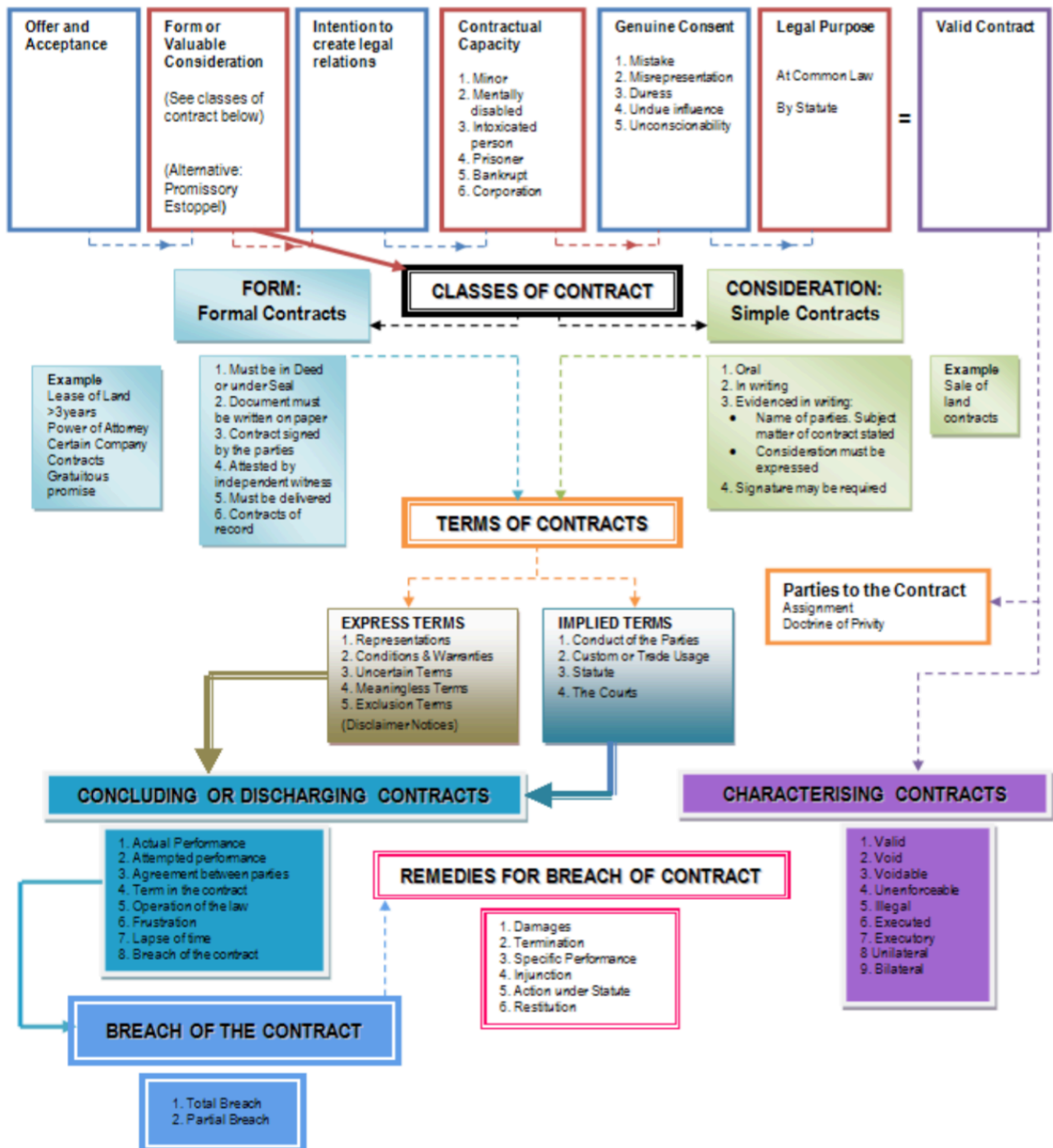


CONTRACTS – COMPLETE EXAM NOTES



LATIN TERMINOLOGY:..... 11

1A. OFFER 14

Offer 14

RULES AS TO OFFER 15

UNILATERAL CONTRACT 15

BILATERAL CONTRACT 15

OFFERS NEED TO BE DISTINGUISHED FROM THE FOLLOWING **Error! Bookmark not defined.**

