

Topic 1 – Contract formation

1.1 Agreement & Offer

Agreement is based on the notion of consensus ad idem – a meeting of the minds between all parties of the contract: ***Smith v Hughes***.

Type of contract (unilateral v bilateral)

- A unilateral contract is between one person and the world: ***Carlill v Carbolic Smoke Ball***.
- A bilateral contract is an offer between distinct parties.

An offer is the final statement by the offeror to the offeree to which the offeror is content to be contractually bound. It is only acceptable if it shows a definite **consideration**, an **intention** to be bound and **certainty** in its terms – ***Australian Woollen Mills v Commonwealth***.

An offer must be communicated/knowledge of the offer is essential

An offer must be communicated by the offeree: ***Fitch v Snedaker***.

- An offer must be in the mind of the acceptor when he accepts the offer – ***R v Clarke***
- Offeree must be aware of the offer: ***Fitch v Snedaker***.

What is not an offer?

- Mere puffs: ***Leonard v Pepsico Inc***
- A request for more information: ***Harvey v Facey***.
- An invitation to treat – ***Partridge v Crittendon***.
 - Display of goods for sale: ***Pharmaceutical Society of Great Britain v Boots Cash Chemists***.
 - Advertisements: ***Grainger v Gough***.
 - Unless they show “bona fides” – ***Carlill v Carbolic Smoke Ball***.

Special offers

- Auction with reserve
 - Each bid is an offer, the auctioneer accepts or rejects them – ***Payne v Cave***; **Sale of Goods Act s 60**.
- Auction without reserve
 - Auctioneer may be liable to highest bidder: ***Hughes Aircraft Systems International v Airservices Australia***.
- Sale by Tender
 - Invitation to send in offers (not an offer in its own right) – *Spencer v Harding*.
 - May be subject to conditions of fairness: ***Hughes Aircraft Systems International v Airservices Australia***
- If joined by guarantee that it will be awarded to the lowest bidder, it may be a unilateral offer – ***Harvela Investments Ltd v Royal Trust Company of Canada***.
- Tickets
 - May be offers but are not evidence of a contract – ***MacRobertson Miller Airline Services v Commissioner of State Taxation***.

- When given automatically, ticket is offer, taking it is acceptance. Conditions must be brought to offeree's attention before acceptance – ***Thornton v Shoe Lane Parking Ltd.***

Australian Consumer Law

- **S 18**– misleading and deceptive conduct
- **Ss 29, 30** – false representations
- **S 32** – offering gifts without meaning to provide them
- **S 35** – bait advertising

Termination of the offer

Revocation

Can be revoked before acceptance: ***Byrne and Co v Leon Van Tienhoven and Co***

- Must be communicated (Postal Rule does not count for revocation): ***Byrne and Co v Leon van Tienhoven and Co.***
- Can be indirect – ***Dickinson v Dodds.***
- For unilateral offers, revocation must be in the same form as the offer: ***Shuey, Executor v United States.***

Where there has been substantial performance, generally, can't be revoked (should be given reasonable opportunity to complete): ***Errington v Errington.***

- Except where performance is in accepting, not in completing the contract: ***Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd.***

Rejection

Rejection terminates the offer.

- Rejection need not be explicit (a counter offer is a rejection): ***Hyde v Wrench.***
 - Last shot v Synthesis approaches: ***Butler Tool Co v Ex-Cell-O Corp.***
- Request for further information is not a counter-offer: ***Stevenson Jaques and Co v McLean.***

Carlill v Carbolic Smoke Ball (1893)

Facts

- In a newspaper, the Ds (manufacturers of an influenza remedy, the carbolic smokeball) offered £100 reward to any person contracting influenza having used the remedy in accordance with the company's directions.
- The advertisement also stated that the Ds had deposited £1000 with the bank to show the sincerity of their offer.
- P on the faith of this offer bought and used the remedy in accordance with the directions and contracted influenza.
- D argued that an offer must be made bilaterally (i.e. an offer cannot be made to the world) and that there was no intention, no offer or acceptance, no consideration → therefore no contract.

Held

- Court disagreed with D and held that an offer CAN be made unilaterally (i.e. to the entire world).
 - There was intention → 100 pounds put in the bank was a clear statement of intent to be bound by the contract.
 - There was acceptance → it was a unilateral contract; therefore acceptance occurs at the time of performance. The performance also constitutes consideration.
- This case established that an advertisement can sometimes be an offer, and that the notification of acceptance is not always necessary.
- Today we have legislation in place (Australian Consumer Law) that deals with misleading and deceptive conduct.

Lapse

- Effluxion of time
 - If a reasonable amount of time expires, the offer does too: ***Ramsgate Victoria Hotel Co Ltd v Montefiore.***
- Death of the offeror generally causes the offer to lapse: ***Reynolds v Atherton.***
 - Unless the offeree does not know of the death and the contract does not require the personal services of the deceased offeror: ***Carter v Hyde.***
- Failure of a condition precedent will lapse an offer: ***Gilbert J McCaul (Australia) Pty Ltd v Pitt Club Ltd***