

A Practical Introduction to Business Contract Law (in construction)

Objectives : At the end of this course, participants should:

- ❖ understand the principles and practices of business contract law
- ❖ have a dramatically reduced likelihood of inadvertently entering a contract and/or entering a contract at a commercial disadvantage
- ❖ have improved awareness of the legal consequences of their actions
- ❖ be able to negotiate from a position of legal strength.

Programme/Topics covered :

- ❖ **Contract Basics** – Exercise 1; Key components of contract (offer, acceptance, consideration etc); Exercise 2; normal vs construction contracts; underlying documents and typical contents of a 'project based' conditions of contract.
- ❖ **Getting to contract** – 'soft' factors and risk, inc. principles of risk allocation and sharing; confidential information/NDA's; Heads of Agreement; Letters of Intent; Side Letters; Agency; Impact of Negligence; Exercise 3.
- ❖ **Terms** – Express vs. Implied; 6 Acts to know about; Simple and Contracts by Deed; Warranties; Indemnities; and Endeavours. Exercise 4.
- ❖ **Drafting and Interpreting Contracts** – Rules of Interpretation/Construction; Tips for Drafting. Exercise 5.
- ❖ **Remedies and excluding or capping liability** – 6 types of Remedy; Damages in detail; Force Majeure and Acts of God; 3 types of Misrepresentation; Caps & Exclusions.
- ❖ **Terminating Contracts & Resolving differences** – Termination & unwitting termination. Types of Issue/Dispute Resolution; Exercise 6.
- ❖ **Conclusion and summary.**

Offer to the world at large : Carlill v Carbolic Smoke Ball Company [1892]

Advertisement promised to pay £100 to any user who caught influenza after use of carbolic smoke ball. Sincerity of 'intention to be bound' shown statement that had deposited £1000 in bank a/c. I.e. this was the consideration.

English contract law decision by the Court of Appeal. It is notable for its curious subject matter and how the influential judges (particularly Lindley LJ and Bowen LJ) developed the law in inventive ways. Carlill is frequently discussed as an introductory contract case, and may often be the first legal case a law student studies.

A medical firm advertised that its new wonder drug, a smoke ball, would cure people's flu, and if it did not, buyers would receive £100. When sued, Carbolic argued the ad was not to be taken as a serious, legally binding offer. It was merely an invitation to treat, and a gimmick. But the court of appeal held that it would appear to a reasonable man that Carbolic had made a serious offer. People had given good "consideration" for it by going to the "distinct inconvenience" of using a faulty product.

Counter offer revokes previous offers :Hyde v Wrench [1840] 3 Beav 334

Facts

The defendant, Mr Wrench, offered to sell the farm he owned to the complainant, Mr Hyde. He offered to sell the property for £1,200, but this was declined by Mr Hyde. The defendant decided to write to the complainant with another offer; this time to sell the farm to him for £1,000. He made it clear that this would be his final offer regarding the property. In response, Mr Hyde offered £950 for the farm in his letter. This was refused by Mr Wrench and he confirmed this with the complainant. Mr Hyde then agreed to buy the farm for £1,000, which was the sum that had previously been offered. However, Mr Wrench refused to sell his farm.

Issues

The complainant brought an action for specific performance, claiming that as Mr Wrench refused to sell the farm, this was a breach of contract. The issue in this case was whether there was a valid contract between the parties and if a counter offer was made in discussions, whether the original offer would still remain open.

Held

The court dismissed the claims and held that there was no binding contract for the farm between Mr Hyde and Mr Wrench. It was stated that when a counter offer is made, this supersedes and destroys the original offer. This original offer is no longer available or on the table. In this case, when Mr Hyde offered £950, he cancelled the £1,000 offer and could not back track and accept.

So, if offered a good deal, need to be very careful about how phrase questions / negotiate to avoid making a counter-offer i.e. it's phrased as enquiry or for more detail i.e. "merely exploratory"

Battle of Forms : Butler Machine Tool Co. Ltd v Ex -Cell-O Corp. Ltd.

If introduces new term or modifies an existing

Negligence by omission : *Donoghue v Stevenson* [1932] AC 562

Mrs May Donoghue drinking a bottle of ginger beer in a café in Paisley Renfrewshire. Unknown to her or anybody else, a decomposed snail was in the bottle. She fell ill, and subsequently sued the ginger beer manufacturer, Mr Stevenson. The House of Lords held that the manufacturer owed a duty of care to her, which was breached, because it was reasonably foreseeable that failure to ensure the product's safety would lead to harm to consumers. There was also a sufficiently proximate relationship between consumers and product manufacturers.

Cavendish Square Holdings B.V. v El Makdessi and ParkingEye Ltd v Beavis [2015] UKSC 67

In it, the House of Lords re-cast the true test of whether something is a penalty to be "whether the impugned provision is a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation."

Also made it clear that they are very unwilling to intervene in a commercial agreement unless the damages were genuinely exorbitant or unconscionable against the greatest likely loss.