Options **Error! Bookmark not defined.**

Tickets **Error! Bookmark not defined.**

Fate Of An Offer **Error! Bookmark not defined.**

TERMINATION **Error! Bookmark not defined.**

ACCEPTANCE **Error! Bookmark not defined.**

REJECTION **Error! Bookmark not defined.**

COUNTER OFFER **Error! Bookmark not defined.**

LAPSE OF OFFER BY EFFLUXION OF TIME **Error! Bookmark not defined.**

DEATH **Error! Bookmark not defined.**

CONDITION BRINGING OFFER TO AN END **Error! Bookmark not defined.**

SUPERVENING INCAPACITY **Error! Bookmark not defined.**

STATUTORY INTERVENTION **Error! Bookmark not defined.**

1B. ACCEPTANCE **ERROR! BOOKMARK NOT DEFINED.**

Rules of Acceptance **Error! Bookmark not defined.**

Agreement in absence of apparent offer and acceptance **Error! Bookmark not defined.**

1C. CONSIDERATION **ERROR! BOOKMARK NOT DEFINED.**

Exception **Error! Bookmark not defined.**

rules of consideration **Error! Bookmark not defined.**

RULE 1: SIMPLE CONTRACTS MUST HAVE CONSIDERATION **Error! Bookmark not defined.**

THE DOCTRINE OF PRIVITY **Error! Bookmark not defined.**

THE DOCTRINE OF CONSIDERATION **Error! Bookmark not defined.**

RULE 2: CONSIDERATION MUST MOVE FROM THE "PROMISEE" BUT NEED NOT FLOW TO THE PROMISOR **Error! Bookmark not defined.**

RULE 3: MUST BE SUFFICIENT (LEGALLY EFFECTIVE) BUT NEED NOT BE ADEQUATE **Error! Bookmark not defined.**

RULE 4: MUST BE LAWFUL **Error! Bookmark not defined.**

RULE 5: CANNOT BE ILLUSORY (DISCRETIONARY) **Error! Bookmark not defined.**

RULE 6: MUST BE DEFINITE **Error! Bookmark not defined.**

RULE 7: MAY BE EXECUTED, EXECUTORY BUT CANNOT BE PAST CONSIDERATION **Error! Bookmark not defined.**

RULE 8: EXISTING OBLIGATION IS NOT GOOD CONSIDERATION **Error! Bookmark not defined.**

RULE 9: PART PAYMENT OF A DEBT IS NOT GOOD CONSIDERATIONError! Bookmark not defined.

1D. PROMISSORY ESTOPPELERROR! BOOKMARK NOT DEFINED.

Common law estoppel..... **Error! Bookmark not defined.**

Equitable estoppel..... **Error! Bookmark not defined.**

Proprietary estoppel..... **Error! Bookmark not defined.**

Promissory estoppel..... **Error! Bookmark not defined.**

Elements of promissory estoppel.....Error! Bookmark not defined.

Relief AvailableError! Bookmark not defined.

1E. INTENTION (TO CREATE LEGAL RELATIONS) ...ERROR! BOOKMARK NOT DEFINED.

Express intention.....Error! Bookmark not defined.

Implied intention.....Error! Bookmark not defined.

presumptions..... **Error! Bookmark not defined.**

Preliminary Agreements / Heads of Agreement / Subject to Contract Error! Bookmark not defined.

Consequences of a lack of intentionError! Bookmark not defined.

statutory modifications.....Error! Bookmark not defined.

1F. CERTAINTY/COMPLETENESSERROR! BOOKMARK NOT DEFINED.

the contract must be complete **Error! Bookmark not defined.**

Agreement to Agree/Negotiate..... **Error! Bookmark not defined.**

Machinery Clause **Error! Bookmark not defined.**

Formula Clause **Error! Bookmark not defined.**

Subject to Contract **Error! Bookmark not defined.**

Illusory Consideration/Promise **Error! Bookmark not defined.**

results of uncertaintyError! Bookmark not defined.

2A. CAPACITYERROR! BOOKMARK NOT DEFINED.

MinorsError! Bookmark not defined.

application in problem question **Error! Bookmark not defined.**

Exceptions **Error! Bookmark not defined.**

Mental incapacity.....Error! Bookmark not defined.

Intoxicated personsError! Bookmark not defined.

convictsError! Bookmark not defined.

