Contracts Summary

Fall 2018//MacArthur

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Offer and Acceptance

Offer & Preliminary Negotiations

Offer

1. Inclusive terms> enough detail to be accepted
2. Outward directed expression
3. Objective> no doubt for either party as to the meaning of the offer
4. Time requirements (offer before acceptance)

## Is there an offer?

### CASE: Storer v Manchester (1975 CA)

**FACTS**: S trying to buy his rented apartment; Held: there was an offer

**TAKEAWAY**: Determining offer and acceptance is done through **examining parties’ actions and outward appearances**

### CASE: Johnston Bros v Rogers Bros (1899) \*quotation

**FACTS**: R sent letter /w quoted prices that were changing quickly/J tried to hold R to quoted prices; Held: response was not acceptance bc letter was not an offer

**TAKEAWAY:** Quotation of price does not constitute an offer 🡪 invitation to treat is not an offer

### CASE: Harvey v Facey (1893 PC) \*quotation

**FACTS:** H wrote letter offering to buy F’s land, asking what the price would be; F responded with a lowest acceptable price, H purports to accept F’s offer of sale; HELD: F’s response was a quotation, not an offer

**TAKEAWAYS**: A quotation of a price of what something will be sold at is not an offer (but an invitation to treat)

### CASE: Lefkowitz v Great Minneapolis Surplus (1957) \*unilateral K

**FACTS:** L tried to buy an advertised discounted fur coat from GMS, refused on ‘house rule’ that they were for sale only to women; HELD: L performed as per unilateral K ~ it was an offer

**TAKEAWAY**: When an advertisement is clear, explicit, and **leaves nothing open for negotiation** it is an offer

### CASE: Pharmaceutical Society GB v Boots Chemists (1957)

**FACTS:** PCharged B /w selling poison without proper pharmacist supervision; HELD: No, offer isn’t made (to sell) until point of sale, when cashier decides to accept payment (not when taken from the shelf)

**TAKEAWAY**: Display of merchandise with price is invitation to treat, not an offer

- Affirmed in **Fisher v Bell (1960):**  display of illegal switchblade is not an offer of sale (which would be illegal)

### CASE: Denton v Great North Railway Co (1856)

**FACTS:** D unable to get to his desired location bc he depended on G’s posted schedules as being accurate; G argued schedules as invitation to treat; HELD: schedule = offer, unilateral k upon performance showing up for the train

**TAKEAWAY**: A promise made to the public at large = making it to individuals (unilateral K, creates power of acceptance)

Acceptance

Power of acceptance is created in the offeree once the offer has been made.

Place and time of acceptance may determine what laws apply & terms of K.

## Is there acceptance?

An offer dies if:

* Specified time lapses
* After “reasonable” amount of time (*Shatford*)
* Upon revocation of the offer
* Fundamental/unforeseeable change in circumstances (*Nielson*)

### CASE: Shatford v BC Wine Growers (1927- BCSC)

**FACTS:** BC made offer to sell berries to S, S mailed acceptance to BC; HELD: offers expire after reasonable time (seasonal for wine/berries)

**TAKEAWAYS**: Offer must be accepted within reasonable amount of time

What is a reasonable amount of time? Consider: Commodity, time of year, necessity of prompt response being indicated in the offer

### CASE: Nielson v Dysart Timbers Ltd (2009- NZSC)

**FACTS:** D sues N for prepayment of debt, N makes offer to settle /w D prior to the court’s ruling & D tries to accept N’s offer after the court rules N’s request for appeal has been granted; Held: reasonably foreseeable, no revocation, no limit stated that offer would be invalid once court came back ~ D’s acceptance of N’s offer valid

**TAKEAWAYS**:

* When there is not an express term in the offer, in order for circumstances to cause the offer to lapse, they must be of fundamental nature and not reasonably foreseeable

- Where **unexpected/significant/unforeseeable change in circumstance occurs**, offeror should not be held to the offer

### CASE: Dickinson v Dodds (1876 CA)

**FACTS:** D offered to sell land to P, /w stated expiry of offer, P tries to accept offer but D is not made aware, and P learns D has sold land to someone else

