

Business law cases summary

[Law](#), [Contract Law](#)



Offer (Topic 3) Is a proposal the acceptance of which establishes the existence of an agreement. It shows a promissory intent. In other words, it is a promise to do or refrain from doing something. - Usually upon condition that the other party agrees to do or refrain from doing something else in return. - Harvey v. Facey Harvey sent to Facey a telegram to buy Bumper Hall Pen. He asks Facey to telegram the lowest price. Facey telegram the lowest cash price ? 900. Harvey says agree to buy for ? 900.

Principle: Offer is more than a mere supply of information - Offer must show promissory intent - Australian Wooden Mills v Commonwealth in where the government " offer" did not ask anything in the return - Offer is not Invitation to treat and must be distinguished from ITT Invitation to Treat Is an action by one party which may appear to be a contractual offer but which is actually inviting others to make an offer of their own. Invitation to treat lacks of promissory intent 1. Boots Case (Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd) Self service

PS sued Boots cash for breach of pharmacy and poison act by selling certain poison not under supervision of registered pharmacist as boots cash is a pharmacy in a self service basis. However, there is one registered pharmacist in the cashier check out point. Principle: In the self service system, the offer is made by customer at the checkout point of sales while the acceptance is made by the cashier at the checkout point of sales as well. 2. Fisher v. Bell Shop Window Bell selling the flick knife which is showed in the window displayed. Bell was sued for offering the knife which is prohibited at that time by statute. Principle: The display of an article with a price on it in a shop window is merely an invitation to treat. ITT can be an offer if: - Show

promissory intent - Limited to who can accept - Limited to what can be accepted Offers to the World At Large Offers that are not directed to any specific person, but to anyone who becomes aware of them. 1. Carlill v. Carbolic Smoke Ball Carbolic smoke ball advertise promised reward to anyone who contracting influenza after using their product. To show the seriousness, they placed money? 1000 in account. Mrs C used it and contracted influenza.

Principle: An offer can be made to the world at large. The contract is made to limited portion of public, who perform the condition on the advertisement. And it show promissory intent. Offer must be communicated Offer becomes effective if it is communicated and there is meeting in mind when they accept it. However, offeree must be aware of its existence and terms. 1. R. v. Clarke Reward for information about murder of 2 policemen. Clarke was arrested and to save himself, he gave the information. Principle: Offer must be accepted with the knowledge of the offer. Respon to Offer Accept - Clarify - Counter Offer - Reject - Do Nothing Counter Offer Rejection of the original offers which make the original offer to an end, and form a new offer. If the Counter Offer being rejected, the original offer will not revive, unless the offeror renew it. 1. Hyde v. Wrench Wrench made an offer to sell his farm to Hyde for ? 1000. Hyde says that he will pay ? 950. Wrench says no, and Hyde say want to pay ? 1000. Principle: Counter offer resulting the original offer to end. It is rejection of the first offer. Counter offer must be distinguished from mere inquiry . Stevenson Jacques v. McLean McLean made an offer to SJ to sell certain iron. In reply, SJ write " will accept 40 over 2 months". As it is no reply, SJ write again to accept the 1st offer. Principle: Seeking clarification is

not counter offer, but mere inquiry. Only the offeree who are directed to accept the offer by the offeror 1. Boulton v. Jones Jones places offer with old chum Brocklehurst. Boulton had taken over the business and he filled the offer. Jones refused to pay. Principle: Only the person to whom the offer is directed can accept. Revocation by Offeror

Revocation is not valid, unless it is communicated to the offeree. Revocation is valid before acceptance. Purported revocation after acceptance has been communicated is a breach. 1. Dickenson v. Dodds Dodds made an offer open until 9 am on the 12 June. On 11, Dodds sell the house to B, and B has told Dickinson. On 12 at 9 am, Dickinson comes bring the acceptance. Principle: The offer can be revoked indirect or via conduct. Acceptance (Topic 4) Is an absolute and unqualified assent to the terms of the offer, made in the manner specified or indicated by the offeror. 1. Master v. Cameron Masters want to buy Cameron farms.