Aliens.....	Error! Bookmark not defined.
bankrupts	Error! Bookmark not defined.
corporations.....	Error! Bookmark not defined.
Pre-Incorporated Contracts.....	Error! Bookmark not defined.
Incorporated Associations	Error! Bookmark not defined.
Unincorporated Association.....	Error! Bookmark not defined.
Partnerships	Error! Bookmark not defined.
Business Names.....	Error! Bookmark not defined.

2B. PRIVACYERROR! BOOKMARK NOT DEFINED.

Exceptions to the Rule of Privacy	Error! Bookmark not defined.
Trident principle.....	Error! Bookmark not defined.
ASSIGNMENT / NOVATION	Error! Bookmark not defined.
Equitable doctrine of trust	Error! Bookmark not defined.

3A. FORMALITIESERROR! BOOKMARK NOT DEFINED.

Contracts that must be made in writing in the form of a deed....	Error! Bookmark not defined.
Contracts that must be reduced totally in writing.....	Error! Bookmark not defined.
Contracts must be at least evidenced in writing	Error! Bookmark not defined.
Contents of a Memorandum or Note	Error! Bookmark not defined.
Requirements of Signature	Error! Bookmark not defined.
Joinder Documents	Error! Bookmark not defined.
Electronic Writing and Electronic Signature.....	Error! Bookmark not defined.
Time of Creation of Note	Error! Bookmark not defined.
Effect of Non Compliance	Error! Bookmark not defined.
Common Law	Error! Bookmark not defined.
Equity.....	Error! Bookmark not defined.

Creation of Enforceable Rights Despite Non-Compliance

Doctrine of Part Performance.....	Error! Bookmark not defined.
Elements	Error! Bookmark not defined.
Constructive Trust/Promissory Estoppel.....	Error! Bookmark not defined.
Restitution: <i>Quantum Meruit</i>	Error! Bookmark not defined.
Variation	Error! Bookmark not defined.

3B. STATUTORY ILLEGALITYERROR! BOOKMARK NOT DEFINED.

Expressly illegal	Error! Bookmark not defined.
Impliedly illegal	Error! Bookmark not defined.
Illegal as formed.....	Error! Bookmark not defined.
illegal as performed	Error! Bookmark not defined.

Severance TestsError! Bookmark not defined.

3C. ILLEGAL AT COMMON LAW/PUBLIC POLICY...ERROR! BOOKMARK NOT DEFINED.

Illegal contracts at common law.....Error! Bookmark not defined.

Void contracts at common lawError! Bookmark not defined.

3D. CONSEQUENCES OF ILLEGALITY.....ERROR! BOOKMARK NOT DEFINED.

statute.....Error! Bookmark not defined.

 Doctrine of severance..... **Error! Bookmark not defined.**

Common lawError! Bookmark not defined.

 illegal as formed..... **Error! Bookmark not defined.**

 illegal as performed..... **Error! Bookmark not defined.**

4A. EXPRESS TERMSERROR! BOOKMARK NOT DEFINED.

pre-contractual statements.....Error! Bookmark not defined.

Pre-Contractual statements v contractual termsError! Bookmark not defined.

express terms.....Error! Bookmark not defined.

 Unsigned Documents..... **Error! Bookmark not defined.**

 Signed Documents **Error! Bookmark not defined.**

 Incorporation of Express Terms by Past Dealings..... **Error! Bookmark not defined.**

 Reference to Other Documents **Error! Bookmark not defined.**

4B. EXTRINSIC EVIDENCEERROR! BOOKMARK NOT DEFINED.

parol evidence ruleError! Bookmark not defined.

 Exceptions to Parol evidence rule **Error! Bookmark not defined.**

 Purpose 1 (Identify Terms)..... **Error! Bookmark not defined.**

 Purpose Two (Construe Meaning)..... **Error! Bookmark not defined.**

collateral contractsError! Bookmark not defined.

 Elements:..... **Error! Bookmark not defined.**

 Breach of collateral contract **Error! Bookmark not defined.**

4C. IMPLIED TERMS.....ERROR! BOOKMARK NOT DEFINED.

terms implied in fact.....Error! Bookmark not defined.

 Past Dealings Between Parties..... **Error! Bookmark not defined.**

 Custom or Trade Usage..... **Error! Bookmark not defined.**

 Business Efficacy **Error! Bookmark not defined.**

Terms Implied by Law.....Error! Bookmark not defined.

 Common Law **Error! Bookmark not defined.**

Statute..... **Error! Bookmark not defined.**

4D. CONSTRUCTION/CLASSIFICATIONERROR! BOOKMARK NOT DEFINED.

