

70211 CONTRACTS NOTES

Offer

General:

- To determine whether an offer made: issue is whether it would appear to a reasonable person in the position of the offeree that an offer was intended, and that a binding agreement would be made upon acceptance.
- Court looks at the **intention** of making an offer objectively according to the outward manifestations (**Carlill**)

An offer can lead to a binding agreement only if the offer identifies the terms of the proposed agreement with sufficient certainty.

- For offer, need:
 - Element of exchange (otherwise it would be a conditional gift promise – firm commitment is given before the conditions are fulfilled)
 - **Australian Woollen Mills Ltd v Cth**
 - Cth developed subsidy scheme for local wool manufacturers
 - AWM claimed purchase was before termination of scheme and wanted compensation
 - Say offer was a subsidy in return for acts of purchasing for local wool manufacturing
 - Held – no offer, since no element of exchange (promisee must give something in exchange)
 - Finality (otherwise, invitation to treat)
 - Intention
- Offer must be communicated – if offeree is unaware of offer, impossible to accept
 - **R v Clarke** (1927) (HC) – ct held that Clarke could not claim reward since at the time of offer, he was unaware of the reward
- Must be distinguished from mere puffs, an exaggerated non-promissory statement which would not reasonably expected to be true (**Carlill v Cabolic Smoke Ball Co**)
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GIBSON (page 42)

Issue: offer by council to sell land?

Decision: Court of appeal said it was a contract. Council appealed to HOL (appeal allowed- i.e. found no contract).

Reasons/Principles:

- Conventional approach by Lord Diplock: 'see no reason ...depart from the conventional approach...seeing whether upon their true construction there is ...contractual offer ...therefore words such as 'may be prepared to sell' makes this a letter setting out the financial terms of the sale.
- Look at plain meaning of the words used.

CARLIL (page 46) – unilateral contract

Issue: offer by smoke ball co?

Decision: yes, therefore plaintiff received 100 pounds

Reasons/principles:

- Acceptance is by conduct- i.e. performing all conditions: court held although acceptance of offer must normally be notified to offeror, the offeror may dispense with that notification. An offer that calls for performance of particular conditions may be accepted by performance of those conditions. An offer of reward is this type of offer. Per Lindley LJ: “if notice of acceptance required...person who makes the offer gets the notice contemporaneously with his notice by performance of the condition. Also ‘if the person making offer, expressly/impliedly intimates in offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of condition is sufficient acceptance without notification.
 - Construe contract in plain and ordinary meaning – Bowen LJ
 - Statement of bank deposit: clear that promise was intended – construction of ad objectively- according to what an ordinary person would think was intended i.e. plain words)
 - Reasonable construction on ad and payment of reward within reasonable time.
 - Use of the smoke ball by plaintiff constituted both a benefit to the defendant and a detriment to the plaintiff, either which would have been enough to constitute good **consideration** for the promise. Per Bowen LJ: use of smoke ball promotes their sale.
 - Court held offer was made to the whole world and could be accepted by any person who performed the conditions **on faith of the ad**.
 - Communicate offer in other cases: i.e. two minds come together.
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- **Invitation to treat:** Invitation by one party to commence negotiations which may or may not lead to an offer – a person who responds to this is making the offer. If the offeror did not intend to be bound and envisaged further negotiations, not an offer but invitation to treat

Boots (page 55)

Issue: was selling of chemist drugs offer or invitation to treat?

Decision: no offer, def won.

Reasons/principles:

- Rejected argument that display of goods regarded as offer. When take item off shelf, customer entitled to return and substitute what they have chosen, thus customers making an offer when they present item to cashier and are not bound until cashier accepts that offer. “Contract not completed until shopkeeper, or someone on his behalf accepts the offer”.

Revocation of offer

Goldsbrough (page 56) – OPTION CASE Option – agreement to hold an offer open in exchange for consideration

Issue: could offer be revoked?

Decision: grantors (quin) attempt to repudiate offer before acceptance was held to be ineffective. The option holder exercised the option within the specified period and was able to force the grantor to sell the land as agreed.

Reasons/principles:

- Griffith CJ: regarded an option to purchase property as a contract for the sale of that property, conditional upon the option being exercised within the specified period. "Offer may be withdrawn at any time before acceptance. A mere promise to leave it open for a specified time makes no difference because...no agreement if made without consideration...not binding.
- ISSAC: option...promise founded on valuable consideration to sell land on stated terms and given time. If unsupported by valuable consideration...creation of a contract by acceptance in accordance with conditions...could be withdrawn...
- Feature that distinguishes option from offer is consideration. It ensures continuance by creating a relation in which the law forbids the offeror retracting it.
- If there is an option, then cannot be withdrawn before specified time coz it is a binding contract.
- Lapse
 - Reasonable time (***Manchester Diocesan Council for Education v Commercial and General Investments Pty Ltd***)
 - Death of offeror or offeree – ***Fong v Cilli*** (must be knowledge of the death)
 - Failure of a condition (***Financings Ltd v Stimson*** – see below)
- Rejection and counter-offer
 - Rejection need not be explicit – a counter-offer is a rejection (***Butler Machine Tool Co Ltd v Ex-Cell-O-Corp***)
 - But, a request for further information is not a counter-offer

Dickson V Dodds (1876)

Withdrawal of offer does not need to be withdrawn by an offeror personally to be a valid withdrawal.

Byrne v Van Tienhoven (1880)

- Revocation of offer must be communicated.
- Revocation occurs when withdrawal received.
- **UNILATERAL CONTRACTS** 1 party promises, the other accepts through performance

MOBIL (page 59) (use this case where unilateral contract and party wants to revoke offer!)

Issue: offer? If there was, could it be revoked? Was it revoked?

Decision: no offer. Even if offer, Mobil was free to revoke that offer.

Reasons/principles:

- An offer 'to find a way' to 'extend' ...simply to **vague an uncertain** to be capable of giving rise to a contractual obligation.
- Matter of construction
- Tear off slip- terms were not **certain** to give rise to a contract.
- **Not universally unjust that an offeror be at liberty to revoke once the offeree has commenced or embarked upon performance of an act which is both the sought act of acceptance and the sought executed consideration for the promise.**
- Unilateral contract: acceptance takes place offeree performs act (also the consideration).
- In any event, even if it be assumed that an offeror has impliedly promised not to revoke in consideration of a commencement of performance of the act of acceptance. It would not follow that a purported revocation would be ineffective...in the absence of specific relief in respect of that promise; the offeror's revocation would be effective, although leaving the offeror liable in damages. Unilateral contracts
 - Take place in the same form as the offer was made (US *Shuey v US* (1875))
 - An offer made in return for performance of an act is revocable at any time
 - **Mobil v Wellcome**
 - Mobil implemented incentive scheme but after 4 years revoked offer
 - Held – can revoke unilateral offer
- Failure of Condition – **Financing Ltd v Stimson** – car damaged whilst still waiting for finance

Ticket Cases

- Issue of ticket is offer which can be accepted by passenger after consideration of the conditions of purchase (**MacRobertson Miller Airline Services v Commissioner of State Taxation (WA)**)

Acceptance

General rule: **Brinkibon Ltd v Stahag Stahl**: *a contract is formed when acceptance of an offer is communicated by the offeree to the offeror*

Crown v Clarke (unilateral) page 71

- In bilateral contracts, there must be consciousness of the offer in order to accept, but with unilateral contracts, it depends – this is the subjective approach: