

CONTRACT A CHEAT SHEET

Offer → Acceptance → Consideration → Intention → Certainty → Capacity → Formalities,
then pivot to whatever substantive issues arise (**Privity, Estoppel, Terms (express (exclusion asw) and implied), ACL**).

FORMATION OF CONTRACT

Offer - define, objective test, bilat vs unilat, offer vs ITT, termination

- ▶ unusual transactions, ad/shop/auction (not offer), puff, ITT, termination, option contracts

Acceptance - objective test, bi vs uni, comm rule, postal rule, email/electronic, silence, battle of forms

- ▶ distant negotiations (postal), silence, standard form, unilat subjective intention, terms differ

Consideration - benefit detriment, req, bargain req, past consideration, existing duty

- ▶ promise to pay for past work(consideration), for contractually required (existing duty), variations benefit one party (practical benefit), settlement of debt for less (bona fide compromise), gift vs bargain

Intention - commercial/domestic relations/gov schemes, masters v cameron

- ▶ domestic, gov policy vs commercial contract, "subject to contract", letters of comfort (promissory)

Certainty/ Completeness - essential terms (completeness), agreements to agree, certainty of meaning, illusory promises

- ▶ no essential terms, price to be agreed, vagueness, promisor has unfettered discretion, part perform

Capacity - minors (binding, binding unless repudiated, not binding), mental incap

Formalities - land/lease/sale/mortgage s126 1A, guarantee (2nd obligation) vs indemnity (1st), elec comms for signature and writing (s9/s126(2), part performance (took possession w/out f. contract)

- **S126** checklist - content, timing, joinder, signature, guarantee vs indemnity

- ▶ involves land, guarantees, electronic comms, took possession without formal contract (part perform)

VALIDITY OF CONTRACT

Privity - when third party wants to benefit, avoid by: enforcement, agency (4 conditions), insurance, trust, estoppel (detrimental reliance), assignment, guarantee, novation (og contract terminated, new one)

- ▶ third party seeks benefit from a contract they didn't sign, insurance / guarantee / indemnity

Estoppel - AIDKDRU test + relief for detriments (minimum equity good assumption rewarded)

- ▶ no contract but one party relied to their detriment, unilateral offer revoked, pre contractual rep relied on before contract, oral land contract unenforceable use estoppel alternative, contract varied without consideration (other party relied on variation).

TERMS

Incorporation of express terms - signature (bound regardless w exceptions), notice unsigned (timing and actual knowledge), course of dealings (past history is implied term)

- ★ **Parol evidence rule** (wholly in writing + exceptions)
- ★ **Promissory statement** (contract, importance and timing, language, expertise),
- ★ **Collateral contract** (4 req- promissory lang, induce into main contract, consistent, main elements)

Construction of express terms - extrinsic evidences (true rule, low threshold for ambiguity, plain meaning, subjective intentions, objective facts)

- **Process** - objective approach, whole doc, purposive approach, clear lang
- Steps: Incorporation, privity, natural and ordinary meaning, s64 exclusion

Implied terms - fills gap in contract (in fact formal/informal (*BP 5 part test*), in law, custom trade usage)

Good faith - where party exercises termination for ulterior purposes, impedes, withholds (standard form, dealership, government tender) (*5 duties*: cooperate, no capricious, reasonableness, universal)

THIRD PARTY AND REMEDIES

ACL - consumer guarantees - where defective product or exclusion clause, use *5 step checklist*:

?: Consumer per s3, in trade or commerce which guarantee breached, major or minor fail, exclusion clause

ACL - unfair contract terms - where standard form/significant imbalance, ask: consumer or small biz, standard form (s27), exemption (s26).

