

LAWS1015 STUDY NOTES

Part 1 – Contract Formation

Agreement

Contract: Legally binding agreement between two parties

- Unilateral: Offeror promises to pay after occurrence of a specified act (eg Carlil)
- Bilateral: Agreement between two parties in which each side agrees to fulfil their side of the bargain.

Agreement:

Traditional approach → clear offer + acceptance (has some limitations)

Electronics Contracts Act 2000 (NSW)

S7: Transactions not invalid merely because of electronic communication

Case	Facts	Principle
Goldsborough Mort & Co v Quinn (1910)	Def. made offer for sale of land, explicitly stated price + time period. Before end of week (+ acceptance) he revoked the offer. However, was accepted within this week = plaintiffs sought specific performance.	Agreement exists where an offer from one party is accepted unequivocally by another party.
Carlill v Carbolic Smoke Ball Company [1893]	Carbolic = vendors of pseudo-medical preparation 'smoke ball'. Newspaper ads = amounting to offer of a K? Carlill bought ball and used it as directed over 8 weeks, contracted influenza. Sued to recover 100 (reward stipulated in ad).	An offer is an expression of willingness to be bound on certain terms without further negotiation = willingness to be bound immediately. Agreement made at the moment of acceptance/communication of acceptance. Cannot contract with "all the world" Unilateral contracts may be accepted by performance. Mere 'puff' cannot give rise to a contract (extravagance of claims).

<p>Brinkibon Ltd v Stahag Stahlune Stahl [1982]</p>	<p>Brink sued respondents for breach of K (sale by respondents of steel bars)</p> <p>Relevant communications – two telexes. Q: was telex instantaneous? Once message is received by offeror’s machine = acceptance.</p>	<p>Postal Acceptance Rule: acceptance may occur at the time of the offeree posting acceptance (not when its actually received).</p> <p>Only applies where terms of offer allow for acceptance by post.</p> <p>Does not apply to instantaneous communication.</p>
<p>Felthouse v Bindley (1862)</p>	<p>John selling horse to Felthouse. Misunderstanding about price, Paul wrote to John: “If I hear no more, horse is mine.”</p> <p>No reply. Auctioneer (Bindley) accidentally sold horse to 3rd party. Felthouse sued, arguing ownership had already passed to him.</p> <p>Held: no real bargain, open offer.</p>	<p>Silence isn’t acceptance, acceptance has to be objectively demonstrable → acceptance must be communicated.</p>
<p>Butler Machine Tool Co. Ltd v Ex-Cell-O Corp Ltd [1979]</p>	<p>Butler sued to recover sum for a delivered machine → payable under price variation clause.</p> <p>Ex-Cell denies this, states K included standard terms which made no provision for price variation.</p> <p>Letters passed back and forth = offer, counter-offer, second counter-offer.</p> <p>No doubt K was concluded, sale was on buyer’s terms.</p>	<p>Inconsistent standard forms – whose should prevail?</p> <p>Synthesis approach: requires court to build K from sets of two terms from reasonable implication.</p> <p>As a reasonable 3rd party, what can you objectively determine to be the intention of the two parties?</p> <p>Counter offer is not sufficient acceptance.</p>
<p>Brambles Holdings v Bathurst CC (2001)</p>	<p>Looking at circs -> manifestation of mutual assent, as B received liquid waste at BCC’s disposal depot and charged for acceptance.</p> <p>Parties entered into new K, specified that portion of fees charged for accepting waste be remitted to BCC.</p> <p>Correspondences regarding B charging a new price + additional fees – BCC sued for these fees and succeeded.</p> <p>Indivisible nature of BCC’s offer = B’s conduct “objective viewed, was an unequivocal acceptance of offer.”</p>	<p>If there is not offer and acceptance, look at whether an agreement can be inferred.</p> <p>Would a reasonable person in position of each of the parties think there was a concluded bargain?</p>

