

Foundation Studies

Business Environments

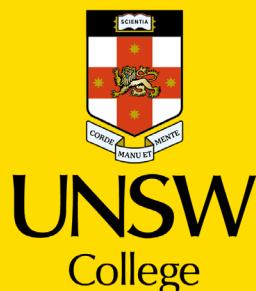
Part 2: The Legal Environment of Business

Unit 4

Contract Law (I)

Lecturer:

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Overview

- Introduction to contract law
- Definition of a contract
- Simple contract and formal contract
- Unilateral contract and bilateral contract
- Essential elements of a valid contract
 - Agreement:
 - Offer
 - Acceptance

Cases in this unit

Partridge v Crittenden

Grainger and Sons v Gough

Pharmaceutical Society of Great Britain v Boots Cash Chemist (Southern) Ltd

Carlill v Carbolic Smoke Ball Co.

Harvey v Facey

Hyde v Wrench

R v Clarke

Introduction

- Understanding contracts is basic to understanding business – there would be no business without contracts.
- A contract is an agreement made between two or more parties with an intention of certain legal rights and obligations which the law will enforce.
- Contract law is about the enforcement of promises.

Formation of Contract

Formal contract

- Must comply with formality requirements
 - A formal contract is signed, sealed and delivered in a deed, not necessarily with mutual promises (Consideration – See Unit 5)
- Examples
 - Gratuitous promises/gift
 - Power of Attorney

Simple contract

- No particular formalities are needed
- Can be written, oral, implied
- Must be supported by consideration: must involve an exchange between the parties, each one giving and receiving something (See Unit 5)

Examples:

- Bus rides
- Purchase of clothes

Formation of Contract

Bilateral Contract

- Involves a promise in return for a promise
- Consideration is executory (See Unit 5)

Unilateral Contract

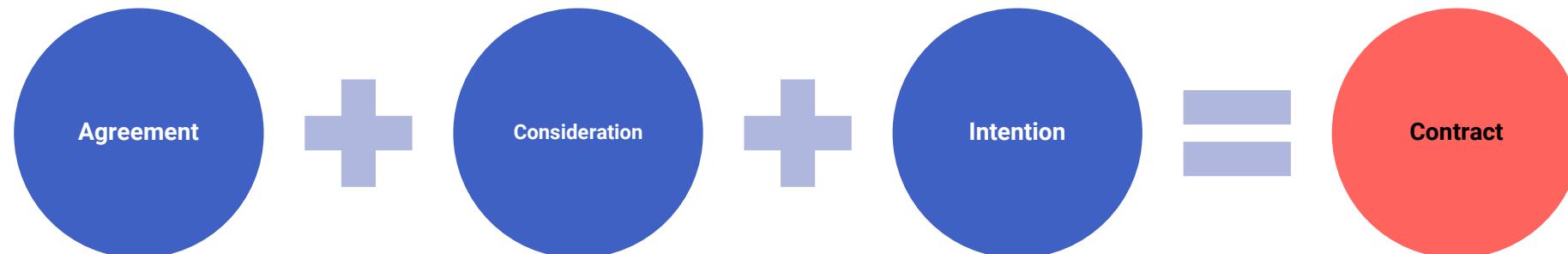
- Involves a promise which is accepted by doing what is required
- Consideration is executed (See Unit 5)

Formation of Contract

A legally binding agreement comprises the following legal elements: offer and acceptance, consideration, intention to create legal relations

Essential elements of a valid simple contract

- Agreement = Offer + Acceptance
- Consideration (See Unit 5)
- Intention to create legal relations (See Unit 5)



Formation of Contract

Other things to consider

- Capacity of parties – parties must have legal capacity to enter into a contract
- Genuine consent – all parties enter into a contract freely and willingly, without fraud, duress, undue influence, misrepresentation, or mistakes
- Legality of object/Purpose of contract – contract must be for a lawful purpose and not involve any illegal activities

Agreement



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Agreement

- An agreement is created when an offer is made by one party, and that offer is accepted by another party.



Offer

- An offer is an undertaking by the offeror made with the intention that it will bind the offeror as soon as it is accepted by the offeree
- Capable of giving rise to a contract on acceptance
- Promise (offer) made by the offeror
- Capable of acceptance by the offeree
- **Offeror** – Person making the offer
- **Offeree** – Person receiving the offer

