| **Topic** | **Case** | **Rule** | **Facts** |
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| **Offer & Invitation to Treat** | ***Canadian Dyers Assn. Ltd. v Burton* (1920) 47 OLR 259 (HL)** | * No contract unless offer + acceptance
* Mere quotation of price is not an offer, only an invitation to treat
* It is a question of INTENT at the time. Courts will look at language in light of circumstances that is used and the subsequent actions of both parties to determine whether it is a mere quotation or a true offer to sell.
 | * Letter, deed, and acceptance of deposit showed that there was more than mere quotation of price; therefore, contract made
 |
| **Offer & invitation to Treat** (not limited to retail only) | ***Pharmaceutical Society v Boots* [1953] 1 QB 401 (CA)** | * In retail self-service sales: the placing of goods on shelves with price is an invitation to treat
* Offer + acceptance takes place at cashier when customer offers to buy at the price and cashier accepts the offer
 | * P claims no supervision of purchase of poisons in pharmacy– when was purchase/contract made?
* P’s action fails
 |
| Unilateral Contracts**Communication of Offer** | ***Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256 (CA)** | * Advertisement = usually invitations to treat **unless** a reasonable person would think otherwise
* **Mere puffs** are when reasonable person would not intend legal consequences. The details given show it is not a mere puff.
 | * D advertised 100*l* for anyone who used the smoke ball as prescribed and still contracted influenza
* P bought ball, used it, and caught influenza
* P entitled to money
 |
| **Communication of Offer** | ***Williams v Carwardine* (1883) 110 ER 590 (KB)** | * Motive of the offeree does not matter. Only requires performance and knowledge of the offer
 | * P was not induced by offer or reward
* Still entitled to receive award?
* Yes – she performed act outlined in the unilateral contract
 |
| **Communication of Offer**(Public offer to anyone who does something) | ***R v Clarke* (1927) 40 CLR 227 (Aust. HC)** | * In contrast with *Williams v Carwardine*, court held that defendant was *not entitled to reward* because he didn’t act in reliance of the offer and did not intend to accept it
* Reconcile with *Williams v Cawardine* by noting that in a bilateral contract knowledge is required (to enable meeting of minds), but motive is irrelevant
* Knowledge of the offer and intent to accept is required
 | * Proclamation of reward for information leading to arrest
* Clarke entitled to reward?
* No – did not mentally assent to Crown’s offer (no meeting of minds) because he had no knowledge of offer
 |
| Acceptance / Counter Offer**Termination of Offer – Rejection and Counter offer** | ***Livingstone v Evans* [1925] 3 WWR 453 (Alta SC)** | * Rejected offers cannot be accepted without consent of offerror
* Offeror’s response to a counter-offer may be a renewal of original offer, depending on wording and circumstances
* Mere inquiry is not a rejection of an offer
 | * D offered to sell P land for $1800. P answered with: “I will give you $1600. If you won’t take that, wire your lowest price.” D answered: “Cannot reduce price.” P accepted the offer.
 |
| Acceptance / Counter Offer(Battle of Forms) – not applicable | ***Butler Machine Tool v Ex-cell-o Corp.* [1979] 1 WLR 401 (CA)** | * Common law does not create a contract for the parties
* Offers are killed by materially different counter-offers unless some communication reinstates it
* **Denning’s first shot/last shot does not apply**
 | * P quoted price. On back of offer were terms that said “these shall prevail over all others”
* D placed order, but with different terms and conditions -- no mention of price change
* Whose terms prevail? Look at all documents as a whole – found that last document decisive
* D’s terms prevail
 |
| **Communication of Acceptance**  | ***Felthouse v Bindley* (1962) 11 CB** | * Silence does not amount to acceptance, even if person intended to accept
* Some cases of silence can be acceptance, depends on previous dealings of the parties and their practices
* Communication of acceptance can be waived, not the actual acceptance
 | * P discussed with nephew sale of horse; said to send him horse at his convenience, but nephew never responded; horse sold at auction; P sues auctioneer
* No contract made – absence of notification of rejection does not amount to acceptance
 |
| **Communication of Acceptance** | ***Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256 (CA)** | * Actual acceptance can be via conduct
* Communication of acceptance can be waived (ie. Silence is ok)
* Acceptance occurs when the person arrives at the door asking for $$
 | * D advertised 100*l* for anyone who used the smoke ball as prescribed and still contracted influenza
* P bought ball, used it, and caught influenza
* P entitled to money
 |
| **Instantaneous Methods of Communication** | ***Brinkibon v Stahag Stahl* [1983] 2 AC 34 (HL)** | * Acceptances valid when received, including instantaneous communications
* Mailbox rule is the exception that applies to mail and telegrams, valid when sent
 | * Contract made in UK? No – using telex, contract made where acceptance is received (Vienna)
 |
| **Mailed Acceptances (Postal Rule)** | ***Household Fire v Grant* (1879) 4 Ex D, 216 (CA)** | * Mailbox rule upheld despite acceptance not received
* Parties can specify rules to the communication of acceptance and override mail box rule
* Mailbox rule applies if it is logical to do so based on circumstance
 | * acceptance was mailed, but never reached D (who never paid), P tried to claim money from D who said he never was a shareholder
* Contract found – D liable for shares
 |
| **Mailed Acceptances (Postal Rule)** | ***Holwell Securities v Hughes* [1974] 1 WLR 155 (CA)** | * Mailbox rule should only apply if it does not lead to “manifest inconvenience and absurdity.”
