



ALL Contract Cases

Law Of Contract A (University of Wollongong)

Contract Cases:

CASE	PROCEDURAL:	FACTS	ISSUE	DECISION	RATIO	WHAT IT LINKS TO:
Weeks 1 & 2 Offer						
<i>Gibson v Manchester City Council</i> [1979] 1 WLR 294	M. County Court: In favour of Gibson. Claimed there was a contract. Court of Appeal: Found in Gibson's favour, 2 to 1. House of Lords:	Gibson was approached by MCC to purchase the house he was renting by the council, through a scheme. G fills out the letter and sends back. The Council changes parties and no longer wants to sell house.	Was there an offer? Can 'may be willing to sell' constitute an offer?	Unanimously in MCC favour, there was no contract. There was no contract. It was not legally enforceable as the letter: 'may be willing to sell' was too vague. It was an offer to negotiate.	Offers must be: clear and definite promise to be bound without any further negotiation.	What is an offer? An offer needs to be a clear promise. It will be judged objectively to see if the parties thought it was a contract. Termination of contract? Is a question of price a negotiation? No. Bilateral Contract: a promise in exchange of a promise. e.g.: car for money.
<i>Carlill v Carbolic Smoke Ball Company</i> [1893] 1 QB 256	There was a binding contract. Carlill won at all levels of court.	Carbolic claimed their product prevented influenza and colds. In an ad they offered a 100 pound offer of the product did not work for the purchaser. They said they deposited 1,000 pounds into a bank to shrew their offer. Mrs Carlill used the ball and contracted influenza.	Was there a contract between the parties or was it 'mere puff'?	A unilateral contract existed. Mere puff was dismissed as Carbolic showed sincerity in depositing 1,000 pounds into the bank for rewards.	A unilateral contract can be made to the world; however, an offer can only be made to the person who accepts the offer. E.g.: lost dogs for a reward.	Unilateral Contract: A promise in return of performance. Mere Puff: so obviously 'out there, exaggeration' that only the gullible would believe. Ad Idem: 'One of mind' or see things in the same way - seeing a contract has been made. Magic moment of formation: acceptance of the offer
<i>MacRobertson Miller Airline v State Taxation (WA)</i> (1975) 133 CLR 125		Customer Purchases ticket, ticket contains terms and conditions = airline has the right to cancel any flight...e.g.: weather. Commission charged 25c in Tax in all agreements.	Was the airline ticket an agreement and therefore liable to be taxed?	At the time the ticket is issued it is an offer and then after a reasonable point of time or when boarding, that is when the offer becomes accepted.	At the time the ticket is issued it is an offer and then after a reasonable point of time or when boarding, that is when the offer becomes accepted.	Offer & Acceptance: ticket purchase is offered by customer; it is accepted after a reasonable time or by actually boarding.
<i>Pharmaceutica l Society of Great Britain v Boots Cash Chemists (Southern)</i> [1953] 1 QB 401		Boots organised a self-service and the store was arranged so the customers could choose items. Tills were supervised by pharmacist, under s18(1) of the <i>UK Pharmacy & Poisons Act 1933</i> . Customer picks up item makes purchase. Customers need to purchase drugs without supervision of a pharmacist. Boots was charged with being in breach of the Act for not supervising purchases.	Was the store making an offer to sell goods on the shelves? Where does the offer and acceptance take place?	No, the offer is made by the customer when they place the items in front of the cashier or at the counter. The showing of goods was an invitation to treat, where the customers made the offer to purchase the goods where the pharmacist could reject the offer.	Invitations to treat are not offers, they invite the customer to make an offer to purchase goods. The store then accepts the offer by selling them the goods.	Invitations to Treat: are shop sales, auctions, tenders, ticket cases and electronic transactions. They invite the purchaser to offers to purchase goods, the offer is made when the goods are placed in front of the counter. The store can then accept or reject their offer at the counter.

<p><i>Australian Woollen Mills Pty Ltd v Commonwealth</i> (1954) 92 CLR 424</p>		<p>AWM bought lots of wool for a couple of months without subsidy. Each purchase was subsidized by the Commonwealth. There was an incentive by the Commonwealth to purchase wool. Limited quantity of the subsidy (saying to act now). Government requires payback, AWM complies and gives back the subsidy, now AW wants their subsidy back.</p>	<p>Was the governments subsidy a contract?</p>	<p>no, it is not an offer as there is no consideration for the governments, they are not receiving a gift in return for the discount. It was not a unilateral contract either as AWM would have bought the wool regardless of the subsidy.</p>	<p>For there to be a contract, there needs to be consideration, that is a benefit and a detriment for the two parties, the offeror and offeree. In AWM there was no benefit for the Government.</p>	<p>Consideration: 'an act or forbearance of one party, or promise thereof, [is] the price for which the promise of the other is bought'. The principle: to amount to an offer, there needs to be an exchange, the offeror has to be getting something. Without the exchange, it is a conditional gift Govt. contract: 'good will'</p>
<p>Week 3 Termination of an Offer</p>						
<p><i>Goldsbrough, Mort v Quinn</i> (1910) 10 CLR 674</p>		<p>Q wanted to sell property to the applicant, G. Q had made an offer, with the option to the application without realizing he had made a mistake in the offer. Q then reneged the offer before the option time was over. G is appealing believing that Q is liable. The option of 5 shillings was paid. The option was accepted, meaning the option was open for one week. before the option lapsed, Q tried to revoke his offer and sell to another party. G sought specific performance.</p>	<p>Could Quinn revoke his offer? Could the Quinn revoke the offer after having accepted consideration for keeping the offer open for one week?</p>	<p>An option means nothing unless it has consideration. e.g.: I'll pay you \$5 if you hold it for 1 week. The court found that the option was not revocable and Goldsbrough had accepted the offer before the due lapse of the option, therefore there was a contract. Just because you promise to keep it open means nothing; unless they have accepted money, then they have to keep it open. The court found that there had been a contract formed between the parties.</p>	<p>If consideration is given for an option, the option cannot be revoked by the offeror. An option consists of a promise founded on valuable consideration to sell. Goldsbrough had accepted the offer before the end of the week. Because there was consideration of 5s the contract cannot be revoked before its expiry period.</p>	<p>Termination of an offer: 'An offer may be withdrawn at any time before acceptance' (Golds Mort v Quinn) Offers can be revoked at any stage until the offeree accepts the offer. If the is an option with consideration, the offeror cannot revoke the offer. After the stated time of option, the offer lapses.</p>
<p><i>Mobil Oil Australia v Wellcome International</i> (1998) 81 FCR 475</p>	<p>Trial judge: found that once an offer was made that required performance, the offer could not be revoked if the party had started to perform. HCA: Ffound in favour of Mobil Oil.</p>	<p>Mobil's scheme offered franchises who score 90% or better in the Circle of Excellence judging in each of the six years following 1991 would be granted 9-year renewal at no cost. Mobil abandoned the Circle of excellence judging so the franchisers couldn't be judged.</p>	<p>Can an offer in a unilateral contract be revoked if the other party has begun performance?</p>	<p>There is no offer, it was too vague. Should Mobil be prevented from relying (drawing back) on its promise? No because there was no detriment. Why wasn't equitable estoppel found? Because there was no detriment to the franchiser, they painted and 'spruced up' there stations.</p>	<p>You can revoke even if the performance has begun, however they cannot unless there is an implied ancillary contract not to revoke the offer, OR estoppel.</p>	<p>Estoppel: Assumption – 6 years for the circle of excellence Inducement – if you earn 90% over the Circle of Excellence – Reliance – they have cleaned up and made them look better. Detriment? There was no detriment as the shops were improved. Should Mobil be prevented from relying (drawing back) on its promise? No because there was no detriment. Why wasn't equitable estoppel found? Because there was no detriment.</p>