Construction..... **Error! Bookmark not defined.**

Interpreting the meaning of the words in each term **Error! Bookmark not defined.**

Determining the legal effect of those words..... **Error! Bookmark not defined.**

Classification of terms **Error! Bookmark not defined.**

conditions..... **Error! Bookmark not defined.**

WARRANTIES..... **Error! Bookmark not defined.**

INTERMEDIATE TERMS (INNOMINATE TERMS) **Error! Bookmark not defined.**

Other classification systems **Error! Bookmark not defined.**

Promises and Contingencies..... **Error! Bookmark not defined.**

Condition precedent..... **Error! Bookmark not defined.**

Condition Subsequent **Error! Bookmark not defined.**

Boilerplate terms..... **Error! Bookmark not defined.**

4E. EXCLUSION CLAUSES.....ERROR! BOOKMARK NOT DEFINED.

construction and interpretation **Error! Bookmark not defined.**

traditional approach..... **Error! Bookmark not defined.**

Contra Proferentem Rule (contra proferens) **Error! Bookmark not defined.**

Fundamental Breach Rule **Error! Bookmark not defined.**

Four Corners Rule..... **Error! Bookmark not defined.**

Main Purpose Rule..... **Error! Bookmark not defined.**

Deviation Rule **Error! Bookmark not defined.**

Negligence Rule..... **Error! Bookmark not defined.**

Modern Approach **Error! Bookmark not defined.**

Statutory Prohibition on Exclusion Clauses **Error! Bookmark not defined.**

Trade Practices Act 1974 (Cth) **Error! Bookmark not defined.**

Sale of Goods Act 1923 (NSW)..... **Error! Bookmark not defined.**

Contracts Review Act 1980 (NSW) **Error! Bookmark not defined.**

5A. MISREPRESENTATIONERROR! BOOKMARK NOT DEFINED.

elements **Error! Bookmark not defined.**

Element 1: Representation made by one party to another..... **Error! Bookmark not defined.**

DIRECT REPRESENTATION **Error! Bookmark not defined.**

INDIRECT REPRESENTATION **Error! Bookmark not defined.**

Element 2: Representation must be a statement of fact **Error! Bookmark not defined.**

Element 3: Representation must be false..... **Error! Bookmark not defined.**

Element 4: Representation was made to induce the contract..... **Error! Bookmark not defined.**

Element 5: The representation does induce the contract **Error! Bookmark not defined.**

consequences of finding Misrepresentation **Error! Bookmark not defined.**

Fraudulent Misrepresentation..... **Error! Bookmark not defined.**

innocent misrepresentation **Error! Bookmark not defined.**

Negligent misrepresentation..... **Error! Bookmark not defined.**

5B. MISTAKEERROR! BOOKMARK NOT DEFINED.

common mistake.....Error! Bookmark not defined.

common mistake at common law **Error! Bookmark not defined.**

res extincta **Error! Bookmark not defined.**

RES SUA **Error! Bookmark not defined.**

common mistake at Equity **Error! Bookmark not defined.**

Mutual mistakeError! Bookmark not defined.

mutual mistake at common law..... **Error! Bookmark not defined.**

Mutual mistake at equity **Error! Bookmark not defined.**

unilateral mistakeError! Bookmark not defined.

Unilateral mistake at common law **Error! Bookmark not defined.**

THE MISTAKEN IDENTITY CASES..... **Error! Bookmark not defined.**

Mistake as to the nature of the document signed..... **Error! Bookmark not defined.**

Unilateral mistake at Equity **Error! Bookmark not defined.**

5C. DURESSERROR! BOOKMARK NOT DEFINED.

elements of duress.....Error! Bookmark not defined.

Types of duress.....Error! Bookmark not defined.

duress to the person **Error! Bookmark not defined.**

Duress to Goods..... **Error! Bookmark not defined.**

Economic Duress **Error! Bookmark not defined.**

remedy/effect of finding duress.....Error! Bookmark not defined.

Common Law **Error! Bookmark not defined.**

Statute..... **Error! Bookmark not defined.**

5D. UNDUE INFLUENCEERROR! BOOKMARK NOT DEFINED.

types of undue influenceError! Bookmark not defined.

presumed undue influence **Error! Bookmark not defined.**

fiduciary relationships..... **Error! Bookmark not defined.**

REBUTTAL OF THE PRESUMPTION **Error! Bookmark not defined.**

Actual undue influence **Error! Bookmark not defined.**

REBUTTAL OF ACTUAL UNDUE INFLUENCE **Error! Bookmark not defined.**

effect of undue influence.....Error! Bookmark not defined.

