

→that the following two topics will *not* be examined: promissory estoppel and innominate terms.

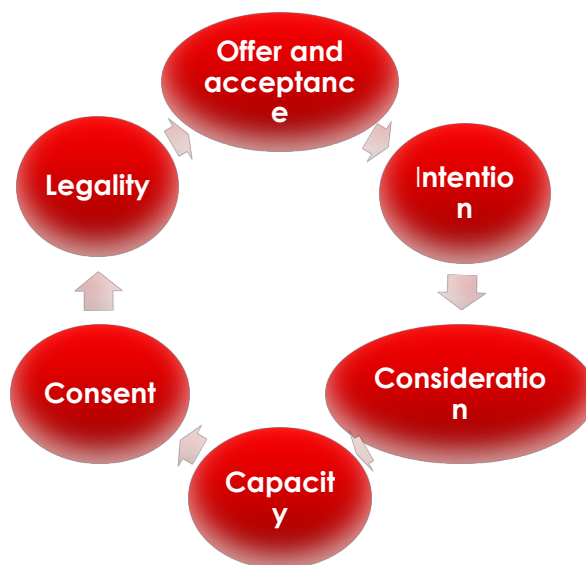
❖ Contract definition

-A contract is an **agreement** between **two or more parties** under which **legal rights and obligations** are created which can be **enforced**, if necessary, in the **courts**.

Characteristics

1. **Oral V signed**
2. **Signed V unsigned**
3. **Express** = clear intention stated either orally or in writing V **implied** = term of the contract is inferred from the conduct of the parties and the surrounding circumstances .e.g enter taxi= promise to pay fare to destination & agrees to transport you
4. **One- sided(Unilateral)** where only one party may have an obligation to do something For e.g offer of reward for the return of a lost dog is accepted by the return of the dog.
V **two sided(bilateral)** where both parties have rights and obligations (A PROMISE FOR A PROMISE)

Element of enforceable contract.



❖ Offer and acceptance

→ **Consent or agreement** is the cornerstone of contract law

- In case of dispute ask whether there was an **offer and an acceptance of that offer**.

→ **What is an offer?**

- an offer is a **proposal** by one party to enter into a legally binding contract with another. Offer only exist if term are clear. Offeror **must intend** that it can be **converted into legally binding obligation** by acceptance

- **definite and clear undertaking to be bound contractually.**

Carlill v Carbolic Smoke Ball Co

Sometimes **not** clear communication = **offer, mere puff or invitation to treat**

11 ⇒ Advertisement can be an offer or a mere puffery(not to be taken seriously)

❖ Acceptance

An acceptance = definite and unqualified assent to an offer

- In cases involving advertisements the offer is usually made by the customer.
- *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd*
- The status of Ben's alleged acceptance must now be considered.

An offer must first be made by one party and accepted by the other before there is a legally binding agreement. In *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* the court decided that the display of goods was an invitation to treat. The offer is made when the items are taken to the counter for purchase. Acceptance occurs when the person to whom the offer is directed communicates his assent to the offeror's terms without further discussion or negotiation.

In a retail situation this occurs when the sales assistant accepts payment for the goods.

- When Ben says he 'accepts' the offer on the plasma 3D TV, he is in fact making an 'offer'. That is, he is offering to buy the television for \$7,500 and the contract will only be made if Mary accepts.

❖ **Mere puff & unilateral contract & invitation to treat**

Unilateral contract- ... Not a puff	- one-sided contract- one side (offeror) made a promise to do something in exchange for an act by another person (the offeree)	- <i>Carlill v Carbolic Smoke Ball Co</i> 3.40
Mere puff	- Statement containing exaggerated claim and assertion - Reasonable person would not take it seriously	Compare <i>Leonard v Pepsi (CACL 3.60)</i>
invitation to treat	<p>- is just an indication of willingness to deal or trade or negotiate.</p> <p>- <i>not</i> an offer</p> <p>- Most shop display, catalogue, advertisement,</p> <p>- online contracting... When accept to pay = invitation to treat, When pay = contract</p> <p>- Auction saying diff prices = invitation to treat when say sold = offer Accept = contract</p> <p>Online auctions eg eBay</p>	<p>- <i>Gibson v Manchester CC (CACL 3.80)</i> - <i>Harvey v Facey (CACL 3.90)</i> - <i>Pharmaceutical Society of GB v Boots CC (CACL 3.110)</i></p> <p>- <i>Harris v Nickerson (CACL 3.140) p1</i></p> <p>- <i>Smythe v Thomas (CACL3.155) p2</i> Pg 66</p>