<p>Empirnall Holdings (1988)</p>	<p>E (developer) retained MPP (architects) to draw plans/obtain approvals etc for property redevelopment work.</p> <p>Accepted, did work, required progress payment from E and execution of written K. Sent written K and asked for signature.</p> <p>Later – another letter saying they are proceeding in accordance with those terms, on understanding that E accepts.</p> <p>E knew terms, took benefit of work = intention to accept.</p>	<p>Acceptance is usually express, but may be implied → analysis of surrounding circumstances + offeree’s conduct as manifesting intention to be bound.</p>
<p>Australian Woollen Mills v Commonwealth (1954)</p>	<p>1946: Cth created wool subsidy scheme for wool manufacturers.</p> <p>AWM purchased wool stockpile, but in 1948 Cth discontinued scheme even though AWM had not been paid subsidies.</p> <p>AWM argued each purchase of wool by AWM was a unilateral K.</p>	<p>Contractual offer must be clear, set out the terms of the bargain, indicate intention to create legal obligations.</p>
<p>Smith v Hughes (1871)</p>		<p>Need for meeting of the minds</p> <p>If a reasonable man would believe a party is assenting = intending to agree.</p>
<p>Hyde v Wrench (1840)</p>		<p>Counter-offer is not acceptance.</p>
<p>Pharmaceutical Society of Great Britain v Boots Cash Chemists [1953]</p>	<p>Boots organised pharmacy organised on ‘self-service’ basis. Drugs displayed on shelves.</p>	<p>Invitation to treat → an invitation to negotiate → NOT AN OFFER.</p>
<p>MacRobertson Miller Airline Services v Cmr for State Taxation (1975)</p>	<p>Airline quoted price + availability to prospective passenger.</p> <p>In return for payment of fare, passenger issued ticket with conditions, including that airline should cancel booking, or part of the booking WITHOUT liability.</p>	<p>Ticket not an agreement or even an offer → no offer to undertake any obligation to carry intending passenger.</p> <p>No K until passenger boards plane aka ACCEPTS.</p>

	Stamp duty payable if ticket constituted an agreement.	Thornton v Show Lane Parking Company [1971]: If customer took it and retained w/o objection, act was regarded as an acceptance of the offer. Offeror may revoke an offer before acceptance.
Mobil Oil Australia v Wellcome International (1998)	Mobil Oil incentive scheme for franchisees through "Circle of Excellence" judging that provides scores for franchisees (out of 100)	
Dickenson v Dodds (1876)	Dodds delivered to Dickenson a document: "I hereby agree to sell to Mr Dickinson for the sum of 800 pounds." – offer to be left over until 9am Friday. Thursday evening: Dickinson delivered letter of acceptance to Dodds' mother in law. Didn't receive, when Dickinson gave him duplicate letter next day, had already sold. Dickinson sought specific performance.	Offer cannot be accepted if the offeror communicates a revocation of the offer (in absence of consideration). Consensus ad idem – existence of same mind between parties is essential.
R v Clarke	Reward of 1000 pounds offered to anyone who provided info which could lead to arrest/conviction of murderer. Clarke arrested in connection w one of the murders, made a statement. Clarke claimed reward.	Acceptance is as essential as an offer (Clarke wasn't acting in response to the offer but for his own benefit)

Consideration

A contractual promise is to be supported by **consideration** to be enforceable.

- Quid pro quo (this for that)
- Benefit/detriment requirement
- Consideration must move from promisor
- Must be sufficient but need not be adequate - What constitutes 'sufficient' consideration? Anything that is not unlawful.

- Past consideration = something you have done before entering into the K = not good consideration.

