

PRINCIPLES OF PRIVATE LAW SUMMARY

CONTRACTS

Classical Contract Theory

What is classical contract theory, and what is the philosophy that underlies it? What are some criticisms of classical contract theory?

- A **contract** is an agreement or set of promises that the law will enforce. I.e., for breach the law will provide a remedy
 - o Classical theory of contract: the role of contract law is to facilitate the freedom of the parties to create their own private law, a unifying theory that attempts to capture the essence of contract in a single idea
 - o At the heart of the theory is the notion of *self-imposed liability*
 - Favoured philosophical individualism, free will over government intervention
- The individual seeking remedy must bring an action against through his own means and will and prove that the contract has been breached.
- **Criticisms:**
 - 1) the obligations arising from a contract do not necessarily represent the will of the parties
 - 2) assumes contracts are fully negotiated between parties
 - 3) the notion that contract law is fundamentally concerned with individual autonomy yet the state enforces contracts and establishes the legal framework in which bargaining takes place

Equity

What is equity? What are its historical origins?

- **Equity:** a system of doctrines and remedies developed by the Court of Chancery to rectify defects in the common law.
- **History:** In the 13th century, the common-law system offered limited range of remedy leading to the development of the Court of Chancery. This court administered and developed a system of equitable doctrines and remedies. E.g. specific performance and injunction. In 1873, the *Judicature Act* established the Supreme Court of Judicature which was to give effect to both common law and equity. Equitable remedies are available at the discretion of the court. A separate set of defences is also available in equity. Historically, the role of equity was to remedy injustice resulting from overly rigid common law.

Private Law

What are the sources of private law?

- **The Law of Obligations:** dealing with rights, any claim you can make against somebody else, which you can legally have enforced and if it is infringed upon you can get a legal remedy through the state
- **The Law of Property:** Right under the law of property are rights that one citizen has in relation to one thing, but the rights are enforceable against all other citizens

Legal Authority

Where does legal authority come from?

- **Common Law:** The decision of judges (most private law is sourced here)
- **Statute:** Laws handed down by Parliament (occasionally relevant to contracts)

The Law of Obligations

What are the main categories of the law of obligations and how are they distinguished? What does Atiyah say about these distinctions?

- Main Categories:
 - o **Contracts:** Voluntarily assumed, self-imposed obligation determined by contracting parties voluntarily entering into agreement. Allows people to receive promises and plan their lives on the basis that they will be kept
 - o **Torts:** “civil wrongs” enforceable by the person, not the State, ensure that if one person leaves another worth off the person who suffers the loss is able to seek legal remedy
 - o **Unjust Enrichment:** Acts to restore unjustly acquired gains from one person to another, reverses enrichments considered legally unjust
- **Atiyah:** Divides between Contract, voluntarily assumed obligations, and Tort, legally imposed obligations. 19th century legal thinking drives these concepts which are now outdated. Reflective of a liberal tradition, economic and social values that rewarded enterprise. Such concepts need revision to better precisely reflect today’s values. Atiyah argues that obligations arise whenever benefits are rendered or acts of reasonable reliance take place. Rather than just based on intentions.

Four Elements of a Formation of a Contract

- 1) Agreement
- 2) Consideration
- 3) Certainty
- 4) Intention to create legal relations

AGREEMENT: OFFER

Definition

What are the elements of an offer? When does a proposal or suggestion become an offer? How is an offer distinguished from an invitation to treat?

- A statement is an **offer** if:
 - o it is an unequivocal declaration that the statement maker will consider himself bound to a promise immediately upon the addressee the statement's doing something specified in return for the commitment
 - o The statement must propose an exchange of his promise in return for something he specified he wants in return (which can be a return action, forbearance from action, or promise)
 - o If it proposes an exchange it must be sufficiently final, you have power to commit me without any further negotiation by just giving what has been asked
- **To determine if a proposal or suggestion has become an offer:** (*Carlill v Carbolic Smoke Ball Company*)
 - o If the person making the proposal indicates acceptance is invited and will conclude the agreement between the parties.
 - o The crucial issue is whether it would appear to a *reasonable person* in the position of the offeree that an offer was intended, and that a binding agreement would be made upon acceptance. It does not matter whether the offeror in fact intended to make an offer; the courts determine the offeror intentions objectively.
- An **invitation to treat:** (*Gibson v Manchester City Council*) (*Pharmaceuticals Society of Great Britain v Boots Cash Chemist*)
 - o An invitation to others to make offers or enter negotiations to possibly for a contract
 - o i.e., Items displayed on the shelf of a store

Unilateral and Bi-Lateral Contracts

What is a 'unilateral contract'? What is its opposite or counterpart?