**TAKEAWAYS**:

* OBJECTIVE INTENTION TO BUY must be communicated for acceptance to be valid
* Communication necessary to revoke an offer
	+ even *INDIRECT indication of revocation counts as invalidating power of acceptance*

- Without **SEAL** or **CONSIDERATION**, offer = naked promise, ~ can be revoked at any time before communication of acceptance is made

### CASE: Larkin v Gardiner (1895)

**FACTS:** Held: no acceptance (to offeror’s agent) prior to withdrawal of offer

**TAKEAWAYS**:

* \*OBJECTIVE standard for offer/acceptance\*
* When parties use AGENTS- acceptance must be communicated to offeror’s agent (insufficent for offeree to communicate to their own agent)

### CASE: Dominion Building Ltd v The King (1933- PC)

**FACTS:** D sent written offer to K to purchase K property, offer stated acceptance would be made once council approved purchase; HELD: K accepted D offer (sending a certified copy of the council approval)

**TAKEAWAYS**:

* Offeror/Seller CAN dispense with usually required **NOTIFICATION of acceptance**

### CASE: Eliason v Henshaw (1819)

**FACTS:** E offered to purchase flour from H, stipulating terms of acceptance, H purported to accept by other means; HELD: No K

**TAKEAWAYS**:

* **Offeror is Master of the Offer**
	+ can insist on any manner/time/place of acceptance (no obligations on offeror until acceptance)

### CASE: Felthouse v Bindley (1862)

**FACTS:** F negotiated purchase of horse from his nephew X, price confusion between the two, B an auctioneer, sold horse to someone else, F sued B for conversion; HELD: nephew never accepted Fs offer, ~ F had no property in horse

**TAKEAWAYS**:

* Generally inaction/silence does not = acceptance
* K is effective against 3rd parties AFTER acceptance

### CASE: Wheeler v Klaholt (1901- US)

**FACTS:** W sent shoes to K presuming they had an agreement, K offered/sent money for less than agreed, W sent back money and asked for shoes to be returned (sued for money for shoes); HELD: K accepted W offer by silence/inaction.

**TAKEAWAYS**:

Court more likely to find **Inaction/silence = acceptance** WHEN:

* defendant is benefiting from services & had a chance to reject them
* Past dealings between the parties (existing K/business relationship established)
* Defendant treats property in a way that is inconsistent with the plaintiff’s ownership rights (treats it like their own )

### CASE: Hyde v Wrench (1840- UK)

**FACTS:** H declined W’s offer to sell farm(1200), and W made new offer to sell for less. H offered even less than that, W rejected H offer to buy at that price (950), and H then purported to accept W’s second offer (1000); HELD: No acceptance, counter-offer of 950 killed 1000 offer.

**TAKEAWAYS**:

* Counter-offer kills original offer

### CASE: Livingstone v Evans (1925)

**FACTS:** Held: Valid K; E offered to sell, L made lower counter-offer which was refused: “Cannot reduce price”- said by E- constitute restatement of initial offer- which L accepted

**TAKEAWAYS**:

* Original killed offer can be revived if restated

### CASE: Butler Machine Tool Co v Ex-cell-o Corp (1979-CA)

**FACTS:** B sent offer to E, E sent back a signed, adjusted counter-offer (included price variation clause), which B also signed/accepting. Held: B acknowledged and accepted E’s offer (terms were written on back)

- B signing the tear-off acceptance form = accepting the terms of the counter-offer

**TAKEAWAYS**:

* Acceptance must be on **same terms as offer** (meeting of the minds)

### CASE: Tinn v Hoffman (1873- ExCh)

**FACTS:** Parties negotiation of terms, simultaneously make the same offer. Held: No K

**TAKEAWAYS**:

* **Two Offers** crossing eachother, even on the same terms, cannot equal offer + acceptance
* Acceptance must come AFTER offer/in response to offer

### CASE: Bristol Cardiff v Maggs (1890)

**FACTS:** M offered to sell bakery to BC, *BC accepts*, THEN asks to add non-compete clause, & M rejects the addition. BC then accepts/wants to move forward w original offer, M refuses. Held: No consensus, ~ original acceptance invalid

**TAKEAWAYS**:

* During continuing negotiations, either party can withdraw
* Earlier acceptance from BC was vitiated by the apparent lack of “meeting of the minds”

## Unilateral Contracts: Is there acceptance?

Acceptance, ~ K is formed, on performance of the offeree. No legal obligation on either until then.

