

COMMERCIAL LAW EXAM NOTES

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CONTRACTS

Formation

PART 1A: OFFER

- A **proposal** by one party to enter into a **legally binding contract** on **certain terms** with another, giving the offer an opportunity to choose between **acceptance or rejection**
- May be in **writing, oral** or implied from **conduct**.
 - **Brambles Holdings Ltd v Bathurst City Council pg.210** - implied from conduct
- Is there an offer? Yes, if a **reasonable person** would think so (**OBJECTIVE**)
 - **Carlill v Carbolic Smoke Ball Co pg.220**

Revoking an Offer

- Offer **can be revoked** any time prior to acceptance
 - **Dickinson v Dodds pg.223**
- Promise to hold offer open for a specific amount of time is **not binding** unless consideration has been given. If it hasn't, this is an **option**, can exercise or disregard it
 - **Goldsborough, Mort & Co Ltd v Quinn pg.221** - offer not able to be revoked
- Offer will **lapse after a specified time** if no time period has been given

Rejecting an Offer

- Once rejected offer is **no longer available for acceptance**, but may later be **revived**
 - **Tinn v Hoffman & Co pg.230**
- A **counter-offer is a rejection**
 - **Hyde v Wrench pg.230** - offeror and offered changed roles (counter offer is new offer)
- **Mere enquiry is not a rejection** as to the meaning/altercation of terms
 - **Harvey v Facey pg.218** - eg: cannot accept someone is merely stating lowest price they would sell

Unilateral Contract: offer which is accepted in return for an act

- **Australian Woollen Mills Pty Ltd v Commonwealth pg.256**

Bilateral Contract: exchange of promises

Invitation to treat: Invitation to make offer or enter into negotiations

- **Pharmaceutical Society v Boots Cash Chemists pg.213** - taking something to a till is an offer to the person running the till

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PART 1B: ACCEPTANCE

- Acceptance occurs when the party to whom the offer is made **agrees**, and offers their **unqualified assent** to, the terms of the offer
- The party must be conscious of it
 - **R v Clarke pg.228** - not acceptance if first acting on goodwill then find out there is a reward

- Acceptance must be **communicated to the offeror**, unless:
 - Offeror dispenses with **requirement of notification**
 - Acceptance is effected by **performance of an act**
 - **Postal acceptance** rule applies
- Acceptance must be in **manner prescribed** by offeror
 - **Gilbert J McCaul Pty Ltd v Pitt Club Ltd pg.228**
- **Silence** is not acceptance
 - **Felthouse v Bindley pg.229**
- Acceptance may be **inferred from conduct**
 - **Clarke v Earl of Dunraven and Mount-Earl (The Satanita) pg.209**

Postal Acceptance Rule

- Effective **as soon as posted** and not ineffective by **delay or loss of letter in post**
 - **Adams v Lindsell pg.233**
- **Inapplicable to instantaneous communication** such as telephone, fax
 - **Entores Ltd v Miles Far East Corp pg.234** - only effective once received
- Email / SMS unclear **pg.234**

CONTRACTS

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PART 2: INTENTION TO CREATE LEGAL RELATIONS

- The parties must have **intended** their agreements to be legally enforceable;
 - 'Would **reasonable people** regard the agreement as **intended to be legally binding**'
 - **RULE FROM: Merrit v Merrit**
-
- **Commercial** dealings are intended to be **legally binding**
 - **Banque Brusses Lambert SA v Australian National Industries Ltd pg.255**
 - **REBUTTED: Pirt Biotechnologies Pty Ltd v Pitferm Ltd pg.255**
 - **Private/domestic** arrangements are **not legally binding**
 - **Ermogeneous v Greek Orthodox Community of SA Inc pg.251** - voluntary organisations
 - **Cohen v Cohen pg.247** - spouses do not intend to create legal relations
 - **REBUTTED: Roufos v Brewster**
 - **REBUTTED: Wakeling v Ripley pg.249** - seriousness of broken promise = intention
 - **REBUTTED: Trevey v Grubb pg.246** - between friends