

**MLL111- Exam Notes**  
**Contract Law**  
**(All Topics + Cases)**

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## Formation of Contracts

### Offer and Acceptance

- Offer by one party
- Acceptance by the other party
- Identification of these events determines if there is an agreement (i.e. where and when it was formed)
- Must be an *agreement*
- Must be an 'offer' and 'acceptance'
- Agreement must be *voluntary* (i.e. no illegitimate pressure)

Cases: *Carlill v Carbolic Smoke Ball Company*

*Pharmaceutical Society of GB v Boots (1953)*

*AGC (Advances) Ltd v McWhirter (1977)*

*Blackpool & Flyde Aero Club v Blackpool Borough Council (1990)*

### Formation

1. Agreement
2. Capacity
3. Consideration (or Substitute)
4. Intention to Create Legal Relations
5. Compliance with Formalities

## Acceptance

**General Rule:** Words or conduct purporting to accept offer must be consistent with the offer. If they are not this will constitute a counter-offer and therefore the initial offer is made redundant and can no longer be accepted.

- Unequivocal statement (oral, written, conduct) by offeree agreeing to the offer
- Only a person whom the offer was directed can accept the offer and it must be accepted in response to the offer
- An acceptance can take any form (i.e. written, conduct) unless specifically stipulated by offeror
- Acceptance must be communicated to offeror

Cases: *Crown v Clarke (1927)*

*Maxitherm Boilers v Pacific Dunlop Insurance (1996)*

## Communication of Acceptance

### Waiver

- Offeror may tell offeree they don't have to communicate acceptance
- They can't do this in a way that would impose a contract on the offeree for remaining silent
- For example: "I'll assume if you don't call me by Friday, you accept"
- Can't waive need for **actual acceptance**, but can waive need to communicate that acceptance
- Performance (i.e. finding and returning dog) is sufficient (implied by the nature of offer and does not impose an obligation to find dog)

*Carbolic Smoke Ball:* The court concluded about communication that notification is for benefit of offeror. Offeror can dispense with need for notice (expressly or by implication). In this case, inference was that act of performance was sufficient to constitute acceptance without need for communication.

### Silence

- Silence alone cannot be treated as assent
- Where the offeree's conduct can be characterized as 'acceptance by conduct', the outcome may be different

Case: *Empirnall Holdings v Machon Paull*

## Estoppel

- General rule: acceptance occurs *where* and *when* it reaches the offeror
- Offeror prevented from claiming there has been no communication of acceptance

Exception: When the offeror's conduct has prevented the communication from occurring (i.e. an incorrect email address may be given even though there was communication of acceptance).

## Form

If the offeror stipulates a form for acceptance, if:

Mandatory: Acceptance not effective unless that method is used.

Suggested: An equally quick or faster method is acceptable.

## Agreements Without Identifiable Contracts

Cases: *Clarke v Dunraven*

*Brambles Holdings v Bathurst City Council*

**UN Convention (Article 18):** Silence or inactivity does not in itself amount to acceptance.

- Acceptance is not effective until communicated
- Acceptance occurs **when acceptance is received** (i.e. phone, email, fax when **sent**, not opened)
- Acceptance occurs where acceptance is received

Case: *Felthouse v Bindley (1862)*

## **Postal Rule**

### **Applies**

- Acceptance occurs when and where it is *sent* to the offeror (i.e. letters, telegrams)
- The offeror contemplated acceptance could be communicated in this form
- Either express or implied

### **Does Not Apply**

- Instantaneous forms of communication (fax, phone, email, telex)
- Where post not contemplated
- If unreasonable to use post
- If offeror informs postal is not sufficient form of communication
- If letter lost due to offeree's incompetence

Cases: *Bressan v Squires*

*Brinkibon v Stahag Stahl*

## **Electronic Transactions Act (1999) (Cth) (Section 14)**

### **Time of Dispatch**

- Time communication leaves the information system or if it has not left the information system when it is received by the addressee (i.e. where parties are using the same server)

### **Time of Receipt**

- Time communication is capable of being retrieved by addressee at designated address
- If not designated address, time that (electronic communication is capable of being retrieved and addressee is aware that communication has been sent

### **Place of Dispatch and Receipt**

- Dispatch where originator has place of business
- Received at place addressee has business

### **Invitation to treat regarding Contracts**

- A proposal to form a contract made through one or more electronic communications that:
  - Is not addressed to one or more specific parties
  - Is generally accessible to parties making use of information systems

## **Bilateral and Unilateral Agreements**

**Unilateral:** Only one party makes a promise

**Bilateral:** Both parties make a promise

- Difference is number of promises not number of parties
- The purpose of a unilateral promise is to get offeree to do something they are unlikely to promise to do

Carbolic Smoke Ball Case: Carbolic Smoke Ball Co made promise of reward. Carlill (and other members) made no promise (i.e. they could have stopped using smoke ball after a week without breaching contract). Carlill could sue Carbolic Smoke Ball Co if they didn't pay reward but CBS could not sue Carlill if she stopped using the smoke ball.

### **Unilateral Agreements**

- For a unilateral contract to be accepted, as in *Daulia v Four Milkbank Nominees* (1977), it was suggested that in the case of offers of unilateral contracts, the offer is accepted and a contract is made when an unequivocal commencement of the act has occurred
- If acceptance is performing the act it is entirely the general rule would enable revocation to occur before the act is completed

Case: *Errington v Errington* (1952)