interpretation of the contract**

- J. Identify Expressed terms
 - a. Incorporation of terms
 - b. Does the parol evidence rule apply?
- K. Construction those terms
- L. Gaps? Implied terms
 - a. Implied in fact
 - b. Implied in law
 - c. Implied by custom
 - d. Good faith
- M. Australian Consumer Law
 - a. Consumer Guarantees
 - b. Unfair Contract Terms
- N. Conclusion

I Formation of Contract

A Offer

Rules

1. An **agreement** is established by identifying an offer and acceptance (*Gibson*).

An offer is an indication (statement/words, outward manifestation/conduct) of willingness to enter a contract on certain terms (*AWS*) and invite the other party's acceptance (*Brambles*).

- It is a proposal that the offeree can accept or reject, rather than being commanded to do something (Heydon JA in *Brambles*).

Offer is determined by an **objective** test (*Carlill*). The court would consider whether it appears to a reasonable person in the offeree's position that an offer was intended (*Gibson*).

- Language used was certain or vague.

Conventionally, a **ticket** is an offer that the purchaser can accept or reject after having a reasonable opportunity to review the ticket's terms (*MacRobertson*). **Ticket** represents receipt of a pre-paid fare and is analogous to a **unilateral contract** (Barwick CJ).

To satisfy the **bargain** requirement, the profit or loss **must** be given **in return for** the promise (*AWM*).

- Fulfilling a condition for a reward or **gift** is different from performing a consideration (*AWM*). A valid offer **must** identify a 'quid pro quo' (*AWM*).
- A promisor's request is relevant/a strong indicator **but** insufficient. Without a request, a promise is likely to be a conditional **gift** (*Beaton, AWM*).
- Mere reliance is not good consideration (*Beaton*).
 - The other party did not really give something in return.

2. **Peppercorn Rule** - The **adequacy** of the consideration will **not** be examined (*Woolworths*).

3. Consideration **must** be sufficient.

Something the promisee has already done is **not** sufficient consideration (*Roscorla*).

- Promisor requested a service and promised to pay, and
- Promisee provided the service in the belief that it would be paid for (*Ipex*).

Generally, the performance of an existing legal duty is insufficient consideration (*Stilk; Foakes*).

- In *Stilk*, sailors were already contractually bound to sail the ship home. A promise of extra pay for doing no more than their existing duty was not supported by consideration.
- A requested act carries an implied promise of payment, so a later promise to pay is supported by consideration (*Lampleigh*).

Template - B can argue that K was already under a pre-existing obligation to pay \$24,000 to Bob. Paying B \$10,000 in four weeks' time is not consideration for discharge of the debt.

- **Exceptions** include fresh consideration (*Hartley - 17 of 35 crew sail with promise to be paid extra \$40*) – continuing in a new and dangerous/risky circumstance is 'something more'.
- Practical benefit
 - The existing legal duty rule is inapplicable when the modifying party obtains a practical benefit from the beneficiary's promise to perform an existing obligation (*Williams*).
 - However, when a party's commitment was induced by unfair pressure, practical benefit rules would **not** apply (*Musumeci*).
 - Need evidence to prove – how? Admitted?
- New obligation to a **third party**
 - A promise to perform a pre-existing contractual obligation to a third party can be valid consideration because the promisee obtains the benefit of a direct obligation (*Pao On*).
- **Bona fide** compromise of a legal dispute (*Wigan*) - *B genuinely believed that he was not bound to complete the transaction due to the flaws of the property*.
- Termination and replacement of agreement

- By continuing to deal with the party attempting to impose the contractual term, the bound party has shown a desire to be bound by that term.
 - This rule is efficient. It is pointless to spend time and effort on each following transaction.
- 4) **Statements made during negotiations** – *statements made orally or in writing at different stages of negotiations leading up to the contract's conclusion.*
- A statement may be made which is **not** stated in the contract. There are two steps to determine whether a pre-contractual statement is a term of the contract.
 - 1. If the agreement was deemed wholly/**entirely written**, the **Parol Evidence Rule (PER)** would apply and **no** further extrinsic evidence (*oral or written evidence – eg. letter prior to formal contract*) would be admissible (*Saleh*).
 - **Part 1 – Identifying the terms** prohibit extrinsic evidence to add to, alter or contradict the terms of a written contract.
 - Written contract is the evidentiary foundation of the PER.
 - 1. There was an **entire agreement clause (EAC)**.
 - Written agreements commonly include entire agreement clauses. Parties do this to ensure the written agreement is complete and certain.
 - *An example of EAC - This agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements, and agreements, whether oral or written, between the parties with respect to the subject matter of this agreement.*
 - An **EAC** usually shows that the contract is wholly in writing and thus the **PER** would apply to prevent evidence of any prior statements during negotiations.
 - However, it is a matter of interpretation in all the circumstances. (*Not always*)
 - **ACL** – The **EAC** may be an unfair term. - Disadvantage in litigation
 - Terms listed in **s 25 (h), (i) & (m)** create disadvantage in litigation.
 - Limits evidence that can be adduced in legal proceedings (*e.g., entire agreement clause*).
 - **Consumer Guarantees** give pre-contractual promises effect (*in contrast to common law relating to incorporation of statements during negotiations*). *In particular*
 - **S 54(3)** Goods must be of acceptable quality, according to supplier's representations.
 - **S 55** Goods must be fit for any disclosed purpose, and reasonably fit purpose that supplier's represented.
 - **S 59** The supplier must comply with the pre-contract express warranty.
 - 2. If there was no **EAC**, *2 possible methods that could be taken -*
 - **flexible approach** prevails in Australia (*State Rail*).