* The postal rule does not apply if the express terms of the offer specify that the acceptance *must* reach the offeror. The requirement for “notice” was held to override the mailbox rule
 | * P wanted to exercise options to purchase property; clause stated written notice was required; notice was lost in the mail
 |
| Termination of Offer**Revocation** | ***Byrne v Van Tienhoven* (1880) CPD 344** | * The mailbox rule does not apply to revocation – *revocation must be communicated to the other party to be effective*.
 | * D mails revocation of offer before he receives P’s acceptance and before P receives revocation
* No revocation – binding contract
 |
| Termination of Offer**Revocation** | ***Dickinson v Dodds* (1876) 2 Ch D 463 (CA)** | * If offeror dies, the offer cannot be accepted
* *an offer could be revoked by indirect communication* (or by third party) applying the same general rule logic – that is, once the person to whom the offer was made knows that the property has been sold to someone else, it is too late for them to accept the offer and the contract is impossible to make.
* Promise to keep offer open is not binding unless there is an options contract
 | * D agreed to keep offer to sell house open until Friday; P heard that D was in talks with another on Thursday; P still gave acceptance to D but D said it was too late, already sold to another
* Is D bound to sell to P if another purchases? No – P’s action for specific performance fails
 |
| Unilateral Contracts**Revocation of Unilateral Contract** | ***Carlill v Carbolic Smoke Ball Co.* [1893] 1 QB 256 (CA)** | * Offer can be revoked up till the point when someone approaches to accept, by giving notice to revoke
* Unilateral contract is formed when person approaches for $$
 |  |
| Termination of Offer**Revocation of Unilateral Contract** | ***Errington v Errington and Woods* [1952] 1 KB 290 (CA)** | * Unilateral contracts are formed when all conditions of the offer are met
* In unilateral contracts, must make distinction between performance and acceptance. Acceptance is complete when offeree has unequivocally commenced performance, but the offeror is not bound to provide his performance until the act is completely performed
* Restitution imposes an obligation to keep the offer open if offeror is aware that performance has started, although acceptance is not completed
 | * Unilateral promise by father (in-law) to give house to kids: gave down-payment as gift and got loan in his name for them to repay over time; he was seeking their act of payment as acceptance; kids kept paying and living there on promise that father would transfer title when all payments made; upon his death, his estate owned the house and kids left as ‘bare licensees’
 |
| Counter OfferTermination of Offer – Rejection and Counter offer | ***Livingstone v Evans* [1925] 3 WWR 453 (Alta SC)** | * See previous entry
 | * D offered to sell P land for $1800. P answered with: “I will give you $1600. If you won’t take that, wire your lowest price.” D answered: “Cannot reduce price.” P accepted the offer.
 |
| Termination of Offer**Lapse of Time** | ***Barrick v Clarke* [1951] SCR 177** | * An offer will lapse in any of the following cases:
1. Time limit specifice by offeror passed
2. Within reasonable time(if not time limit specified)

Courts will use a “reasonable time” depending on the nature/character of the item, circumstances, conduct of the parties and the usual course of business. | * Offer made to R; R was away hunting
* R did not accept A’s offer within reasonable time – no contract made
* Implied rejection is based on actions of offeree and possible to look at circumstances after
* Implied revocation based on proof up till offer
 |
| Certainty of Terms**Incomplete Terms** | ***May & Butcher v R* [1934] 2 KB 17 (HL) This case is only used to interpret SOGA nowadays, use Hillas instead!** | * Reasonable price section in SOGA only applies when parties never mentioned price, does not apply when parties designated a way to ascertain price
* **This case is only used to interpret SOGA nowadays, use Hillas instead!**
 | * P agreed to buy from government at unspecified terms of price and dates.