Use *s24 3 part unfairness test* (significant imbalance, not reasonably necessary, would cause detriment)

Effect: Void term is disregarded, and penalties apply

EXAM SCRIPT

Colour Key: Substitute text with facts, Legislation/Cases, IF this applies statements, Elements

▶ LOOK OUT FOR

Unusual sequence of events (auction, tender, website, unilateral, ticket) and check offer/acceptance v carefully
One party alleges no contract or one sided promise (check consideration, deed, estoppel)
Domestic/social/government (check intention)nnnn
Missing vague term (check certainty/completeness, implied terms)
Contract for land/guarantee (check formality s126 instruments act)
Third party enforcer (check privity and exceptions).

3. ACCEPTANCE

STEPS: IS THERE A VALID ACCEPTANCE?

▶ **LOOK OUT FOR:** Parties negotiating at a **distance** (cite postal rule/ETA), **silence** or inaction (felthouse), **standard form contracts** exchanged by both parties (battle of the forms), **ticket/receipt** (timing issue), terms in **acceptance differ** from terms in **offer, unilateral** contract (consider subjective intention - Crown v clarke)

1. Did the conduct constitute acceptance?

SCRIPT:

Bilateral

Per **Fitness v First v Chong**, **[The conduct / signature / act of [party]] [constitutes / does not constitute]** acceptance because, applying the objective test, a reasonable person would **[/ would not]** conclude that **[party]** assented to the terms of the offer.

Unilateral

Per **Fitness v First v Chong**, **[The conduct / signature / act of [party]] [constitutes / does not constitute]** acceptance as, applying the objective test, a reasonable person would **[/ would not]** conclude that **[party]** assented to the terms of the offer. As **[party]'s** own admission shows they did not act in response to the offer, this rebuts the presumption of acceptance (**Crown v Clarke**).

- **Objective test** - would a reasonable person consider the parties to have reached agreement having regard to their external manifestations? (**Fitness First v Chong**).
 - **Signing a document** = acceptance of its terms even if unread, absent fraud or misrepresentation (**Toll v Alphapharm**).
 - **Counter Argument:** [D] may argue in a unilateral contract context that **[offeree]** did not subjectively act in response to the offer, relying on **Crown v Clarke**.
- ★ **IF unilateral contract:** subjective intention of offeree IS relevant - acceptance must be in response to the offer (**Crown v Clarke** - Clarke did not act on faith of the reward).
- ★ **IF bilateral contract:** objective test applies -- subjective intent irrelevant.

2. Communication of acceptance general rule

SCRIPT:

Per **Latec Finance** as well as **Brinkibon**, acceptance must be communicated to and received by the offeror and is effective when and where it is received. Acceptance **[was / was not]** communicated to **[offeror]** because **[the letter was posted on [date]]**, and applying the postal acceptance rule, acceptance took effect at that moment / the communication was by **[fax / telex / email]** and is therefore governed by the receipt rule, becoming effective when received by **[offeror] at [time/place]]**.

- **IF** face-to-face or telephone: received when heard -- general rule applies straightforwardly.
- **IF** posted letter: postal acceptance rule may apply -- effective when posted (**Adams v Lindsell**).
- **IF** fax or telex: instantaneous -- general rule applies; effective on receipt (**Brinkibon**).
- **IF** email: near-instantaneous; depends on parties' intentions -- Electronic Transactions Act governs timing.

Counter Argument: [D] may argue the postal rule should not apply because there was no mutual contemplation that post would be used, applying the narrower Australian position from **Tallerman v Nathan's Merchandise**.