<i>Dickinson v Dodds</i> (1876) 2 ChD 463		Wednesday 10 June, Dodds offered to sell Dickinson some houses for the sum of 800 pounds. The offer was to remain open until 9am on Friday 12 June. Dickinson intended to accept the offer. 11 June, Dickinson was informed by another party, Berry, that Dodds had sold the houses. The houses were sold to Allan. Dickinson was sent a formal notice of acceptance to Dodds. Dickinson, Friday morning and accepted the offer. Dodds said it was too late. Dickinson sued for breach of contract.	Can you accept an offer when you know it has been withdrawn?	The court found for Dodds. The attempted acceptance made by Dickinson was invalid. The Court found that it was not necessary for Dodds to personally provide notice of revocation. It was not possible for Dickinson to accept an offer that he already knew had been withdrawn.	the offeree must be informed of the revocation. A promise to keep an offer open (an option) is itself a contract which must have some consideration, otherwise it is nudum pactum.	Revocation of an offer: The offeree must be notified of the revocation. It can be through words, conduct or even a third party or through conduct. A third party (Berry) can communicate revocation as long as the offeree is aware of the revocation.
<i>Stevenson Jaques v McLean</i> (1880) 5 QBD 346		M was an iron merchant who purchased iron and sold it to third parties. M, via telegram, offered to sell iron for '40s net cash, open till Monday'. On Monday morning, S sent a telegram to M stating 'please wire whether you would accept forty for delivery over two months'. After not receiving response, S.J sent another telegram accepting the original offer. Between these two telegrams, M had sold the iron to another party and then notified S.J, who weren't aware of the notification. M claimed that he did not have a contract with S.J because they had revoked his offer and because the telegram amounted to a second offer.	Was the offer able to be revoked by McLean? Were the enquires made by Stevenson a request for further information which made the original offer invalid?	The original offer was valid and could still be accepted as Stevenson's request was only for more information, it was not a counter offer. And the revocation was not communicated Stevenson before Stevenson accepted the offer.	Offers can be revoked until the offeree accepts. The revocation must be communicated to the offeree before they accept the offer. Stevenson was making a mere enquiry. A mere enquiry is not a counter offer.	Revocation of an offer: The offeree must be notified of the revocation. it can be through words and conduct. The notification can be given by a third party. The notification does not have to be formal. Request for information/ Mere enquiries: A mere enquiry is not a counter offer. Likened to the case to (Hyde v Wrench)... "here there is no counter proposal... there is nothing specific by way of offer or rejection".(Stevenson v McLean)
Week 4 Acceptance						
<i>R v Clarke</i> (1927) 40CLR 277	WA case	Clarke claimed a reward for giving information that led to the conviction of a murderer who killed two policemen. Clarke was a suspect for the case. There was a reward for information, which he seen in May. However, Clarke gave the information in while he was on trial himself as an accessory for murder. Clarkes evidence cleared himself. He told the police it was "exclusively in order to clear himself". Clarke tried to sue the Crown for £1,000 promised as reward.	Can Clarke claim the reward even though he gave information so he could clear himself, not for the reward.	Clarke could not get the reward money. Clarke gave the information to clear his name, not in response to the offer for reward. This was a unilateral case. The court saw that he was already obligated to form a defense for himself and he did not rely on the offer.	The information needed to be 'given in exchange for the offer'. If you are already doing something or providing a defense, then you are not able to receive the reward..	Acceptance: Nexus Must be in response to the offer, otherwise there are no contractual liabilities. The information needed to be 'given in exchange for the offer'.

<i>Felthouse v Bindley</i>	Trial court: Felthouse succeeded. Court of Common Pleas: the court discovered that there was no contract.	The Felthouse wrote a letter to his nephew Felthouse saying that he wanted to purchase a horse and considered the horse his if he didn't reply to the terms. The auctioneer, Bjdndley, then accidentally sold the horse, Felthouse sued Bindley for the selling of the horse.	Can acceptance be inferred from silence?	The court does not want to put burden on the offeree to reject an offer. The general rule of law is that you cannot accept an offer by doing nothing! Not communicating is different to acceptance being nothing.	Silence count accept a contract. Conduct, however can.	Acceptance: An offeror cannot by stating in his offer silence can be deemed as acceptance. The reason is, if the nephew did not need to accept, it would be a burden to reject an offer. He would have to work to reject and nothing to accept.
<i>Empirnall Holdings Pty Ltd v McMahon Paull Partners Pty Ltd</i>		Empirnall were the Property developers they hired an architect to do some work. The architect sent a contract to the property developer who said they don't sign contracts. The architect continued on with the job and was paid by the property developer. The developer became insolvent and claimed that there was no contract because it wasn't signed.	Was there a contract even if no one had signed?	Yes. Both parties acted in a way which could be seen by a reasonable person that they had accepted the contract. Therefore, Empirnall had to pay the architect.	Conduct can accept an offer. The conduct is objectively tested.	Unconventional Acceptance: Conduct can accept an offer. The conduct is objectively tested.
<i>Brambles Holdings V Bathurst City Council (2001) 53 NSWLR 153</i>		Brambles managed a waste disposal depot for the Council. Brambles would dispose of liquid waste for 1.1c/L. The council instructed Brambles to increase its fees to 1.3c, then an additional cent every quarter, up to a limit of 6c. Brambles was unwilling to do so, without further remuneration beyond their 1c share. However, Brambles adopted the pricing approach. The Bathurst City Council claimed against Brambles for the extra income	Did the contract apply to liquid waste?	Yes. The contract did apply to the waste.	Clause 2(b) related to liquid waste. BBC is entitled to collect the portion of fees for liquid waste owing to it under the contract.	.
<i>Brinkibon Ltd v Stahag Stahl Und mbH [1983] 2 AC 34</i>	House of lords	The buyers, English company wanted to purchase a large quantity of steel bars, they sent a telex to the offeror in Vienna accepting the terms.	When & where was the contract made? Does the postal acceptance rule apply to a telex communication	The offer is accepted when the acceptance is communicated to the offeror.	The Acceptance took place in Vienna, where the offeror had the acceptance communicated to them.	Acceptance: acceptance takes place when the offeror has received communication of the acceptance. Exception: Postal Acceptance Rule it does not apply to Telex's but it does apply to non-instantaneous forms of communication.
Electronic Transactions Act 2000		Issues – where does acceptance take place? When the email is sent or when it is seen by the offeror. Part 2 – ‘unless otherwise agreed’ (a) When the message appears in the email à as long as you designate the address (e.g.: mobile number/email)		‘Designated by the addressee’ if you give someone you email address or number and the person sends the acceptance to that, you are giving terms of the agreement. (b) No address designated a capable of being retrieved & awareness of receipt.		Acceptance: takes place when it is capable of being retrieved, (e.g. when the email has been sent and received by the email, not viewed by the offeror)

