

# CASE SUMMARIES

## OFFER

- Carlill v Carbolic Smoke Ball
  - What constitutes an offer
    - Definite language
    - Clear statement of terms
    - Clear reward for satisfaction
- Partridge v Crittendon
  - Advertisements are normally invitations to treat
- Fisher v Bell
  - Goods on display are ITT
- Pharmaceutical Society of GB v Boots Cash Chemist
  - Contract is formed when goods are brought to the counter and the money offered. ITT when on display in a self service store
- Thornton v Shoe Lane Parking
  - Vending machine's are offered
- Leonard v Pepsico Inc
  - Puffery - Would a reasonable person believe this to be an offer
- Dickinson v Dodds
  - Communication by reliable source of information
- Shuey, Executor v United States
  - For unilateral contracts if the offer is revoked it must be completed in the same medium it was offered.
- R v Clarke
  - Completes requirements without knowledge of the offer – No K
- Stevenson, Jacques and Co v McLean
  - Request for information is not a counter-offer

## ACCEPTANCE

- Hebb's Case
  - Offer must be accepted – definition of acceptance
- Felthouse v Bindley
  - Offer by silence is wrong
- George Hudson Holdings Ltd v Rudder
  - Specified Method of Acceptance
- Adams v Lindsell
  - Postal Rule
  - Postal acceptance must be contemplated
- Entores Ltd v Miles Far East Corp
  - Fax rule
- Electronic Transmissions Act 2000
  - E-mail on server
- Masters v Cameron
  - If one party says subject to XYZ
- Objective test – Conditional assent
  - Not what the state of mind was

- Geebung Investments
- What evidence is there
  - Subject matter
    - Words used
    - Land involved
  - Arms Length
  - Subsequent Actions
  - Effect on the parties
  - Writing

### **CONSIDERATION**

- Currie v Misa
  - Must be Consideration
- Roscorla v Thomas
  - New terms to an old contract is not valid
- Dunton v Dunton
  - Forebearance counts as Consideration
  - Ex partners can be commercial
- Stilk v Myrick
  - Pre-existing Duty
- Glasbrook Bros v Glamorgan County Council
  - Public duties cannot be included as value

### **INTENTION**

- Rose and Frank Co v J R Crompton & Bros
  - Not valid unless intended to be bound by a contract
  - In Honour only clauses
- Ermogenous v Greek Orthodox Community of SA
  - Party may not be intended to be bound
  - But may be anyway
- Balfour v Balfour
  - Domestic Relations = no intent
- Merritt v Merritt
  - Exception to domestic – large value of land
- Wakely v Ripley
  - Exception to domestic – reliance on K

### **WRITING**

- S54A of the Conveyancing Act 1919
  - Land must be evidenced in writing with elements
- Carr v McDonald's Aust Ltd
  - Part Performance
- Long v Miller
  - Joinder Doctrine
- Regent v Millett
  - Defendant acted as though there was a K
- Cooney v Burns
  - Determining situations before contract
    - Stock levels
    - Cleaning
    - Sending things to solicitors

## **Terms v Representations**

- Oscar Chess v Williams
  - Language must state that the parties intend the statement to be a promise
  - Defendant must have greater knowledge than the plaintiff
- Savage v Blakney
  - Language of a term must be a promise or Guarantee
- Routledge v McCay
  - Length of time between statement and K is more likely to make it a representation
- Van den Esschert v Chappell
  - Important statements are more likely to be a term
- Lambert v Lewis
  - Implied condition of purpose at the time of delivery
- Baldry v Marshall
  - Back up of Sales of goods when they have on reliance purchased a brand
- Grant v AKM
  - Merchantable Quality Case
- Crowther v Shannon Motor co
  - Merchantable Quality Case
- George Wills Co Ltd
  - Merchantable Quality Case
- Sales of Goods Clause 19 NSW Subsection 1
  - Fit for purpose
- Sales of Goods Clause 19 NSW Subsection 2
  - Merchantable Quality
- Sales of Goods Clause 19 NSW Subsection 57
  - Exclusion clauses for all rights under the act
- Sales of Goods Clause 19 NSW Subsection 64
  - Exemptions to exclusion clauses