<p>3. Postal Acceptance Rule</p>	<p>Applies when (a) post is a contemplated and reasonable means of acceptance; and (b) offeror contemplated and intended that posting would constitute effective acceptance (Tallerman v Nathan's Merchandise -- Australian narrower position).</p> <p>Does NOT apply to Instantaneous communications (Brinkibon)</p> <p>→ IF postal rule applies: contract formed when and where letter is posted, even if lost or delayed. → IF email: consider whether parties treated it as analogous to post (designated address -- ETA s 13A(1)(a)) or near-instantaneous (receipt rule).</p> <p>SCRIPT</p> <p>The postal acceptance rule [applies / does not apply] because [post was / was not] a mutually contemplated and intended means of acceptance. [Therefore, acceptance was effective when the letter was posted on [date] (Adams v Lindsell) / acceptance was only effective when received by [offeror] on [date] (Brinkibon)].</p> <p>Counter argument: [D] may argue the postal rule does not apply because there was no express or implied indication that acceptance by post was intended, meaning acceptance was only effective on receipt.</p>
<p>4. Email and electronic communications Electronic Transactions Act Vic 2000</p>	<p>SCRIPT</p> <p>[Offeree]'s acceptance by email [took effect on [date]] because, under the Electronic Transactions (Victoria) Act 2000 s 13A, the email [became capable of retrieval by [offeror] at [time] / both became capable of retrieval and [offeror] became aware of it], [it having been sent to a designated email address / the address not having been specifically designated].</p> <p>Time of dispatch (s 13): when email leaves originator's system. Time of receipt (s 13A): if designated address -- when capable of being retrieved. If no designated address -- when capable of being retrieved AND addressee is aware it was sent.</p> <p>→ IF offeror specifies an email address for acceptance: designated address -- receipt when email enters that inbox. → IF no designated address: must also have awareness of receipt.</p>
<p>5. Silence and Acceptance from conduct</p>	<p>SCRIPT</p> <p>[The silence and conduct of [party]] [does / does not] amount to acceptance because, applying the objective test in Empirnall v Machon Paull, a reasonable bystander would [/ would not] regard [party]'s conduct of [describe conduct] as signalling assent to [offeror]'s offer. This is more than mere silence because [reason]. Therefore, as silence alone cannot constitute acceptance, ___ cannot force ___ to accept by stipulating silence as the method per Felthouse v Bindley.</p> <p>→ IF the offeree has commenced performing the contract without objection: may be accepted by conduct. → IF offeree retains goods or benefits without objection: may be inferred acceptance.</p> <p>Counter Argument: [D] may argue silence and retention alone are insufficient; there must be some positive act signalling assent beyond mere passivity.</p>
<p>6. Battle of the Forms</p>	<p>When two parties are trying to enter a contract, but they each want to determine their own terms and conditions, which may be in conflict.</p> <p>→ Solving issues: Last shot approach (whoever sent the last communication will prevail)</p> <p>SCRIPT</p> <p>[Party]'s response [is / is not] a valid acceptance because [it corresponds exactly with the offer / it purports to add or vary the term of [X], making it a counter-offer that terminates the original offer]. [Under the last shot rule, the contract was formed on [party B]'s terms when [party A] proceeded without objection (Butler Machine Tool).</p> <p>➤ A purported acceptance that varies or adds terms = counter-offer (rejection of original + new offer) (Butler Machine Tool). ➤ 'Last shot' rule: contract formed on terms of last form sent and received without objection.</p>

➤ Mere inquiry does not reject offer (**Stevenson Jacques v McLean**).

- ➔ **IF** 'is there room for improvement in price?': mere inquiry -- not a counter-offer.
- ➔ **IF** 'I accept but on my own standard terms': counter-offer -- original offer terminated.
- ➔ **IF** parties exchange standard forms: Battle of the Forms -- last shot usually wins in Australia/UK.

Counter argument: [D] may argue under CISG Art 19(2) that the additional terms do not materially alter the offer and therefore acceptance is still valid, with the modification incorporated unless objected to promptly.

What if you cannot identify a clear offer and acceptance?

Consider possibility of acceptance inferred from conduct – **Empirnall v Machon Paul, Brambles v Bathurst CC**

A contract may be made without an identifiable offer and acceptance (last resort)

★ **Test for agreement without offer and acceptance from Heydon JA in Brambles:**

- In all the circumstances can agreement be inferred?
- Has mutual assent been manifested?
- What would a reasonable person in the position of the parties think as to whether there was a concluded bargain?

