

## Aviation Advocacy

# Introduction to Contract Law: Part I

Monday 21 March 2016: Module 2

Andrew Charlton  
Matthew Feargrieve  
Richard Gimblett  
21 - 26 March 2016

## Did you know?

- When you:
  - signed on to this course
  - travelled here on a bus or a train
  - bought your morning coffee

you entered into various contractual relationships.

# Why is Contract Law Important?

- Business transactions and relationships are almost entirely based on contract law
- Contract law governs the discharge of our legal obligations to each other

# Examples of Contracts

- Employment contracts: the provision of labour in exchange for payment
- Contracts of sale: eg purchasing air tickets or goods at the supermarket
- Contracts for service: eg staying at a hotel and using its facilities
- Contracts of conveyance: if you own property, you will hold a contract to that effect

# Examples of Contracts in Aviation

- Employment contracts (eg between airline and pilot)
- Insurance contracts
- Contracts of carriage (tickets)

# Sources of Contract Law

- There are two key sources of contract law:
  - common law (or “case law”): law made by judges in the courts
  - legislation (or “statutory law”): laws made by parliaments, passed as “Acts” or “Statutes”
- Contract law derives from both common law and legislation.

## What is a Contract?

- A contract is a legally binding agreement between two or more competent persons to do, or not to do, a particular thing
- The agreement is regulated by the law of contract

# The Elements of a Contract

- To be legally enforceable the contract **must** contain the following elements:
  - an offer
  - an acceptance of the offer
  - consideration
  - an intention to create legal relations
  - certainty of contractual terms
  - capacity of the parties to contract
- **All** of these elements are required for a valid and legally enforceable contract



## The Offer (1)

- An offer is an indication of willingness, to do or refrain from doing something, that is capable of being converted into a legally binding contract
- **Offeror:** party that makes the offer
- **Offeree:** party that receives the offer

## The Offer (2)

- The offer:
  - does not have to be in writing
  - must be promissory in nature: promise to do something or to refrain from doing a certain act
  - must be intended to be legally binding
  - must be communicated to the offeree
  - must be clear and certain in its terms
  - the terms must be notified to the offeree (the “ticket cases”)

# Offer or Invitation to Treat? (1)

- An offer can be contrasted with an **invitation to treat**
- An invitation to treat is an invitation to enter negotiations
- The “acceptance” of an invitation to treat does NOT create an agreement
- It is not always easy to distinguish between an offer and an invitation to treat

## Offer or Invitation to Treat? (2)

- Examples of invitations to treat:
  - Shop Displays
  - Advertisements
  - Catalogues
  - Sales “blurb”
  - Price Lists
  - Vending Machines
  - Calls for bids at auctions
  - Calls for tenders

## Offer or Invitation to Treat? (3)

- Rationale: if an advertisement was an offer, the person who placed the advertisement would be required to contract with anyone/everyone who wanted to purchase the goods at the price stated
- The law recognises that this would not be reflective of the true commercial intention of the person placing the advertisement

## Offer or Invitation to Treat? (3)

- But: some advertisements do amount to offers, that are capable of acceptance and therefore become legally binding contracts.
- Leading case is *Carlill v Carbolic Soap Ball Company* (1893)

# Carlill v Carbolic Smoke Ball Co

THE ILLUSTRATED LONDON NEWS

## CARBOLIC SMOKE BALL

WILL POSITIVELY CURE

COUGHS	BRONCHITIS	BRONCHITIS	THROAT AFFECTIONS	DEFEVERING	CHOLERA
INFLUENZA	ASTHMA	LOSS OF VOICE	OPHTHALMIA	SALT RHEUM	WINDCOLIC
HOARSENESS	SCURF	HEADACHE	EARACHE	DIARRHOEA	SPITTING BLOOD

TO ALL THE FOREGOING AFFECTIONS ABOVE MENTIONED THIS SMOKE BALL CAN BE USED BY THE SMOKEE

### £100 REWARD

CARBOLIC SMOKE BALL CO.  
LONDON

## INFLUENZA,

£1000 IS DEPOSITED



## THE CARBOLIC SMOKE BALL,

PREPARED BY  
DR. WHEEL WARDLE, M.B.