<i>Butler Machine Tool v Ex-Cell-O Corp (England) Ltd [1979] 1 WLR 401</i>		Both parties have business forms, there is a price variation clause (allows for fluctuations of the price)	Can two forms make one contract?	Yes. Courts are going to try to find that a contract existed.	Acceptance: must mirror the offer.	Battle of the Forms: when both parties have contract forms. Exception – between businesses, if there is a small variation between the acceptance and the offer, the courts will find that a contract exist. The variations cannot be significant.
<i>Henthorn v Fraser [1892] 2 Ch 27</i>		Fraser called into Henthorn's office to negotiate the purchase of houses. Fraser handed the Henthorn a note giving him the option to purchase some houses within 14 days. On the next day, Fraser withdrew the offer by post, but this withdrawal did not reach Henthorn until 5 P.M. Meanwhile, Henthorn responded by post with an unconditional acceptance of the offer, which was delivered to Fraser after its office had closed. The letter was opened by Fraser the next morning.	Was there still a binding contract between Henthorn and Fraser?	Henthorn was entitled to specific performance.	"Where the circumstances are such that it must have been within the contemplation of the parties that, according to ordinary usage of mankind, the post must be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted."	Postal Acceptance Rule: acceptance is created when the offeror posts their acceptance, not when the offeror receives it. It does not apply to revocation of offers.
<i>Manchester Diocesan Council for Education v Commercial [1970] 1 WLR 241, 245-246</i>		MD called for tenders relating to property. C&G submitted an offer to buy. The tender stated that acceptance was to be notified to the person whose tender was accepted by letter sent 'by post addressed to the address given in his tender'. MD decided to accept C&G tender and sent their acceptance to the CG's solicitor, which was not the address given in the offer. C&G knew of this acceptance.	Was there acceptance?	The offer was accepted.	The method of acceptance prescribed in the tender was not <i>mandatory</i> - here the offeror was made aware of the acceptance by an equally effective method and thus the acceptance was effective.	Acceptance: the mandatory prescribed tender is the paramount way to communicate acceptance to the offeror, however, you are also able to tell them in other means, as long as they know about the acceptance.

Week 5 Consideration I

<i>Beaton v McDevitt</i>		McDevitt owned land and was forced to subdivide it. He asked Beaton to stay on the land and permaculture it. All Beaton did was do ti-chi and little farm work. When McDevitt wanted Beaton off the land, Beaton tried to sue.	Was there an offer from McDevitt to Beaton?	No. The language used was informal and very vague. There is no time frame, it is not stated for how many years he had to farm for. Lack of specificity, lack of language and time frame.	How long until it lapses? It doesn't say how much farming he needed to do, the amount, for how many years?	The language that constitutes an offer and must propose an exchange. Benefit and detriment Reaffirms the bargain theory as the leading theory.
<i>Woolworths v Kelly</i>		Woolworths set up a pension scheme for their long-serving employees. Kelly and Woolworths agreed that instead of receiving payment for his consultancy services, he should be paid via the scheme.	Did the payments via the pension scheme constitute valid consideration?	The court found for Kelly.	Consideration need not be equal to the promises given by the parties of the contract.	Consideration: need not be equal to the parties. As market price of goods can vary or be of sentimental value. It is not the courts place to put a price on goods.

<i>Chappell & Co v Nestle</i> [1960] AC 87, 108 – 109, 112 – 113, 114		As a promotion, Nestle offered to give a copy of a record to people who sent in 3 wrappers of their chocolate bar. Nestle did not own any rights to the song. Nestle offered Chappell royalty. Chappell said that the amount should be in line with s8 of the UK copyright Act 1956 and should be the cost of 1shilling and 3 choc wrappers.	Were the chocolate wrappers part of consideration?	The court found for Chappell and Nestle had breached the Act.	Chocolate wrappers can form part of consideration.	Consideration: a peppercorn would suffice for consideration, as long as it was good in law. Anything can have value for consideration.
<i>Dunton v Dunton</i> (1892) 18 VLR 114, 116, 118 – 119		The parties entered into a written agreement whereby Mr Dunton agreed to pay his former wife an allowance so long as she behaved 'with sobriety, and in a respectable, orderly, and virtuous manner' or committed an act whereby she or Mr Dunton could be subjected to 'hate, contempt, or ridicule'. The question arose as to whether this agreement was legally binding.	Was there consideration for Mr Dunton's promise to pay the allowance?	Yes, consideration was found.	The terms of the agreement did imply a promise by Mrs Dunton and this was good consideration. Though promising not to do something which cannot lawfully be done <i>is not</i> good consideration, a promise not to do something which can be lawfully done <i>is</i> good consideration.	Consideration: can only be appropriate if it is done lawfully.
Week 6 Consideration II						
<i>Rule in Pinnel's Case Part Payment of Debt's</i>		Example: D owes C \$10. C's promise to accept \$8 in full settlement of the debt will not, on its own be contractually binding on C. D will not have provided good consideration for the promise.			A promise to pay part of a debt will not constitute consideration for a promise to accept the payment in satisfaction of the debt. UNLESS: there is fresh consideration, or new benefit and detriment.	Part Payment of Debt's: The rule will not apply where part payment of a debt is accompanied by some additional consideration from the debtor, even if the consideration is normal.
<i>Roscorla v Thomas</i> (1842) 2 QB 234		P bought horse for 30. After sale D said horse was free from vice. Later horse was aggressive. P sued for breach of contract. Plaintiff: Initial benefit – horse Detriment – losing money Defendant: Initial Benefit – money Detriment – losing horse	Was the statement part of the agreement or is it a separate agreement?	Any new terms that are brought up outside of the consideration group (3 types of consideration) will not be a part of the original consideration. You cannot have past consideration. Plaintiff had given no consideration for the subsequent promise, and thus it was not enforceable.	Past consideration is not valid consideration (are limited exceptions where subsequent promise would be binding). → Consideration must be given to the actual promise D makes. → Consideration must be contemporaneous with the contract	Past Consideration: is not valid consideration.