CASES

Case	Authority on	Facts + Held
OFFER VS ACCEPTANCE		
Fitness First v Chong	Signing a known contractual document = bound by its terms even if unread. Objective test for assent.	Quit gym and got a termination fee she didn't know about in the contract
Crown v Clarke	Exception - unilateral contracts that act must be done in response to the offer	Policemen murdered and alleged culprit gave info on the culprit and claimed reward money
Stevenson Jacques v Mclean	Mere inquiry is not a counter offer and does not terminate the original offer	McLean offered to sell him the iron with an open offer with variation til Monday, SJ responded after 9:42am but Mclean already sold it despite time.
POSTAL ACCEPTANCE RULE		
Latec Finance v Knight (held by Brinkibon)	Communication of acceptance general rule - Acceptance must be communicated to the offeror by the offeree Communication of acceptance is effective when and where it is received by the offeror	Hire purchase agreement for TV set, specified it was an offer from Knight and not binding until signed by LF, LF accepted offer but didn't communicate, Knight returned TV bc it was unsatisfactory, LF sued
Adams v Lindsell	Acceptance occurs when letter posted	Postal acceptance - offer to sell wool, acceptance sent by post but then defendants sold wool to someone else
SILENCE AND ACCEPTANCE		
Empirnall Holdings	Acceptance can be inferred from conduct Silence AND conduct amount to acceptance Objective test	Engaged project manager without contract, manager business went insolvent, MP rely on contract clauses and charges over land

Brambles	Acceptance can be inferred from conduct Silence AND conduct amount to acceptance	Collected waste disposal fees from customers and kept the liquid waste ones and he said it wasn't specified in the contract.
Felthouse v Bindley	Acceptance may not be inferred from silence	Uncle wanted buy nephew horse, said if i don't hear anything it's mine, neph accidentally sold
Carbolic Smokeball	Offeror may dispense with need to communicate acceptance	
Brinkibon	A contract is formed when acceptance is communicated to the offeror - when (ie time) and where (ie place) the acceptance was received Postal rule does not apply to instantaneous communications	Where offeree has commenced performance or retained benefit without expressly accepting
BATTLE OF THE FORMS		
MacRobertson Miller Airline Services v Commissioner of State Taxation	Ticket is an offer and not an agreement or contract	Bought a plane ticket and now airline says they can cancel without liability
Butler Machine Tool Co Ltd v Ex-Cell-O Corporation	Last shot/ knockout approach	Sent contract with variation, sent back without variation to sign but replied with order, seller signed but says they agreed

4. CONSIDERATION

A consideration is a detriment or liability voluntarily incurred by the promisee ... or a benefit conferred on the promisor at the instance of the promisee ... in exchange for the promise'

- ▶ **LOOK OUT FOR:** Promise to **pay for work already done** - past consideration (Roscorla v Thomas)
- One party promises to **do** something they are **contractually obliged to do** (Stilk v Myrick)
- Variation of contract where only **one party benefits** (existing legal duty + practical benefit exception (Williams v Roffey))
- Settlement** of disputed debt for **less than full amount** (bona fide compromise (Wigan v Edwards))
- Unilateral Contract, performance = consideration or is it a **conditional gift** (Beaton McDivitt)
- Nominal consideration arranged to make agreement **binding** (check bargain req).

IS THERE VALID CONSIDERATION?

1. Benefit/Detriment requirement	<p>There must be: a detriment incurred by the promisee, or a benefit conferred on the promisor at the instance of the promisee</p> <p>SCRIPT:</p> <p>For consideration to be met, the promisee must confer a benefit or incur a detriment. Here, as [promisor] has/has not provided consideration by [act/promise] due to [reason], consideration is legally sufficient, despite not being adequate per Woolworths v Kelly.</p> <ul style="list-style-type: none"> → IF promisee pays money, performs labour, or foregoes a legal right: clear detriment -- proceed. → IF benefit goes to a third party: check whether promisee still incurs a detriment. → IF joint promisees: one can provide consideration on behalf of the other (Coulls v Bagot). <p>Counter Argument: [D] may argue the consideration is nominal and therefore not a genuine bargain, though courts generally will not inquire into adequacy (Woolworths v Kelly).</p>
2. Bargain Requirement	<p>SCRIPT:</p> <p>Per Australian Woolen Mills, the benefit or detriment must be given in exchange for the promise, not mere reliance or coincidence. As the [the act or promise] was/was not given in exchange for [promisor]'s promise because there was/was not an express or implied request by the [promisor] that the [promisee] to do so, this is an [enforceable bargain/conditional gift] because [reasoning, e.g., the promisor requested the act as the price of the promise / the act was performed independently of any request].</p>