### CASE: Williams v Carwadine (1833)

**FACTS:** C had offered reward for info on his brother’s killer. W gave info that lead to conviction & tries to collect, C refuses on basis that W did so to ‘ease her conscience’ since she thought she would die. Held: W performed, forming K.

**TAKEAWAYS**: When you **know of the offer**, performance = acceptance, regardless of mixed/other motivations

### CASE: The Crown v Clarke (1927- HC AUS)

**FACTS:** Clarke gave info to police which equated to performance- Crown’s offer of reward; HELD: Clarke did not know of the offer, ~ no acceptance

**TAKEAWAYS**: Acceptance of offer through performance isn’t there if you were unaware of offer @ time of performance

### CASE: Carlill v Carbolic Smoke Ball (1893)

**FACTS:** C performed CSB advertised directions of use for product which guaranteed protection from the flu, or a 100f reward; CSB claimed they required notification of acceptance of the offer; Held: C performed, ~ valid uni K

**TAKEAWAYS**:

- Actual performance is adequate notification (in unilateral K, ~ notification isn’t required to form/clinch the K)

### CASE: Dale v Manitoba (1997 MCA)

**FACTS:** D was in an affirmative action program- ACCESS- and **was told through school** after the program was cancelled, that funding would continue for current students until the completion of their degrees. Subsequently, funding was denied, Manitoba claimed THEY had made no such guarantee/promise Held: Enrolling in school = performance, ~ unilateral K formed through acceptance of the promise (of funding through the ACCESS program)

**TAKEAWAYS**: Parties /w perceived authority can speak on behalf of that unilateral K offeror/actual party; detrimental reliance

### CASE: Dawson v Helicopter Exploration (1955 SCC)

**FACTS**: D found mineral deposit in remote area in BC to claim, H offers to fly D to the site for a share in the claim & D agrees + will contact H when available to go. H retracts offer, takes another person by heli to stake claim; D sues for breach of K, H claims unilateral K would only be formed upon performance **Held**: there was an enforceable **bilateral K**

**TAKEAWAYS**:

* Courts usually interpret Ks as bilateral, when unclear, implying mutual obligation
* Bilateral Ks are formed /w offer and acceptance, ~cannot be revoked prior to performance, unlike open unilateral Ks (Which aren’t formed until performance)

### CASE: Errington v Errington (1952 CA)

**FACTS:** Father promised to sign over house to son and daughter-in-law if they completed payments on mortgage (which was in father’s name), when father died, his widow brought action for possession of the house; HELD: father’s offer not revocable while son/daughter were performing.

**TAKEAWAYS**:

* Unilateral K can’t be revoked once offeree enters into performance of the act
* BUT K would not be binding if performance was left incomplete

Uncertainty: Formalization and Certainty

If the terms fo the K are not sufficiently certain/definitive, no K

* courts will give force to agreements which pass reasonable & just interpretation
* More likely a court will find there is a K when:
	+ There is detrimental reliance by party seeking enforcement
	+ Bad faith by party seeking to avoid enforcement

\*The Role of the court is to give legal meaning to parties’ intentions, NOT to substitute their own subjective idea of what fair/reasonable intentions ought be.\*

### CASE: Brogden v Metropolitan Railway Co (1876-77)

**TAKEAWAYS**:imperfect or incomplete documents can still be interpreted as consensus, ~ finding a valid K

### CASE: British American Timber v Elk River Timber (1993- BC CA)

**FACTS**: agreement to formalize agreement in writing was a term of the formed contract- NOT a condition of contract formation; E refused to go through w purchase; HELD: K formed

**TAKEAWAYS**:

* Ks are enforceable without formal documentation
* Formal docs would be necessary when obligations are premised on a formal document or particulars still to be agreed upon

### CASE: Green v Ainsmore (1951)

**FACTS**: “*This memo shall be subject to formal agreement of sale, satisfactory in form to solicitors of both parties.*” HELD: No K **TAKEAWAY**: < Example of requiring the formal document to clinch K