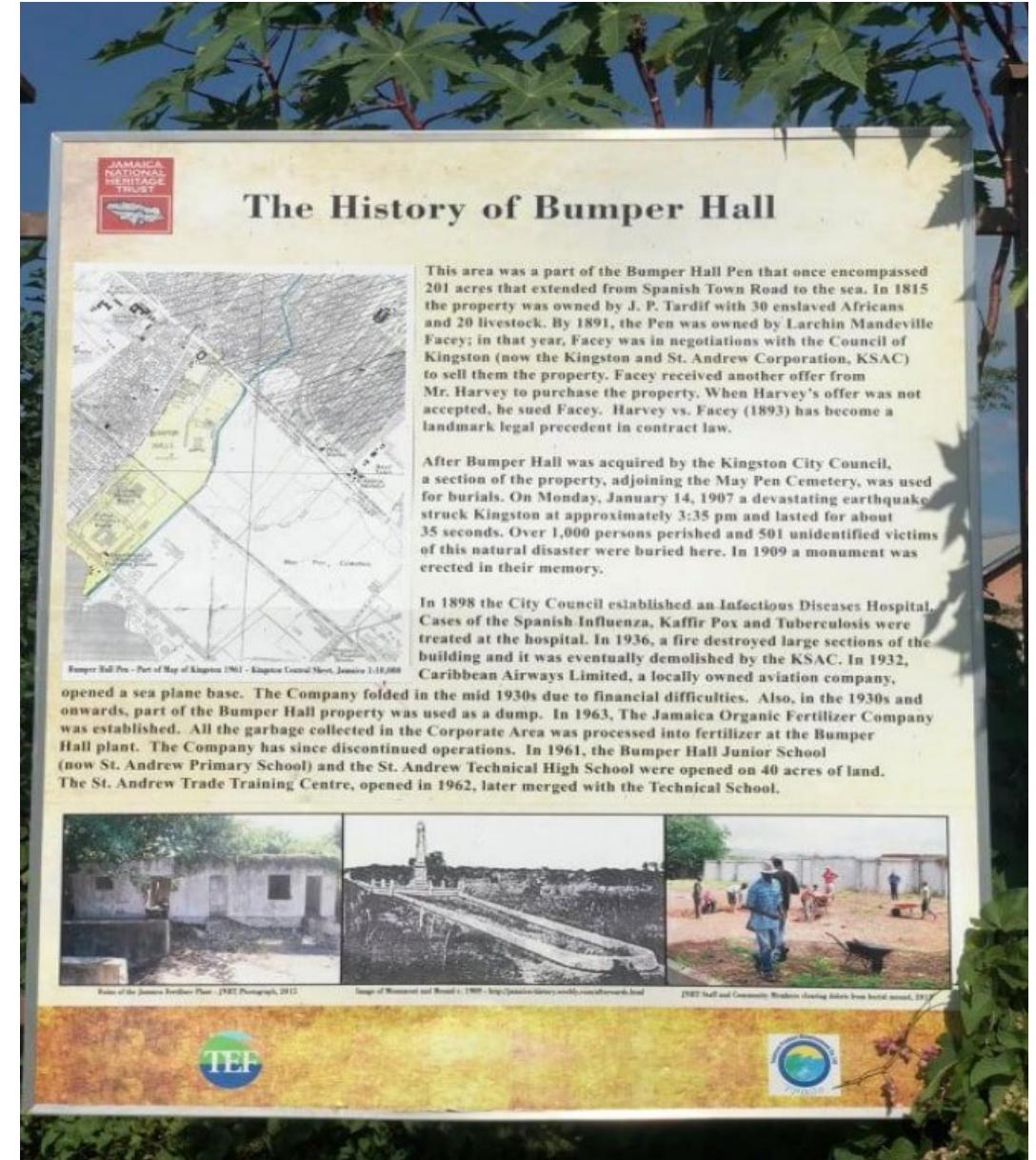
Offer

Mere supply of information is not an offer

Harvey v Facey [1893] AC 552

Facts

- H→F: Will you sell us Bumper Hall Pen?
Telegraph lowest cash price.
- F→H: Lowest price for Bumper Hall Pen £900.
- H→F: We agree to buy Bumper Hall Pen for the sum of £900 asked by you.



Picture source

Offer

Harvey v Facey [1893] AC 552

Issue

- Was there an offer from Facey to sell the land for £900 to Harvey?

Decision

- No offer was made by Facey
- Facey was merely supplying information as requested
- The only offer was made by Harvey which was never accepted

Offer

Offer must be distinguished from invitation to treat

- The general rule: Advertisements, brochures, catalogues and price lists amount to invitations to treat
- Those who reply make an offer which can accepted or rejected
- Invitation to treat
 - not an offer
 - represents an invitation to another to make an offer

Offer

Invitation to treat: Advertisements

Partridge v Crittenden [1968] 1 WLR 1204

Facts

- Partridge advertised rare wild birds for sale using the following words “Quality British Bramblefinch cocks, Bramblefinch hens, 25s. each”
- There was no use of the words “offer for sale”.
- It was an offence to offer for sale live wild birds.