<p><i>Foakes v Beer</i> (1884) 9 App Cas 605</p>		<p>Foakes for a debt owed of \$2090 and costs in 1875 to Beer. Over a year later the parties entered into an agreement to the effect that in consideration of Foakes paying Beer \$500 in part satisfaction of the judgement debt and on condition that the balance be paid in instalments, Beer would not take proceedings on the judgement. In 1882 Beer took proceedings to enforce the judgement so as to recover interest on the judgement debt. It was established that the whole debt had now been paid off. Beer is suing for interest.</p>	<p>Has Beer agreed to forego proceedings and if so, is that sufficient consideration for the new agreement?</p>	<p>Beer could recover the interest as there was no fresh consideration.</p>	<p>No fresh consideration was provided. Beer is entitled to the \$2090. Giving up full payment did not provide full consideration for the interest.</p>	<p>Part payment of a debt: on or after the date the debt is due is not good consideration for the creditors promise not to claim the balance.</p>
<p><i>Williams v Roffey Bros & Nicholls</i> (1990) 1 All ER 512</p>		<p>P contracted to perform carpentry work for D. When it became apparent he could not complete on time, D promised to pay P extra money to ensure it was completed on time. D would incur liability to a third party if the work was not completed on time. Was D liable to pay the extra amount?</p>	<p>Is there sufficient consideration for the agreement? The contractors are saying they cannot do the work for \$20,000.</p>	<p>There was a contract with sufficient consideration.</p>	<p>Contractors What is the benefit to have to pay more to the contractors? The flat will be finished. The houses would not be finished Benefit for the contractor, building will be finished Detriment - paying more money Carpentry D - work harder B - has been given to the carpenters to finish the building and therefore there is a contract.</p>	<p>(1) A enters into a contract with B for the supply of goods or services in return for payment by B; and (2) Prior to completion B has reason to doubt whether A will complete; and (3) B then promise A additional payment in return for B promising to perform on time; and (4) As a result of this promise B obtains a benefit; and (5) B's promise is not given as a result of A's benefit Then: (6) The benefit to B is capable of being good consideration for B's promise.</p>
<p><i>Musumeci v Winadell Pty Ltd</i> (1994) 34 NSWLR 723</p>		<p>The Musumeci's leased a shop in a shopping Centre run by Winadell. Winadell subsequently leased another shop in the Centre to a competing business. Musumeci's asked for a rent reduction to compensate for this and Winadell agreed. When a dispute later arose Winadell sought to terminate the lease and Musumeci sought damages for breach, relying in part on Winadell's promise to charge a reduced rent.</p>	<p>Was consideration provided?</p>	<p>Yes, there was valid consideration for varying the lease.</p>	<p>Benefit – for the mall – there is a practical benefit The practical benefit is the consideration for keeping the mall full. It's the shopping Centre that has caused the grocery shops profit to drop due to the Centre brining in competition.</p>	<p>Reduction of Rent: Can work as new consideration, as long as there is benefit and detriment.</p>

<i>Pao On v Lau Yiu Long</i> [1979] UKPC 17		Pao On wants to sell the shares from Fu Chip. Lou Y wants to make a new agreement with Pao, which could get more money if the stock market goes up. But as it turned out the shares did slump in value. Pao tried to enforce the guarantee agreement. Lau argued the guarantee agreement was not valid (1) because there was no consideration, only in the past and under a pre-existing duty, and (2) because it was a contract procured by duress.	Is past consideration sufficient. Does the new agreement have enough consideration to be binding?	No but the exception is an existing duty to a 3rd party. Fu Chip stocks sink and the Plaintiff says no there was no consideration to the 2nd agreement. However, there is an exception with existing duty to a 3rd party	An act done prior to a promise will be good consideration if: 1. the act was done at the promisor's request 2. the parties understood that that act would be remunerated; and 3. had the promise occurred in advance of the act it would have been enforceable	Act prior to a promise: A promise perform 'a pre-existing contractual obligation to a third party can be valid consideration' Exception to Partial Payment of Debt: Existing duty to third party.
<i>Wigan v Edwards</i> (1974) 1 ALR 497		Edwards purchased a new house from Wigan. The contract did not contain any promise that the house was in a good condition etc. The house was defective in certain ways and E said that they would not finalize the contract unless these were attended to. As a result of this pressure, Wigan promised: (a) to remedy minor defects set out within one week of finance being approved. (b) to correct an major defects occurring within five years. Wigan did none of these things. He sought to recover the cost of the work.	Can we enforce the additional agreement?	An agreement to a compromise of a disputed claim is a consideration	1. Was there consideration? 2. The promisor asserted that he is not obliged to perform his side of the preexisting contract or that he has a cause of action under it. 3. But the claim must be honestly made. 4. Edwards honestly believed that they did not have to complete the contract.	Exception to Partial Payment of Debt: Agreement to a compromise of a disputed claim is a consideration. A promise to perform an existing contractual duty is not consideration.
Week 7 Intention to Create Legal Relations						
<i>Ermogenous v Greek Orthodox SA</i> (2002) 209 CLR 95	Full Court of Supreme Court of SA: no legal intentions.	Archbishop Ermogenous made a claim for payments he thought due for annual and long service leave from the Greek Orthodox Community.	Was there legal intentions between the church and Ermogenous?	There was a contract.	Objectively tested to see if there were manifested intentions to be legally bound. Looked at subject matter, salary etc.	Intention: each case is to be objectively assessed to see if there is intention to be legally bound. Look at the parties bearing onus.
<i>Banque Brussels Lambert SA v Australian National Industries Ltd</i>		ANI provided a comfort letter to the Bank to give \$5million to Spedley. ANI is the holding company of ANI or the parent company.	The comfort letter – does it become a separate agreement? Did ANI have the intent to be legally bound?	If was found that the comfort letter was legally bound.	The bank has not been paid back and wants their \$5million back and because Spedley couldn't pay it back. They see if ANI should pay it back.	There is enough information provided in the comfort letter to suggest they were intending to create legal intentions.
<i>Todd v Nicol</i> [1957] SASR 72	Supreme Court of SA	Elderly woman lived in Aus. Wanted company and asked for sister in law and niece to move from Scotland. She would give them the house when she passed away. The 2 women did something and the elderly lady wanted them to move out. 2 ladies sued for breach of contract.	Was there intention to be legally bound? Does previous intention remain liable if circumstances change?	Court found there is a contract.	However, the old lady didn't breach the contract, the 2 ladies did, therefore, they were not entitled to the house.	Post Ermogenous: Contracts are objectively tested.