* Price “will be determined from time to time”
* Agreement too vague? Yes – no binding contract made. SOGA can’t imply price. Arbitration clause also not binding
 |
| Certainty of Terms**Incomplete Terms** | ***Hillas v Arcos* (1932) 147 LT 503 (HL)** | * Court will interpret fairly/broadly if parties intend/believe to be in contract
* Note difference between imposing a contract vs discovering the terms of it
* Missing of essential terms will make it not binding BUT courts will interpret as best they could rather than perish
* Will take into account circumstances, context, expression, importance, etc
 | * P brought action against D for breach of contract of sale of timber – agreement left essential terms to be decided later
* CA: no enforceable contract
* HL: enforceable contract
 |
| Certainty of TermsIncomplete Terms | ***Foley v Classique Coaches Ltd.* [1934] 2 KB 1 (CA)** | * Interpreted HL’s general principles in *Hillas* to mean that each case should be decided on the construction of the particular document.
* An agreement to agree on price from time to time was certain enough since the parties believed they had a contract and acted for 3 years as if they did (i.e. partial performance: transfer of land, portion of sale of gas agreement had been performed).
 | * D agreed to purchase land with supplemental agreement to buy gas at a price to be agreed upon; P sued when D tried to buy petrol elsewhere
* Contract? Yes – P entitled to damages
 |
| Certainty of Terms**Agreements to Negotiate** | ***Empress v Bank of Nova Scotia* [1991] 1 WWR 537** | * The courts will try to give the proper legal effect to any clause that the parties understood and intended to have legal effect.
* an *implied term* to negotiate in good faith, it is enforceable to *some extent*.
* When parties stated a formula (i.e. market value) to ascertain a clause but did not supply machinery for applying the formula, the courts will supply the machinery and apply the formula (as long formula not defective).
* Where formula is set out but defective and machinery is provided, the machinery may be used to cure the defect in the formula.
* This case gives *some meaning* to promises to negotiate, but does not impose a contract
 | * P leased to bank (D) for 5 years, with option to renew lease for a further 5; rental rates were to be those prevailing at the start of the renewal term as mutually agreed b/t landlord and tenant; D wanted to renew, P didn’t want to let them.
* P not granted writ of possession
 |
| Certainty of Terms**Agreements to Negotiate** | ***Mannpar Enterprises v Canada* [1997] 33 BCLR (3d) 203 (SC)** | * Promises to negotiate does not impose a contract
* Courts imply terms to give business efficacy to contracts
* Use of the term “renegotiate” does not promise a future agreement or duty to negotiate in good faith
 | * P held a 5-yr permit under Crown to remove and sell sand/gravel from Indian reserve – agreement to enter into negotiation of the rate after 5 yrs for another 5.
* Was there an obligation to negotiate in good faith, stated or implied? No
 |
| **Intention to Create Legal Relations** | ***Balfour v Balfour* [1919] 2 KB 571** | * AtkinLJ: the common law does not regulate agreements between spouses.
* There is a strong presumption that family agreements are not intended to produce legal consequences.
* **Might not represent view of the courts nowadays**
* Contract void if no intention BUT is enforceable. Court may still adjudicate
 | * Husband failed to pay wife money he promised her; deal was made during their marriage.
* Binding contract? No
 |
| **Intention to Create Legal Relations** | ***Rose and Frank v JR Cromptons & Bros.* [1923] 2 KB 261 (CA)** | * There is a strong presumption that business agreements are intended to produce legal consequences.
* However, if there is a clear and definite expression to the contrary, there is no reason in public policy why effect should not be given to their intention.