[Picture source](#)

Offer

Partridge v Crittenden [1968] 1 WLR 1204

Issue

- Whether the advertisement was an offer?

Decision

- The advertisement was not an offer for sale but an invitation to treat.

Offer

Invitation to treat: Catalogues, price lists

Grainger & Sons v Gough [1896] AC 325

Facts

- Grainger & Sons, a wine merchant, circulated catalogues which contained price list for wines.



Picture source

Offer

Grainger & Sons v Gough [1896] AC 325

Issue

- Whether the catalogues were offers which can be accepted when a customer placed an order.

Decision

- Advertising by the merchant, such as by catalogue, circular or pamphlet, is merely an invitation to treat; it is not an offer to supply an unlimited quantity of the wine described at the stated price.
- An offer was made when a customer placed an order with a merchant.

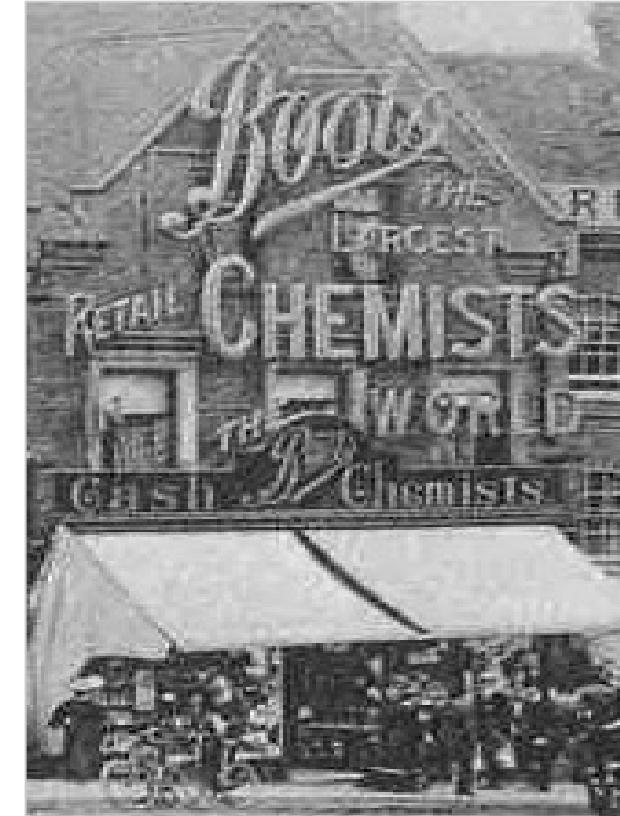
Offer

Invitation to treat: Goods on display in shop

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

Facts

- Drugs on display
- Customer select the item and take it to the cash register which was supervised by a pharmacist



[Picture source](#)

Offer

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

Issue

- Were the goods displayed offers to sell by the shop owner?

Decision

- The display of goods was an invitation to treat.
- The customer made the offer to buy when the customer took the goods off the shelf and handed them to the pharmacist at the cash register.
- The sale only took place when the pharmacist accepted the customer's offer by accepting the customer's money.

Offer

The general rule: Advertisements, shop displays, brochures, catalogues and price lists amount to invitations to treat

- The exception: Advertisements which comes under the category of *unilateral contracts* are considered offers and not invitations to treat

Offer

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

Facts

- The Carbolic Smoke Ball company ran an advertisement stating that:
- "£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. £1,000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter".
- Mrs Carlill purchased the product, used it as prescribed, and still caught influenza. She sued the company for £100. The company refused to pay.



[Picture source](#)

Offer

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

Issue

- Was the defendant's promise to pay £100 contained in the advertisement a binding offer or an invitation to treat?

Offer

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

Carbolic Smoke Ball Company's arguments

- The advertisement was an invitation to treat
- No specific offer was made to any one person
- The advertisement, therefore, cannot be accepted
- Carbolic Smoke Ball Company had no intention to create legal relations

Offer

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

Decision

- The advertisement was not an invitation to treat. It was an offer made to “world at large” which could be accepted by the public and that the offer could be accepted by a member of the public buying the product and following the instructions in the advertisement. The company was obliged to pay the advertised sum.
- The advertisement’s wording, together with actions of company, amounted to a clear promise to pay £100 to anyone who used its product according to the specified directions but contracted influenza.

This is an example of a unilateral contract where a contract is created when someone comes forward and performs the condition/s.