## **Classification of Terms**

- Poussard v Spiers and Pond (1876)
  - Opera Singer who defined what a warranty was
- Bettini v Gye (1876)
  - K cannot be terminated if a warranty is broken as the K can still be performed
- Essentiality test (Jordon CJ in Luna Park)
  - What would a reasonable person looking at this K think of term, would the innocent p not have entered unless assured of compliance.
- Hong Kong Fir Shipping v Kawasaki Kisen Kaisha Ltd
  - Intermediate Innominate Terms

## **Parol Evidence Rule**

- Mercantile Bank v Taylor

- You cannot include a term within the contract that was talked about but not written within the contract

### **Ending a Contract**

- Foran v Wight (1989)
  - Anticipatory breach of Terms
- Codelfa Construction v SRA
  - Frustration of a K – radically changes rights or obligations
- Taylor v Caldwell
  - Frustration of a K – No party caused the event

### **Factors Affecting Agreement**

- Taco Co of Australia v Taco Bell Pty Ltd (1982) 42 ALR 177
  - Checklist of Misleading or Deceptive

### **Negligence**

- Cook v Cook
  - Road users DOC
- Grant v AKM [1936] AC 85 (Dr Grant's Case)
  - Manufacturer/Consumer DOC
- McCabe v BAT Aust (2002)
  - Suppliers of Dangerous Goods DOC
- BAT Aust v Cowell (2002) (VSC) Cigarettes
  - Suppliers of Dangerous Goods DOC
- Rogers v Whitaker (1992) 175 CLR 479
  - Establishes Doctor Patient DOC
- Jaensch v Coffey (1984) 155 CLR 549
  - Establishes DOC for 3<sup>rd</sup> parties
- Fox v Peakhurst Inn NSW (unreported, 2002)
  - Establishes DOC for 3<sup>rd</sup> parties
- Wyong SC v Shirt (1980), Mason J
  - Establishes reasonable person test for Negligence
- Civil Liability Act, Section 5 (1) (b)
  - Establishes reasonable person test for Negligence
- Bolton v Stone
  - If the probability of risk is high then the standard of care is higher
- Paris v Stepney Borough Council [1951] AC 367
  - Even if probability is low, if the potential injury is high then standard increases
- Woods v Multi-Sport Holding (2002)
  - Lower Standard of care if the cost of removing the precaution is high.
- Hollis v Vabu
  - Case showing vicarious Liability
  - Acting within scope

- Didn't do well
- Cuijs v Wirth Bros (1955) 93 CLR 561
  - Establishes multi Factor test for employment
  - Helps determine if employer is liable for the actions of the employee
- Cork v Kirby Maclean
  - But 4 test
- Law Reform Miscellaneous Provisions Act 1965
  - Defences for negligence
- Ellis v Wallsend District Hospital
  - Hospitals must ensure its services are performed with reasonable care

# In Depth Summaries

## Offer

- Definition
  - A clear statement of the terms upon which the offeror is prepared to be bound
  - Reasonable person believes it to be an offer
- Must be communicated
- Can be revoked any time before acceptance
- Issues
  - Is there an offer
    - Carlill v Carbolic Smoke Ball
      - What constitutes an offer
        - Definite language
        - Clear statement of terms
        - Clear reward for satisfaction
  - Is it an invitation to treat
    - Grainger v Gough – wine
    - Partridge v Crittendon
      - Advertisements are normally invitations to treat
    - Fisher v Bell
      - Goods on display are ITT
    - Pharmaceutical Society of GB v Boots cash Chemist
      - Contract is formed when goods are brought to the counter and the money offered. ITT when on display in a self service store
    - Thornton v Shoe Lane Parking
      - Vending machine's are offered
  - Is it puffery
    - Leonard v Pepsico Inc
      - Would a reasonable person believe this to be an offer
  - Communication
    - Offer must be communicated
      - Any reliable source of information
        - Dickinson v Dodds
          - Reliable source of information
  - Termination of the offer – prevents acceptance
    - Revocation
      - Same medium and method
        - Shuey, Executor v United States
          - For unilateral contracts if the offer is revoked it must be completed in the same medium it was offered.
      - Any reliable source of information