

Elements of a contract:

1. **Offer**
2. **Acceptance**
3. **Consideration**
4. **Intention to be bound**
5. **Mutuality**
6. **Capacity**
7. **Legality**

Offer:

A promise to do or not to do something – together with an intention to be contractually bound on acceptance by the other party. Offers can be made to:

- One person
- An identified group of people
- World at large

Offers to the world at large:

Offers not directed to any specific person or persons but to anyone who becomes aware of them (other than those who are EXPRESSLY excluded from the offer).

Invitations to treat: statements made to others inviting THEM to make you an offer. Examples:

- a) Advertisements and circulars
- b) Display of goods in shops
- c) Calls for bids at auctions
- d) Calls for tenders

PUFF: obviously farfetched statements made to induce a contract but not intended to form part of the contractual obligation

- Sometimes statements are made to induce a person to enter into an agreement.
- Puff can be defined as exaggerated promises

Cross offers:

Occurs when 2 parties offers to one another at the same time and in the same or substantially similar terms

Termination of offers:

1. Revocation by the offeror (who made the offer)
 - a. Revoke the offer before it has been accepted
2. Rejection by the offeree
 - a. Rejection by offeree, expressly rejects it or presents a counter offer
3. Lapse of time: when something is no longer valid (equity will step in)

4. Change of circumstances: (Offering to sell the car when in good condition, however now the car got damaged)
5. Failure of a condition
 - a. Eg. Buying a property – usually subject to finance (if no finance, then no offer)
6. Death of a party
7. Supervening *incapacity*
 - a. Incapacitated will also mean termination of an offer

Acceptance:

A FINAL and UNQUALIFIED assent to the terms of an offer

Offer can only be accepted by those persons:

- To whom the offer was intended
- To whom it was communicated

What can be accepted?

What was offered (without any additions, deletions or conditions)

Counter offer: rejects the original offer and substitutes a new offer for it

RULES OF ACCEPTANCE:

1. Acceptance *generally* must be *COMMUNICATED* to be effective.
2. Such communications may be by *WORDS* or *ACTIONS*.
3. *SILENCE* cannot be *STIPULATED* as the required means of acceptance.
 - a. *Felthouse v Bingley (1862) 142 ER 1037*
4. An offeror can *WAIVE* his or her right to communication of acceptance.
5. The offeror can *REQUIRE* acceptance to be in a prescribed manner eg (in writing)

The postal rule: where acceptance is by mail or telegram, the acceptance will be complete when the letter is posted or the telegram is sent

The postal rule does not apply when:

1. The parties' dealings were protracted or contentious;
 - a. *Tallermann and Co Pty Ltd v Nathan's Merchandise (Vic) Pty Ltd (1957) 98 CLR 93*
2. It would produce manifest inconvenience or absurdity; or
3. The offeror expressly requires *ACTUAL* communication of acceptance

Revocation of acceptance: an acceptance can be revoked IF the revocation comes to the offeror's attention before he or she receives the acceptance

Intention to be bound: What separates a mere agreement from a contract is the parties' intention to be bound if agreement is reached

RULES FOR INTENTION TO BE BOUND:

1. With purely *SOCIAL or DOMESTIC* agreements it is *PRESUMED* that the parties *DID NOT* intend to create a *LEGALLY ENFORCEABLE* agreement.
2. With *BUSINESS or COMMERCIAL* agreements it is *PRESUMED* that they *DID*.
3. Both presumptions are *REBUTTABLE*.

Honour clauses: statements in an agreement expressly providing that the parties do not intend that their agreement will create legal rights or result in legal consequences

Consideration (is an exchange of promises):

- The price paid by the promisee for the promisor's promise
- DONT NEED THIS ELEMENT IF IT IS A DEED

Consideration can take the form of either:

- a. A benefit to the promisee
- b. A detriment to the promisee incurred at the promisor's request

3 types of consideration:

1. Executor (Still to occur)
2. Executed: (hasn't occurred)
3. BUT NOT past: (you can't have past consideration)[therefore isn't good consideration]

The concept of value:

1. For something to be a good consideration, it must have some sort of value in the eyes of the law:
2. BUT it need not be of an *equivalent value* to the promisor's promise.

PAYMENT OF A *LESSER SUM* ON THE DUE DAY FOR PAYMENT IS no satisfaction OF THE WHOLE OBLIGATION

Promissory Estoppel (Equitable remedy):

- It is an exception to the requirement for consideration
- **Promissory estoppel *ONLY APPLIES* where it would be COMPLETELY UNFAIR to allow one party to escape his or her obligations JUST BECAUSE one party**
- Only applies when
- the situation is completely unfair for a party to escape their obligations

Privity of contract:

Reflects at the private nature of contract

- “Privity” refers to *any relationship between two parties*.
- Privity of contract means that *ONLY* the parties to a contract have *rights under it*.
- Therefore, only the parties to a contract can:
 - enforce it; or h
 - have it enforced against them

privity of contract: The main exceptions:

1. *Joint Promisees.*
2. *Agency arrangements.*
3. *Assignments.*
4. *Statutory provisions*

Agency: when someone is acting for the principle (lecture 8)

Assignment: the contract is assigned to a 3rd party

4) Provision under insurance contracts act to cover 3rd persons