Offer

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

Decision

Intention to create legal relations

- Action of the company in placing £1,000 in bank account showed that the company was prepared to be bound by its promise (See Unit 5)

Consideration

- Consideration in a unilateral contract is executed (See Unit 5)

Offer

- Offer may be made to a specific person or persons, or to a class of persons, or to the whole world
- Offer must be clear, certain and final
- Offer must be communicated to offeree
- All terms must be brought to notice of offeree
- Offer may be revoked (withdrawn) prior to acceptance
 - This has the effect of terminating the offer
 - Revocation of offer must be communicated to offeree
- Offer may lapse
 - after the period of time that it is made available expires
 - after a reasonable time though reasonable time will depend on the circumstances
 - on death of the offeror or offeree before acceptance

Offer

Responses to an offer

- Accept the offer
 - Forms agreement
- Reject the offer
 - Offer not accepted
 - This has the effect of terminating the offer
- Make a [counter-offer](#) (See Slide 29)
- Take no action

Acceptance

- Acceptance is an unqualified assent given in response to an offer
- Acceptance must be absolute/unqualified/unconditional

Acceptance

Counter-offer

- An offer on different terms in response to an offer made by the other party
- A counter-offer is a rejection of an offer; original offer is destroyed and cannot be revived by subsequent acceptance

Acceptance

Counter-offer

Hyde v Wrench (1840) Beav 334

Facts

- Wrench offered to sell land to Hyde for £1,000.
- Hyde responded by offering to buy the land for £950.
- Wrench refused to sell at that price and Hyde said he would pay the original £1,000. Wrench now refused to sell.

Acceptance

Hyde v Wrench (1840) Beav 334

Issue

- Was there a contract?

Decision

- No. Hyde's offer to buy for £950 was a counter-offer
 - A rejection of the original offer of £1,000 which could not now be revived
 - A new offer of £1,000 was made by Hyde and it was never accepted

Acceptance

**Acceptance must be made in reliance on the offer
(Acceptance must be made with full knowledge of the offer)**

R v Clarke (1927) 40 CLR 227

Facts

- The government of Western Australia offered a reward: '*£1,000 for such information as shall lead to the arrest and conviction of the person or persons who committed the murders' of an inspector and a sergeant of police.*'
- Clarke were arrested and charged with the murders but shortly afterwards Clarke gave information which led to the arrest and conviction of Y.
- Clarke had seen the offer, indeed; but it was not present to his mind – he had forgotten it.
- Clarke later tried to claim the reward.

[HIGH COURT OF AUSTRALIA.]

THE CROWN APPELLANT:
RESPONDENT,

AND

EVAN CLARKE RESPONDENT.
PETITIONER,

ON APPEAL FROM THE SUPREME COURT OF
WESTERN AUSTRALIA.

H. C. or A.
1927.

Contract—Formation—Offer and acceptance—Information leading to arrest and
conviction of murderers—Proclamation—Reward offered therein—Knowledge of Sept. 14, 15.
offer—Intention to accept offer—Inducement to give information.

A reward was publicly offered by the Government of Western Australia
“for such information as shall lead to the arrest and conviction of the person
or persons who committed the murders” of two police officers. C., who
knew of the offer, gave information that led to the arrest of one person, and the

PERTH,

SYDNEY,
Nov. 22.

Isaac A.C.J.,
Higgins and
Starke J.J.

Acceptance

R v Clarke (1927) 40 CLR 227

Issue

- Was there acceptance by Clarke?

Decision

- Clarke had acted in ignorance of the offer
- Clarke's performance of an act (provision of information), but the act was made without reliance on an offer
- No valid acceptance – there cannot be assent without knowledge of the offer

Acceptance

- Acceptance must be communicated to offeror
 - Acceptance cannot occur in silence
- Acceptance must be communicated in the method prescribed
 - But the offeror may not prescribe silence as the method of acceptance

Acceptance

- Acceptance can only be made by party/parties to whom offer was made
 - For example, if an offer is made to X and is accepted by X and her friend Y, the acceptance is not an acceptance of the original offer, but is a new offer by X and Y to make a contract on the terms of the original offer.
- Acceptance cannot be revoked without consent of offeror
- Acceptance must be made within time prescribed or, if no time stipulated, within a reasonable time. Reasonable time is decided in relation to the facts of the case.

Exercises



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Exercise 1

Explain whether an automatic vending machine or an automatic ticket machine in a parking station is:

- a) an invitation to treat, or
- b) an offer to the world which is accepted when a coin or card is put in the machine.



Exercise 2

Charlotte makes a new offer of \$1,000 to Theo to buy his television. Charlotte tells Theo that if she does not hear from Theo before 5:00pm she will assume the offer has been accepted. Johnny does not communicate acceptance before 5:00pm.

- a) If Theo refuses to proceed with the sale, can Charlotte enforce the contract? Explain.

- b) If Charlotte refuses to proceed with the sale, can Theo enforce the contract? Explain.



End of Lecture

Next week:
The Legal Environment of Business: Contract Law (II)



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