LAWS1204: Contracts

Week 1: Introduction and Agreement (Offer)

Reading

1. **Agreement and Formation**
- Casebook [3.10]-[3.20] pp. 39-40 by way of introduction.

Gibson v Manchester City Council [1979] 1 WLR 294 in Casebook [3.30] pp.40-43

consider :
- How did the House of Lords and the English Court of Appeal differ in their respective approaches?
- What do you think we can we take from this case?

2. **Defining an Offer**

Carlill v Carbolic Smoke Ball [1893] 1 QB 256 in Casebook [3.50] & [3.60] pp. 43-47

consider :
- What arguments did the defendants raise to help their claim that no contract existed?
- What type of contract was this and why?

3. **Invitations to Treat**

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401 in Casebook [3.100] pp. 52-53

consider :
- Why was it significant to determine when a valid offer had been made in this case?
- Why is it significant to understand the difference between an offer and an invitation to treat? Think of an exam context here as well!

4. **Termination of an Offer**
- *Mobil Oil Australia Ltd v Wellcome International Pty Ltd* (1988) 81 FCR 475 in Casebook at [3.160] pp. 56-63 only (will cover [3.170] in later weeks)

consider :
- Was there a valid offer made in the circumstances of the case?
- What did the Court say about the revocability of an offer in the context of a potential unilateral contract?

<u>Notes</u>

Agreement and Formation:
- It is generally accepted that 4 essential elements are necessary for contract formation to create legal relations:
    - Agreement
    - Consideration
    - Certainty
    - Intention
- The existence of an agreement between the parties is usually analysed through the rules of offer and acceptance
    - A contract can be made without an identifiable offer and acceptance, provided the parties have manifested their mutual assent
    - The 'acid test' in a case where offer and acceptance cannot be identified is whether, viewed as a whole and objectively from the view of reasonable persons on both sides, the dealings show a concluded bargain
    - Heydon JA concluded that, in light of those authorities, in circumstances where the traditional approach cannot be applied, it is relevant to ask:
        - Whether, in all the circumstances, an agreement can be inferred;
        - Whether mutual assent has been manifested; and

        - Whether a reasonable person in the position of each of the parties would think there was a concluded bargain

Offer:

- "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it."

Gibson and Manchester City Council [1979] 1 WLR 294:

- Case summary:
    - In 1970, the conservative-controlled Manchester City Council introduced a policy allowing tenants to buy their council houses
    - My. Gibson, a tenant, received a standard form letter from the Council stating they "may be prepared to sell" his house to him at a specific price
    - He was asked to fill in an application for if he wished to proceed. He did so (leaving the price blank) and returned it.
    - Before a formal contract was issued, a new labour-controlled council came into power and abandoned the sale scheme, completing only those where a binding contract had already been concluded
    - My. Gibson claimed there was a binding contract and sued for specific performance (ie. the compel the council to sell him the house)
- Lower courts:
    - The trial judge agreed with Gibson: he found there was an offer and acceptance, so a contract existed
    - The Court of Appeal (majority: Lord Denning and Ormrod LJ) upheld the trial decision, but Denning adopted a broader view - suggesting that courts should look at the whole correspondence and conduct to determine the agreement, not just formal offer an acceptance
    - Geoffrey Lane LJ dissented, likely favouring a stricter, traditional interpretation
- Hourse of lords (Final Appeal):
    - Lord Diplock, delivering the lead judgment, rejected the Court of Appeal's broader appraoch
    - He insisted on orthodox contract principles: Was there a clear offer and a clear acceptance?
    - The Council's letter stating it "may be prepared to sell" was held not to be a legal offer, merely an invitation to treat (i.e. inviting negotiation, not making a binding promise)
    - Since there was no formal offer, there could be no acceptance, and therefore no binding contract
    - The House of Lords allowed the appeal, siding with the Council - no enforceable contract existed, and Gibson's claim failed
- Summary of why Mr Gibson lost the case:

    - No offer made by the council → the court held that the council's letter ("may be prepared to sell") was not a definite offer, just part of preliminary negotiations → without a firm offer, there could be no acceptance and therefore no contract
    - Application form was an invitation to treat, not acceptance → Mr Gibson's filled-in application form was treated as a request to negotiate, not a legal acceptance of a contract
    - No acceptance by the council → Even if Mr Gibson's actions amounted to an offer (which the court didn't decide), the council never formally accepted it
    - Policy change meant no intention to contract → the council had abandoned the scheme, and no contract could exist under the new policy
- Key takeaway:
    - A contract for the sale of land must demonstrate a clear offer and unqualified acceptance. Ambiguous or provisional language (eg. may be prepared to sell) → ambiguous language like "may be prepared to sell" does not constitute an offer.