Common Law **Error! Bookmark not defined.**

Statute..... **Error! Bookmark not defined.**

5E. UNCONSCIONABLE CONDUCTERROR! BOOKMARK NOT DEFINED.

elements of unconscionabilityError! Bookmark not defined.

rebutting the presumptionError! Bookmark not defined.
 wives special equity..... **Error! Bookmark not defined.**

RemedyError! Bookmark not defined.
 Common Law **Error! Bookmark not defined.**
 Statute..... **Error! Bookmark not defined.**

5F. THIRD PARTY IMPROPRIETYERROR! BOOKMARK NOT DEFINED.

5G. RESCISSIONERROR! BOOKMARK NOT DEFINED.

Rescind/Affirm.....Error! Bookmark not defined.
 Who Rescinds? **Error! Bookmark not defined.**
 How to Rescind? **Error! Bookmark not defined.**
 The Right to Rescission..... **Error! Bookmark not defined.**
 Restrictions to Rescission **Error! Bookmark not defined.**
 Intervening Third Party Rights **Error! Bookmark not defined.**
 Delay (laches)..... **Error! Bookmark not defined.**
 Executed Contract..... **Error! Bookmark not defined.**

6A. TERMINATION BY PERFORMANCEERROR! BOOKMARK NOT DEFINED.

Exact performanceError! Bookmark not defined.

exceptions to exact performance.....Error! Bookmark not defined.
 Divisible (Severable) Performance **Error! Bookmark not defined.**
 De Minimus Rule **Error! Bookmark not defined.**
 Substantial Performance **Error! Bookmark not defined.**
 voluntary Acceptance of Partial Performance **Error! Bookmark not defined.**
 Obstruction..... **Error! Bookmark not defined.**
 legislation **Error! Bookmark not defined.**

Matters Impacting on Performance.....Error! Bookmark not defined.
 Time **Error! Bookmark not defined.**
 Dependent v Independent Obligation **Error! Bookmark not defined.**

6B. BREACH AND REPUDIATIONERROR! BOOKMARK NOT DEFINED.

SUMMARYError! Bookmark not defined.

Actual Breach.....Error! Bookmark not defined.

Anticipatory breachError! Bookmark not defined.

Ways to Terminate.....Error! Bookmark not defined.

CONDITIONS, WARRANTIES & IMMEDIATE TERMSError! Bookmark not defined.

TIME IN CONTRACTS.....Error! Bookmark not defined.

notices to completeError! Bookmark not defined.

Repudiation.....Error! Bookmark not defined.

Equitable principles **Error! Bookmark not defined.**

6C. TERMINATION BY AGREEMENT**ERROR! BOOKMARK NOT DEFINED.**

Discharge by Term in the Original AgreementError! Bookmark not defined.

Express Term **Error! Bookmark not defined.**

Implied Term..... **Error! Bookmark not defined.**

Contingencies **Error! Bookmark not defined.**

Condition Precedent..... **Error! Bookmark not defined.**

Condition Subsequent **Error! Bookmark not defined.**

Discharge by Subsequent Agreement.....Error! Bookmark not defined.

Mutual Discharge (Bilateral Discharge) **Error! Bookmark not defined.**

By Unilateral Discharge (Release) **Error! Bookmark not defined.**

Novation **Error! Bookmark not defined.**

Waiver **Error! Bookmark not defined.**

Abandonment..... **Error! Bookmark not defined.**

discharge of an indefinitely continuing agreement.....Error! Bookmark not defined.

Discharge v Variation.....Error! Bookmark not defined.

6D. FRUSTRATION**ERROR! BOOKMARK NOT DEFINED.**

Original Performance/Absolute Contract RuleError! Bookmark not defined.

Doctrine of Frustration.....Error! Bookmark not defined.

ElementsError! Bookmark not defined.

Element 1: Supervening event causes radical change..... **Error! Bookmark not defined.**

Element 2: Not self-induced **Error! Bookmark not defined.**

Elements 3: No contemplation of frustrating event **Error! Bookmark not defined.**

Theories on Frustration.....Error! Bookmark not defined.

Effect of Finding Frustration.....Error! Bookmark not defined.