<i>Admin of Papua and New Guinea v Leahy</i> (1961) 105 CLR 6	Appeal from Supreme Court of PNG.	Govt gave subsidies to eradicate lice on properties. Govt helped Leahy but it ended up doubling the amount of lice. Leahy sued for breach of contract.	Was there an intention to be legally bound?	No. The Govt's subsidies were 'good will' payments or public payments.	The good payment means no intention.	There are 2 types of Govt agreements: 1. Commercial transactions – buying tissues 2. Public policy -welfare payments – known as good will payments , in Woollen Mills there was no intention.
<i>Masters v Cameron</i> (1954) 91 CLR 353		Cameron, the respondent, signed a document with Masters, where Cameron agreed to buy Masters property. The document contained 'this agreement is made subject to the preparation of a formal contract of sale which shall be acceptable to Cameron's solicitors on the above terms and conditions'. Masters encountered financial difficulties and denied they were legally bound to purchase the property and sought to recover the deposit.	Can a memo amount to a binding contract?	There was no contract. A prelim agreement is merely agreeing to agree in the future. When it comes to that future point in time, the parties may not be able to agree.	A pre-contract agreed upon by Cameron and Masters cannot be considered as a final contract for the sale because the circumstances suggest that it was still not the final contract	Prelim Agreements: cannot agree to agree in the future, unless there is a mechanism in place.
<i>Balfour v Balfour</i> [1919] 2 KB 571, 578 – 580		Wife is to stay as the doctors said don't travel for your health. Husband says he'll provide her with 30 pounds a month. They separate, Mrs Balfour sues Mr for the 30 pounds a month.	Was there legal intention?	No, the court found no legal intention.	He was supporting his wife and look out for her. When the marriage dissolved, I don't think he would still want to support her.	Pre-Ermogenous: Domestic: No because they are divorced. He was supporting his wife and look out for her. No intention to be legally bound before Ermogenous. Now, still would have been no intention to be bound.
<i>Jones v Padavatton</i> [1969] 2 All ER 616	Court of Appeal	Mother promises daughter \$200 per month and become a barrister and move from US to UK. Daughter sues when mother does not pay up.	Was there legal intention?	There was no intention to enter into legal relations.	Money from mum is only a benefit. The original payments were not the same as the actual payments. Neither were intending to be bound.	Intention: is objectively tested. 'family arrangements which depend on the good faith of the promises which are made and are non-intended to be rigid'.

<p><i>Rose & Frank Company v JR Crompton</i> [1923] 2 KB 261, 282 – 283; 288, 293</p>		<p>Rose & Frank dealt with carbonizing tissue paper. After a series of agreements between 1907 & 1911 they entered into an agreement in July 1913, under this, the P's were to have exclusive rights on the sale in certain areas and the D's were to sell exclusively to the P's. P was only to supply D. D was only to buy from P. Disputes occurred in 1918 and it was alleged by P's that D's had repudiated (rejected) their obligation. They claimed damages. Clauses in the contract stated that there was no intention to be legally bound.</p>	<p>Is there a binding contract? Was D liable for rejecting the obligation?</p>	<p>The clauses state that there was no intention to create legal docs. Objectively, it can be thought that there was no agreement at all as they did not intend to be bound.</p>	<p>There was no intention to be legally bound.</p>	<p>Pre –Ermogenous: Commercial: even though there was no intention to be legally bound, because it was a commercial agreement, it was assumed to be intended to be legal.</p>
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Week 8 Certainty & Completeness

<p><i>Council of the Upper Hunter District v Australian Chilling and Freezing Co Ltd</i> (1968) 118 CLR 429</p>	<p>It was referred to an arbitrator where they said go to the Supreme court. Supreme Court NSW: Held that clause 5 of the agreement was void for uncertainty. HCA:</p>	<p>The council purchased electricity in bulk and agreed to supply the Chilling & Freezing company with electricity at certain rates. The agreement allowed for automatic changes in rates through changes in the cost of coal to be delivered to the generating company. The agreement also provided an arbitration in the event of disputes. The council wanted to increase the charge. The Chilling & Freezing said claimed that clause 5 was uncertain.</p>	<p>Was the clause 5 void for uncertainty? What is the intent of the parties?</p>	<p>Appeal Allowed., Council won.</p>	<p>Barwick CJ, [436]'A contract is where there can be more than one possible meaning or which when construed can produce in its application more than one result is not there void for uncertainty'.</p>	<p>Certainty: 'clause 5 provides certain criterion by reference to which the differences of the parties as to the propriety of an increase in charges could be resolved'. Barwick CJ [436] If there is uncertain language, then the clause/or contract could be void. If you can establish a meaning to something uncertain then it is not void.</p>
<p><i>Biotechnology Australia Pty Ltd v Pace</i> (1988) 15 NSWLR 130</p>	<p>Appeal from the Supreme court of NSW</p>	<p>Dr Pace was a senior scientist who entered into a contract of employment with Biotechnology Aus. The contract offered a letter from Biotech which 'confirmed a salary package of \$36,000 p.a, a car and the option to participate in the Company's senior staff equity sharing scheme'. There was no such scheme in existence at the time of contract or at any time during Pace's employment. Pace sued for breach of contract.</p>	<p>Is the sharing scheme void for being too vague or uncertain to be in force?</p>	<p>There was no sharing scheme as consideration was illusory. It was solely within Biotech's discretion and there were no objective standards.</p>	<p>Even if something is a little vague, it is not void if a third party has been identified to settle disputes (arbitrator). It is a way of keeping non honest people from scheming against you or getting more out of the person then agreed to.</p>	<p>Uncertain/Too Vague: can void a contract. However, a mechanism is able to fix the uncertainty. The mechanism must be agreed on to be used and it can be a third party such as a Valuer. Is there an external standard that can be used? Extrinsic evidence is evidence outside of the contract – it is usually not allowed.</p>
<p><i>Whitlock v Brew</i>(1968) 118 CLR 445</p>	<p>Brew appealed to the Supreme Court.</p>	<p>Whitlock agreed to sell Brew the respondent to buy an area of land. A contract was drawn up and signed by both parties. The purchaser paid the deposit but then declined to complete the purchase. The vendor wanted his rights. Clause 5. Had the petrol station Shell on it.</p>	<p>Was the special condition, clause 5 void for uncertainty and incompleteness ?</p>	<p>Held the clause was not void for uncertainty</p>		<p>Uncertainty: where a clause cannot be severed from the contract because it is too void.</p>

