

LAW1116 Contract Law.

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Module 1: Introduction to Contract Law: Formation of a Contract: Offer Week 1: 10 February – 16 February

Welcome to Week 1.

The learning objectives for this week are to understand:

- the focus of the course, its structure and essential administrative information
- how the course will be delivered and the resources that will support your learning
- and become familiar with the course StudyDesk
- ✓ what 'contract law' is
- ✓ the first element needed for the formation of a contract: offer
- ✓ the elements for creation of a valid 'offer'
- ✓ how an offer can lapse or be withdrawn

Required Reading: <https://usq.leganto.exlibrisgroup.com/leganto/nui/lists/5479305360004691>

✓ Chapter 4 – The Offer - of both the **Principles of Australian Contract Law, 6th edition** Gooley, Randan & Vickovich (Textbook 'Principles' and Casebook 'Cases and Materials') J LexisNexis

Q&A Contract Law book (Chapter 1 in preparation of tutorial answers in wks 1-3)

It will also be helpful to read: J the Sources of Contract Law Principles & Classification of Contracts (in Chapter 1)

Learning Objectives

At completion of this topic, you should have a basic knowledge of:

J the terminology, history, theories, assumptions, and role of contract law, as applied to different situations and groups in Australia, and the Internationalisation of contract law.

Contract Law is all about people keeping their promises- that's how business works.

Key terms

Debt: part of the composite writ of Debt-Detinue, 'unjustly detaining' something which was of value of which he was entitled"

Covenant: early on it covered consensual agreements of various kind, agreements to do something, to build a house etc then by 14th C the Covenant needed a sealed instrument.

Assumpsit was a legal doctrine in English common law that allowed people to sue for damages when someone broke a promise or agreement. It was particularly important before modern contract law fully developed. Before *assumpsit*, a person could only sue under **covenant** (if there was a written contract) or **debt** (if money was owed).

- *Assumpsit* is now largely obsolete, as modern **contract law** has absorbed its principles.
- However, its legacy remains in doctrines like **promissory estoppel**, where courts enforce promises even if no formal contract exists

*One of the most famous cases involving **assumpsit** was Slade's Case (1602), which played a crucial role in shaping modern contract law.*

Indebitatus Assumpsit (*Implied Promise*)

- Used when a debt was owed, but instead of suing under strict *debt* law, the plaintiff argued that the defendant implicitly promised to pay.
- Example: If a shopkeeper delivered goods and wasn't paid, they could sue for the value of the goods under this rule.

The **doctrine of consideration** is a fundamental principle in contract law that ensures agreements are **legally binding** and **enforceable**.

Consideration refers to **something of value** that each party gives to the other in exchange for a **promise**. It can take various forms:

- **Money** (e.g., paying for goods or services)
- **Goods or Services** (e.g., a mechanic fixing a car in exchange for payment)
- **A Promise to Do Something** (e.g., agreeing to paint a house for \$500)
- **A Promise Not to Do Something** (e.g., agreeing not to sue in exchange for a settlement)

A **Consideration Clause** in a contract outlines what each party is giving or receiving in exchange for entering into the agreement. It ensures that the contract is legally binding by specifying the exchange of value between the parties.

Sources of contract law

1. Common law + Equity

2. Statute laws

Contracts can be Classified

1. Number of Parties: unilateral, bilateral and multilateral

- a) Unilateral Contracts; only 1 party has obligations Eg : Reward for dog
- b) Bilateral; 2 parties promise to do something Eg: I will sell my car to Barry for \$1000. These are **executory** (one or both parties still have obligations to fulfill) and promised to do.
- c) Multilateral more than 2 parties e.g. partnerships

2. Type: Simple or Formal

Simple	Formal
<ul style="list-style-type: none">• Oral (hard to enforce, unclear terms)• Written• Partly written and partly oral or implied• Implied by conduct of the parties• Land dealing etc. must be in writing - statute• Simple contracts require consideration.• (1566 Sherrington) spoke of building Deeds to show deliberation to a contract. No doctrine of consideration is needed as it is 'signed, sealed, delivered'	<ul style="list-style-type: none">• In Writing (Statute of Fraud from England are used in land, house etc)• Formal (signed, seal & delivered)• 'Free' – do not require consideration (but may contain it)

3. Defects

- ❖ **Void** contracts: No legal effect, i.e. void *ab initio* e.g. illegal contracts. **Vitiating** or spoiling factors; contract with a minor, someone of unfit mind, contract to commit a crime.
- ❖ **Voidable** contracts: Remain valid & binding **unless & until** the contract is repudiated by the injured/innocent party, e.g. for misrepresentation or other defects In this scenario only the innocent party can have a malicious contract set aside.

THE OFFER

Definition of offer

4.10 In *Dysart Timbers Ltd v Nielsen*¹⁸ Tipping and Wilson JJ defined an offer as follows:

An offer is a statement of the terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive.

Whether a statement constitutes an offer is objectively determined.¹⁹

4.11 For a valid offer to exist, it must be communicated to the offeree, or his or her agent, by the offeror, or his or her agent. If the offeree learns of the offer from an unauthorised person, there is no offer for that offeree to accept.²⁰ Once the offer is communicated to the offeree, he or she has the power to transform it into an agreement by accepting it.

- Central to an offer is the will or intent of the offeror to be bound by a contract by the terms of the offer. Anything looser is "Invitation to treat" which Carter defines as 'an invitation to a person to make offers or negotiate'

Formation of Contract



1. Agreement = Offer and Acceptance



2. Consideration and Promissory Estoppel



3. Intention to create legal relations

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What are Valid, Enforceable Agreements?

