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1 Definition of a contract (p46)

1.1 Essential elements of a contract (p46) (a-f)

(c) valuable consideration, **exception** is where the promise is made under seal (contained in a formal deed), the valuable consideration is not necessary for the promise to be enforceable.

1.2 Different types of contracts

(1)

Simple contracts	Contracts Under Seal (Deed)
Require "consideration" to be enforceable	'consideration' is not required
No need for writing or signature to be enforceable*	Formalities required – must be "signed sealed and delivered"
Exceptions to this general rule (e.g. contracts relating to interests in land must be evidenced in writing)	

(2) Express and implied contracts (p47)

(3)

Bilateral	Unilateral
promise for a promise	accepted by actual performance rather than a promise

Case: *Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256*

(See 'Acceptance' communicated)

(4) Valid, voidable, void and unenforceable contracts

2 Offer and Acceptance

2.1 The Offer (p52-54)

(1)

Requirements:
enough information/detail to allow a binding contract to come into existence
offeror must intend to be bound by the offer
Rules:
must be communicated to the offeree
may be made to one person, a group of people or the whole world: <i>Carlill v Carbolic Smoke Ball Co.</i>
must be distinguished from an "invitation to treat"
may be revoked

(2) Distinguish from: Request for information & invitation to treat

Case: Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd [1953] 1 QB 4010

Facts: Boots operated a self-service store which included a pharmacy department. Customers would select items from the shelves and take them to a cashier's desk at one of the exits where they were paid for. When a drug was involved, a pharmacist supervised the sale. The Pharmaceutical Society alleged that Boots infringed the Pharmacy and Poisons Act 1933 requiring the sale of certain drugs to be supervised by a registered pharmacist. The claim failed at first instance and the Society appealed.

Held: customer's offer to buy goods is accepted by the cashier at front counter

Case: Grainger & Sons v Gough [1896] AC 325

Held: It would be wrong to say that the shop keeper is making an offer to sell every article in the shop to any person who might come in and that that person can insist on buying any article by saying 'I accept your offer'. I agree with the illustration put forward during the case of a person who might go into a shop where books are displayed. There is no contract by the shopkeeper to sell until the customer has taken the book to the shopkeeper.

Case: Harvey v Facey [1893] AC 552

Facts: 3 telegrams:

- i. "Will you sell us [property]? Telegraph lowest cash price."
- ii. "Lowest price for property £900."
- iii. "We agree to buy property for £900 asked by you. Please send us your title deeds...."

Buyer sues for specific performance of alleged contract in writing; argues final telegram is acceptance of offer to sell

Held: no contract existed between the two parties. The first telegram was simply a request for information, so at no stage did the defendant make a definite offer that could be accepted.

(3) auction sales: invitation to treat, offer from the bidder

(4) tenders: (end of p52)

(5) communication of the offer (not important)

(6) Termination of an offer

Revocation:	may occur any time before acceptance
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	terminates the offer (so it cannot be accepted)
	<p>will only be effective when communicated to/received by the offeree</p> <p>1 communication to the offeree</p> <p><i>Case: Dickinson v Dodds (1876) 2 Ch D 463</i></p> <p>Facts: 10 June: Dodds offers to sell houses to Dickinson for a sum of \$. Offer open until 12 June. 11 June: Mr B tells Dickinson that houses already sold to Mr A. 12 June: Dickinson tells Dodd he accepts the offer.</p> <p>Held: sufficient communication of revocation if reliable third party tells offeree that offer has been withdrawn</p> <p>2 acceptance in ignorance of purported revocation</p> <p><i>Case: Byrne v Van Tienhoven (1880) 5 CPD 344 (p54)</i></p> <p>Facts: Correspondence between the parties:</p> <p>October 1: VT writes to B offering to sell 1,000 boxes of tinplates</p> <p>October 8: VT posts letter withdrawing the offer</p> <p>October 11: B receives letter dated 1 October and sends telegram “Accept one thousand boxes”.</p> <p>October 15: B sends letter confirming acceptance</p> <p>October 20: B receives VT’s letter (posted 8 Oct)</p> <p>Held: ineffective withdraw because it hadn’t been communicated to offeree before it was accepted</p> <p>3 separate contract to keep an offer open (an option): (consideration by offeree or deed, otherwise the offer can be revoked by offeror even there was a promise to keep the offer open for a specified time)</p> <p><i>Case: Goldsborough Mort v Quinn [1910] 10 CLR 674</i></p> <p>Facts: the defendant by an agreement gave to the plaintiff in consideration the sum of 5 shillings the right to purchase certain property within one week at a stated price. Before acceptance the defendant repudiated the offer. The company accepted the offer within the week and brought a suit for specific performance of the agreement.</p> <p>Held: The option having been given for value was not revocable, and that the acceptance of the offer by the company constituted a binding contract which was enforceable by specific performance.</p> <p>4 revocation and unilateral contracts:</p> <p>Old view: implied promise not to revoke until reasonable time for performance had elapsed</p> <p><i>Case: Errington v Errington [1952] 1 ALL ER 149</i></p> <p>New view: offeror may revoke once acceptance has commenced but the offeror would be open to liability for damages to the offeree (breach of ancillary/implied promise)</p> <p><i>Case: Mobil Oil Australia Ltd v Welcome International Pty Ltd (1998) 81 FCR 475</i></p> <p>5 not revocable if the offer was in exchange for the doing of an act and the offeree has partly performed the act</p>

	when effective, offeror has no liability
Counter offer (but not from a request for information)	<p><i>Case: Hyde v Wrench (1840) 3 Beav 334</i></p> <p>Facts: W offers to sell farm to H for 1000 -H offers to give W 950 for the farm -W declines -H agrees to buy farm for 1000 -W no longer wants to sell to H so H sues for specific performance of the alleged contract.</p> <p>Held: the plaintiff made an offer of his own to purchase the property for 950 and he thereby rejected the offer previously made by the defendant. I think that it was not afterwards competent for him to revive the proposal of the defendant by tendering an acceptance of it; and that therefore, there exists no obligation of any sort between the parties</p> <p><i>Case: Stevenson Jacques & Co v Mclean (1880) 5 QBD 346</i></p> <p>Facts: Saturday: M offers to sell X tons iron at Y net cash per ton –offer to stay open until Monday. - A.m. Monday: S asks if M would accept Y for delivery over 2 months. M does not reply. - P.m Monday: S sends telegram to M accepting offer- M has sold the iron to 3rdparty. S sues for damages for breach of alleged contract (failure to supply the goods).</p> <p>Held: the telegram was not a counter-proposal, but a mere inquiry</p>
by other means:	failure of condition; lapse; death