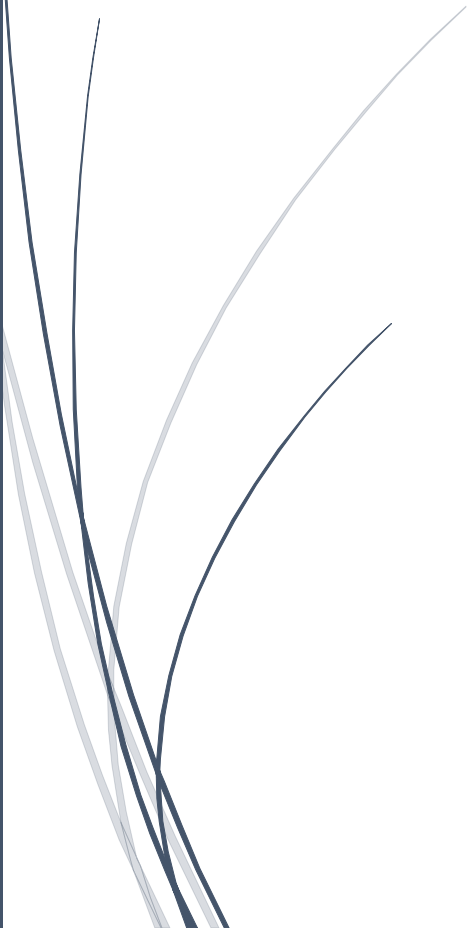




MLC101

# Exam Notes

Commerce Law



## Table of Contents

Chapter 2: INTRODUCTION & CONTRACTUAL FORMATION.....	3
Postal Acceptance Rule:.....	4
Chapter 3: Intention, Consideration, Formalities, Capacity and Illegality	<b>Error! Bookmark not defined.</b>
Consideration.....	<b>Error! Bookmark not defined.</b>
Promissory Estoppel .....	<b>Error! Bookmark not defined.</b>
Formalities .....	<b>Error! Bookmark not defined.</b>
Capacity.....	<b>Error! Bookmark not defined.</b>
Legality .....	<b>Error! Bookmark not defined.</b>
CONTRACT OF EMPLOYMENT.....	<b>Error! Bookmark not defined.</b>
Chapter 4: Genuine Consent: Mistake, Misrepresentation and Unconscionable Contracts.....	<b>Error! Bookmark not defined.</b>
<b>Bookmark not defined.</b>	
Mistakes .....	<b>Error! Bookmark not defined.</b>
Misrepresentation .....	<b>Error! Bookmark not defined.</b>
Duress, undue influence and unconscionable contracts .....	<b>Error! Bookmark not defined.</b>
Chapter 5: The Contents and Interpretation of a contract.....	<b>Error! Bookmark not defined.</b>
Parole Evidence Rule.....	<b>Error! Bookmark not defined.</b>
Sales puff.....	<b>Error! Bookmark not defined.</b>
Conditions .....	<b>Error! Bookmark not defined.</b>
Warranties .....	<b>Error! Bookmark not defined.</b>
Innominate Terms.....	<b>Error! Bookmark not defined.</b>
Incorporation .....	<b>Error! Bookmark not defined.</b>
Exclusion or Exemption clauses .....	<b>Error! Bookmark not defined.</b>
Chapter 6: Terminating a Contract and Remedies for Breach.....	<b>Error! Bookmark not defined.</b>
The remedy of damages .....	<b>Error! Bookmark not defined.</b>
Specific performance .....	<b>Error! Bookmark not defined.</b>
Injunction .....	<b>Error! Bookmark not defined.</b>
Chapter 7: Consumer Law:.....	<b>Error! Bookmark not defined.</b>
Misleading or deceptive conduct.....	<b>Error! Bookmark not defined.</b>
Unconscionable conduct.....	<b>Error! Bookmark not defined.</b>
Unfair contracts .....	<b>Error! Bookmark not defined.</b>
False representations.....	<b>Error! Bookmark not defined.</b>
Penalties.....	<b>Error! Bookmark not defined.</b>
Profitability of business activities .....	<b>Error! Bookmark not defined.</b>
Consumer guarantees.....	<b>Error! Bookmark not defined.</b>
Limitation of liability .....	<b>Error! Bookmark not defined.</b>

