

Topic 2 (Part 1): Introduction to law of Contract; formation of a contract, Intention to create legal relations

Contract – An agreement between two or more parties which creates right and obligations which the law will enforce

1. Offer & acceptance (agreement)
2. Intention to create legal relations
3. Consideration
4. Capacity
5. Real/genuine consent
6. Legality of purpose/objective

Contract classifications: Simple contracts, formal contracts, express/implied contracts, bilateral/unilateral contracts, valid, voidable, void, unenforceable contracts

Simple contracts: Verbal or written

- Partly verbal & partly written
- Implied or express
- Consideration (value) required

Contract under seal/formal contract/deed

- Must be in writing & signed, sealed and delivered
- No consideration (value) needed as form creates legality

Express contract: intentions of parties clearly stated (orally or written)

Implied contract: Terms of contract are inferred from conduct of parties & all surrounding circumstances

Bilateral contract: promise for a promise

- Exchange of mutual promises, actual performances is to occur later
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Unilateral contract: offer invites acceptance by performance of an act (not a promise)

- E.g. offers of a reward *Gippsreal Ltd v Registrar of Titles* (2007) 20 VR 127

Valid contract: All essential elements present, enforceable against both parties

Voidable contract: party may avoid contract if wishes, e.g. where induced to enter contract by other party's dishonesty or threats

Void contract: Under law, no contract at (treated as not made)

Unenforceable contract: Initially seems to be valid but with a technical defect, e.g. contract required to be written but only made verbally

Offer and acceptance

- An offer is necessary to start an agreement
- Offers are proposals by a party to enter into a legally binding contract with another (when accepted)
- Genuine offers require intention to be bound if or when accepted
- Offers can be written verbal or implied by conduct
- Can include a firm promise to do/refrain from doing something

Invitations to treat (ITT) include

- **Shop displays, catalogues and advertisements** – *Leonard v PepsiCo* 88 F Supp 116 (1999);- *Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd* [1952] 2 QB 795
- **Auction sales** – *Harris v Nickerson* (1872-73) LR 8 QB 286, **but compare online auctions** – *Smythe Thomas* [2007] NSWSC 844 (eBay = offer)

Requests for information

- *Harvey v Facey* [1893] AC 552 & *Gibson v Manchester City Council* [1979] 1 All ER 974

There are exceptions to the general rule of ITT.

Case example: Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 (TB p. 61)

- “£1,000 is deposited with the Alliance Bank showing our sincerity in the matter” = more than “mere puff”
- Offer is to anyone who performs the conditions in ad – they have accepted offer.

Compare with

Leonard v PepsiCo 88 F Supp 2d 116 (1999) (TB p. 62)

- \$700,008.50 Harrier jet = mere puff
- Not ‘clear definite or explicit’ enough to constitute an offer.

Courts have made various rules about offers: Can be made to one or many parties (*Carlill v Carbolic Smoke Ball Co* [1893] 1QB 256)

- Must be communicated to offeree
- All terms of offer must be included
- Offer may nominate the manner of acceptance
- Offers may be revoked at any time before acceptance (unless value supplied for offer)

Offers will lapse/end in various ways: Rejection or if not accepted within time stated in offer

- If not accepted within a reasonable time (without time stated)
- If counter offer is made: *Hyde v Wrench* (1840) 49 ER 132 – plaintiff said he would accept earlier offer to sell at \$1000, defendant refused. Court: offer of \$1000 terminated by counter-offer to buy at \$950
- Death of either party before acceptance (with exceptions)
- By loss of contractual capacity by either party (insanity)

Acceptance: offer must be accepted for agreement to be made

- When a party to whom an offer is communicated (the offeree) signifies agreement /consent to the proposal of the offeror this generally constitutes acceptance