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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