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Contract

- Must be an agreement
- Two or more parties
- Must have intended for agreement to be legally binding
- Promise or a set of promises that the law will enforce
- Legal rights and obligations are created
- Will be enforced in the courts

Simple contracts <ul style="list-style-type: none">• Oral, in writing, partly oral partly in writing, implied• Consideration needed for validity (given or promised to give something of value in return from promise)	Unilateral Contracts <ul style="list-style-type: none">• Offer invites acceptance by performance (not promise)• Eg, reward for return of pet, acceptance occurs when pet returned.• <i>Gippsreal Ltd v Registrar of Titles</i>
Contracts under seal (formal contracts) <ul style="list-style-type: none">• Must be in writing and signed, sealed and delivered• No consideration needed	Valid Contract <ul style="list-style-type: none">• All essential elements are present• Enforceable against both parties• Usual remedy for breach of contract is a judgement for damages.
Express contract <ul style="list-style-type: none">• Intentions of parties are stated in clear terms.• Oral or writing• Example : an agreement is signed to buy a car and the price is to be paid in instalments over the next 12 months.	Voidable Contract <ul style="list-style-type: none">• Party may avoid if wishes• Example: where induced to enter contract on other party's fraud.
Implied contract <ul style="list-style-type: none">• Terms of contract are reasoned from the conduct of the parties and surrounding circumstances• Example: hail and enter a taxi, you promise to pay the fare for destination	Void Contract <ul style="list-style-type: none">• Under the law the contract never existed at all• Example: Where illegal (eg, contract to commit crime)

Bilateral Contract <ul style="list-style-type: none"> • “Promise for a promise” • Exchange of mutual promises, actual performance is to occur later 	Unenforceable contract <ul style="list-style-type: none"> • Prima facie (first encounter or at first sight) valid but with technical defect • Eg, contract made verbally but required by statute to be in writing
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Offer

- **Offer** = proposal by one party to enter into a legally binding contract with another
- In writing, orally or implied by conduct (must be communicated to offeree)
- Can only exist if there is a firm promise to do/ refrain from doing something
- All terms must be clear, cant be ambiguous
- Must be an **agreement**
- **LP:** there must be an **offer** by one party to which the other party has **accepted**

Invitation to treat

- Indication of willingness to deal or trade
- Initial approach to others inviting them to make an offer than may or may not be accepted
- Not binding, further negotiation needed
- *Harvey v Facey* - “Lowest price for Bumper hall pen \$900” (information, answer to question – cannot be considered as a offer)

Forms of offers that are different from invitations to treat

- Shop, displays, catalogues and advertisements -
Pharmaceutical Society of Great Britain v Boots Cash Chemist (placing goods on shelf was an invitation and the customer made the “offer” by taking it to the cashier who “accepted” the offer)
- Auction sales –bid is an offer, contract formed when accepted by auctioneer
Harris v Nickerson
- Online Auctions
Smythe v Thomas (eBay=offer)
- Tenders (call for bid) – standing offers of fixed quantities (not binding)
Spencer v Hardling (offer inviting tenders to be submitted for the purchase of stock did not amount to an offer capable of acceptance to sell that stock, but rather amounted to an invitation to treat.)

Person to whom an offer may be made

- Specific person or persons
- Particular class of persons
- To the world at large
- Example: a general advertisement may be accepted by anyone who reads the advertisement.

Offer may only be accepted by the person/s for whom it was intended

Carlill v Carbolic Smoke Ball Co

“€1,000 is deposited with the alliance bank showing our sincerity in the matter”
= more than a “mere puff”

Leonard v PepsiCo

\$700,008.50 Harrier Jet – mere puff

- *Mere Puff* is a statement, which by its nature, and in the context in which it is made, is not intended to have legal relation.

Communication of Offer

- Offer must be communicated or there can be no acceptance and therefore no contract
- The offer must be brought to the notice of the person to whom it is made – how could there be an agreement without this?

Revocation of Offer

- Offer is revoked when it is **formally withdrawn (communicated)** by the offeror
- Offeror can give notice of revocation **at any time** before acceptance
- On revocation the offer comes to an end and **cannot be reaccepted**
- *Byrne & Co v Leon Van Tienhoven & Co*
-While an offer can be revoked at any time before its acceptance, a revocation of the offer was not until it had been communicated to the offeree
- Offeree must be aware of revocation otherwise they can accept the offer and create a valid and binding contract

Option offer

- A promise to keep an offer open for a period of time not enforceable unless offeree provides **consideration**
Goldsbrough, More & Co v Quinn (consideration of 5 shillings was given for the right to purchase property within one week)
- The offeror is not permitted to revoke the offer because with the payment, he is bargaining away his right to revoke the offer.

- Lapse of offer

Offer will lapse:

- a) If not accepted within the time stated
- b) If not accepted within a reasonable time (where no time stated)
- c) If a counter offer is made (material terms of the offer – price, quantity, quality –are changed)
- d) By death of either party before acceptance –exceptions
- e) By loss of contractual capacity of either party (e.g. insanity)

Counter offer

- Example : if a person offered to sell their car for \$5,000 and the person to whom the offer was made replied that they would pay \$3,500 for the car, this reply would constitute a counter offer to buy and the original offer would lapse. The buyer could not then purport to contract by accepting the original offer of \$5000
- *Hyde v Wrench*
- Response to an offer that changes the material terms of the offer is a counter offer

A request of information is not counter-offer

- Offeree may want to clarify or seek more information about the terms of the offer
- Clarification of offer will not make counter offer
- Example: “Would you accept cheque as payment” =info
- *Stevenson Jaques & Co v Mclean*