* However, terms ousting the court as adjudicator will likely be ignored
 | * P distributed D’s paper products; 1913 signed new agreement that said “not subject to legal jurisdiction in US or UK” to which they each “honourably pledge themselves”; D terminated agency agreement
* “honor” pledge effective in keeping the agreement outside of enforcement? Yes
 |
| Consideration**Nature of Seals** | ***Royal Bank v Kiska* [1970] 2 OR 379 (CA)** | * Seals can still be used to create a legal contract with no consideration
* Seal requires **action** and **acknowledgment by the promise** that shows the **understand** the seriousness of what they are doing
 | * D signed a guarantee which had no wafer seal attached; the word “seal” was printed next to D’s signature
 |
| Consideration**Nature of Consideration**  | ***Thomas v Thomas* (1842) 2 QB 851** | * Consideration is something which is of some value in the eyes of the law.
* Consideration must move from the promisee
* Consideration must be of value; it need not be adequate.
* Motive (“wishes of the diseased) is irrelevant as consideration
 | * Husband wanted to leave house to wife when
* After death of co-executor, D tried to eject P out of house.
* Binding agreement? Yes – sufficient consideration in wife’s annual rent of 1*l*
 |
| Consideration**Adequacy of Consideration** | ***Mountford v Scott [1975] Ch. 258*** | * Anything of value, however small the value, is sufficient consideration to support a contract at law.
* Adequacy is for the parties to decide at that time, not for the courts
 | * D sold P an option for 1 pound; the option gave P right to buy D’s house for 10,000 pounds; D wanted to cancel firm offer, but P exercised option to purchase the house
 |
| Consideration**Past Consideration** | ***Eastwood v Kenyon* (1840) 113 ER 482 (QB)** | Past consideration is not good consideration for a new promise made *after* a benefit was conferred or when the benefit was not conferred at the request of the promisor.Promise made (when without capacity) and repeated when regaining capacity will be binding | * P spent money on ward’s education; when ward of page, promised to repay and made one payment before marrying; husband then promised to pay and didn’t; P sued for breach
* Held: D’s agreement lacked consideration
 |
| Consideration**Past Consideration** | ***Lampleigh v Brathwait* (1615) 80 ER 255 (KB)** | * Past consideration may be a good consideration for a subsequent promise if the previous benefit was conferred at the request of the promisor and there was an understanding that it will ultimately be paid for
 | * D killed someone and asked P to ride around the countryside to get the king’s pardon; afterwards, D agreed to pay P for his trouble, but didn’t.
* Held: Good consideration, so D should pay.
 |
| Consideration**Forbearance** | ***Callisher v Bischoffsheim (1870) England QB*** | * Forbearance can be valid consideration, IF the person giving promise honestly believes the lawsuit has merits
* Forbearance is **not** valid consideration if he knows the case is without merit
 | * P had *potential* lawsuit against D. D promised to pay in exchange for dropping suit. D never paid
 |
| ConsiderationPre-existing Legal Duty – Duty Owed to **Third Party** | ***Pao On v Lau Yiu Long* [1980] AC 614 (PC)** | * A promise to perform, or the performance of a pre-existing contractual obligation to a third party can be valid consideration.
* Reusing a previous obligation to a third-party is further detriment to promisor and creates new obligation
 | * P agrees to sell shares to Fu Chip in exchange for 4M shares in Fu Chip (as part of this deal, P agrees to hang onto 60% of stock in order to prevent its depression); P wants protection in case the stock price goes down, so gets indemnity agreement with D; when P realizes they won’t receive benefits if the price goes up, they re-negotiate a new indemnity deal; D will buyback the shares at a min of $2.50 each if stock goes lower by xx date.
* Stock crashes to $0.36, D won’t buyback
* 2 separate contracts: (1) P + Fu Chip, (2) P and D (indemnity deal)
 |
| ConsiderationPre-Existing Legal Duty – Duty Owed to the **Promisor** | ***Gilbert Steel v University Construction Ltd.* (1976) 67 DLR (3d) 606 (CA)** | * Promise to pay more is not enforceable without consideration (see Greater Fredericton for new proposition)
* It would have been enforceable if the parties clearly intend to abandon the old agreement and used its forbearance as consideration for the new one
 | * P entered into written contract with D to sell steel at fixed price; P announced increase in price – made a new contract; had another oral agreement about a price increase with 2 new clauses, but these weren’t mentioned later.