They make a document, signed by both party, indicating the future formal contract to buy the farms. Masters having financial difficulties to buy the farms and sued by Cameron. Principle: Agreement to agree later can't be force able. (Condition 3) Conditional Acceptance is not acceptance. Condition can be precedent or subsequent 1. Parties reach agreement but want terms to be written down 2. Parties reach agreement but performance subject to formal agreement 3. Parties didn't intend to reach agreement subject to formal contract Subject to acceptance is not acceptance at all Manner of acceptance - Stipulation of the offeror Ought to be the same mode as the offer o If stipulated as the only mode, then must comply, otherwise should be equally or more advantageous. 1. Eliason v. Henshaw Eliason made an offer

to buy flour from Henshaw and stated to reply by wagon. Henshaw is reply by post. Principle: if the method had been stipulated, it must comply otherwise, more advantageous. Postal Rule states that where acceptance by mail is contemplated, acceptance occurs immediately when the letter is posted RULES: Acceptance is complete when a properly addressed and stamped letter of acceptance is dropped in the mail box 1. Adam v. Lindsell and Sept, Lindsell posts offer to sell wool, and requires acceptance " in the course of post". On 5th Sept, the offer received by A, and posted it. On 8th Sept, L sold wool to X. On 9th Sept, A's acceptance arrives. Principle: An acceptance is complete as soon as it is properly posted. Negating Postal Rule By using the term as " acceptance must be received by" or application close 1. Nunin Holdings v. Tullamarine Estates Nunin offered to buy a land from Tullamarine, via post. On May '88 Nunin sends offer to purchase land. On June 16 Tullamarine sends a contract. On 5 September Nunin signs and mails back.

On 12 September Tullamarine signs and sends back. On 13 September Tullamarine attempts to revoke before Nunin receives mail. Nunin had indicated at the start that the postal rule did not apply as it was stated in the mails on 5 September that the circumstance was receipt of the identical executed part, not its posting. Principle: The Postal Rule can be negated if this is made clear at the start of negotiations. Instantaneous Communication Postal rule didn't apply in here. Acceptance By: Telex, Fax, E-mail, Web Form is not effective by simply sending it. The offeror must receive the acceptance then the contract can be formed. . Entores v. Miles Far East Co London co makes telex offer to Amsterdam co. Amsterdam

Company accepts via telex. A contractual dispute arises. Principle: With instantaneous communication, the contract is complete as soon as the acceptance is received and at the place where it is received. Silence cannot be stipulated as the required manner of acceptance. 1. Felthouse v. Bindley F offers to buy a horse for ? 30/15/. “ If I hear no more - I’ll consider the horse mine”. Principle: An offer cannot stipulate silence as a manner of acceptance, and acceptance requires positive mental assent.

Acceptance can be communicated by conduct or words. 1. Brogden v. Metro Rail Written offer drawn up and sent. It never specifically accepted, but subsequent dealings were according to its terms. Principle: Acceptance can take the form of conduct. Intention (Topic 5A) The Presumption is with purely domestic, social, or voluntary arrangements it is presumed that the parties do not intend to create a legally enforceable agreement. Domestic 1. Balfour v. Balfour Husband agrees to pay monthly allowance ? 30 to wife while they are apart. Husband fails to pay & wife sues.

Principle: A domestic arrangement is not intended to have legal effect. However the presumption can be easily rebuttable. 1. Wakeling v. Ripley Family give up job and move to live with wife’s brother. Brother promised to leave them his property. Dispute arises & Brother reneges on the promise. Sister & husband sue Brother for breach of contract. Principle: A definite agreement in serious circumstances will rebut the presumption. 2. McGregor v. McGregor Husband and wife issue assault charges against each other. They agree to settle the maintenance payment, living apart, etc. They are still legally married.

Husband fails to pay maintenance. Principle: An agreement between husband & wife can be binding if they intend it to be a legally enforceable contract. Business & Commercial Such agreements are presumed to have the intention to be legally binds, however the presumption can't be easily rebuttable. 1. Carlill v. Carbolic Smoke Ball Contents (Topic 6) [pic] The Parol Evidence Rule Where a contract is reduced to writing and appears to be entire, it is assumed that all the terms of the contract will be contained in it and No extrinsic evidence can add to or vary the written contract 1.

