

## 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).