Common Law **Error! Bookmark not defined.**

Statute..... **Error! Bookmark not defined.**

Frustrated Contracts Act, 1978 (NSW) **Error! Bookmark not defined.**

7A. INTRODUCTION TO DAMAGES**ERROR! BOOKMARK NOT DEFINED.**

Defective ContractError! Bookmark not defined.

Rescind/Affirm.....Error! Bookmark not defined.

Who Rescinds? **Error! Bookmark not defined.**

How to Rescind? **Error! Bookmark not defined.**

The Right to Rescission.....	Error! Bookmark not defined.
Restrictions to Rescission	Error! Bookmark not defined.
Intervening Third Party Rights	Error! Bookmark not defined.
Delay (laches).....	Error! Bookmark not defined.
Executed Contract.....	Error! Bookmark not defined.
Tortious Damage	Error! Bookmark not defined.
Breach of Valid Contracts.....	Error! Bookmark not defined.
Common Law Damages.....	Error! Bookmark not defined.
Causation.....	Error! Bookmark not defined.
Remoteness.....	Error! Bookmark not defined.
Assessment.....	Error! Bookmark not defined.
Types of Damages	Error! Bookmark not defined.
Liquidated v Unliquidated damages	Error! Bookmark not defined.
Heads of Damage	Error! Bookmark not defined.
Mitigation.....	Error! Bookmark not defined.
Contributory Negligence.....	Error! Bookmark not defined.
Fixed Sums and Debt Recovery.....	Error! Bookmark not defined.
Liquidated Damages	Error! Bookmark not defined.
Penalty Clause	Error! Bookmark not defined.
Action in Debt.....	Error! Bookmark not defined.
Forfeit in Deposit.....	Error! Bookmark not defined.
Mitigation in an Action for Debt.....	Error! Bookmark not defined.
Equitable Remedies	Error! Bookmark not defined.
Rectification	Error! Bookmark not defined.
Specific Performance	Error! Bookmark not defined.
Injunctions	Error! Bookmark not defined.
Equitable Damages	Error! Bookmark not defined.
Other Remedies.....	Error! Bookmark not defined.
Restitution	Error! Bookmark not defined.
Statutory Remedies	Error! Bookmark not defined.
When Does Legislation Apply?.....	Error! Bookmark not defined.
Sale of Goods Act 1923 (NSW)	Error! Bookmark not defined.
Trade Practices Act 1974 (Cth)/ Fair Trading Act (NSW).....	Error! Bookmark not defined.
Contracts Review Act	Error! Bookmark not defined.
Loss of Remedies.....	Error! Bookmark not defined.

LATIN TERMINOLOGY:

Latin Term	Definition
<i>ab initio</i>	From the beginning
<i>Caveat emptor</i>	The principle that the buyer alone is responsible for checking the quality and suitability of goods before a purchase is made.
<i>consensus ad idem</i>	Meeting of the minds - where all parties have the same understanding of the terms of a contract
<i>contra proferens</i>	Any ambiguity in an exclusion clause will be construed against the benefiting party
<i>cortum est quot cetum reddi potest</i>	If essential terms are left to be agreed upon, there is no contract
<i>de minimis no curae lex</i>	The law does not concern itself with trivialities
<i>ex dolo malo no oritor actio</i>	No court will lend its aid to a man who founds his cause of action on an illegal or immoral act
<i>ex gratia</i>	Something extra to show goodwill
<i>ex turpi causa non orityr actio</i>	A court will not allow a party to base a cause of action upon an illegal act
<i>force majeure</i>	Frustration will not apply where the parties foresaw the event and inserted a term in the contract to cover the event
<i>in pari delicto portior est condition possidentis</i>	Where both parties are at fault, property should remain with the party who has possession of it when the matter is disputed
<i>inter alia</i>	Amongst other things
<i>nemo dat quod non habet</i>	One cannot give what one does not have

<i>non est factum</i>	This is not my deed
<i>non haec in foedera veni</i>	It was not this I promised to do
<i>prima facie</i>	On its face
<i>quantum meruit</i>	The amount deserved; action for the reasonable value of services performed
<i>quid pro quo</i>	Something for something
<i>res extincta</i>	The subject matter has ceased to exist
<i>res sua</i>	The purchaser already owns the subject matter
<i>restitutio in integrum</i>	Restoration to initial condition
<i>solus</i>	Trade regulation clause
<i>sui juris</i>	An adult of sound mind
<i>uberrimae fidei</i>	With utmost good faith/in full confidence
<i>ultra vires</i>	A company is only able to contract if about a matter specified in its constitution (no longer valid)
<i>verba ita sumi intelligenda ut res in se valeat quam pereat</i>	Words are to be construed so that the thing may avail rather than perish