* Was there consideration for this new contract? P argued ‘good price’ was consideration – No
 |
| ConsiderationPre-Existing Legal Duty – Duty Owed to the **Promisor** | ***Greater Fredericton Airport v NAV Canada (NB court)*** | * Post contractual *modification* (not adding new things) of an existing obligation is enforceable without consideration if there is no economic duress
* Economic duress doctrine relaxes need for consideration
* English law no longer requires consideration for modification as long as promise receives some benefit
 | * Airport agreed to pay more under a pre-existing agreement
 |
| ConsiderationPre-Existing Legal Duty – Duty Owed to the **Promisor** | ***Foakes v Beer* (1884) 9 App. Cas. 605 (HL)** | * common law: an agreement to accept less without consideration not binding
* consideration can be given by giving something extra in return (ie. A pen) or different form of payment
* *Note*: this case has been overruled in BC by **s. 43 of Law and Equity Act** – *Part performance of an obligation either before or after a breach of it, when expressly accepted by the creditor in satisfaction or rendered under an agreement for that purpose, though without any new consideration, must be held to extinguish the obligation.*
 | * D held judgment against P and agreed to take $500 down and payments in exchange in forbearance; when paid in full, D sued P for interest
* Consideration? No
 |
| ConsiderationPre-Existing Legal Duty – Duty Owed to **Promisor** | ***Foot v Rawlings* (1964) (SCC)** | * Taking less for debt is ok as long as there is accord and satisfaction. The consideration van be very little, such as different form of payment
* Post-dated cheques were good consideration for the agreement to forbear action – as long as D continues giving cheques, P’s right to sue is suspended.
 | * P agreed to lower the interest on debts and take payments on condition that D make the payments on time; D made payments, but P sued him for whole amount anyways
* Consideration? Yes
 |
| Consideration**Waiver and Promissory Estoppel** | ***Central London Property v High Trees House* [1947] 1 KB 130** | * Promises (without seal or consideration) are binding when made with the following conditions 1. Intended to create legal relations, 2. To the knowledge of the person making the promise, was going to be acted on by the other party, and 3. Other party acted on it.
* The promise can be extinguished if the prevailing conditions no longer exist or if the promisor gives reasonable notice.
* It cannot be used as a cause of action.
 | * P agreed to take lower rents during the war.
* After war, P wanted to enforce higher rent; P brought action for payment – granted partially.
 |
| Consideration**Waiver and Promissory Estoppel** | ***John Burrows v Subsurface Surveys***  | * The passive conduct of the appellant was not taken by the court as a waiver of his rights to seek enforcement of the contract, but only as friendly indulgences – *indulgences not equal to intention.*
* When there is no consideration or deed, any relaxation of terms must be clear and unequivocal.
* Estoppel only applies when there is an intent to change relations and promise leads the other party to believe so..
 | * P held promissory note for D with a default clause; over 18 months, D was late with payment but P took no action; then, P sued for whole amount.
* Does equitable estoppels or estoppels by representation apply here? No
 |
| Consideration**Waiver and Promissory Estoppel** | ***D&C Builders v Rees* [1966] 2 QB 617** | * Estoppel can be used to suspend legal rights and preclude enforcement
* Estoppel only works when it would be inequitable for it not to
* Must be true accord and satisfaction for agreement to take less to be binding
* A promise made under duress should not be estopped.
 | * P took a lesser-sum settlement for contracting work agreeing to ‘satisfaction.’
* Settlement binding on P? No – no true accord; deal under duress and shouldn’t be estopped.
 |
| Consideration**Waiver and Promissory Estoppel** | ***Combe v Combe*[1951] 2 KB 215 (CA)** | * Promissory estoppels cannot be used as a cause of action itself, it can be secondary as part of a real cause of action (but not too much part of it).
* Promissory estoppel only can be used as a shield, not a sword
* PE should only be used when there is a pre-existing legal relationship.
 | * Husband agreed to pay allowance to ex-wife (with no consideration) but never does; after 7 yrs she sues (using estoppels as sword)
* Is she entitled? No – no consideration
 |
| Consideration**Waiver and Promissory Estoppel** | ***Waltons Stores Ltd. v Maher* (1988) 62 ALJR (HC)** Beware of its applicability in Canada | * Australian court made an exception to the general rule that promissory estoppel is confined to pre-existing legal relationship.
* Promissory estoppel can be used in absence of pre-existing legal relation if there was a reliance on the promise that was a reasonable expectation and if a departure from the promise is unconscionable behaviour.
