

## Elements of a contract

- Agreement- offer and acceptance
- Consideration
- Intention to create legal relations
- Certainty and completeness

**Offer:** The indication by one party (offeror) to another (offerree) of his or her willingness to enter into a K on certain terms, look for evidence of:

- Express promise
- Implied promise

**Acceptance:** Acceptance of an offer occurs when an offeree makes the specified counter-promise (bilateral contract) or performs the specified act (unilateral contract) in response to the offer. For a contract to come into existence between two parties there must be mutual assent to the terms of the bargain. This is commonly put as the requirement that there must be a 'meeting of minds'.

- Bilateral contract may specify how the acceptance must be communicated and the terms it must comply with e.g. before a certain date

**Consideration:** In a bilateral contract, each promise is the consideration for the other promise. In a unilateral contract, the promise is the consideration for the requested act, and the requested act is the consideration for the promise. Consideration in the legal sense must be good consideration, it must have value. Consideration may consist in some right, interest, profit or benefit occurring to the one party, or some forbearance, detriment, loss undertaken by the other.

### **Rules of consideration**

#### **1. Consideration must move from the promisee**

- Only the person who has 'paid' the promise of a promise could sue on it- the promisee

#### **2. Consideration must be legally sufficient**

- Consideration must have some value but it does not have to be adequate
- It is not the role of courts to consider the adequacy of a consideration to support a promise- freedom of contract

#### **3. Consideration must not be illusory**

- Promises that appear to be discretionary
- e.g. an exemption clause that removes all liability for breach of the supposed promise
- promises lacking content e.g. a promise to refrain from committing an unlawful act

#### **4. Past consideration is not sufficient**

Consideration may be executory or executed, but it cannot be past

**Executory:** When what the parties have done is in exchange for promises only

**Executed:** When one party to a contract has performed his or her obligations under the contract

## Two-fold examination

1. The promisee must incur a detriment or grant a benefit on the promisor e.g. payment of money to promisor is a benefit to promisor and detriment to the promisee
2. The benefit or detriment must be given in return for the promise

**Intention to create legal relations:** In the law of contracts, intention or intentional states are usually established objectively, that is, a party will be held to that intention which would be reasonable inferred in the circumstances.

- **Commercial agreements**= strong presumption of intent unless there is a clear evidence to show otherwise
- **Family agreements**= Presumed no legal intent, they intend to rely solely on family ties of mutual trust and affection.

**Certainty and completeness:** Is required in relation to essential terms. The court has wide powers to imply terms and to fix meaning. If the incomplete part of the contract is not essential, then it may be severed without voiding the contract. However, if the incomplete part is essential, then this may render the contract unenforceable.

## Other essential elements affection enforceability of contracts under the common law

**Formality:** Some contracts must be in writing, ones relating to property and land. This is due to the relevant statutes stating so.

**Capacity:** Mental capacity, being an adult not a minor

**Legality:** Can't enter into a contract based on illegal activities

**Invitation to treat:** An invitation to treat is an action inviting other parties to make an offer to form a contract.

- Pricelists, quotations, advertisements and shop displays are generally not offers by invitations to treat
- Reward offers have been treated as contractual offers

**Objective reasonable person test:** An offer will only exist if a reasonable person would conclude on the facts that the offeror was willing to enter into a legally binding contract

## Termination of offers

- May be withdrawn before acceptance
- If stated to be open for a specified period. It expires accordingly
- If not expressly limited in duration, it expires at the end of what is a reasonable time in the circumstances
- Expires on the death of the offeror/offeree
- In litigation proceedings the courts have a process called "A offer of compromise", whereby the offer must be open to 14 days minimum. If there has been no acceptance, the offer will then lapse.
- **Mere Puffery: Statements** that induce a contract by which do not of themselves constitute binding offers. These are statements that are so far fetched that no reasonable person would believe them - [Leonard v Pepsico Inc. 88 F Supp 2d \(SDNY\) 1999](#)