Defective goods - manufacturer's liability .....	<b>Error! Bookmark not defined.</b>
Chapter 8: Negligent Misconduct in Business .....	<b>Error! Bookmark not defined.</b>
Law of tort.....	<b>Error! Bookmark not defined.</b>
The law of negligence .....	<b>Error! Bookmark not defined.</b>
The duty of care .....	<b>Error! Bookmark not defined.</b>
Owe a duty of care.....	<b>Error! Bookmark not defined.</b>
Physical harm:.....	<b>Error! Bookmark not defined.</b>
Economic Loss.....	<b>Error! Bookmark not defined.</b>
Omission: .....	<b>Error! Bookmark not defined.</b>
Damage .....	<b>Error! Bookmark not defined.</b>
Defenses to an action in negligence .....	<b>Error! Bookmark not defined.</b>
Chapter 9: An introduction to Business Relationships and Organizations .....	<b>Error! Bookmark not defined.</b>
Sole Trader.....	<b>Error! Bookmark not defined.</b>
Trust: .....	<b>Error! Bookmark not defined.</b>
Partnership:.....	<b>Error! Bookmark not defined.</b>
Corporation:.....	<b>Error! Bookmark not defined.</b>
Chapter 10: Partnership Law .....	<b>Error! Bookmark not defined.</b>
Formation, number in partnership and firm name .....	<b>Error! Bookmark not defined.</b>
Implied terms.....	<b>Error! Bookmark not defined.</b>
Partnership property and goodwill.....	<b>Error! Bookmark not defined.</b>
Chapter 11: Company Law .....	<b>Error! Bookmark not defined.</b>
Nature and formation of companies .....	<b>Error! Bookmark not defined.</b>
Features of a company.....	<b>Error! Bookmark not defined.</b>
Types of companies .....	<b>Error! Bookmark not defined.</b>
Registration of companies .....	<b>Error! Bookmark not defined.</b>
Removal of directors and the secretary.....	<b>Error! Bookmark not defined.</b>
Director's duty to prevent insolvent trading .....	<b>Error! Bookmark not defined.</b>
Certain persons not to manage corporations.....	<b>Error! Bookmark not defined.</b>
Management and control .....	<b>Error! Bookmark not defined.</b>
Duties .....	<b>Error! Bookmark not defined.</b>
Replaceable rules and a company constitution.....	<b>Error! Bookmark not defined.</b>
Chapter 12: Business Risks and Responsibilities.....	<b>Error! Bookmark not defined.</b>

## Chapter 2: INTRODUCTION & CONTRACTUAL FORMATION

**Contract:** An agreement between two or more parties under which legal rights and obligations are created which will be enforced in courts.

### Essential Elements of a Contract:

- An offer by one party and its acceptance by the other
- Intention of the parties to create legal **relations**
- Valuable Consideration (unless the promise is made by deed)
- Legal capacity of the parties to act (e.g. under 18, intoxicated, disabled)
- Genuine Consent by the parties
- Legality- Contract should be legal

**Offer:** An offer is a proposal communicated to enter into an agreement. If the person accepts, a contract is made.

Rules as to offer:

- May be made to one or more people
- All major terms must be included
- May specify conditions to be followed
- May be communicated to offeree
- May lapse or be revoked

*Harvey v Facey (1893)*- (page 30) A statement that provides information but does so without indicating that the person intended to make an offer is not an offer.

A contract needs to be specific. *Carbill V Carbolic Smoke Ball Co* (page 31) did not specify who the contract was for, therefore it was deemed there was no contract in place.

If a promise is made, asking for someone to complete a task, and someone acts on this, this acts as acceptance of the contract -> occurs when someone has incurred a detriment when there is no pre-existing contract.

**Offeror:** Giving the offer

**Offeree:** Receiving/accepting the offer

**Key point:** Supermarket is usually invitation to treat. Customer selects an item, and goes to counter and makes an offer- can be rejected. Auctions are an invitation to treat, seller can choose whether to accept offer by bidder

*Fisher v Bell (1961)* - Display of goods in a shop window is an invitation to treat.

*Pharmaceutical Society of Great Britain v Boots Cash Chemist (1952)* (page 30)- The display of goods for sale on a supermarket shelf is an invitation to treat, and offer to buy is made by the customer presenting the goods to the cashier.

*Grainger v Gough (1896)* - Catalogues, price lists and advertisements are usually invitation to treat and not firm offers by the seller.

How offer can end:

- Death
- Time
- Revocation- can be revoked after a reasonable amount of time has passed
- Counter- offer -> original offer ends
- Loss of contractual capacity for either party (i.e. insanity)

*Byrne v Van Tienhoven (1880) (page 32)*- An offer can be revoked by the offeror at any time before acceptance, but the revocation is only effective once it is communicated to the offeree.

*Hyde v Wrench (1840)* - An attempt to accept an offer on new terms, not contained in the offer, is a rejection of the offer accompanied by a counter offer.

An offer can be revoked any time before acceptance and revocation also needs to be communicated to the offeree so that he/she/they are aware that a contract does not exist.

Acceptance must be communicated to the other party for contract to be binding

Exceptions:

- Offeror has dispensed with the requirement
- Performance of an act is its acceptance
- Postal acceptance rule

### Postal Acceptance Rule:

The postal rule states that a contractual acceptance is complete when the acceptance is posted, NOT when it reaches the offeror: see *Adams v Lindsell (1818) (page 35)* 106 ER 250 for the early origins of the rule

However, it can be excluded if a requirement is made that notice of acceptance is necessary (see *Bresson v Squires (1974) (page 35)*) or if the offer is made by instantaneous communication.

*Adams v Lindsell (page 35)*- The letter of acceptance sent is effective when it comes to the attention of the offeror, or if the postal rule applies, when it is posted.