- A **Unilateral Contract** is when the offeree accepts the offer by performing his or her side of the bargain (*Carlill v Carbolic Smoke Ball Co.*) (*MacRoberston Miller Airline Services v Commissioner of State Taxation*) (*executed*) (*Mobil Oil Australia v Wellcome International*)
- A **Bi-lateral Contract** formed by an exchange of promises, at the time of formation the obligations of both parties remain to be performed. (*executory*) (*Australian Woollen Mills Pty Ltd v Commonwealth*)

Termination of an Offer

How long do offers last? When can an offer be revoked (including an offer for a unilateral contract)? How must it be revoked?

- **Lapse of Time:**
 - o Sometimes an offer is expressly open a certain amount of time and will automatically lapse after that time
 - o If there is no express time will be by indication open for a reasonable time depending on the nature of the subject matter
- **Rejection:**
 - o Rejection occurs and kills the original offer
- **Counter offer:** proposal in different terms which is firm enough to be an offer, but there is already another offer on the table, is an implied *rejection of an offer*
- **Revocation:** can only occur when; (*Goldsborough Mort & Co v. Quinn*)
 - o 1) it is notified to the offeree (there is no effective revocation of an offer until the offeree is notified)
 - o 2) An offer, even one expressed to be open for time not yet expired, can be revoked at any time before acceptance unless an offeree has paid a price to keep the offer open

Ticket Cases

Why can it be difficult to establish when an offer has been made in ticket cases?

- **Creation of a bilateral or unilateral contract**
 - o This issue arises as to what type of contract is formed (*MacRoberston Miller Airline Services v Commissioner of State Taxation*)
 - Steven J: **a bilateral contract**
 - the issue of a ticket is an offer of the carrier for a set of promises (take you places) in return for promises by the passenger (observe the rules, pay for ticket)
 - The issue of the ticket is an offer according to traditional analysis, the customer is taking the ticket and failing to reject the terms within a reasonable time is regarded as the acceptance
 - Bardick CJ: **A unilateral contract**
 - What you have is an offer of the customer to keep a prepaid fare as in return for the act of the airline to keep the seat on the craft

Cases

Carlill v Carbolic Smoke Ball Co. (Offer, Unilateral Contracts)

- **FACTS:** Carlill is claiming the 100 pounds that was offered if using the smoke resulted in sickness after two weeks of usage 3 times a day. She used it accordingly and still became ill.
- **ISSUE:** Was the poster for the Smokeball an offer? To which she accepted?
- **RATIO:** The court held that there was a unilateral contract comprising of an offer (by advertisement), and acceptance (by performance of conditions stated in the offer)
 - o *Although, generally, communication of acceptance is required, a person may demonstrate acceptance of a unilateral offer through conduct.*

Gibson v Manchester City Council (Invitation to Treat)

- **FACTS:** Letter from council saying Gibson could purchase his home for a certain price. Gibson claims that the letter was an offer, he wrote back as an acceptance thus a contract has been made. The labour party in the meantime halted the sale of council housing, but if a contract was made prior to the reversal they will honour it. Gibson's argument is that the letter is a promise to sell the house in return for the application. The council is arguing that they never entered a contract the letter envisions that at some point there will be a future series of agreements, for this to be a contract
- **ISSUE:** Had this contract been made based on these letters?
- **RATIO:** This letter is not an offer because its terms are too tentative it's an invitation to treat

Australian Woollen Mills Pty Ltd v Commonwealth (Unilateral Contract)