### CASE: May & Butcher v The King (1929)\* $ an essential term of K

**FACTS**: Price had not been agreed to, K claimed to not be bound by the agreement to sell land to M. Held: No K

**TAKEAWAYS:**

* Agreement to make a future agreement does not equal a K
* K cannot be formed with **ESSENTIAL TERMS** not yet made out
* Price $ = ESSENTIAL TERM

### CASE: Empress Towers v Bank of Nova Scotia (1990- BC CA)

**FACTS**: B and E negotiating renewal of B’ s lease in E Towers, K term: renewal of lease on basis of **“market price AGREED UPON BY PARTIES”** E tried to get 15000 from B (a loss incurred separately, which was not insured) sues for possession when B won’t agree Held: E negotiated in bad faith, ~ claim dismissed

**TAKEAWAYS**:

- Bad Faith: E tried to use discretion under K NOT as it was meant to be used (to have good faith negotiations between parties on what the market value was)

### CASE: Bhasin v Hrynew (2014-SCC)

**TAKEAWAYS**:

* NOT contrary to Good Faith to pursue economic self-interest
* cannot use discretion in a way outside of what was intended in K’s granting discretion
* General duty of honesty (not necessarily loyalty or disclosure)

\*power imbalance\*

### CASE: Greenberg v Meffert (1985- ON CA)

**TAKEAWAYS**:

* If K includes “at the discretion of one party”, court will infer NOT UNBRIDLED discretion

### CASE: WN Hillis v Acros Ltd (1932)

**FACTS:** W and A had contract, which included options clause allowing W to purchase more lumber “of fair speculation” within a year at a 5% discounted price; Next year, W attempted to purchase and A refused, arguing that it was only an agreement to agree and there were many variables undecided. HELD: courts interpret biz agreements fairly, can gap-fill where there is enough certainty as to the will of the parties, W can enforce the agreement/K.

**TAKEAWAYS**:

* It is the duty of the Court to construe business agreements fairly and broadly, without being too astute or subtle in finding defects
* A court may imply reasonable terms of detail into contracts provided that this is consistent with the objective intentions of the parties
* An agreement to negotiate is generally not enforceable. As a practical matter, even if enforceable any damages for breach would be nominal
* There is no such thing as a contract to negotiate, but it is open to a judge to imply reasonable terms to fill in gaps in an agreement, where gaps filling is consistent with the objective will of both parties

Correspondence

Offeror needs NOTIFICATION of Acceptance;

* Means of notification can be stipulated by offeror
* Offer can be revoked prior to acceptance

## Postal Acceptance Rule

* Offers accepted at time of mailing; post office = agent of offeror (*Grant*)
* Doesn’t apply to revocation of offer (revocation must be known/communicated, not just sent/mailed) (*Henthorn*)
* DEFAULT RULE has OFFEROR bearing RISK
	+ Why? Offeror is the master of the offer
	+ Offeror is able to exclude acceptance by post if they so choose (*Holwell*)
	+ Unjust for offeree to have sent acceptance of an offer but not know whether they have a valid K

- DOES NOT APPLY to rejection of offer BUT an acceptance following a rejection of the offer is not acceptance, but a COUNTER OFFER

### CASE: Household Insurance v Grant (1879- ExCh CA)

**FACTS**: G applied /w offer to buy shares, H authorized by post that offer was accepted; H mailed G notice of shares and G did not receive notice- H sued G. HELD: K formed by H’s mailing acceptance

**TAKEAWAYS**:

* View Post Office as Agent of the Offeror
	+ K formed as soon as acceptance is mailed

### CASE: Henthorn v Fraser (1892)

**TAKEAWAYS**:

* Postal Acceptance doesn’t apply to revocation
* Revocation: offeree has power of acceptance, MUST have knowledge of revocation

### CASE: Byrne v Leon VT (1880)

**FACTS**: B sent acceptance to L via cable after L sent revocation by mail, but revocation was received after cable was sent. L refused to perform K **HELD**: Valid acceptance, K enforceable

**TAKEAWAYS**:

- Would create uncertainty to allow application of Postal Acceptance rule to Acceptance AND revocation