Term	Definition
Valid	The essential elements are present
Void	No legal validity
Voidable	Validly formed but inherent defect (a right to void a contract)
Unenforceable	Validly formed but with a technical defect
Illegal	The court will not lend its aid to a man who founds his cause of action in an immoral or illegal act
Executed	Where a party has performed their promise
Executory	Where all the parties have done is exchange promises

Express	By written or spoken word
Implied	By conduct
Formal	Some must be in writing
simple	Six essential elements (can be written or oral or both)

TOPIC 1: CONTRACT FORMATION

Elements needed to form a simple contract

1. Agreement (offer and acceptance)
2. Consideration
3. Alternatives to Enforcement of Promises
4. Intention to create legal relations
5. Certainty / Completeness
6. Formalities / Contracts requiring written evidence

1A. OFFER

OFFER

- ❖ 'It is of the essence of contract, regarded as a class of obligations, that there is a voluntary assumption of legally enforceable duty' (*Australian Woollen Mills Pty Ltd v Commonwealth* [1954] 92 CLR 424)

Offer: The expression of willingness to be contractually bound upon acceptance of terms set out with sufficient certainty, without further negotiation. – *LexisNexis Dictionary*, 443.

Offer and Acceptance: According to traditional formulations of contract law, the acts of the parties that demonstrate 'consensus ad idem' or agreement, and which consequently determine the moment and place of contract formation at common law. – *LexisNexis Dictionary*, 443.

Essentially:

- The indication by one person to another of willingness to enter into a contract with the other on certain terms.
- In strict terms it is a clear statement of the terms upon which the offeror is prepared to be contractually bound.

Australian Woollen Mills Pty Ltd v Commonwealth

- An offer can only lead to a binding agreement if the offer identifies the terms of the proposed agreement with sufficient certainty.
- This case demonstrates the inextricable connection between the requirement of offer and acceptance, intention, consideration and certainty.

I. ***Offer must be definite***

Is it complete so that merely saying "I accept" is sufficient to constitute a contract?

Objective Test - Would it appear to a reasonable person in the position of the offeree that an offer was intended and that a binding agreement would be made upon acceptance

II. ***Do not read in isolation***

An offer is only effective if it identifies a valid consideration and manifests an intention to create a legal obligation. It must also have an element of certainty.

III. ***Need for clarity***

There needs to be a clear expression of a willingness to be legally bound by the stated terms. If accepted, is capable of binding both parties.

Lefkowitz v Great Minneapolis Surplus Store 1957

IV. ***Who can be an offeree?***

Offers are often made to one person but can be made to more than one or even to the world at large. In *Carlill v Carbolic Smoke Ball Co* the offer made to the world at large formed the basis of a unilateral contract.

- V. ***The Requirement of Communication* (*Fitch v Snedaker* (1868))**
- VI. ***Motive of acceptor immaterial* (*Williams v Carwardine* (1833))**
- VII. ***Knowledge is essential* (*R v Clarke* (1927))**

RULES AS TO OFFER

- I. May be made to a single person or a class of persons
- II. Must be communicated. Cannot be accepted without knowledge of existence
- III. All terms of the offer must be brought to the notice of the offeree
- IV. Must be distinguished from an invitation to treat. An invitation to treat is an invitation or an enticement to others to make an offer
- V. May be revoked any time prior to acceptance (nb options)
- VI. May have conditions of acceptance
- VII. May lapse through non acceptance

UNILATERAL CONTRACT

The offeree does not undertake to perform but accepts the offer by performing their side of the bargain.

- An offer made to an offeree that does not create mutually binding relations until the offeree does what is requested by the offeror. Performance by the offeree is acceptance.

In reward cases the finder accepts the offer by returning the dog.

In a unilateral contract the obligation of the offeree is executed.

United Dominions Trust (Commercial) Ltd v Eagle Aircraft services Ltd

Carlill v Carbolic Smoke Ball Co - unilateral contract despite being a general offer to the world at large. The plaintiff accepted the offer by using the smoke ball.

BILATERAL CONTRACT

Where there is an exchange of promises.

At the beginning of the formation of the bilateral contract the obligations of both parties remain to be performed. That is they are *executory*.