- **FACTS:** In 1946 the Aus govt. offered a subsidy on wool purchases for domestic use by Australian manufacturers. In 1948 the Commonwealth announced its discontinuation of the scheme, but that each manufacturer would have a certain amount of subsidised wool in stock on 30/06/48. AWM claimed a unilateral contract has arisen out of the wool subsidy scheme – thus, their performance of the act requested should be considered as acceptance and consideration.
- **HELD:** Appeal dismissed: presence of a request does not, establish a contract
- **RATIO:** The test to be applied is whether there has been a request by the alleged promisor that the promisee shall do the act on which the promisee relies. The court held that, in a unilateral contract “*between the statement of announcement, which is put forward as an offer capable of acceptance by the doing of an act, and the act which is put forward as the executed consideration for the alleged promise, there must subsist, so to speak, the relation of quid pro quo*” High Court held consideration requires a quid pro quo (this for that), a bargain. In this case, the letters were sent by the Commonwealth contained statements of policy, rather than offers. There was no quid pro quo because there was no detriment (no exchange)
 - o **Quid pro quo:** to show request (benefit and detriment have to be done in relation to one another)

Pharmaceuticals Society of Great Britain v Boots Cash Chemist (Invitation to treat)

- **FACTS:** Boots operated a self-service store which included a pharmacy department. When a drug was involved, a pharmacist supervised the sale in accordance with the *Pharmacy and Poisons Act 1933*, which required that the sale of certain drugs be supervised by a registered pharmacist. The Pharmaceutical Society alleged that Boots infringed these provisions, arguing that the drug sale was completed when the customer took an item from the shelf and put it in their basket.
- **RATIO:** The result of such an analysis would be that when a customer came to the sales desk, the pharmacist would not be able to say that the drug could not be sold to the customer. The court held that this would be an incorrect analysis
 - o Somervell LJ – “*an ordinary shop, although goods are displayed and it is intended that customers should go and choose what they want, the contract is not completed until the customer, having indicated the articles which he needs to the shopkeeper, or someone on his behalf, accepts that offer. Then the contract is complete*”

MacRoberston Miller Airline Services v Commissioner of State Taxation (Unilateral Contract, Offer)

- **FACTS:** The plaintiff is an airline company. The plaintiff's practice was to quote the fare and availability of seats, then issue a ticket in exchange for payment. Ticket contained condition which allowed the plaintiff to cancel flights without incurring liability.
- **HELD:** No agreement is formed when the ticket is simply purchased.
- **RATIO:** Barwick CJ: it is a unilateral contract. The passenger makes the offer, and the offer is accepted by the conduct of the plaintiff by performance (carrying passenger) Jacobs J: acceptance is made when the passenger presents himself for travel.

Goldsborough Mort & Co v. Quinn (Termination of an Offer)

- **FACTS:** Quinn agreed, for 5s consideration, to grant Goldsborough the right to purchase his land at any time within a week of the initial agreement date for £1 10s per acre. Before any acceptance of the offer, Quinn contends that he informed Goldsborough's solicitor that he repudiated the offer, alleging that it had been made under a mistake. Goldsborough, without knowledge of the repudiation, accepted the offer within the week. Quinn contended that there was never any complete contract for the sale of the land, only an initial agreement to make another agreement.
- **RATIO:** “all agreements consist of an offer made by one party and accepted by the other. But an offer may be withdrawn at any time before acceptance... if made without some distinct consideration. But if there is a consideration for the promise, it is binding”

Mobil Oil Australia v Wellcome International (Unilateral Contracts)

- **FACTS:** Mobil offered an award scheme in the “circle of excellence” for franchisee's who performed in the in the 90% percentile for 6 years. For the next 4 years a number of franchisees get judged at 90% and Mobil discontinues the circle of excellence judging, in effect it becomes impossible for the franchisee's to get the 6 for 9 offer, and they franchisees get in an action and sue Mobil alleging that Mobil entered a contract that would take 6 years to complete and they revoke the offer 4 years in
- **RATIO:** “An offer made in return for performance of an act is, like any other offer, revocable at any time.”