

Skeleton Notes

General

- These notes will be used during Question 1: a problem question worth 60 marks and comprising 3 parts:
 - Q1: Part A is worth 10 marks (time spent: 15 minutes) (10:00-10:15)
 - Q1: Part B is worth 30 marks (time spent: 45 minutes) (10:15-11:00)
 - Q1: Part C is worth 20 marks (time spent: 30 minutes) (11:00-11:30)
- Total time spent on Q1: 90 minutes**

Contents – TOPIC LIST

- Formation of Contract
 - Agreement: Offer & Acceptance
 - Consideration
 - Intention to Creation Legal Relations
 - Certainty

 - Formalities
 - Privity/ parties
 - Capacity
- Estoppel
- Terms and interpretation
 - Express Terms
 - Identification
 - Construction
 - Extrinsic Evidence
 - Implied Terms
 - Consumer Contracts

Structure to follow

Introduction

- Tailor to the question and answer it
- Example:

Adam (A) may have an enforceable contract with Ben (B). To succeed, A must prove that valid offer and acceptance took place, both parties gave consideration and possessed intention to create legal relations (ITCLR), and that the contract was sufficiently certain.

Formation of Contract (sub-heading in red pen)

Agreement (offer & acceptance)

- An **offer** is made by one party (the 'offeror') and the offer is **accepted** by the other party (the 'offeree')

Offer (SH in underline) (or can talk about offer and acceptance together)

Brief intro in response to question and this specific issue in general

- Incorporate DEFINITION: '...the indication by one person to another of his/her willingness to enter into a contract with that other person on certain terms' (*Gibson*)

Objective Test:

- Does it appear to a RP in the position of the offeree (person receiving offer) that an offer was intended, and that a binding agreement would be made upon acceptance? (*Gibson*)
 - Consider the external manifestations of the parties (statement & conduct)

POTENTIAL TALKING POINTS (talk about facts of case, then show how it relates to the matters of law below – 'propositional style') – use **sub-headings**

- Consider arguments made in *Carlil*:
 - Mere puff: a MP (exaggerated sales talk) is not an offer – TEST per *Carlil*: use objective test = would it appear to a reasonable member of the public that an offer was intended? (would a RP deem it MP?)
 - Offers to the world at large: held in *Carlil* = it is possible to make offers to the world at large
- Invitation to treat (ITT):
 - ITT an invitation to others to make an offer or enter into negotiations. Not an offer because lacks sufficient indication of willingness to be bound.
 - Typical categories:
 - Most advertisements_(e.g. catalogues)
 - Goods displayed in shops_(*Boots*) – shop sales are examples of ITT. The offer is taking the goods to the counter to pay (customer is offeror)
 - Goods offered for sale online (*Electronic Transactions Act s14B*)
 - Property declared "on the market" at **auctions**_(*AGC v McWhirter*) – offer is accepted by 'fall of hammer'
 - Invitations to tender (*Harvela, Hughes Aircraft*)

Termination of Offer

An offer is no longer available for acceptance in the following circumstances

- Withdrawal or revocation of offer:
 - This can occur at any time before acceptance so long as communicated to the offeror (*Dodds*)
 - By words/action inconsistent with continuance of offer (*Dodds*)
 - EXCEPTIONS:
 - consideration has been paid to keep the offer open (*Goldsborough Mort*)

- if a unilateral contract, performance has commenced and there is an implied contract not to revoke (*Mobil Oil*)
- If there is a promise to hold an offer for the international sale of goods open (CISG, Article 16)
- Lapse of time:
 - Offer may be open for specified period – will lapse at end of specified time
 - If no period specified – will lapse after a “reasonable time” ->What is “reasonable” will depend on the context – apply **objective test**
- Death of offeror:
 - Offer will lapse on death of offeror (where offeree knows of death) (*Fong v Cilli*)
 - No clear authority re. whether offer will lapse on death of offeror when offeree **doesn't know** of death (depends on parties' intentions/circumstances)
 - 'Option contracts' (an agreement between buyer/seller that gives the buyer the option the right to buy or sell a particular asset at a later date at an agreed upon price) remain enforceable against deceased estate unless:
 - Personal services of deceased required; or
 - Intent of option was that it was not exercisable after death (*Laybutt*)
 - No clear authority as to whether an offer will lapse on **death of offeree**, however it seems that an offer would generally lapse on death of offeree (however, depends on the parties' intentions and the circumstances).