Case	Facts	Principle
Chappell & Co Ltd v Nestle & Co Ltd [1980]	<p>Nestlé offered to supply recordings for “Rockin Shoes” to people who sent company 1s6d + 2 choc wrappers.</p> <p>Chappell held copyright to song, and challenged N’s use of it w/o consent.</p> <p>N argued its promotion was authorised under legislation – allowed dealings where there was an “ordinary retail selling price”</p> <p>Price = solely monetary price, could not include other consideration. Wrappers included? Yes = N failed. Did not matter that wrapper not worth anything in monetary terms, they were good consideration even if merely nominal in value.</p>	<p>Agreement must be supported by sufficient consideration to be enforceable. A contracting party can stipulate for what consideration he chooses – not up to the court to decide whether <u>adequate</u>.</p>
Currie v Misa		<p>Consideration consists of some benefit or right to the promisor or a forbearance or detriment to the promisee</p>
Australian Woollen Mills v Commonwealth (1954)	<p>No intention that buying wool was price – consideration – for subsidies (it was a gov policy).</p> <p>Statements of policy, not offers. Although absence of a request may negate existence of a K, presence of a request to perform an act will not necessarily establish existence of quid pro quo.</p>	<p>Distinction between a contract and a conditional gift → the fulfilment of a condition was not same as performance of a consideration.</p> <p>Consideration is one person varying their legal rights and obligations in consideration for another person doing same.</p>
Stilk v Myrick (1809)	<p>Two crewmen deserted work on ship, captain promised to split extra payment amongst remaining 9 if ship was returned safely.</p> <p>Refused to pay at end of journey, not legally liable.</p>	<p>Past consideration is not good consideration → pre-existing contractual duty.</p> <p>Have the parties done anything extra?</p>
Hartley v Ponsonby 1857	<p>17 crewmen out of 36 deserted = terms of K changed so drastically (much more work) so captain was legally liable.</p>	<p>If the nature of the new duty is substantially different from the original K, it is sufficient consideration.</p>

<p>Roscorla v Thomas (1842)</p>	<p>R bought horse from T for 30.</p> <p>After purchase, Thomas promised horse was “sound and free from vice” → not true.</p> <p>R sued for breach of K, but court held R could not succeed in claim because the promise regarding horse’s state was not supported by consideration.</p> <p>30 was past consideration.</p>	<p>Past consideration not sufficient.</p>
<p>Williams v Roffey Bros & Nicholls (Contractors) Ltd [1991]</p>	<p>Defendants refurbishing flats, engaged plaintiff to do carpentry work for them.</p> <p>Substantial part of price had been paid when plaintiff’s financial difficulties = defendant promised to pay extra sum, at agreed rate per flat.</p> <p>Williams promised to do work, completed 8 more before abandoning. Roffey declined to pay for work, on basis promise was not supported by consid. (ie Williams doing work was past consideration)</p> <p>To find consideration – court emphasised commercial advantaged of agreement on both sides.</p> <p>Williams = gets business. Roffey = would have cost more time/money to get someone else, recognised that original price was less than reasonable. Also, liable to head contractor for liquidated damages for delay under main K.</p>	<p>If party will obtain practical benefit for performance of a pre-existing legal obligation that might not have otherwise been able to be performed, will constitute consideration of a new K.</p> <p>Glidewell LJ, 6 Factor Practical Benefit Test:</p> <ol style="list-style-type: none"> 1. If A has entered into a contract with B to do work for, or to supply goods or services to, B in return for the payment by B; and 2. At some stage before A has completely performed his obligations under the contract B has reason to doubt whether A will, or will be able to, complete his side of the bargain; and 3. B thereupon promises A an additional payment in return for A’s promise to perform his contractual obligations on time; and 4. As a result of giving his promise, B obtains a practical benefit, or obviates a disbenefit; and 5. B’s promise is not given as a result of economic duress or fraud on the part of A; then 6. The benefit to B is capable of being consideration for B’s promise, so that the promise will be legally binding <p>As long as practical benefit exists, and there is no fraud or duress, good consideration will exist.</p>
<p>Musumeci v Winadell Pty Ltd (1994)</p>	<p>M claimed they had not breached terms of lease of tenants of premises in shopping centre, claimed W had made a binding promise to reduce rent (2/3 of original rent)</p> <p>W interfered with the agreement of quiet enjoyment of the lease – attempted eviction.</p>	<p>In addition to the parties benefitting, they can also, alternatively, avoid detriment.</p> <p>Benefit has to be greater than alternative remedy</p> <p>.</p>

