

# CONTRACT LAW EXAM NOTES – T1 2017

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**Definition:** A contract is a promise or set of promises that are legally binding.

- **Express:** terms agreed on by parties
- **Implied:** terms that haven't been agreed on by parties (Types) (Contains both these terms)
- Can be In Writing/Verbal
- Parties in contract can agree on whatever they choose
- Once a contract has been validly formed, courts will always try to uphold the contract
- Purpose of a contract is to set out the rights and obligations of each party (if not can sue for damages)
- Contract law is largely judge made law
- **Neoclassical Contract Theory:** Helps protect parties with weaker bargaining power
- **Classical Contract Theory:** Freedom (free to contract on whatever subject, limits in illegality, fraud, consumer protection) and sanctity (sacred, must be enforced) of contract

**Important to have contracts as it:**

- Is used through market trade, and everyone transaction entered into, almost every consumer and business transactions are conducted involving a contract of somewhat.

**Elements of a Contract**

- Agreement
- Capacity
- Consideration
- Intention (to create legal relations)
- Formalities (compliance with these)

**Methods of Answering Questions**

- Issue
- Rule/Law
- Application
- Conclusion

**Methods of Answering Questions**

**How CONTRACTS are formed (principles):**

- There must be an offer (contracts are self-imposed) plus acceptance
- Two parties must have the intention to enter into a legal relationship
- Person accepting must pay consideration for the offer made

**Classification of Contracts:**

- a) According to weather both parties are **bound** (uni/bi – lateral)
- b) According to weather the contract is **under seal** (signed, in writing, formal contract, agreement recorded in deed)
- c) According to weather terms are **express** or **implied** (express: parties articulate all terms in contract, implied: no terms are expressed, exist due to parties conduct)
- d) According to **subject matter:** made about any subject matter, provided it is not illegal at common law or under statute (e.g. goods, land)
- e) According to their **effectiveness:**
- f) According to the **parties:**

# CONTRACT FORMATION

## AGREEMENT

### Offer

#### **What is an OFFER?**

An offer is a clear definite explicit proposal made by one party to another which leaves no room for further negotiation and showing an intention to be bound.

*"Smith v Hughes"* (nature of an agreement) – agreement must be entered into voluntarily, and no illegitimate pressure, nature is objectively determined.

*"Carlill v Carbolic Smoke Ball"* (to whom can an offer be made)

**Request for Information:** not intended to have legal consequences, affirmative response will not give rise to a contract

**Invitation to Deal:** no intent for affirmative response to constitute agreement, merely further negotiation (distinguished: *"Pharmaceutical Society V Boots"* case, displaying goods in a self-services store) (displaying goods, auctions, advertisements, "bait" advertising, calls for tenders)

**TENDERS:** standing offer involves several separate contracts, contract only formed when order made, invitation to deal

### **Electronic Transactions Act 1999**

#### **4 Rules regarding offers:**

1. Offers can be made to one person/group or entire world
2. Invitation to deal are not offers
3. Mere responses to requests for information doesn't constitute an offer (pg. 45, Harvey case)
4. Offers are **TERMINATED** by any of the following:
  - **Revocation** (withdrawal of an offer)
    - An offer can be revoked any time prior to acceptance, even if a promise was given to keep offer open for a longer period of time unless that promise was separately paid for.
    - There must be proper communication to the offeree in order for revocation to occur
    - In order for revocation to be effective it must hit the offeree before the offeree accepts the offer
    - *"Dickinson V Dodds"*
      - **Rejection**, offeree rejects offer, does not accept offer, offer then cannot be accepted, must be communicated to offeror
      - **Counter-Offer:** offeree's response to an offer, indicating a willingness to enter in a contract but on different terms to that posed by the offeror, new offer created.