Defining an Offer:

Carlill and Carbolic Smoke Ball Company [1893] 1 QB 256:

- Case summary:
    - The Carbolic Smoke Ball Company published a newspaper advertisement offering 100 euros to anyone who:
        - Used its "smoke ball" product three times daily for two weeks
        - Followed the supplied instructions
        - Still contracted influenza
    - The company stated it had deposited 1000 euros with the Alliance Bank to show sincerity
    - Mrs Carlill:
        - Purchased a smoke ball
        - Used it as directed from 20 November 1891 to 17 January 1892
        - Contracted influenza despite this
        - Sued to recover the 100 euro reward
    - The trial judge ruled in her favour
    - The company appealed
    - The appeal was dismissed
- Legal issues and reasoning:
    - Was the advertisement a binding promise or merely a sales puff?
        - The advertisement was not a mere puff
        - The deposit of 1000 euros showed serious intent
        - The advertisement was a clear and express promise to pay 100 euros upon certain conditions being met
    - Was there a valid offer capable of acceptance?
        - The advertisement was a unilateral offer to the public
        - Any person who fulfilled the conditions would form a binding contract
        - Such offers differ from invitations to treat

        - Similar to reward cases (eg. lost dog); becomes a contract upon performance
    - Was acceptance communicated adequately?
        - In unilateral contracts, performance of the act constitutes as acceptance
        - The nature of the offer implied that performance alone sufficed
    - Was there sufficient consideration?
        - Use of the smoke ball provided marketing exposure and likely boosted sales (benefit to company)
        - Inconvenience to Mrs Carlill (using the ball as directed) was a detriment (valid consideration)
    - Was the contract too vague to be enforceable?
        - The Court acknowledged some vagueness (eg. how long does the protection last)
        - Reasonable time could be determined (medical evidence)
        - The promise applied to illness contracted within a reasonable period after correct use
        - Even if protection only lasted while the smoke ball was being used, Mrs Carlill followed this
- Judgment: appeal dismissed → the Court of Appeal (Lindley LJ, Bowen LJ, and AL Smith LJ concurring) upheld the trial court's ruling in favour of Mrs Carlill

Invitations to Treat:
Pharmaceutical Society of Great Britain and Boots Cash Chemists (Southern) Ltd [1953] ` QB 401:
- Case summary:
    - Boots introduced self-service shopping, where customers selected goods (including certain restricted drugs) from open shelves
    - These drugs were subject to regulation under the *Pharmacy and Poisons Act 1933*, which required sales to be made by or under the supervision of a registered pharmacist
    - Customers would place items into a basket, then proceed to a cash register supervised by a pharmacist
    - The Pharmaceutical Society claimed the sale occurred at the point the customer picked the item from the shelf, meaning no pharmacist supervision at the time of sale - hence, a breach of the Act
- Issues:
    - When is the contract of sale formed in a self-service shop?
    - Specifically, does placing goods in the basket constitute acceptance of an offer, or is the contract only formed at the point of payment?
- Legal reasoning and contract law principles:
    - Display of goods = invitation to treat
        - Displaying items on shelves does not constitute an offer
        - Instead, it is an invitation to treat → a pre-offer invitation for customers to make an offer by bringing the items to the cashier

    - Customer’s action = offer to buy
        - When a customer brings the item to the cashier, they are making an offer to purchase
    - Acceptance = the shop’s agreement to sell
        - The cashier (or pharmacist) accepts the customer’s offer by processing payment
        - The contract is formed at the point of acceptance, which is under the pharmacist’s supervision
    - Rejection of the ‘immediate sale’ theory
        - If placing goods in a basket constitutes a contract, customers couldn’t swap items, and the pharmacist wouldn’t be able to refuse the sale
        - This would lead to absurd results, contradicting normal shop practice and undermining pharmacist supervision
    - Compliance with the law
        - Since acceptance occurred under the supervision of a pharmacist at the till, the requirements of the *Pharmacy and Poisons Act* were satisfied