### CASE: Holwell Securities v Hughes (1974)

**FACTS**: Option in a K for Holwell to buy land; “exercisable by notice in writing to Hughes” & /w expiry of option after 6 months; Holwell mailed letter to accept option to Hughes a few days before expiry. **HELD**: Notice in writing = excluding postal acceptance rule (NOTICE/receipt of acceptance, not mailing), ~ no K

**TAKEAWAYS**:

- Option: an irrevocable offer

- Can exempt an offer from Postal Acceptance rule explicitly (otherwise, applies by default)

## Instant Communications

* Postal Acceptance does not apply (*Eastern Power*)
* Acceptance must be received (*Entores*)

### CASE: Entores Ltd v Miles Far East Corp (1955)

WHEN IS THERE ACCEPTANCE?

**Face to Face:** When offeror has heard acceptance

**Telephone:** When offeror has heard acceptance; if line drops, offeree must call back and repeat acceptance until heard

**Fax:** When physically received

**TAKEAWAYS**:

* Instant communication- K is formed upon receipt of acceptance
* When offeree believes acceptance was heard/received? Depends slightly on whose fault for why communication failed (eg offeror’s fax runs out of ink)

### CASE: Eastern Power v Azienda (1999)

**TAKEAWAYS**: Postal Acceptance rule does not apply to instant communication, ~ acceptance must be received by offeror

### **Electronic Commerce Act** - Ontario, 2000

* **Acceptance** must be capable of being received
* Email acceptance: offeror must be made aware of its existence (doesn't need to have accessed it)
* K can exclude itself from Electronic Commerce Act

Consideration

* BREACH OF K REQUIRES: Promise, Consideration, Breach of Promise (*Goldings*)
* Can be BENEFIT conferred or DETRIMENT suffered (*Currie*)
* Exchange; something given for a promise of something to occur
* Law protects he right to the promise purchased by consideration exchanged (*Dunlop*)
* With exchange of mutual consideration, K can be formed with performance far in the future (*Thorp*)
* Mutual promises must be @ same instance, or they are simply two unenforceable naked promises (*Raynbred*)
* The law will not question the adequacy of consideration at K formation(*Westlake*)
	+ - CAN look at adequacy of consideration in an equitable analysis of an agreement
* Consideration and promise must be mutually related/for one another(*Allegheny*)
	+ - * A promise inducing a detriment, or a detriment inducing a promise (one-way) is not enough to be consideration
* Nominal consideration is fine, but motive does not equal consideration
	+ (consideration must have some value in the eyes of the law) (*Eleanor Thomas*)

- Consideration must be separate from the promise (*White*)

* NO NEED for express exchange of promises for **unilateral Ks** (*Witham*)
* Consideration is that which is requested by promisor (*Hamer*)

### CASE: White (Executor) v William Bluett (1853)

**FACTS**: Father promises to not enforce a debt owed by son for him to stop complaining, father dies and executor claims debt from son. **HELD**: no consideration for enforcement of father’s promise not to collect debt, ~executor can sue.

**TAKEAWAYS**: “Detriment suffered” in ceasing to do something must be something you had a right to do for it to be consideration. (Exchange must be reciprocal)

### CASE: Hamer v Sidway (Executor) (NY CA 1891)

**FACTS**: H promised uncle to not drink/gamble/etc, behave- until he turned 21, performed accordingly, uncle died w/out paying and S would not give 5000, claimed no consideration from H. **HELD**: H performance was consideration for uncle’s promise, valid K.

**TAKEAWAYS**:

* courts don’t assess adequacy of consideration, & promisor requesting it is enough
* If a liberty is restricted, even a vice (“for your own good”), it is legally a detriment

### CASE: Great Northern Railway v Witham (1873)

**FACTS**: HELD: Unilateral K (W was under obligation to sell to GNR at fixed price, as per K, but GNR was under no obligation to buy any specific amount)

**TAKEAWAYS**:

* NO NEED for express exchange of promises for unilateral Ks
* New Ks formed with each order made by GNR, & W could have revoked/withdrawn unilateral offer at any point through notice to GNR

### CASE: Tobias v Dick & Eaton

**FACTS**: T acted as exclusive seller of farm equipment made by D, didn’t do a good job, and D began selling through Eaton. T sued D for breach of K and E for inducing breach of K **HELD**: No K between T and D, no mutuality, ~ for defendants.

