LAW2101 — Contract Law

Theory & Doctrine Summary

Principles, Tests, Rules and Frameworks

Topics 1–2: Contract Formation & Offer
Topic 3: Acceptance
Topic 5: Consideration
Topic 6: Intention to Create Legal Relations
Topics 7–8: Certainty & Capacity
Topics 9–10: Formalities & Privity
Topic 11: Estoppel
Topic 12: Incorporation of Express Terms
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Topics 1–2: Contract Formation & Offer

What Is a Contract?

Definition: 'An agreement or set of promises that the law will enforce.' The essence of contract law is determining which promises attract a legal remedy.

Sources of law: predominantly common law (case-based). Also shaped by equity (estoppel, restitution), and statutes: Australian Consumer Law, Goods Act 1958 (Vic), Instruments Act 1958 (Vic), Electronic Transactions Act.

Underlying themes: (1) freedom of contract — parties are free to contract as they choose; (2) commercial efficiency — predictable, certain application; (3) objective approach — contracts assessed by external conduct, not subjective intent; (4) fairness — law abhors certain conduct.

Four Material Elements of Formation

- **Agreement** — offer + acceptance
- **Consideration** — each party gives something of value
- **Intention** — to create legal relations
- **Certainty** — agreement must be complete and certain

Additional requirements: formalities (for some contracts), capacity, and privity.

Types of Contract

- **Bilateral:** both parties exchange promises to do something in the future (both obligations executory at formation).
- **Unilateral:** one party makes a promise; the other accepts by performing the stipulated act. Contract forms at moment of performance. At formation: promisor's obligation is executory; offeree's is already executed. E.g. reward offers (Carlill).

Offer — Core Principles

Definition: 'An indication by one person to another of a willingness to contract on certain terms, such that acceptance is invited and would conclude the agreement.' (Australian Woollen Mills; objective approach applies)

Legal significance: an offer creates in the offeree a power to form a contract by acceptance. It does not in itself create an obligation.

Objective test: would a reasonable person in the position of the offeree think an offer was intended and would be binding upon acceptance?

Mere puff: exaggerated sales talk that no reasonable person would take as a genuine offer (e.g. 'Red Bull gives you wings'). Not an offer.

Invitation to Treat vs Offer

An invitation to treat (ITT) invites the other party to make an offer; it lacks sufficient indication of willingness to be bound. Apply objective test to distinguish.

- **Goods on shop shelves:** ITT (Pharmaceutical Society v Boots). Customer's act of taking to register = offer; payment accepted = acceptance. Rationale: customer must be able to return goods without being in breach.
- **Online goods/services:** generally ITT unless clear intention to be bound (ETA s14B).
- **Public auctions:** auction = ITT; bid = offer; fall of hammer = acceptance. Applies even where property declared 'on the market' or 'without reserve' (AGC v McWhirter). Vendor can withdraw before acceptance.
- **Tenders (general rule):** request for tenders = ITT; tender submitted = offer.
- **Tenders (exceptions):** call for tenders can itself be an offer where it contains a clear undertaking to accept the best complying bid (Harvela). Call for tenders can create a collateral 'process contract' governing how tenders are assessed (Hughes Aircraft).

Termination of Offer

Revocation

- Can occur at any time before acceptance, even within a stated deadline, unless consideration has been paid to keep it open.
- By words or by conduct inconsistent with continuation (e.g. selling to a third party — Dickinson v Dodds).
- Effective when communicated to the offeree — by the offeror or any reasonably reliable source.
- Offers to the public at large: can be revoked in the same manner and with the same coverage as the original offer was made.
- **Exception — Options:** promise to keep offer open is binding if supported by consideration (Goldsborough Mort). Two analyses: (a) conditional contract; (b) two separate contracts (preliminary contract to hold open + main contract on exercise).
- **Exception — Unilateral contracts:** no universal rule against revocation once performance has commenced. However an implied ancillary contract not to revoke may arise once performance has begun, or estoppel may apply (Mobil Oil).

Other Grounds

- **Lapse of time:** offer expressed for a specified period lapses at expiry; otherwise lapses after a reasonable time depending on context.
- **Death:** offer lapses on death of offeror if offeree is notified. No clear authority where offeree unaware. Options survive against estate unless personal services required (Laybutt v Amoco).
- **Failure of condition:** express condition — as stipulated. Implied condition — offer lapses if circumstances change in a way a reasonable person would regard as going to the heart of the offer (Financings v Stimson).
- **Rejection and counter-offer:** a counter-offer is a rejection terminating the original offer. A 'mere inquiry' (e.g. 'is there room on the price?') is NOT a rejection (Stevenson v McLean).

Topic 3: Acceptance

Core Doctrine

Definition: 'Unqualified assent to the terms of an offer.' Two requirements: (1) must be unqualified — identical terms; (2) must be manifested/communicated.

Objective test (general rule): would a reasonable person consider the parties to have reached agreement having regard to their external manifestations? (Fitness First v Chong). Parties need not be ad idem (of same mind).

Exception — unilateral contracts: subjective intention IS relevant. The act must be done consciously in response to the offer (Crown v Clarke). Not just performance for other purposes.

Communication of Acceptance

- **General Rule 1:** must be communicated to the offeror by the offeree in any reasonable way, unless the offeror prescribes a specific method.
- **Exceptions to Rule 1:** (a) acceptance inferred from conduct (Empirnall; Brambles); (b) offeror can dispense with the need for communication (Carlill — unilateral contracts, offer accepted by performance).
- **General Rule 2:** communication is effective when and where received by the offeror.
- **Postal acceptance rule (qualification):** for non-instantaneous communications by post, acceptance is effective at the moment of posting, not receipt (Adams v Lindsell). Depends on parties' intentions and type of communication.
- **Electronic communications — ETA:** s7(1): electronic transactions not invalid because electronic. s13: time of dispatch. s13A: time of receipt — deemed when capable of being retrieved (arrives in inbox), regardless of when read. Exception: if no designated address, also requires awareness it has been sent to that address.

Silence and Acceptance by Conduct

- **Rule 1 — Silence alone:** cannot constitute acceptance. A contract cannot be forced on an offeree by stipulating silence as acceptance (Felthouse v Bindley).