* Estoppel used as sword; can’t encourage other party to act in detriment where outcome would be unconscionable. Ie. There was reliance/detriment
 | * P negotiated with D for lease of land; P sent letter saying: “we’ll let you know by tomorrow if anything isn’t agreed to.” No notification was sent, and demolition/construction of bldg began with P’s knowledge.
* Is P stopped from denying existence of binding contract?
 |
| Consideration**Waiver and Promissory Estoppel** | ***M(N) v A(AT)* (2003) 13 BCLR (BCCA)** | * Courts seem positive towards *Walton* stores case but it was not applied
* Courts said in this case there was no reasonable expectation that a legal relationship be made
 | * M promised to pay A’s mortgage in UK; M never paid but lent her $100,000.
* Promise to pay mortgage binding? No – lack of mutuality
 |
| **Privity**Third Party Beneficiaries | ***Tweddle v Atkinson* (1861) 1 B & S 393** | * A third party can neither sue nor be sued on a contract, even as a beneficiary
* Common law principle that no stranger to the consideration can take advantage of a contract (even for his benefit), not it is changed by statute and overruled in some jurisdictions but NOT in Canadian courts
 | * Father and father-in-law of P agreed to pay P 200$ and say he can sue if he doesn’t get it; P sues for the $$ when father dies.
 |
| **Privity**Third Party Beneficiaries | ***Dunlop Pneumatic Tyre v Selfridge’s* [1915] AC 847 (HL)** | * Only a person who is a party to a contract can sue.
* A principal not named in the contract, however, may sue upon it if the promisee really contracted as his agent and provides consideration.
 | * P sold tires to wholesaler, Dew, with agreement not to sell below listed price except to customers in the motor trade; Dew sells tires to D; they sign agreement not to sell below list, or to give P 5$ each if they do.
 |
| **Circumventing Privity**Specific Performance | ***Beswick v Beswick* [1966] 1 Ch. 538 (CA)****[1968] AC 58 (HL)** | * Under common law, a third party has no right to sue under a contract because no consideration (none from aunt).
* Rule of privity is not changed from this case, this case only illustrates that the courts went around it by allowing the aunt to sue as the administratix. PRIVITY STILL APPLIES!
* CA and HL granted specific performance to aunt as an equitable remedy, very rare for specific performance to happen
 | * Uncle sells business to nephew in exchange for nephew paying support to aunt; nephew refuses to pay after uncle’s death.
* By not paying money, nephew was in breach, only uncle’s estate can sue, but estate sustained no damage, specific performance is difficult to get
* Can wife (third party) sue? Yes – but only as administratrix, not on behalf of herself.
 |
| **Circumventing Privity**Employment | ***London Drugs v Kuehne & Nagel* [1992] 3 SCR 299** | * doctrine of privity is modified to allow employees to use limitation of liability clauses (made for their benefit) in a contract which they are not a party to. This can only be used as a shield, not a sword. Must satisfy 2 conditions:

 1. Limitations of liability clause expressly or implicitly extend benefits to employees seeking to rely on it (courts say that intention to extend the benefit of limitations is implied in all cases, unless the contrary is stated)2. Employees must be acting in the course of employment **AND** performing the services provided for in the contract between their employer and the plaintiff when the loss occurs (ie. If they were doing something they were not supposed to, then they can’t use this as a shield) | * P’s transformer dropped by D’s warehousemen; company had $40 limitation clause.
* Can employees obtain benefit of the clause? Yes
 |
| **Circumventing Privity**Subrogation | ***Fraser River Pile & Dredge v Can-Dive Services* [1999] 3 SCR 108** | * Parties to a contract cannot extinguish terms of the contract that benefits a third party if the third party’s benefits have crystallized.
* This case is an extension of the exception in the *London Drugs* case
* Third parties (not just employees) can rely on limitations of liability clauses/waivers on contracts (as a shield) which they are not a party to if:
1. The parties intended the benefits to extend to the third party (explicit or implicit).
2. The third party’s activities are within the scope of the contract
 | * A’s barge sank while under charter to R; contract of insurance between A and insurer contained ‘waiver of subrogation against any charterer’ clause, which extended coverage to charterers.
* A and insurance Co wanted to vary contract so insurer could sue R for negligence.
* Is R entitled to rely on clause? Yes
 |