	<p>IF promisor requested the act or promise: strong indicator of bargain IF promisee acts without any request: likely conditional gift or act in reliance, not consideration. IF Commonwealth subsidised purchases of wool without requiring anything in return: no bargain (Australian Woollen Mills).</p> <p>Counter Argument: [D] may argue the promise was a conditional gift (not a bargain) because there was no express or implied request by [promisor] that [promisee] perform the act, applying Australian Woollen Mills.</p>
<p>3. Past consideration is insufficient</p>	<p>SCRIPT</p> <p>Per Roscorla v Thomas, something given before the promise was made cannot be consideration for it. As such, The consideration of ___ offered by [promisee] is / is not past consideration because [the act of [X] was performed before [promisor]'s promise on [date]].</p> <p>Exception: [However, the exception in Lampleigh v Braithwait [applies / does not apply] because [promisor] [did / did not] request the services earlier and the circumstances [do / do not] show an implied expectation of payment per Ipex Software Services v Hosking.</p> <p>Exception: services performed at the promisor's prior request, with an implied expectation of payment, can be good consideration for a subsequent promise to pay (Lampleigh v Braithwait; Ipex Software Services v Hosking).</p>
<p>4. Existing legal duty insufficient</p>	<p>SCRIPT</p> <p>Per Stilk v Myrick and Foakes v Beer, a promise to perform (or performance of) an existing legal duty is not good consideration. [Promisee]'s promise to [act] [is / is not] good consideration because [they were / were not] already under an existing legal duty to [act] [to [promisor] / to a third party].</p> <p>[If existing duty to promisor: consider whether exceptions of practical benefit, fresh consideration, or bona fide compromise applies.]</p> <p>Applies to: (a) public duties; (b) contractual duties owed to the same promisee under an existing contract.</p> <p>EXCEPTIONS</p> <ol style="list-style-type: none"> 1. Fresh consideration - Hartley v Ponsonby 2. Practical benefit – Williams v Roffey; Musumeci v Winadell; 3. New obligation to a third party - Pao On v Lau Yiu Long 4. Bona fide (good faith) compromise of a legal dispute – Wigan v Edwards 5. Termination and replacement of agreement – Hartley v Ponsonby
<p>5. Practical Benefit Exception</p>	<p>SCRIPT</p> <p>Per Williams v Roffey, the promisor's promise is to pay additional [amount is/is not] supported by consideration via the practical benefit exception because [promisor] obtained [practical benefit] which exceeds the remedy available for breach of [original contract].</p> <p>Adjust this: Applying the objective test per Musumeci, as there was an existing contract and reasonable unfulfillment concern given __, and [party] promised and obtained a practical benefit not under duress, this conduct can/ can't be accepted as good consideration.</p> <p>Counter: However this exception [may/may not] be accepted in Australia as it effectively negates the rule in Stilk v Myrick.</p> <p>★ Objective Test per Musumeci</p> <ol style="list-style-type: none"> 1. Is there an existing contract between A and B? 2. Is there a reasonable concern that a party may not fulfill a requirement of the contract? 3. Did the party promise a Practical Benefit? 4. Did the parties obtain a Practical benefit?

