

Week 1 Summary– Introduction to Contract Law and Formation

WHAT IS CONTRACT LAW?

- Contract → a promise that is legal binding.
- Legally binding → enforceable by the courts and the innocent party has access to a remedy.
- Unilateral Contract → an offer and an act of acceptance.
 - Authority: **Carlill v Carbolic Smoke Ball [1883] 1 QB 256.**
 - Authority: **Crown v Clarke (1927) 40 CLR 227.**
 - Authority: **Errington v Errington [1952] 1 All ER 149.**
- Bilateral Contract → an exchange of promises.

FORMATION – AGREEMENT:

- Agreement → understanding between two parties that one of them will do something, in return for the other doing something.
 - Made up of two components: OFFER + ACCEPTANCE = AGREEMENT
 - Consensus idem – meeting of the minds.
 - And agreement must be entered into voluntarily without any illegitimate pressure.
 - Parties have reached an agreement when one party has communicated to the other that an offer has been accepted.
 - Authority: **Smith v Hughes [1871] LR 6 QB 597.**

Invitation to Deal/Treat

- Invitation to deal → if the communication was intended to merely initiate negotiation.
 - Invitation to deal is not the same as an offer.
 - Authority: **Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401.**
- Auctions are usually an invitation to deal by the auctioneer and the bids are the offers.
 - Authority: **AGC (advancers) Ltd v McWhirter (1977) 1 BPR 9454.**
 - Online auctions are different. A seller who lists goods for sale with a disclosed reserve is making an offer to sell. The person who bids the highest and is higher than the reserve has accepted the offer and a contract is formed.

Offer

- Offer → promise by one person (offeror) to do something, or not do something, if the person to whom it is addressed (offeree) responds in a specified manner.
 - Authority: **Carlill v Carbolic Smoke Ball Company [1883] 1 QB 256.**
- Termination of an offer:
 - Revocation → occurs when an offer is withdrawn and the offeror communicates this decision to the offeree.
 - Offer can be revoked at any time before it is accepted.
 - Once acceptance has occurred this is no longer possible.
 - Authority: **Dickson v Dodds [1876] 2 Ch D 463.**
 - Rejection → communication saying 'no' to an offer.
 - Counter-offer → communication by the offeree indicating that the offer is acceptable in substance, but seeking to vary the terms of the proposed contract.
 - Lapse of time → if an offer specifies a time within which it must be accepted, acceptance after that time will be ineffective unless the offeror agrees to waive the stipulation.
 - Death → an offer will lapse with the death of the offeror and cannot be accepted thereafter.

Acceptance

- Acceptance → affirmative response to an offer by the offeree (saying yes).
 - Authority: **Crown v Clarke (1927) 40 CLR 227.**
 - Can only be accepted by whom it is addressed to.

- Silence is not acceptance.
- An acceptance must be communicated to the offeror by the offeree
 - **Authority: Felthouse v Bindley (1862) 11 CB (NS) 869.**
- Postal Acceptance Rule:
 - A properly addressed pre-paid letter of acceptance is effective on posting (whether or not received by the offeror)
 - Must be known by both parties that post is being used.

Statutes:

Competition and Consumer Act 2010: Schedule 2 – The Australian Consumer Law

- Act was the *Trade Practices Act 1974*.

- Section 18 (Section 52 of *Trade Practices Act 1974*): Misleading or deceptive conduct
 1. A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

- Section 50: Harassment and coercion
 1. A person must not use physical force, or undue harassment or coercion, in connection with:
 - a. The supply or possible supply of goods or services; or
 - b. The payment for goods or services; or
 - c. The sale or grant, or the possible sale or grant, of an interest in land; or the payment for an interest in land.

Note: A pecuniary penalty may be imposed for a contravention of this subsection.
 2. Subsections (1)(c) and (d) do not affect the application of any other provision of Part 2-1 or this Part in relation to the supply or acquisition, or the possible supply or acquisition, of interests in land.

- Division 2—Injunctions
Section 232: Injunctions
 1. A court may grant an injunction, in such terms as the court considers appropriate, if the court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - a. A contravention of a provision of Chapter 2, 3 or 4; or
 - b. Attempting to contravene such a provision; or
 - c. Aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - d. Inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
 - e. Being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - f. Conspiring with others to contravene such a provision.
 2. The court may grant the injunction on application by the regulator or any other person.
 3. Subsection (1) applies in relation to conduct constituted by applying or relying on, or purporting to apply or rely on, a term of a consumer contract that has been declared under section 250 to be an unfair term as if the conduct were a contravention of a provision of Chapter 2.
 4. The power of the court to grant an injunction under subsection (1) restraining a person from engaging in conduct may be exercised:
 - a. Whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of a kind referred to in that subsection; and
 - b. Whether or not the person has previously engaged in conduct of that kind; and
 - c. Whether or not there is an imminent danger of substantial damage to any other person if the person engages in conduct of that kind.
 5. Without limiting subsection (1), the court may grant an injunction under that subsection restraining a person from carrying on a business or supplying goods or services (whether or not as part of, or incidental to, the carrying on of another business):
 - a. For a specified period; or
 - b. Except on specified terms and conditions.

Air Great Lakes Pty Ltd v KS Easter (Holdings) Pty Ltd

Citation: [\(1985\) 2 NSWLR 309](#)

Court: New South Wales Court of Appeal

Judge/s:

- Hope JA
- Mahoney JA
- McHugh JA

Parties:

- **Appellant:** Air Great Lakes Pty Ltd
- **Defendant:** KS Easter (Holdings) Pty Ltd

Material Facts:

- Parties entered into an agreement for the sale of an airline business.
- Air Great Lakes alleged that the agreement had been repudiated (rejected) by Easter and claimed damages.
- Easter argued, in part, that there was no intention for the document signed by the parties to be legally binding.

Litigation History:

- New South Wales Supreme Court (1983)

Issue to be decided:

- Was the contract entered into by the parties legally binding?

Decision:

- That where a contract is alleged to be found in a written signed document, notwithstanding that the document contemplates further agreement, including additional terms and conditions to be recommended by the parties' legal advisers, the court may have regard to extrinsic evidence of surrounding circumstances for the purpose of determining objectively whether there was an intention that there should be a concluded contract.
- That where a concluded contract is alleged to have been abandoned or abrogated, extrinsic evidence of prior negotiations and subsequent events is admissible to establish mutual agreement to abandon the contract.

Reason for the decision:

- Where A conducts himself so that a reasonable person would think he was intending to contract, then a subjective reservation by A not to contract will not prevent a contract existing.
- Subjective intention may, however, be relevant if B knew of A's actual subjective intent; thus, if A is 'pretending' to contract (play-acting), and B knows this, then the law would not impose upon either party the relationship of a contract (even though it might objectively appear as if they were!).
- Intention can be proven, not by the 'document' itself (where one exists) but statements of the parties and other outside material may also be considered.