

Commercial Law (BTC1110) – Notes 2018

Week 2: Offer & Acceptance.

The Contract

Contract: A contract is an agreement between two or more parties under which legal rights and obligations are created which can be enforced in the courts.

Types of Contracts:

- Unilateral (Only one party is obliged)
- Bilateral (Two or more parties obliged)
- Simple (Oral, written, implied – this is the usual contract and it ALWAYS requires consideration. Can even be implied)
- Contracts Under Seal (“deed,” must be in writing and signed, sealed and delivered – this doesn’t require consideration)
- Express (Expressed in the form of words or price)
- Implied (Inferred from conduct)
E.G. Buying a coffee would be both express and implied. The express related to the cost of the coffee and asking to purchase it, and the implied is that the coffee will taste reasonably nice, and the shop won’t use sour milk.

The Elements of a contract include:

- Offer and Acceptance by both parties
- Intention by both parties to create legal relations
- Hold a form of consideration (to be legally forcible)
- Legal capacity of the parties to act
- Genuine consent by both parties
- The agreement must be legal

Void, Voidable, Valid and Unenforceable contracts:

- Valid: One in which all the elements are present, and this is enforceable against both parties
- Voidable: A contract which one party may void or get out of if they wish.
- Void: One in which (as far as the law is concerned) never even existed.
- Unenforceable: One in which is a valid contract, but by reason of some technical defect is not capable of being enforced by action by one or both parties.

The Offer.

Offer: A proposal by one party that is communicated to another person that indicates that the person is ready and willing to enter into an agreement if the other person accepts.

Alternatives to an offer include:

- Mere Puffs: exaggerated statements
- Invitations to Treat: person who is prepared to negotiate (auction or supermarket shelves)

- Statement requesting or supplying information

Communication – For an offer to be made there must be adequate communication (with internet, the rule is that the communication has been communicated once the person's device is capable of receiving the communication).

Options: a promise to keep an offer open for a period of time so people can have some time to consider it. There must be consideration.

Offer Lapse: An offer may lapse if –

- It is not accepted within the stated time, or within a reasonable time
- A counter offer has been made
- A party dies or is incapacitated before acceptance

Acceptance

1. Acceptance must be communicated to the offeror before it is valid (Online includes when the message is receivable)
2. Acceptance may be implied by conduct
3. Offeror cannot impose silence by offeree as a method of acceptance.
4. In Unilateral contracts, acceptance is by performance as the offeror waives the right to communication of acceptance.
5. Acceptance must be unconditional
6. Acceptance must follow conditions (if any) in the contract
7. Acceptance can only be made by the party to whom the offer was made.

Vagueness, Uncertainty or Incompleteness

- If a contract is deemed too much of any of these terms, it will NOT be enforceable. It is difficult to know this, but the parties need to both be fully aware of every term and clause that they have agreed upon to ensure this doesn't occur.