	<p>Damages – loss of profit, emotional stress, vexation.</p> <p>M paid the price variation, inclusive of outgoings. W sought to maintain that rent concession had been terminated because M failed to pay outgoings in full. Agreed to accept less than what they were contractually entitled to – cut rent by 1/3.</p> <p>Benefit to W – avoided not having a full shopping centre.</p>	
Woolworths Ltd v Kelly (1991)	<p>Appeal relating to rights to provision out of a Pension Scheme Fund – Kelly began with W as a clerk in 1928 + rose to leadership.</p> <p>Entitlement to pension scheme → sought declaration of rights x 34666 total amount payable.</p> <p>Scheme was gratuitous = unenforceable?</p> <p>Company said consideration did not sustain pension entitlement (surrender of legal entitlement of money owed for consultancy work).</p>	It's not for the courts to judge (except for in situations concerning undue influence or unconscionable conduct) adequacy of consideration.
Re Casey's Patents; Steward v Casey	<p>Casey spent time/money developing + promoting inventions patented by Steward and Charlton.</p> <p>Steward signed letter to Casey: "in consideration" of Casey's services, would receive 1/3 of share in patents.</p> <p>Payment sought, Steward claimed C had no rights because any consideration was in the past – had already spent time and money.</p>	When a party enter into an agreement on the faith that their services will be reasonably compensated = good consideration.
Foakes v Beer (1884)	<p>F owed B judgement debt. B agreed if he paid 500 immediately, and the remainder in instalments of 150, she would not sue for the judgement debt. Later went back on this and claimed statutory interest due on debt. Court held Mrs Beer was entitled to interest as F had not given her anything extra in exchange for promise.</p>	Existing legal rule duty

<p>Wigan v Edwards (1973)</p>	<p>K for purchase of house between E and W (builder).</p> <p>No express terms relating to how house was to be constructed, or structural defects or quality. E subsequently discovered a number of defects and provided a list to W to remedy before purchase.</p> <p>W agreed to repaid any major defaults in construction 5 years after purchase date, but didn't remedy anything.</p>	<p>Bona fide compromise of a legal claim → a promise to do what the promisor is already bound to do is a sufficient consideration, when it is given by way of a bona fide compromise of a disputed claim (if they genuinely believed there was no obligation to complete previously)</p>
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Certainty

- Narrowly defined uncertainty: is the agreement uncertain because the terms are too vague or ambiguous for a meaning to be attributed by a court? Aka Too uncertain to be enforced.
 - ‘the courts are reluctant to find an agreement is too vague or uncertain to be enforced where it is found that the parties had the intention of being contractually bound and have acted on their agreement’ **Divani v Wells [2020] AC 129 at [18]**
 - a. Is term capable of meaning?
 - b. Contracts to negotiate
 - i. A mere agreement to agree is void for incompleteness (**Booker Industries P/L v Wilson Parking**)
 - ii. K to resolve a dispute is not a K to negotiate, but guidelines are ended (**Elizabeth Bay Developments v Boral Building**)
 - iii. Aus position – **Coal Cliff**
- Incompleteness: Is there agreement on all essential elements of the bargain, or have the parties left an essential matter to be determined by future agreement?
 - a. Context critical – leases, Ks for sale of land and Ks for sale of goods.
 - i. S 13(2) of Sale of Goods Act 1923 (NSW): “Where the price is not determined [by the K or a course of dealings] the buyer must pay a reasonable price. What is a reasonable price is a q of fact dependant on the circumstances of each particular case.”
 - ii. Importance of intention
 - b. If an inessential term is uncertain – SEVER.
 - c. Machinery/formula – K wont be void for uncertainty if parties have provided an effective mechanism for determining content of relevant essential matter.
- Illusory promise: Is a particular promise illusory because the contract effectively gives the promisor an unfettered discretion as to whether to perform or not?
 - a. **Meehan v Jones**

Dealing with incomplete K:

- Can terms be implied?