**TAKEAWAYS**: Exclusivity agreements must be supported by express promise/consideration

### CASE: Wood v Duff-Gordon (1917)

**FACTS**: LDG sold exclusive right to use her name in marketing/selling fashions to W, then licensed her name elsewhere; **HELD**: There would have been no bilateral K, as W had no obligations until he had used and profited from LDG name (when he became obligated to share profits)- Macarthur, BUT the Court **implied consideration** (that W would take reasonable efforts to succeed)~ valid K

**TAKEAWAYS**:Courts can imply a promise for promise to form a K, when that is the only way the K would make sense.

## Past Consideration

### CASE: Hunt v Bate (1583)

**FACTS**: B bailed out H’s servant, H promised to pay back cost of bail, then didn’t. **HELD**: Promise not enforceable- moral but no legal obligation.

**TAKEAWAYS**: Voluntary courtesy that was not requested cannot be enforceable without consideration

### CASE: Lampleigh v Braithwait (1615)

**FACTS**:B killed someone and asked L to beg the King’s pardon for him- L did so, got the pardon, and requested 100f for the service- which B agreed to- then retracted his explicit promise. **HELD**: 100f promise enforceable (performance was not a mere gratuitous act)

**TAKEAWAYS**: Promise made after performance can be enforced IF understood by both parties that there would be some form of reward for performance

### CASE: Pao On v Lau Yiu Long (1980)

**FACTS**: About using shares as means of payment, with a guarantee to pay if the shares dropped below a certain amount?

**TAKEAWAYS**: 3 part **test for past consideration**:

 1. Act must be @ promisor’s request

 2. Parties understood act would be remunerated (can be implied or explicit)

 3. Payment/benefit must have been legally enforceable if it were promised in advance (ONLY difference is the timing of the promise)

## Preexisting Duty & Duress

POST-CONTRACTUAL MODIFICATION requires FRESH CONSIDERATION

* Rescission of old K (explicit or implicit, bc of frustrated circumstances)> agreeing to ‘stay’= re-entering a fresh K, ~ fresh consideration (*Hartley, Raggow*)
* promise not to breach K is not fresh consideration (*Dawson*)
* Can make same promise to multiple parties, no preexisting duty issue (*NZ Shipping*)

### CASE:Harris v Watson (1791)

**FACTS**: H member of crew performing duties, under K for captain, W, claiming additional pay promised by W. **HELD**: Not enforceable- would open ship captains up to being held hostage for more pay.

**TAKEAWAYS**: Promise can be deemed unenforceable on policy grounds

### CASE: Stilk v Myrick (1809)

**FACTS**: Captain promised to split the pay of crew that left between the remaining crew, then refused to follow through. **HELD**: In an emergency situation, sailors are already obligated to do ‘extra’ work, so agreeing to take on extra work when some of the crew left was not consideration for more pay.

**TAKEAWAYS**: Agreements stemming from a preexisting duty are void for lack of consideration

### CASE: Hartley v Ponsonby (1857)

**FACTS**: Another ship & crew. Conditions released H from his obligations, allowing him to walk away from the K OR agree to stay, ~staying party to the K amounts to consideration (for a fresh agreement), and H can enforce (new) K for additional pay.

**TAKEAWAYS**: If promisee is relived of duty (for the danger it poses), and they agree to fulfil the duty detailed in the old/rescinded K, that new promise is fresh consideration.

### CASE: NZ Shipping v AM Satterthwaite (1975)

**TAKEAWAYS**:

* You can promise the same performance to two different parties, and both Ks are valid;
* Not a pre-exisitng duty issue if you owe the same duty to multiple parties.