Henderson v. Arthur Written lease of theatre with rent of ? 2, 500 p. a "CASH". T paid by cheque because the L had verbally stated " Don't worry, a cheque is okay". L sued for late rent payment. T said he paid by cheque but L now refused it. Principle: No extrinsic evidence can add to or vary the written contract. EXCEPTIONS: Partly written, partly oral contracts 1. Van Den Esschert v. Chappell Before Signing Contract To Purchase A House C Asks " Is The House Free Of White Ants (Termites)? " Van de Replied " Yes Of Course. If There Had Been Any I Would Have Taken Steps To Eradicate Them. Written Contract Makes No Mention Of " White Ants". The House Turned Out To Have Termites Principle: Partly written and partly oral contracts don't apply on Parol Evidence Rule. Sometimes A Verbal Term Can Be Included In The Contract, If It Doesn't Contradict The Written Part. Nothing mentioned in the contract about the white ants Oral statement Representation or Term Representation Oral statement that is not intended to be bind Terms Oral or written statement that are intend to be bind Factor to decide it is term or representation - Time lapse before contracting - Verbal or Written Special knowledge or skill - Importance of the statement 1. Oscar Chess v. Williams

W purchased a car from O, a registered dealer. He traded in his "1948" Morris (? 290). It turned out to be a 1939 Morris (? 175). The dealer sued for the difference in trade in values (? 115). Principle: The buyer does not have special skill or knowledge in car. Therefore, it is a representation as the dealer is supposed to know it better. 2. Dick Bentley v. Harold Smith Dealer wrongly stated that a vehicle "has done 20,000 miles" since the engine & gearbox was replaced. But it was more like 100,000 miles.

Principle: The buyer relied on the special knowledge of the dealer. The dealer was in a position to know the true mileage. [pic] Condition Major Breach Going "To the Root of the Matter". Non-breaching Party May: - Terminate The Contract. - Elect To Continue. - Sue for Damages. 1. Poussard v. Spiers P, an opera singer engaged to perform from 28th Nov. P, falls ill & cannot attend until 4th Dec. Opening night is 28th. On 25th S&P hire another singer. Principle: Attending the night party is the root of the contract. Where a breach goes to the root of the matter, there is a breach of condition term.

Warranties Minor Breach not going to the root of the matter. Non-breaching Party May: - Sue for Contractual Damages. - Not elect to terminate the contract. 1. Bettini v. Gye B, an opera singer contracts for 3 month season & to arrive for rehearsals 6 days before opening night. Due to illness B showed up only 2 days before. G terminates & sues for damages. Principle: A clause, not vital to the completion of an agreement is a warranty; (B was available for all performances). Innominate Term A term which is capable of either a major or minor breach. Major Breach => Can terminate the contract.

Minor Breach => Payment of compensation. 1. L Schuler AG v Wickman Machine Tool Sales Ltd W contracts with S to sell S's Machinery and to visit <https://assignbuster.com/business-law-cases-summary/>

customers once a week. Contract describes the weekly customer visits as a “condition”. Machinery is sold but weekly visits do not happen. S terminates the contract & sues for damages. Principle: The weekly visit term was capable of major and (as in this case) minor breach, so it was innominate. The status of contractual terms is a matter of fact, not mere description.

Effect of Signature Someone who signs a document is DEEMED to have read understood and agreed to its contents. . *L’estrage v. Graucob* L purchased vending machine signed but did not read contract. Machine defective but contract basically said “not responsible for defects”. Principle: If you sign something, then you have read, understood and agreed to it. There was no fraud or misrepresentation. L could not bring an action for breach of contract. Effect of Signature exception: 1. Misrepresentation. 2. Document does not appear contractual. 1. *Curtis v Chemical Cleaning & Dyeing Co* C took a wedding dress to CCD for dry-cleaning. C asked to sign a receipt excluding CCD from damage to buttons & sequins.

The receipt contained an exclusion from any liability whatsoever. The dress was returned stained & C sues. CCD tries to rely on the printed & signed receipt. Principle: Misrepresentations create an exception to the signature rule. Exclusion Clause Contract terms which excludes or limits the liability of one party. Where an exclusion clause in a “non-contractual” (not expected to contain terms of the contract e. g. voucher) a reasonable notice of the clause at that time of contracting will render it enforceable BASE RULE: If the exemption clause is in a signed document, it is binding. 1.

Causer v. Browne Printed on a dry cleaning ticket: “NO RESPONSIBILITY FOR DAMAGE TO ARTICLES “. C handed in frock which was returned damaged. C

sues. Principle: The document was non-contractual in nature. A reasonable person would not expect to find contractual terms on it. 2. Thornton v Shoe Lane Parking Ltd T parked his car in an automatic car park & received a ticket. Sign at the entrance listed terms of use. One was "cars parked at owners' risk". Ticket referred to the terms of use. BUT notice was small and not conspicuous. T seriously injured when collecting his car & sues car park.