<i>Hall v Busst</i> (1960) 104 CLR 206	The grant of an option for Hall to purchase land from Busst being a small island off the coast of Queensland. (clause 5) the purchase price will be £3,157 to which will be added all additions and improvements to the property purchased by the grantor and a reasonable sum to cover depreciation of buildings and property. The agreement was to not sell the land without prior consent. The option was to purchase it back.	Is the price able to be specified?	The ambiguity here was that clause 5: chattels (personal property) is worth more in price if there are additions on the land e.g. sheds, but the price will decrease if there are things taken off the land, such as removal of prior sheds.	clause 5 fails as it cannot specify the price. It was too ambiguous. The sale of land must have 3 things: 1. Must have the parties 2. Subject matter = what land is being purchased, where are the boundaries? 3. The price.	Incomplete: a contract must have all of the essential terms, or at least be able to sever words or clauses or waive benefits.
<i>Meehan v Jones</i> (1982) 149 CLR 571	This case involved a contract for the purchase of property which was "subject to suitable finance being available". The purchaser told the vendor that they had found satisfactory finance, but the vendor refused to complete. The purchaser sought specific performance.	Is satisfactory to finance too illusory? Does it give all of the power to the person looking to get finance?	No, finance is not illusory.	Finance is very common and courts do not want to throw it out.	Illusory: finance is common; 1. Promisor has been able to find satisfactory finance. 2. The person getting finance acts honestly and 3. Make a reasonable effort to find financing.
<i>Placer Development v Commonwealth of Australia</i> (1969) 121 CLR 353	Placer & Cth arranged to form a company which would, as part of its operations import and export timber. The Commonwealth provided that it would pay a subsidy on any timber on which import duty had been paid and not remitted on export "of an amount or at a rate to be determined by the Commonwealth from time to time".	Was the Commonwealth Govt. liable to pay the subsidy?	The Cth Govt. was not liable to pay the subsidy.	A promise to pay an unspecified sum that is discretionary is too illusory or vague.	Illusory: too much discretion is given to one party. Or Too Vague.

Week 9 Formalities

<i>Ogilvie v Ryan</i> [1976] 2 NSLWR 504	In 1939 Ryan lived in one of two cottages in a street called Little Barber Street, renting for 1 pound a week. Ogilvie promised Ryan a life tenancy of his house if she lived with him until his death. Ogilvie died without mentioning the Ryan in his will. The Plaintiff [executor of the owner's estate] sought possession of the house from Ryan.	Whether the law would give effect to the deceased owner's promise.	Ogilvie won. There was no written contract.	Contracts not in writing cannot be enforced when a party is deceased.	Writing: as the contract was not in writing when Ogilvie died, it is merely Ryan's hearsay. Ryan can receive part performance through: Moving out and helping Ogilvie around the house
<i>Blomley v Ryan</i> (1956) 99 CLR 362	Ryan was 78 and was suffering the effects of prolonged and excessive consumption of alcohol. Blomley entered into a contract to purchase a farm from Ryan. When Ryan sought to rescind the sale Blomley sought specific performance.	Was there a contract? Could Ryan get out of it due to intoxication?	There was a contract, however Ryan could get out of it because he was intoxicated and taken advantage of.	'Mere' drunkenness will not permit a person to get out of a contract. However, where one party was – to the knowledge of the other – 'seriously affected by drink', equity will refuse specific performance.	Intoxication: mere drunkenness will not get a person out of a contract. however, if the other party knows they are very drunk and takes advantage of them, then the contract can be rescinded. A 'contract which disadvantages the party affected has been obtained by "drawing him in to drink", or that there has been real unfairness in taking

						advantage of him., the contract may be set aside.’
<i>Pirie v Saunders</i> (1961) 104 CLR 149	An appeal from the Supreme Court of NSW : held that the solicitor’s notes were capable of being a sufficient note or memo.	Respondents sought damages from the Appellants for breach of a lease agreement for a shop premises to the respondent. Appellants argued that a contract created by discussions between the parties was unenforceable under s54A of the Conveyancing Act 1919 (NSW). Respondent argued handwritten instruction notes made by their solicitor to prepare the lease constituted a sufficient memorandum or note of agreement for the purposes of s54A. Based on solicitor’s notes.	Can instruction notes amount to a contract? it needs to be in writing for Conveyance Act.	The contract was Too Vagure These notes didn’t specify the location, or many other essential terms	The notes were not sufficient enough for the contract to be enforced as it left out subject matter.	Statutory Provisions: Note or Memo: a note or memo can amount to writing for Conveyance Act, it can bring many notes together to form one contract. it needs to include all of the essential terms and it needs to be made after the agreement
<i>Fauzi Elias v George Sahely & Co (Barbados) Ltd</i> [1983] 1 AC 646		P sought specific performance of an agreement with D for the sale of D’s land. D raised the defence under the Statute of Frauds with regard to the requirement that such a contract be evidenced in writing. Elias sought specific performance of an oral contract for the sale of land. He alleged the contract had been recorded in two documents.	Can documents be joined together to form a contract?	Yes, they used parole evidence (testimonies of the parties) the documents do not need to say that they are relating to each other. The parole evidence backed up the intention of the parties.	The contract had been recorded in two documents (1) a letter written by his lawyer which contained the material terms (including price) and which asked for a contract to be forwarded for signature, and (2) a receipt for a deposit relating to the land sent by Sahely’s solicitor.	Statutory Provisions: Note or Memo: a note or memo can amount to writing for Conveyance Act, it can bring many notes together to form one contract. it needs to include all of the essential terms and it needs to be made after the agreement
Week 10 Estoppel - Mobil Oil also applies						