- Usually consists of an identifiable **offer** and an identifiable **acceptance**
- BUT courts can also examine the acts and conduct of the parties to infer a 'meeting of minds' of the parties - Heydon JA in *Brambles Holdings Ltd v Bathurst CC* (2001) 53 NSWLR 153 at 179

IS IT PROMISSORY?

OBJECTIVE TEST – *what would a reasonable person think? Capable of being accepted?*

- ❖ Mere puffery
- ❖ Mere supply of information
- ❖ Invitation to treat: e.g. advertisements, display of goods in shops, auctions, tenders



Puffery

So far-fetched & fanciful no reasonable person would believe it to be sincere - e.g. *Leonard v Pepsico Ltd* 88 F Supp 2d 116 (1996)

<https://www.youtube.com/watch?v=ZdackF2H7Qc>

Netflix - Pepsi, Where's My Jet?

<https://www.youtube.com/watch?v=lzS8BQBcAu4>

4.14 In *Harvey v Facey*²⁶ Harvey telegraphed to Facey saying: 'Will you sell us Bumper Hall Pen?' Facey replied: 'Lowest price for Bumper Hall Pen, £900'. Harvey replied that he agreed to buy the property for £900 and asked that the title deeds be forwarded to him. Facey refused, claiming there was no contract of sale. The issue before the court was whether Facey's reply to the Harvey's initial telegram was an offer or simply the supplying of information. The House of Lords ruled that it was merely the supply of information. Lord Morris²⁷ said that 'the mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at the lowest price'.

- Circulars, catalogues and ad are invitation to treat, the rationale being that stock may not exist for all.
- Display is and **invitation to treat**, in the trolley is not a close of sale
- Acceptance of offer at an Auction is at the fall of a hammer, but an offer can be withdrawn (Payne vs Cave 1789)
- So you can sue an Estate Agent not selling over the reserve?

* Invitations To Treat- Advertisements

Partridge v Crittenden [1968] 2 All ER 421

CHAPTER 4: THE FACT OF AGREEMENT

no reason why the auctioneer should not be so bound in these circumstances. The purpose of a reserve price is to preclude the vendor from being bound in contract to sell the property at a price below the reserve price. By implication, the reserve price is a statement that the vendor is prepared to sell to the highest bidder, provided that the highest bid exceeds the reserve price. In other words, once the reserve price has been reached, the position of bidders becomes the same as at an auction without reserve price and the auctioneer is liable, pursuant to *Barry v Davies*,⁶¹ if he or she does not accept the highest bid.

Tenders

the meaning & content of a contract

Acceptance and the date and place of contract are important

For a contract to exist there must be agreement between its parties.

4.7 The rules of offer and acceptance tell us the following things about any contract that results:

- *when* the contract was entered into — this can be an important matter because the time for performance of obligations is often determined by reference to the date of the contract;¹²
- *where* the contract was entered into — this is important in cases where a contract is entered into between parties in different legal jurisdictions in order to establish which jurisdiction's courts will resolve any dispute between the parties;¹³ and
- the express terms of the contract.¹⁴

Invitations To Treat

***Displays of goods in shops (only invitation, as you put it back, acceptance is when money is taken)**

Pharmaceutical Society (GB) v Boots Cash Chemists (Southern) Ltd [1952] 2 QB 795

Fisher v Bell [1961] 1 QB 394- flick knives, even with price, still only an invitation



] the history & basic assumptions of contract law

Tender is the same as Auction, yet bidder only make one bid, without knowledge of others.

Process contract is built to provide safeguard to tenderer if the inviters specifications changes.

A standing offer has no obligation from the buyer and freedom to buy elsewhere

An offeror can retract the offer to a single person/s

] the formulation & enforcement of a contract

“Battles of the forms” cases – most common is when A buys from b but only on B terms etc.

The last shot means the last communication will be taken as the formation of the acceptance

The Offeree's Options

- Accept the offer
- Counter-offer – destroy the original offer
- Request further information – neither acceptance or rejection
- Reject the offer
- Do nothing – offer eventually lapses

] the meaning of a valid offer & acceptance

- Has to be unequivocal and line up with the terms of the offer
- A response cannot introduce new terms or conditions *Dunlop v Higgins*
- Acceptance can be express or implied- Contract can be formed by conduct
- Acceptance must be communicated and is complete as soon as it is posted- postal acceptance rule

If there is an inconsistency between common law and statute law, the statute law prevails

Offers with limitations

Lefkowitz v Great Minneapolis Surplus Store 86 NW 2d 689 (Minn 1957)

An offer can be revoked:

- at any time before acceptance: *Payne v Cave* (1789) 100 ER 502.
- unless the offeror has contracted (eg given an option) to keep the offer open: *Goldsborough Mort & Co Ltd v Quinn* (1910) 10 CLR 674.

- revocation must be communicated to offeree before it becomes effective: *Byrne v van Tienhoven* (1880) 5 CPD 344

Revocation can be by words, or by doing an inconsistent act: *Dickinson v Dodds* (1876) 2 Ch D 463

Offers to the world at large can be revoked in the same manner that the offer was made: *Shuey, Executor v United States* 92 US 73 (1875)

└ the termination of an offer

Lapse of time, court can determine what is reasonable see *Ballas v Theohilas*

A counter offer is rejection of offer *Hyde v Wrench*, although asking for credit or other payment is not

Revocation can happen at anytime- even if offer was set to dates

Death of an offeror lapsed the offer

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