

# Contract

## Agreement

Capacity (Minor, unsoundness of mind & drunkenness)

## Offer

### Definition

Statement showing willingness to be bound; only valid if IDs contract terms w/ sufficient certainty

### Type

Unilateral/executory (*Carlill*)

- *Mobil*: not executory contract - no consequences for sub-performing.

### Willingness to be bound

May req signature, but note *Empirnall* (acceptance by conduct)

- *Gibson*: 'may', req'd app; no intention
- *Carlill*: lexeme 'will' & declaring \$ deposit -> sincerity -> not puffery
- *Brambles*: language of COMD = unlikely to be offer
- *Mobil*:
  - Trial judge: there was an offer – 'Guarantee', 'commitment that we're making to you'
  - Ct of Appeal: there was no offer – 'there's more work to do', 'maybe', etc.
    - 'Commitment' referred to finding a scheme, not to a definite scheme in place
    - NOTE: this is a factual issue that's up for debate

### Revocation (*Mobil*)

Unilateral offer can be revoked even once conduct of acceptance has commenced, UNLESS:

Implied ancillary contract exists - consider whether:

- offeror knows the offeree has commenced performance
- offeree understands that incomplete performance is at their risk
- parties intend the offeror should be at liberty to revoke the offer
- acts towards performance are detrimental to the offeree

^*Mobil*: no ancillary contract

- Hard to say when a franchisee should be taken to have 'embarked upon' performance (the acts were already part of their jobs)
- Franchisees' actions were to their own benefit (no detriment established)

### Ticket *MacRobertson*

Stephen J: airline makes offer by issuing ticket; passenger accepts by presenting at airport, or by not objecting after reasonable time

Barwick CJ: passenger makes offer by presenting ticket at airport; airline accepts by allocating a seat

## Acceptance

### Definition

Acceptance occurs when the offeree gives their unqual'd assent to the terms of an offer *Gibson*.

### Executory

Reqs unconditional acceptance

- *Gibson*: no - rejected by not filling in price: acceptance must be unqual'd, else it's counter-offer

Acceptance by conduct (prima facie - *Felthouse*: can't regard silence as acceptance)

- *Empirnall*: can infer acceptance fm conduct if reasonable bystander would regard it as so
- *Brambles*:
  - Heydon JA: rejected offer, but then took advantage of benefit of offer -> agreement
  - Ipp JA: accepted by conduct (acceptance of commercial benefit)

### Unilateral

Reqs completion of performance

- Complete performance - *Carlill*: used ball for full 2 weeks
- Not complete performance - *Mobil*: franchisees had only performed for 4 yrs instead of 6

### Notification

Req'd by both executory & unilateral but:

- Unilateral: not req'd where offer made to the world (no quals on whom it's made to): dispense w/ need for comm *Carlill*

### Postal Acceptance Rule

- If acceptance was via post IAW offeror's intent, offer's accepted as soon as acceptance posted.
  - Postal acceptance rule is N/A *Entores*

### Electronic comm

- *Brinkibon*: receipt = acceptance
- *ETA s13A* (unless otherwise agreed):
  - If sent to designated address, receipt = time when comm is capable of being retrieved
    - ^Guide to Enactment of the UNCITRAL Model Law on Electronic Commerce: mere indication on a letterhead shouldn't be regarded as express designation
  - If sent to other address, receipt isn't til addressee is aware that it's been sent

## Consideration

### Benefit/detriment *Misa*

- a) Right/interest/profit/benefit to 1 party; OR
  - CSB asked for use, which gives them reputational benefit if it had worked. *Carlill*
- b) Forbearance/detriment/loss/responsibility undertaken by the other
  - Minor inconvenience still counts as long as it's asked for *Carlill*

### Bargain/exchange (quid pro quo r/s) *AWM*

*AWM*: admin notice (conditional promise), not express request, hence not unilateral contract

- CRITIQUE - McHugh JA & Mahoney JA, & Privy Council in appeal decision: there IS a request for certain conduct here (but still goes w/ same decision b/c of lack of intention to be legally bound)
- HYPO: Talk abt both sides (note that factual findings aren't binding)