<p><i>Je Maintiendrai Pty Ltd v Quaglia</i> (cb 231)</p>	<p>Trial Judge: held that the landlord was estopped from claiming the amount. the landlord then appealed to the Supreme Court of SA.</p>	<p>Q was a tenant of a hairdressing business in a shopping Centre owned by J.M. they entered into a three-year contract of paying \$278 per month. Q found it difficult to pay the rent. J.M then reduced the rent amount to \$240 per month for an indefinite period; J.M accepted the reduced rent until Q's rent expired and moved out. J.M then sued for the arrears of rent.</p>	<p>Whether the appellant having told the respondents that their rent was reduced, is estopped from recovering from the respondents as arrears of rent. whether detriment was required and if the tenant had suffered detriment?</p>	<p>Promissory Estoppel prevented the landlord from denying his promise and he couldn't claim the full amount. Is the landlord estopped from taking back his promise to accept lesser rent? The landlord was estopped from taking back his promise. Promissory Estoppel prevented the landlord from denying his promise and he couldn't claim the full amount. As the tenant relied on their promise to their detriment.</p>	<p>Promissory estoppel – shielded the tenant from detriment of paying the full amount. As the tenant relied on their promise to their detriment. The landlord induced the assumption in the tenants that lesser rent, which they relied upon to accept the inducement as they paid the lesser rent and were not kicked out by the landlord from not paying the full amount. The tenants were then caused detriment after being told to repay the arrears of the rent.</p>	<p>Estoppel -was used as a shield in this case for the rentals. What is the assumption? The person will hold up the offer What is offered? A discount in rent Is there reliance? Yes Is there a detriment? If they are struggling to pay the rent at once, they wouldn't be able to pay it in full. The second is that they were in a contract and couldn't move to a better mall</p>
<p>Walton Stores (Interstate) Ltd v Maher (cb 237) HCA</p>	<p>Trial: Awarded M the damages on the basis that W were estopped from denying the existence of a binding contract. Court of Appeal: Upheld the decision. Walton's appealed to the HCA: Appeal was dismissed.</p>	<p>M and W negotiated a lease for a Walton's store to be built. M was beginning to demolish an old building on the site. 7 November, M's solicitor said that the agreement had to be completed quickly. He also said the M did not wish to begin the demolition of a newly constructed brick portion of the old building until there was an agreement. That day, W's solicitor sent M's docs with letter stating that they didn't have a response from their client in regards to approving the amendments, but they will agree to them later. There was no later agreement. W told their solicitor to 'go slow'. Jan 1984, M commenced building. W informed M that they did not intend to proceed with the lease. M claimed that a binding agreement existed and sought specific performance.</p>	<p>Is there sufficient estoppel from denying the binding contract? Were the Maher's entitled to rely upon the promise made by Walton's even though no formal contract had been completed?</p>	<p>W breached equitable estoppel because they induced a representation of future conduct and promises about legal relations to M and did not carry out their promise.. Will estoppel work in the absence of a contract? Yes. As long as they can prove: Defendant failed to act & they intended to not act as well as Assumption, inducement, reliance and detriment. It was unconscionable conduct to delay signing and informed them they didn't want to continue with the contract</p>	<p>For estoppel to be established there needs to be a legal relationship, inducement of an assumption, reliance of the assumption, knowledge or intent, detriment to the relying party and failure to act which cause detriment. Equitable Estoppel - 1. an ambiguous representation must be made by the defendant, expressly or implied, as to present or future facts of law.</p>	<p>ESTOPPEL = 4 Items = all items need to happen for estoppel. Assumption / inducement / reliance / detriment. The Representor must make good on the performance when possible. Rule of Law; must make good on their promise. If you represented something, you will have to do what you said you would do. Example: An assumption has to be made. Part performance begins on the assumption that the contract has been made. The inducement is what you told me and I assumed it was to go ahead. I relied on that inducement you told me. I have suffered a detriment because of your inducement.</p>

<p><i>Giumelli v Giumelli [1999]</i> HCA 10</p>	<p>Trial Judge: found that Robert acted to his detriment. He ordered the parents to pay Robert a greater sum spent on the house and the value of the house and the land on it stood. Full Court of the Supreme Court of WA: found that Robert had suffered A,I,R,D.</p>	<p>Robert G was a partner in family business of two properties owned by his parents. Robert worked to improve the property. Robert worked without wages but received pocket money ad was credited with earning in the partnership accounts. Robert's parents promised him 3 things. the property would be his for compensation of no wages, when R planned to marry, he could build a house on the property and after he married if R promised to stay on the property and rejected offer the work elsewhere, the subdivided property would include the orchard and house. Robert married a person whom his parents didn't like and they left the property.</p>	<p>Should Robert be entitled to the promises made by his parents due to them being estopped? Was there detrimental reliance to Robert for the 3rd promise?</p>	<p>Should the parents be prevented from revoking? Yes, Robert relied on his parents promise he turned down jobs, had no wages and built a house, as well as making improvements to the land. What would be the appropriate relief? Quantum Meruit.</p>	<p>Assumption – the he will be given the property Inducement – they would give him the subdivided property Reliance – turned down his career opportunity. Detriment – no wages, as he was getting the house and land.</p>	<p>Quantum Meruit: Monetary relief, because his brother was in the house on the land, he cannot get the house as it was impractical. It was impossible for the parents to pay the back the possible turned down jobs money. But he could get paid for the wages he did not receive. Get property and land valued and wages.</p>
<p><i>Sidhu v Van Dyke [2014]</i> HCA 19</p>	<p>Trial Judge: found in favour of Sidhu. As the subdivision required consent of Mrs Sidhu. Court of Appeal: found in favour of Van Dyke. Sidhu to pay compensation of the value of the land promised.</p>	<p>Sidhu’s owned Burra Station and lived on the main station. Mr Sidhu and Van Dyke had a sexual relationship. Sidhu promised to give V.D the cottage she lived in if she stayed. V.D lost the opportunity to earn wages elsewhere. Van Dyke sought relief on the basis of equitable or propriety estoppel.</p>	<p>Is Sidhu liable to pay on the basis of estoppel?</p>	<p>Found in favour of Van Dyke.</p>	<p>Mr Sidhu was ordered to pay Ms Van Dyke’s costs and the previously ordered equitable compensation in an amount assessed by reference to the value of the cottage.</p>	<p>Estoppel: Van Dyke was induced by Sidhu’s promise and acted to her detriment on that promise.</p>
Week 11 Restitution						
<p><i>Pavey & Matthews v Paul (1987)</i> 162 CLR 221</p>	<p>Trial Judge: found that P&M could claim the balance in an action for a quantum meruit Court of Appeal: overturned the decision and on the basis that an action in indebitatus assumpsit was an action to enforce the contract. HCA</p>	<p>Paul orally entered into an agreement with P&M. once P &M completed the work, Paul refused to pay. Paul stated that contract was not enforceable because it did not comply with s45 of the Builders Licensing Act 1971 (NSW) – which needed the contract in writing. The Act was introduced to prevent fraud. The statute was not protecting the consumer, but the builder. In order for the contractor to be paid: Paul claimed the contract was invalid. Equity in this case was unjust enrichment.</p>	<p>Where Pavey & Matthews entitled to recover for work they had performed, even though the contract was unenforceable? Could Pavey establish a quantum meruit claim?</p>	<p>Appeal Allowed. As Paul had taken the benefit of the work completed, principles of undue enrichment and restitution meant that the builders should be entitled to recover a reasonable sum for the work they completed under the Quantum Meruit. What is missing from the contract? The formality of signing a written agreement and the cost must be described.</p>	<p>Deane J: the concept of monetary restitution involves the payment of an amount which constitutes, fair and just compensation for the benefit or enrichment that was accepted.</p>	<p>Restitution: ‘the plaintiffs must show how they performed the services’ [Byrne] Quantum Meruit: 1. Defendant has accepted benefit of the plaintiffs services 2. Where it would be unjust for that party to do so without making restitution to the plaintiffs’</p>