Principle	Application in Case
Invitation to treat	Goods on shelves are not offers
Offer	Customer offers to buy at the till
Acceptance	Cashier (supervised by pharmacist) accepts the offer by taking payment
Contract formation	Only complete at the point of payment, not when goods are selected
Statutory compliance	The sale took place under pharmacist supervision, so no breach

- Outcome:
    - Appeal dismissed
    - Boots did not breach the *Pharmacy and Poisons Act*
    - Reinforced that contract law principles apply in everyday retail situations, including self-service settings

Termination of an Offer:
Mobil Oil Australia Ltd and Wellcome International Pty Ltd (1998) 81 FCR 475:
- Case summary:
    - Mobil offered a “nine-for-six” lease tenure deal to franchisees who scored 90% or more in “Circle of Excellence” (COE) for 6 years (1992-1997)
    - Franchisees began working toward that goal
    - In 1996, Mobil abandoned the COE judging system
    - Some franchisees sued for specific performance, claiming they were entitled to the promised 9-year lease

- Issues:
    - Revocation of unilateral offer: can an offeror revoke a unilateral offer once the offeree has commenced performance?
        - Normally, offers can be revoked anytime before acceptance
        - *Abbot and Lance* supports the view that once performance begins, a unilateral offer may become irrevocable
        - However, no universal rule exists preventing revocation upon commencement of performance
    - Implied ancillary contract: is there an enforceable promise not to revoke once the offeree starts performing?
        - Even if implied, a breach would typically result in damages, not ineffectiveness of revocation
        - Specific relief (eg. injunction) could prevent revocation but was not sought in this case
    - Specific performance: is it appropriate to compel fulfilment of a promise if the offeree has not fully performed
        - General rules about irrevocability upon commencement may lead to unjust outcomes (eg. multiple offerees duplicating effort after offer fulfilled)
    - Consideration: Did the franchisees furnish the stipulated consideration through their performance?
        - Franchisees did not complete the stipulated act (90% or more COR for all 6 years)
        - Partial performance or "commencement" did not suffice
        - They also have existing obligations under Team Pak standards, so actions taken were not clearly additional detriment
    - Promissory estoppel: Was their detriment sufficient to support estoppel or enforce the promise?
        - Estoppel: a legal doctrine that prevents someone from arguing something or going back on a previous statement or action, especially if another party has relied on that statement or action to their detriment. It is a principle of fairness, preventing a party from unfairly benefiting from inconsistent behaviour or taking advantage of another party's reliance on their prior conduct.
    - Damages as a remedy:
        - The property remedy (if any) was damages for loss of chance, not specific performance
        - Damages would consider the probability of franchisees meeting the 90% target in the remaining years
- Conclusion:
    - Mobil was not bound to keep its offer open to those who had only commenced performance
    - The offer was revocable, and franchisees had no right to specific performance
    - The trial judge erred in granting specific performance - damages may have been more appropriate, but were not pursued

- Legal principles:
    - Unilateral offers may become irrevocable upon substantial commencement of performance - but not always
    - An implied ancillary contract not to revoke may exist, but breach usually leads to damages, not invalidation of revocation
    - Specific performance is inappropriate where full consideration is not furnished
    - A party seeking enforcement of such offers should seek injunctions or damages, not rely on specific performance alone
        - Injunction: a judicial order restraining a person from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act
        - Specific performance: a court-ordered remedy, meaning it's granted at the court's discretion when monetary compensation is deemed insufficient to address the breach

Lecture

<u>What is a contract?</u>

- A legal relationship between two or more parties
- Each is obliged to yield or transfer legal entitlements of something
- For the benefit of the other (or others) to:
    - Facilitate the exchange of:
        - Money
        - Goods
        - Services
        - Other entitlements
    - Legally binding, enforceable
        - Why aren't all promises known to each other legally binding?
        - Where to draw the line? → advice from AI? Sale of territories on Mars? Surrogate motherhood? Gambling? Sale of organs
- Not all exchanges and promises are contracts → legally binding, enforceable
    - Ex-post perspectives
        - Results of the rules/decisions on the parties
        - Tasks for the decision-making bodies: information, financial, and rent-seeking
    - Ex-ante perspectives
        - Potential incentives, behaviours, and consequences from the rules/decisions
            - Future parties
            - Third parties
            - Decision-making bodies
            - Others in society

<u>Why do we need contract law?</u>