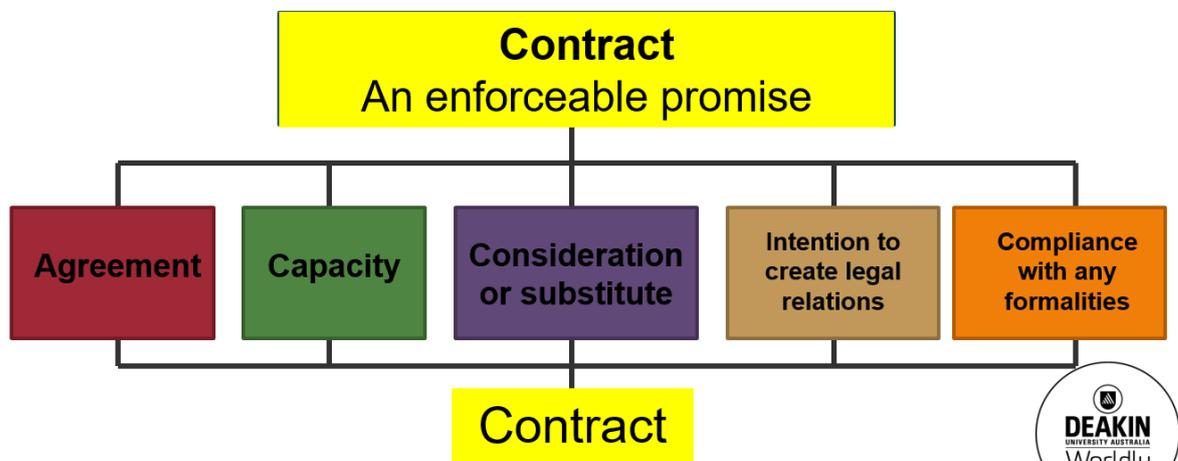


# Formation

1. Agreement
2. Certainty and conditional Contracts
3. Consideration
4. Intention to create contractual relationships
5. Capacity
6. Formalities



## Agreement

1. Offer
2. Invitation to treat
3. Requests for further information
4. Termination of an offer

“The central requirement of a contract is the existence of an agreement between two parties concerning the promise in question.” (CC, p25)

### The Nature of an Agreement

- An agreement “is an understanding between two parties that one of them will do something or will promise to do so, in return for the other doing something, or promising to do so.” (CC, p26)
- Two elements
  - A meeting of the minds (consensus ad idem); and
  - At least one promise
- It is essential that the agreement is entered into voluntarily; interpreted narrowly
  - Whether the parties have reached an agreement is determined objectively, not subjectively
  - Agreement is required only about entering into the contract and its terms; it is not concerned with the desirability of doing so, or what motivates the parties
  - An agreement can exist even though one, or both, of the parties believes that they were obliged to enter into it because of their economic or personal circumstances
  - An agreement can exist even though one of the parties is not happy about its terms and has entered into it reluctantly.

#### • E.g. *Smith V Hughes* [1871] LR 6 QB 597

- **Facts**
  - Smith offered to sell oats to Hughes and gave H a sample which H thought was old oats and agreed to pay the price S wanted.
  - Later H discovered they were new oats and wanted to return them and not pay S.
  - S knew they were new oats and he refused to take them back and sued H for breach of contract for the contract price. (Miscommunication of what was being sold, no meeting of the minds)
- **Principle**
  - “If, whatever a man’s **real intention** may be, he so conducts himself that a **reasonable man would believe that he was assenting to the terms** proposed by the other party, and that other party upon that belief enters into a contract with him, the man thus conducting himself would be equally **bound as if he had intended to agree** to the other party’s terms”  
(at 607 per Blackburn J, emphasis added)



### 1. Offer

- “An offer is a promise by one person (the ‘offeror’) to do something, or not to do something, if the person to whom it is addressed (the ‘offeree’) responds in a stipulated manner.” CC, p29
- Any form of words or conduct intentionally communicating such a promise can amount to an offer.

#### **Nature and Duration of Offers**

- To whom can an offer be made?
  - An offer can be made to a particular person, group or to the whole world

#### ***Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256***

- Facts
  - CSB placed an ad which said it would give any person who used the smoke ball as directed and contracted influenza 100 pounds. Mrs. Carlill followed the directions, contracted influenza and CSBC refused to give her 100 pounds
- Issues
  - Was it an offer or a mere sales puff?
  - Could an offer be made to the world at large?
- Held/Principle
  - An offer could be made to the whole world and a contract would be formed only with those who came forward and complied with the terms of acceptance.

#### **Sales Puff**

- The exaggerations of the good points of a product, a business, real property, and the prospects for future rise in value, profits and growth

## **2. Invitations to deal or to negotiate**

- If ‘communication was intended to merely initiate negotiation, it will be characterized as an ‘invitation to deal’ CC, p31
- Advertisements are usually regarded as invitations to deal
- Not contractually obliged to supply the stock

#### **Displaying Goods**

- The display of goods in a self-service store, or in a shop window, is usually regarded as merely an invitation to deal, rather than an offer to sell.

#### ***Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern Ltd) [1953] 1 QB 401***

- Facts
  - Boots operated a self-serve chemist except if customers purchased a drug. In this instance, the transaction at the cashier’s desk was supervised by a pharmacist.