<p><i>Brenner v First Artists' Management</i> [1993] 2 VR 221</p>		<p>Fener & Brenner were to provide management services to Daryl Braithwaite. F&B's responsibilities and their entitlement to commission was too vague for an enforceable contract. FB provided services to Daryl. Later the relationship broke down and the arrangements terminated. Daryl's music was a hit and F&B sought remuneration from Daryl on the basis of quantum meruit.</p>	<p>Were F&B's services enough to provide for quantum meruit? Could f&b seek remuneration on the basis of their services through quantum meruit?</p>	<p>There was no legally binding contract. 'too ambiguous agreement'. There was restitution.</p>	<p>Services have been provided, which Daryl accepted and no money was paid for the services.</p>	<p>Restitution: common, fair and just amount of dollars paid = common gross money is usually 15%. Quantum Meruit 1. No enforceable contract. 2. A reasonable person would realise services require payment. 3. The defendant accepted the services rather than reject them.</p>
<p><i>Lumbers v W Cook Builders (in Liq)</i> [2008] HCA 27</p>	<p>Trial: held that W Cook builders had no rights against the Lumbers. Full Court of SA Supreme court: 2-1 held that Builders could recover in restitution against the Lumbers.</p>	<p>Cook Sons orally agreed to build a house for the Lumbers. The work of the builder was to supervise sub-contractors. It was agreed that Lumbers would pay the costs incurred by Sons plus a supervision fee - which was never determined. Sons work was taken over by W Cook without the Lumbers knowledge. Lumbers move in after being told no more money had to be paid. Cook goes into liq and finds \$42,000 missing. W Cook sues for their services.</p>	<p>Could W Cook be restituted as Lumbers were unjustly enriched? Could a Q.M be brought for reasonable restitution.</p>	<p>Appeal Allowed. Builders claim in restitution failed.</p>	<p>There was no Q.M as Lumbers had not requested W Cook to complete the building work and in this case, as request is needed for the elements of Q.M.</p>	<p>Restitution: Quantum Meruit 1. There is no contractual relationship. 2. P has given services or money. 3. Reasonable compensation is fair. 4. A request for the services.</p>

Week 12 Privity

<p><i>Coulls v Bagot's Executor & Trustee</i> (CB p 338)</p>	<p>Trial: O'Neil was not bound to pay the royalties to D Coulls.</p>	<p>A. Coulls agreed to let O'Neil Construction solely quarry and remove stone from the area (50acres). The agreement was signed by A & D Coulls. A. Coulls died, his executor Bagot sought the rights of the agreement. Mr Coulls entered into a contract to allow O'Neil Constructions to quarry part of his land. In exchange, O'Neil was to pay royalties to Mr Coulls and his wife as joint tenants. Following Mr Coulls' death, his executor (Bagot's) sought to determine whether O'Neil was required to pay the royalties to the estate or to Mrs Coulls.</p>	<p>Is O'Neil entitled to the contract?</p>	<p>O'Neil was not a part of the contract and no Privity applied. Majority of judges find that Doris was a third party as she did not negotiate the contract; she gave no consideration. Barwick CJ: dissenting.</p>	<p>Look at Privity: was there any? 1. No 2. No 3. No 4. No 5. Induced? No 6. No misleading or deceptive conduct 7. No negligence. D has no Privity of contract.</p>	<p>1. must be a party to the contract. Yes, she signed the contract. 2. have to have some control over the negotiations to the contract. No. it was Mr Coulls who entered into the agreement. 3. must be responsible for the contract or have responsibility. No she didn't. 4. give some consideration. Doris gave nothing.</p>
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<p><i>Port Jackson Stevedoring Pty Ltd v Salmond & Spraggon (The 'New York Star')</i> (CB p 347)</p>		<p>Salmond were the owners of 37 cartons of razor blades, purchased under distribution agreement with Schick. Blue Star transported the goods. The razor blades were unloaded by Stevedoring and misdelivered. Salmond & S sued Stevedoring for damages.</p>	<p>Are Stevedoring protected by the exclusion clause in their contract with Blue Star Line?</p>	<p>Stevedoring piggybacks Blue star and B.S says that they are not liable for the loss of the razors. Agency applies. S.D argues they are a part of the original contract. B.S states that them and their contractors are not liable for any 2. the carrier is action as an agent for the S.D.</p>	<p>Bill of Lading - shipping contract B.S is the agent for B.S</p>	<p>Privity: Agency: When a contract indemnifies an agent, the agent, has the rights of the parties to the contract. = S.D had the same rights that B.S has.</p>
<p><i>Trident General Insurance Co Ltd v McNiece Bros Ltd</i> (CB p 357)</p>	<p>Supreme Court of NSW: McNiece won. Court of Appeal: Found for McNiece on the ground that under insurance policies beneficiaries can sue on the policy despite no Privity or consideration. Trident appealed to the High Court.</p>	<p>Blue Circle Cement entered into a contract of insurance with Trident. The insurance policy covered liability for accidents occurring during this construction and defined the 'assured' parties as including all Blue Circle's contractors and sub-contractors (which included McNiece). McNiece became the principal contractor for work being carried out at the Blue Circle plant. A worker was injured and sued against McNiece who sought indemnity under the policy from Trident. Trident denied liability on the ground that McNiece was not a party to the insurance contract and has not provided any consideration.</p>	<p>Is McNiece covered under the insurance company?</p>	<p>Found in favour of McNiece.</p>	<p>They concluded that McNiece was not a party to the contract and therefore as a general rule the doctrine of Privity precluded it from enforcing the contract</p>	<p>Rule of Privity does not apply to insurance contracts. Based on unjust enrichment. Trident there is an exception to the Privity rule for insurance. McNiece is found to not be a third party but party of the contract with trident. In an insurance claim, they ruled. A = McN – B = Trident. 2 important principles 1. Only a party to a contract can sue under it 2. Consideration must move from the promisee</p>
<p><i>Beswick v Beswick</i> [1968] AC 58</p>		<p>P sold company to N. After P died N was to pay 5\$ to W per week. N paid once and stopped. N stated no contract existed. W is executrix of Ps estate/she sues N. Before the death: A = P – B = Nephew. C =She. After: A = P and her as administrator – B=nephew.</p>	<p>Can a 3rd party beneficiary sue on a contract to which they are not a contracting party?</p>	<p>She does have a legal right = executor. She was acting on behalf of her husband for the distribution of the estate.</p>	<p>The contacting party is entitled by himself, alone, or jointly with the 3rd person, to have the contract performed to its terms, and the court will decree specific performance for it. General rule can't get specific performance for just a payment of a sum of money.</p>	<p>Privity: acting on behalf: 3rd party provides no consideration for the promise. No 3rd person can sue or be sued on a contract to which he is not a party – rule of procedure. Recognize that executor or contracting party can get a decree of specific performance. Wife can sue – but only as executrix and for specific performance, not as a 3rd party</p>