	<p>5. No duress or fraud</p> <p>Problem: Does the existing legal rule ignore commercial realities?</p> <p>Lord Blackburn in Foakes v Beer: many businesses would regard prompt payment of only part of a debt as more beneficial to them than insisting on their rights and enforcing payment of the whole</p> <p>Commercial reality is that 'one-sided' variations to contracts are often made</p> <ul style="list-style-type: none"> • Modify bargain because of changed / unforeseen circumstances • Accepted by other side to preserve a relationship / reputation • Parties often assume such variations are binding
6. Conclude	<p>SCRIPT</p> <p>As such, [party]s promise is/is not supported by good consideration.</p> <p>IF not: No enforceable contract exists at common law unless [the promise is made by deed/ estoppel applies/ nominal consideration was arranged ti make it binding]</p>

6.CERTAINTY AND COMPLETENESS

An agreement must be sufficiently certain and complete for a contract to be formed.

IS THE AGREEMENT SUFFICIENTLY CERTAIN AND COMPLETE?

1. Completeness	<p>SCRIPT:</p> <p>The agreement [is / is not] sufficiently complete because the term of [X] [has / has not] been agreed. [That term [is / is not] essential because the court [can / cannot] enforce the contract without it. [S 13 Goods Act / a mechanism for determination / part performance / an objective standard] [saves / does not save] the contract by [supplying / enabling determination of] the missing term. Further, per Foley, if the parties have part performed, the courts are willing to use ut res magis valeat quam pereat principle and fill the gap, which likely [will/will not] be the case here because ____.</p> <p>A contract is incomplete if an essential term has not been agreed and cannot be filled by</p> <ol style="list-style-type: none"> implication of law or objective standard; a mechanism/formula; or a statute (e.g., s 13 Goods Act -- reasonable price). <p>What is 'essential' depends on whether the court can enforce the contract without that term.</p> <ul style="list-style-type: none"> → IF essential term missing AND no mechanism: contract likely void for incompleteness. → IF s 13 Goods Act (Vic): reasonable price may be implied for sale of goods -- but all other essential terms must be agreed (ANZ v Frost). → IF parties have part-performed: courts more willing to imply missing terms (Foley v Classique Coaches). <p>Counter Argument: [D] may argue the missing term is essential and cannot be supplied by the court without the court writing the parties' bargain for them, relying on ANZ v Frost.</p>
2. Agreements to agree	<p>SCRIPT</p> <p>The [agreement to agree / deferred term] on [X] renders the contract [unenforceable / enforceable with the uncertain term severed] because [that term [is / is not] essential] and [there [is / is not] a mechanism for its determination / the parties [have / have not] partly performed]. The remainder of the contract [can / cannot] operate without this term.</p> <p>Agreements to agree are generally unenforceable (same effect as silence on that term).</p> <p>Exception: if a contract has been partly performed, courts are more willing to uphold it and imply reasonable terms (Foley v Classique Coaches). A mechanism (e.g., price set by arbitrator/valuer) can save the agreement.</p> <ul style="list-style-type: none"> → IF 'price to be agreed': agreement to agree on essential term -- generally void unless mechanism or part performance. → IF mechanism (arbitrator, CPI formula): enforceable even if parties cannot agree.