### Reliance

Irrelevant for contract (McHugh JA in *Beaton*) BUT CHECK ESTOPPEL

### Sufficiency

Amt doesn't matter to be legally sufficient *Thomas, Kelly, Beaton* (McHugh JA, Mahoney JA)

### Past Consid

Additional promise made after contract formed isn't good consid *Roscorla*

### ELD *Wigan, Stilk*

#### Bona Fide *Wigan*

1. Dispute: E asserted that they weren't bound to perform.
2. Honest belief at the time: E honestly believed that they weren't bound.

Public policy: cts encourage ppl to resolve things themselves. Thus, given that W agreed, E's promise to complete the contract = good consid.

#### Practical Benefit Exception - *Roffey, Musumeci*

1. A has entered into a contract w/ B;
2. B has reason to doubt that A will, or will be able to, complete their side of the bargain;
3. B thereupon promises an additional pyt in return for A's promise to perform their contractual obs on time;
  - Santow in *Musumeci*: doesn't have to be pyt: can be some other kind of concession
4. As a result, B gets a prac. benefit (apart fm not having to sue A, e.g. retain tenant when struggling to find tenants already); &
  - Santow in *Musumeci*: practically speaking beneficial to avoid litigation
5. B's promise isn't given as a result of econ. duress / fraud on the part of A, i.e. A lacks ability, not just willingness, to complete their obs otherwise.
  - Santow in *Musumeci*: adds 'undue influence or unconscionable conduct'

### Other Solns

Fresh consid

Promise made to 3<sup>rd</sup> party

Termination & replacement

## Certainty

### Incompleteness

#### Omission

Time of performance: std implication = performance must be given w/in a reasonable time.

Goods price: *Goods Act 1958* (reasonable price; void if 3<sup>rd</sup> party doesn't value & goods not given yet)

#### Deferment

##### *Agreement to agree*

Ok as long as sufficient completeness in terms, incl. agreement to be bound by terms set by 3<sup>rd</sup> party

- *Godecke*: even tho solicitor is vendor's agent, still diff person; thus can even leave out essential terms, as long as solicitor's terms are consistent w/ other terms, & are reasonable.
- Note: doesn't work if it's BOTH parties' solicitors
- *Meehan*: 'satisfactory' isn't agreement to agree, as only 1 party needs to be satisfied (not both)

##### *Agreement to negotiate in good faith*

*United Rail* - Allsop J: no certainty problem - concept of good faith is known to judiciary & has sufficient meaning - have to be loyal to the bargain, & honest in negotiation approach

## Unclear Language

Multiple possible meanings: no certainty problem - issue is interpretation *Carlill, Upper Hunter*

- *Meehan*: unknown if 'satisfactory' is subjective/objective, but np coz there's 2 possible meanings

But if nowhere to find guidance (unique situation), word is meaningless

- *Whitlock*: 'reasonable' was meaningless as lease was unique; can't look to mkt for guidance
- *Pace*: share scheme (how many, what type, options, etc.)
  - Dissent (Hope JA): can look to similar coys for guidance; better to come up w/ partially satisfactory scheme than to not come up w/ 1 at all

## Illusory Promise

Kitto J in *Placer J*: meaningless if someone says they promise to do this unless they don't want to

Gibbs J in *Godecke*: idea of 1-sided discretion

- Implementing share scheme, the attributes of which D has discretion over *Pace*

Can't extrapolate fm subsequent behaviour *Placer*

#### *Meehan*:

- Gibbs CJ: not illusory where discretion relates to a condition on which the contract depends
- Mason J: discretion re 'satisfactory' qual'd by ob of honesty, thus not illusory

## Consequences *Whitlock* - 2 ways to save rest of contract:

1. Severance: term may be severed if it doesn't fundamentally change the contract.
2. Waive: if a term exists only to benefit 1 of the parties, they may waive it.

Arbitration clause can't fix uncertainty coz arbiter can't give meaning to something meaningless.