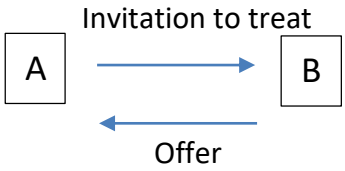
Offer and Acceptance

- What is an offer? – a proposal by one party to the other, an acceptance of which creates an agreement
- Agreement of offer and acceptance is accomplished through meetings of the mind, which is mutual consent.
- The offer should be clear and specific.
- The offer can be directed at a specific person, group of people or world at large.
- Certain cases can be an offer or an invitation to treat- how can you tell the difference?

  Consider 2 people A and B

  <u>An offer</u> is where A gives and offer to B directly wherein A is the offeror and B is the offeree.

  <u>An invitation to treat</u> is where A Invites B through paper adverts, catalogues and auctions wherein B can then make an offer to A. In this case B is the offeror and A is the offeree.



- Offer should be communicated properly, otherwise offer is not present.
- An example of an option in an offer is promising to keep the offer open till a certain date or time period.
- For an option to exist, there must be consideration present, if there is no consideration then the option is not valid.
- Consideration in terms of contract law is termed as compensation. An example of this would be agreeing to keep an offer open for a certain time period for a certain amount of money.
- An offer can lapse if it is not accepted within the time stated, it is not accepted within a reasonable time frame, if there is a counter offer made or through the death of the offeror before the offer is accepted.
- A counter offer is when the original offer ends with a new offer being made, however, request for information on the current offer is not a counter offer.

- Acceptance is an unequivocal statement ascent to the offer.
- Rules as to acceptance- (i) Acceptance should be communicated to the offeror. (ii) Acceptance can be implied from the conduct of the parties.

- Exceptions to acceptance is if (i) any requirements of the contract are waived (ii) implied by conduct (iii) Postal acceptance rule if stated by offeror and offeree.

Intention to create legal Relations

- Agreements can either be (i) social, family or domestic (ii) commercial, business or consumer.
- For social, family and domestic agreements there is a presumption in law that there are no legal intentions intended to be created.
- For commercial, business and consumer agreements there is a presumption in law that there are legal intentions intended to be created.
- However, these presumptions can be rebutted by evidence (refer cases for evidence)

Consideration and Promissory Estoppel

- Consideration is the price you pay for the promise, or buy the promiser's promise.
- Consideration must be present when making a promise.
- The nature of consideration should be that it is stipulated by the promiser, should move from the promisee, but not necessarily to the promiser.
- The value of consideration must be sufficient but not adequate.
- The consideration that is made should not be illusory.
- Past consideration is not good consideration, performing an existing contractual duty is not good consideration (obligation). Consideration must be executed or executory
- Exceptions to consideration are (i) <u>promise under seal</u>- where contracts under seal obtain their binding force from their form alone (ii) <u>Promissory Estoppel</u> (iii) <u>Practical benefit</u>

- Promissory Estoppel is a legal principal that a promise is enforceable by law, even if made without formal consideration.
- Criteria for promissory estoppel are (i) The promisee assumed that a legal relationship existed or would exist (ii) The promisor induced that assumption (iii) The promisee acted, or refrained from acting, in reliance on that assumption (iv) The promisor knew that the promisee intended to act in that way (v) The promisee will suffer a detriment (material loss) if the assumption is not fulfilled (vi) The promisor acted unconscionably in failing to prevent the damage to the promisee