FOR THE SEVERAL PURPOSES

THE CARBOLIC SMOKE BALL CO., 27, PRINCES ST., HANOVER SQ., LONDON W.

CARLILL'S CARBOLIC SMOKE BALL CO. 1893

## Offer or Invitation to Treat? (4)

- Distinguish offer from invitation to treat by looking at intention of offeror
- Offer can be made to world at large
- Consideration can amount to detriment or effort
- The result is a **unilateral contract**: communication of acceptance of offer is not required



# Notification of Terms of Offer (1)

## The Ticket Cases

- True “agreement” between the parties assumes they are both aware of the offer’s terms
- This rule has been relied on in cases involving the issue and purchase of travel tickets, where the full terms and conditions are provided only after payment
- The leading aviation case is ***MacRobertson Miller Airlines Services*** (1975)

## Notification of Terms of Offer (2)

In ***MacRobertson Miller Airlines Services*** (1975):

- the airline issued the ticket after the customer had paid the fare
- the ticket contained the full terms and conditions of carriage, including sweeping exclusions of liability

**Q. Had the customer accepted the terms of the airline's offer (and so was bound by them)?**

## Notification of Terms of Offer (3)

### ***MacRobertson Miller Airlines Services (1975):***

**A. The court decided that the customer's acceptance of the ticket did not constitute the acceptance of an offer because at that time the terms of the offer had not been notified to the customer.**

- The court suggested that the ticket constituted an offer that was open for acceptance by the customer orally or by his later conduct.
- An alternative view was that the ticket was only a receipt for payment of the fare: the agreement was concluded when the customer took his seat on the plane.

## Terminating the Offer

- An offer can be terminated through the following ways:
  - (1) **Revocation**
  - (2) **Lapse**
  - (3) **Rejection By Offeree**
  - (4) **Implied rejection: counter offer**

Eg: A offers to sell his car to B for \$1000. B says to A, "I will give you \$750". B has made a **counter offer** which terminates the original offer made by A

## Acceptance (1)

- An acceptance is a **final and unqualified assent** to all the terms of the offer.
- Rules of acceptance:
  - 1) it must take place while the offer is still in force;
  - 2) it must be on the same terms as the offer;
  - 3) it must be unconditional; and
  - 4) it must be communicated to the offeror.

## Acceptance (2)

- Acceptance must involve some **action** on the part of the offeree
- If the method of acceptance is indicated by the offeror, that method alone will be effective
- If it is not, acceptance may be either express (by word of mouth or in writing) or inferred by the offeree's conduct, e.g. if he receives goods and makes use of them

## Acceptance (3)

- Acceptance must be **communicated** in some way by the offeree
- Exceptions:
  - Implied from past dealings between parties
  - Industry custom
  - Acceptance indicated by conduct
  - Unilateral contracts
  - Postal rule applies

## Acceptance (4)

- Acceptance: the Postal Rule
  - Applies where offeror has expressly or impliedly accepted post as the means of communication of acceptance
  - Acceptance occurs at time of posting **not** receipt
  - Applies to all situations where non-instantaneous communications are used



## Acceptance (5)

- Acceptance must be communicated
- Internet
  - Electronic Transactions legislation
    - Receipt occurs when it enters the addressee's designated information system
    - Otherwise, when it comes to attention of addressee
- Jurisdictional differences?

## Acceptance (6)

- Acceptance must be final & unqualified
- Offer accepted “*subject to contract*”?  
3 legal outcomes:
  1. there is a contract & one of terms is that documentation be prepared;
  2. there is a contract but nothing can happen until contract prepared; or
  3. there is no contract.