### CASE: Smith v Dawson

**FACTS**:Almost-built house burns down, D promised to pay S from his insurance payout to rebuild the house. (S had not had his own insurance X) HELD: Applies Still v Myrick: S was already obligated to build D a house, D’s new promise unenforceable for lack of consideration

**TAKEAWAY:** Promise not to breach existing K (build house obligated to build under K) is not valid consideration.

### CASE: England v Davidson (1840)

**FACTS**: Police officer off-duty gave info to D regarding his house being robbed. D claimed it’s an officer’s pureexsiitng duty to report that info and E should not get reward offered. HELD: unilateral K formed, enforceable

**TAKEAWAYS**: Circumstances may mean an officer does not have duty OF the office.

### CASE: Raggow v Scougall (1915)

**FACTS**: War broke out, which would have made S close down factory, but R and staff agreed to accept less salary until the war ended. R then sued for backpay. **HELD**: Court implied recision of original K, no pre-exisitng duty issue with ‘new’ K. S not obligated to pay.

**TAKEAWAYS**:

* Rescission of original K can eliminate pre-existing duty issues
* Circumstances can amount to implied rescission of K (when ‘replacing’ it with a new one)

### CASE: Gilbert Steel v University Construction (1976 ON CA)

**HELD:** Uni Construction NOT obligated to pay more for what G had pre-existing duty to complete.

**TAKEAWAY**: Fresh consideration is necessary to make changes to a K.

### CASE: Williams v Roffey Bros\* practical benefit

**FACTS**: R promised to pay W more to get the work done on time, HELD: (timely completion) amounted to consideration ~ promise to pay enforceable.

**TAKEAWAY**:

* **Practical benefit** can be consideration \*NOT the law in ONT currently

### CASE: GFAA v NAV Canada (2008- NB)\*duress

**TAKEAWAY**: Post-K modification, unsupported by consideration may be enforceable absent economic duress.

Intent to Form Legal Relationship

* Consider what the existing relationship is, Mutuality,
* (Rebuttable) Factual presumption against intent /w close family members (*Balfour*)
* Intention presumed in commercial relationships (*Rose & Frank*)

### CASE: Balfour v Balfour (1919)

**FACTS**: Husband paid monthly support to wife, eventually agree to live separately & continue paying support. Wife sues for full amount of support when H stopped paying. **HELD**: No consideration, NOT enforceable

**TAKEAWAYS**:

* Presume no intention /w close family
* Enforcing this type of agreement would open floodgates of litigation (unenforceable promise between family)

### CASE: Jones v Padavatton (1969)

**FACTS**:J (mother) asked P (daughter) to quit job, move to England and attend law school & promises to support her 200$/month, then J purchased a house for P to live in free while studying & keeping rental income as support. P married and slacked in school, J sued for possession of the house & P sued for $ support. **HELD**: J can evict P, not enforceable K. (Majority: No intention to create legal relationship, Concurring: K formed but P did not perform)

**TAKEAWAY**: Some arrangements between close families can/are intended to have the force of law.

### CASE: Simpkins v Pays (1955)

**FACTS**: P (grandmother) lived with X granddaughter and border/close friend S, they competed in a newspaper comp together, taking turns mailing submissions & would “go shares” if won; they won, P refused to split prize. **HELD**: Binding agreement, S due her 1/3 of the prize $

**TAKEAWAYS**:

* mutuality of the arrangement: it was a joint enterprise to which resources were contributed /w expectation that any prize would be shared.
* Familial relationship not considered (not technically family)

### CASE: Merritt v Merritt (1970)

**FACTS**: D (husband) left P (wife) to live with another woman, met to discuss finances & agreed to sign over his part ownership in their home & give $ to P who would use it to pay mortgage, upkeep (P had D sign a paper agreeing to the terms). **HELD**: D promise was enforceable (intention was found, and P performed/provided consideration making the payments and upkeep)

**TAKEAWAY**: Presumption of intent to create legal rel. where people are no longer living in amity (H/W separated)

### CASE: Rose & Frank Co v JR Bros Ltd (1923)

**FACTS**: Long standing commercial relationship, /w written agreement \*clause:“not formal/legal, no litigation”. J refused to continue /w arrangement and R sued. **HELD**: clause not enforceable (written agreement had legal force, regardless of the clause)- against public policy

**TAKEAWAYS**:

* Intention presumed in commercial relations (\*also public policy concern)
* Can explicitly state in an agreement, no intention to create legal relationship