Principle: T's attention was not brought to the specific existence of the clause in a way that could be described as reasonable. Ticket was also issued when T could not revoke his offer. Furthermore, this was T's first use of the car park. 3. Olley v Marlborough Court Ltd O booked in to hotel & paid for 1 week's stay in advance. When O got to the room there was a sign on the wall disclaiming liability for loss of personal effects. O's personal effects were stolen & O sued the hotel for the loss. Principle: A clause that is notified after the contract is formed is not part of the contract. Doctrine of Privity (Topic 7b)

A person cannot incur obligations or gain rights under a contract to which they are not a party. Beneficiary can't sue 1. Tweddle v. Atkinson On engagement, father & father-in-law agree to each pay the future husband ? 100. The father-in-law didn't pay. Principle: "... no stranger (to the contract) can take advantage of it, although made for his benefit". Therefore, he can't sue his father in law. Exception: Joint Promises 1. Coulls v. Bagots Executor Mr. Coulls made an agreement with O'Neil to quarry Coulls's property, and to pay the royalty to him and to Mrs. Coulls. Not long after, Mr. Coulls dies.

Principle: The contract must have been made with you as well as the other party even though the other party didn't contribute any consideration,

contract still exist. Mrs. C was not a joint promisee. If she is, then she can claim Property Law Act 1969 Where a contract expressly in its terms purports to confer a benefit directly on a person, who is not named as a party to the contract, the contract is... Enforceable by that person in his own name but every person named as a party... shall be joined to the action. Must have 2 Conditions: - Has be name beneficiaries in the contract - Join in the legal action 1.

Westralian Farmers v. SMP Sale of stock from K to SMP. Contract requires SMP to pay commission to WF. Principle: S. 11 (2) PLA enables WF to sue if K is also named as co-defendant. It is also known as " joining". Therefore WF entitled the commission. Termination (Topic 9) a. Discharge by performance Contract can be terminated when obligation (paying, transferring or other act of service etc.) is performed: as agreed in the contract and within the time agreed. General Rule: Performance must be exact to be effective 1. Cutter v Powell Seaman signs on from Jamaica "... To the port of Liverpool..." He died about 3/4 of the way.

The widow wants to claim the ? of his pay. Principle: The performance of a contract must be exact to be effectively discharged. It is an " entire" contract Exception: a. Where the contract is ' divisible' Divisible contract is a contract in where instead of doing for entire contract we can do it divisibly. b. The doctrine of substantial performance Pay full amount but subtract some amount to ratify the service. (Was treated as performed and payment was reduce for work not done) 1. Hoenig v. Isaac Contract is made for redecoration of flat for ? 750. Work was not done satisfactorily and cost ? 55 to repair.

Principle: If contract is substantially performed then subtract the cost of fixing it. The contract is performed even it is partially defective. Therefore, ? 750-? 55 b. Discharge by Frustration Frustration = an intervening, dramatic situation rendering performance impossible or radically different from what the parties had in mind. A person was required to carry out their contract, no matter what 1. Paradine v. Jane P leased land to J. J was dispossessed by an invading prince. J refused to pay rent. Principle: Parties, who voluntarily enter into contracts, must perform all their obligations irrespective of what happens.

They are " absolutely liable". Therefore, J must pay the land, even though he is not occupy the land Because there are unfair things happen in Paradine v Jane case, therefore some exception in frustration is applied. It is apply because a. Contract is impossible to perform because of an event b. Nobody's in the contract are fault c. Note ' unforeseeable' here means not provided for in the contract, not ' impossible' 1. Taylor v. Caldwell Fire burns down concert hall. The promoter does not have to continue to pay rent Principle: When, without fault of any party. The subject matter of the contract ceases to exist.

The contract is discharged by ' frustration'. Therefore, no more rent fees. 2. Krell v. Henry Contract was made to hire a flat for 1 day, to view the coronation procession of Edward VII. Coronation postponed. Principal: Where the entire basis of the contract does not occur the contract is discharged by frustration. Therefore, rent is not paid. 3. National carriers v. Panalpina LTD P leased a warehouse from N for 10 years. Road closed for 20 months. P

refused to pay rent for those months. Principle: The purpose could still be substantially achieved, performance was not radically different.

The contract was not frustrated. Therefore, the rent should be paid.

