

LEGAL INSTITUTIONS FINAL NOTES

LEGAL PROBLEM SOLVING:

1. **Classifications of law:**

- *It is important to understanding the different classification of law in order to accurately apply them to the IRAC method.*
- There are a number of classifications of law:
 1. Public law: criminal law, constitutional law, administrative law, evidence, practice and procedure, etc.
 2. Private law: tort, contract, real property, etc.
 3. Commercial law: commercial transactions, law of associations, etc.
 4. National law.
 5. International law.
 6. Common law system:
 - a. Civil/common law (case law/judge-made law).
 - b. Statute law (legislation/Parliament-made law).
 - c. Equity.

Distinctions between Civil Law and Criminal Law	
<i>Civil Law</i>	<i>Criminal Law</i>
Burden of Proof: 'Balance of Probabilities'.	Burden of Proof: 'Beyond Reasonable Doubt'.
Case between two or more parties.	Case between the State and accused party.
Remedy is compensation for loss or injury.	Remedy is fine or imprisonment (i.e. a form of retribution).

2. **Overview of problem-solving methodology:**

- The "IRAC" method should be adopted for legal problem-solving.
- I = Issue.
 - The legal problem that needs to be answered to reach an outcome.
 - Typically phrased as a question or a "whether..." as the issue needs to be answered by the conclusion.
 - E.g. "Does a contract exist between Jim and Kathy?"
 - E.g. "Whether a contract exists between Jim and Kathy."

R = Rule.

- The relevant law (statute or case law) applicable to answering the issue.
- CASE LAW: Each case learned will have precedent/s that are the authority to later cases. When using case law authority, look to the *ratio*

decidendi (and possibly also *obiter dicta*) of the case (i.e. the precedents established), NOT the trivial facts and outcome of the case, as these are rarely relevant.

- E.g. when distinguishing *Felthouse v Bindley*, only required to make a distinction that silence did not constitute acceptance – rather than discussing facts as to the sale of the horse.
- STATUTE: When using legislation authority, don't summarise the entire section/Act – instead, apply it specifically and concisely.

A = Application.

- Applying the rule set out in case law and statute law to the MATERIAL facts of the problem question.
- Occasionally, there will be more than one rule and application of that rule in answering a single issue.
 - E.g. when answering the issue of whether there was a contract, we simultaneously applied law of offer and acceptance to the facts.

C = Conclusion.

- From applying the rule/s to the relevant facts, reaching an answer to the issue.

Note: often there will be multiple issues needing to be addressed in a problem question in order to reach an outcome/provide comprehensive advice.

3. **Extended overview of contract law:**

CONTRACT: An agreement that is enforceable at law.

- The law of contracts is found mostly in case law.
- There are some statutes which determine the law of contracts also – e.g. *Unfair Contracts Act*.

A contract arises when:

OFFER + ACCEPTANCE = AGREEMENT + INTENTION +
CONSIDERATION

Offer:

- An offer is, “the indication by one person to another of his or her willingness to enter into a contract with that person on certain terms” (Carter and Harland).

IF RELEVANT: *Harvey v Facey* – an offer is not the mere request for or supply of information. It is also not a statement of the lowest price at which the vendor would sell.

IF RELEVANT: *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* – an offer is not an invitation to treat. The offeror must intend to be bound by the offer.

IF RELEVANT: *Carlill v Carbolic Smoke Ball* – distinguishes a unilateral contract (an offer made by vendor to world at large) from a bilateral contract (an offer made by vendor to specific person).

Acceptance:

- An acceptance is a final and unqualified assent to the terms of an offer made in the manner specified or indicated by the offeror.

IF RELEVANT: *R v Clark* – the offeree must have the offer in mind at the point of acceptance.

IF RELEVANT: *Felthouse v Bindley* – silence is not a sufficient form of acceptance.

Intention:

- “To create contract there must be a common intention of the parties to enter into legal obligations, mutually communicated expressly or impliedly.”

IF RELEVANT: *Balfour v Balfour* – in social and domestic agreements there is a presumption against an intention to enter into legal obligations.

IF RELEVANT: *Wakeling v Ripley* – this presumption is rebuttable.

Consideration:

- Consideration is the price of value paid for the promise.

Contents of a contract:

- Misrepresentations do not form part of a contract – possible actions in equity or statute.
- ‘Puff’ does not form part of a contract – no action in equity but possibly under statute.
- Terms of a contract form part of the contract.
- Terms can be a condition (an essential term), a warranty (an ancillary term) or an innominate term (an intermediate term).

IF RELEVANT: *Hospital Products Ltd v United States Surgical Corp* – look to intention of the parties when determining whether it is a term of the contract.