# Consideration (1)

- Every contract must be supported by **consideration**
- Consideration “moves from” the **promisor** (the person making the promise) to the **promisee** (the person receiving the benefit of the promise)
- The law will not enforce a gratuitous or bare promise (ie, unsupported by consideration)
- Exceptions: contracts made as **deeds** (see later slide)

# Consideration (2)

## What is consideration?

- “I the promisor will do (or not do)  $x$ , if in return you the promisee do (or not do)  $y$ ”
- Consideration may take the form of:
  - a promise to do something
  - a promise not to do something
  - doing something
  - refraining from doing something
  - a benefit for the promisee
  - a benefit for a third person at the promisee’s direction
  - anything of real value to the promisee
  - a detriment to the promisor

## Consideration (3)

- **Rules of consideration:**
  - something of “value” must be given by the promisee in exchange for the promise: this can be a *benefit* to the promisor (or a third party) or a *detriment* to the promisee
  - does not have to be adequate (ie full value) but must be sufficient (ie have *some* value, even if inadequate)
  - must not be illegal
  - past consideration is not good consideration

## Consideration (4)

### **An example: consideration “moving from” promisee to promisor**

- A agrees to sell a car to B
- B promises to pay \$5,000 to A for the car
  
- B's consideration is the promise to pay \$5,000 to A for the car
  
- So the contract is **supported by consideration**

## Consideration (5)

### **An example: consideration moving from promisee to third party**

- A promises B to pay \$100 to C
- The consideration moves from A (the promisor) to B (the promisee), so the contract is supported by consideration
- BUT only the person receiving the “benefit” can enforce the promise
- So only B, not C, can enforce A’s promise
- C is not a party to the contract: “privity of contract”

# Privity of Contract

- A person has the rights or obligations conferred under a contract only if that person is named as a “party” to the contract (or “privity” to the contract)
- Someone who is not a party cannot sue or be sued under the contract
- Exceptions: eg insurance contracts: a family member can benefit from the contract because it would defeat the purpose if the company later refused to pay anything because the intended beneficiary was not a party to the contract
- English law reformed in 1999 to permit *named* third parties to benefit from contract
- US abandoned privity rules in mid-19<sup>th</sup> century.



# Consideration (6)

## Exception to need for Consideration: contracts executed as Deeds

- must be in writing
- must be clear on the document's face that it is executed as a "deed"
- maker of deed must sign, seal and deliver the document
- must be an independent witness to signing
- special signature block:

SIGNED SEALED AND DELIVERED                    )  
by the said JOE BLOGGS [*maker*]                    )  
in the presence of [*witness*]:                    )

# Intention to Create Legal Relations

- If it can be shown that it was not the intention of the parties to create a legally binding relationship, there is no contract
- Presumption: if the agreement is with family or friends, the agreement is not intended to be binding
- Commercial agreements: presumption is that the agreement is intended to be binding

# Certainty of Contractual Terms

## **The agreement must be certain**

- As a general rule the courts will not enforce vague or incomplete agreements
- All essential elements of the agreement must be sufficiently clear, especially subject matter and price.
- The courts will strive to find and uphold a valid contract, having reference to other factors:
  - trade customs & usage
  - previous dealings between the parties

# Capacity of Contracting Parties

- The capacity of certain persons to enter into legal contracts may be affected.
- Minors, drunkards, persons of unsound mind and bankrupts.
- Adults have capacity, but not in certain cases (eg unsound mind)
- Minors are persons under the age of 18 (in most countries)
- Contracts with minors can be
  - valid: legally enforceable
  - voidable: legally enforceable until repudiated by the minor
  - void: having no legal effect

# Aviation Advocacy

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Aviation Advocacy Sarl  
Rue de la Gare 17  
1260 Nyon Switzerland  
Phone: + 41 22 361 06 33  
[info@aviationadvocacy.aero](mailto:info@aviationadvocacy.aero)  
[www.aviationadvocacy.aero](http://www.aviationadvocacy.aero)