Remedies 3 basic of remedies; 1. Discharge (for material breach) Contracts can be discharged if a breach is material. But - make sure it is actually a

breach and not performance or frustration. 1. Green v Sommerville G contracts to sell land to S - settlement fails when S has no funds. Later G

rents property to S in anticipation of settlement - 6 months later G rescinds the contract. Principle: the right to rescind not available. Conduct of G

amounted to affirming the contract. The contract was enforceable against G by S. MATERIAL: Justifies election to terminate - MINOR: Substantial

performance. Does NOT justify termination by the innocent party. 2. Damages (for material or minor breach) Is a monetary compensation for loss

caused by the breach. Breach can be: - MATERIAL: Breach of Condition or major breach of innominate term. - MINOR: Breach of Warranty or minor

breach of innominate term. Rules of Damages - Must not be too remote. - Are compensatory / quantum, (calculation), of damages. - Must be mitigated.

- Can be pre-agreed a) Rule of Remoteness For damages to be recoverable the loss must: a) Arise naturally from the breach {be reasonably

foreseeable} - given reasonable current standards... or: (b) Have been contemplated as a probable result of the breach 1. Hadley v Baxendale A

contract made for the transportation of a crankshaft. It was breached by delay. Mill shut down for longer than expected, production lost. Principle: the

mill owner can't claim the profit on the lost production. Where two parties have made a contract which one of them has broken, the damages which the

other party ought to receive in respect of such breach of contract should be such as might fairly and reasonably be considered either: a. arising naturally, that is, according to the usual course of things, from such breach of contract itself, or b. Such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it. " Because the carrier did not know the machine was a vital part of the mill, he did not see it as probable that the mill would close down. Therefore he was not liable. 2. Victoria Laundry v. Newman Laundry buys boiler. Delivery required in June. Laundry begins negotiating for lucrative new dyeing deal.

But delivery delayed until November. Deal lost. Principle: 'type' of losses must be foreseen as a 'serious possibility'. Therefore, the laundry can claim lost production, not lost new deal. Quantum of Damages Means the calculation of damages (Main Principle) The injured party is entitled to be placed in the same position that they would have been in if the contract had been performed". *Damages compensate for loss suffered 1. Commonwealth v. Amann Aviation Contract was made for coastal surveillance. AA sets up, modifying planes, training staff etc, but wasn't ready on time to start contract.

C terminated, but being a breach of warranty only, C's termination is not justified - placing C in breach. Principle: The injured party is entitled to be placed in the same position that they would have been in if the contract had been performed". Therefore, the damages is awarded *Damages can be awarded for loss of a chance 1. Howe v. Teefy Lease of a racehorse for 3 years. Owner takes horse back after 3 months. Principle: Just because losses

are “ extremely difficult to quantify” doesn’t mean they won’t be ordered. This is “ Loss of a Chance”. Therefore possible lost prizes can be claimed. Damages can’t be claim from loss of enjoyment or entertainment unless the fruit of the contract say so 2. Baltic v. Dillon Cruise liner sinks. Passenger sues for damages for disappointment & distress. Principle: While such damages are not usually given, this contract is to provide a relaxing holiday. This was the essence of the entire contract i. e. “... The fruit of the contract is not provided... ” Therefore, the passenger can sue for disappointment and distress. *Damages must be mitigated Reasonable steps must be taken to minimise the loss. *Damages can be pre-agreed

Liquidated damages arise from the parties agreement to pay stated sum in the event of breach as long as it is a genuine pre-estimate and not a penalty 1. Dunlop Pneumatic Tyre Co Ltd. v New Garage & Motor Co. Ltd. D contracts with N to supply tires provided that N will sell them at D’s preferred price. Contract provides that damages will accrue to D in the amount of ? 5 per tire for each tire sold below D’s price. Principle: The amount stated was a genuine pre-estimate of the loss to D. therefore, the clause is not penalty. Equitable remedies SPECIFIC PERFORMANCE Court order to carry out some act (perform the contract).

It is not available in many circumstances. 1. Green v Sommerville G contracts to sell land to S - settlement fails when S has no funds. Later G rents property to S in anticipation of settlement - 6 months later G rescinds the contract. Principle: No two pieces of land are identical. G affirmed the contract & it should be performed as agreed. Damages will not compensate adequately. INJUNCTION Court order prohibiting some act (breaching the

contract). Not available in many circumstances. RESTITUTION “ Quantum meruit” - “ as much as he has earned”. No-one should benefit from “ unjust enrichment”. Not available to a party in breach.