	<p>→ IF agreement to agree on NON-essential term: unenforceable as to that term only; rest of contract survives.</p> <p>Counter argument: [D] may argue the agreement to agree clause cannot be severed as the parties clearly intended price to be agreed before being bound, and without it there is no enforceable contract.</p>
<p>3. Certainty of meaning</p>	<p>SCRIPT</p> <p>The term [quote term] [is / is not] sufficiently certain because [an objective standard can / cannot be applied to give it meaning -- e.g., 'reasonable' is a standard the court can assess / the term is so subjective and open-ended that no court could give it a definite meaning]. [Applying the objective standard, the court [can / cannot] determine [content of the term]] (Council of Upper Hunter; Meehan v Jones).</p> <p>Test: not a pedantic test -- some ambiguity is acceptable; the question is whether the term is so obscure and incapable of any definite meaning that the court cannot attribute any contractual intention. Courts may imply an objective or 'reasonable' standard to resolve ambiguity.</p> <ul style="list-style-type: none"> → IF 'reasonable price', 'fair market value', 'equitable price': courts will try to give meaning using objective standards. → IF 'satisfactory to purchaser' (re finance): may be resolved as purchaser's satisfaction only, not agreement to agree (Meehan v Jones). → IF agreements to negotiate in good faith: can be enforceable in Australia (United Group Rail Services v Rail Corp NSW). <p>Counter Argument: [D] may argue the term 'satisfactory' (or similar vague language) is incapable of objective meaning and is therefore void for uncertainty.</p>
<p>4. Illusory Promises</p>	<p>SCRIPT</p> <p>Per Placer Developments v Cth, a promise is illusory and provides no consideration if the promisor has an unfettered discretion as to whether to perform.</p> <p>The promise by [party] to [act] [is / is not] illusory because [they [have / do not have] an unfettered discretion as to performance -- i.e., [they may choose to pay any amount / they must act reasonably in exercising their discretion]]. [The term [can / cannot] be severed, [leaving / destroying] the remainder of the contract (Whitlock v Brew; Placer Developments v Cth).]</p> <ul style="list-style-type: none"> → IF promisor has complete unfettered discretion (e.g., 'such bonus as I think fit'): illusory -- unenforceable. → IF discretion is limited (must act honestly, reasonably, or in good faith): not illusory (Meehan v Jones; Biotech v Pace). → IF third party exercises the discretion: not illusory -- enforceable (Godecke v Kirwan). → IF condition relates to fulfilment of a condition (not performance itself): not illusory -- analogous to option (Meehan v Jones re 'subject to finance'). <p>Counter Argument: [D] may argue the discretion is limited by implied obligations of good faith or reasonableness, making the promise non-illusory.</p>

CASES		
Case	Authority on	Facts
<p>Council of Upper Hunter v Aust Chilling & Freezing (1968 HCA)</p>	<p>Certainty of meaning: Courts will not destroy a bargain unless the terms are entirely incapable of meaning.</p>	<p>Contracted ACF for electricity and had right to increase charges under a section that ACF said was unclear</p>
<p>Milne v Attorney-General for the State of Tasmania</p>	<p>Essential term: What is an essential term? "A term without which the contract cannot be enforced"</p>	
<p>ANZ v Frost Holdings (1989)</p>	<p>Essential terms (other than price) not agreed re calendars -- s 13 could not save because other essentials unsettled.</p>	<p>Negotiations with no specific agreement on price, size, content, quality etc, ANZ pulls out</p>

Foley v Classique Coaches (1934 CA)	Agreement to agree on price for petrol (essential term) saved by part performance over three years.	
Meehan v Jones (1982 HCA)	Subject to finance clause: 'satisfactory' = purchaser's satisfaction only (not both parties). Illusory argument failed -- condition relates to a condition, not performance itself	Sale of oil refiner with "uncertain conditions" that he used to argue contract was void
Whitlock v Brew (1968 HCA)	Lease -- 'reasonable and usual covenants' too uncertain. Illusory clause could not be severed as it was integral. Contract void.	C for sale of land incl petrol station with clause condition of "reasonable terms...", said it was uncertain
Hall v Busst (1960) 104 CLR 206	Financial clauses must be not be uncertain and there could be no external standard of value of additions and improvements if unique	
Placer Developments v Cth (1969 HCA)	Promise to pay subsidy 'as the Commonwealth shall determine' = illusory -- completely discretionary. No enforceable promise.	Timber subsidy to be paid by Cth "at a rate to be determined by the Commonwealth from time to time".
Biotechnology Australia v Pace	Promise illusory when dependant entirely on BA discretion and too many uncertain elements	Confirmed salary package with scheme that did not exist, dr sued for breach
United Group Rail Services v Rail Corp (2009 NSWCA)	Agreement to negotiate in good faith is not too uncertain and is enforceable in Australia. Good faith negotiation has real content.	