Contract Script

Offer

In order for there to be a valid contract, the court will need to determine if there was an offer. An offer is an indication by one party (the offeror) to another (the offeree) of a willingness to contract on a particular set of terms (Australian Woollens Mills).

The court will use an objective test to determine if there was an offer. The court will decide would a reasonable person in the offeree's position consider there to have been an offer made? (Carbolic) On the facts, it is likely made out that there was/was not an offer because [inset facts]

<table>
<tr><td colspan="2">Issue: Was a valid offer made?</td></tr>
<tr><td colspan="2">The first issue is whether a [insert offeror's name] made a valid offer to [insert offeree's name]. In order for a legally binding agreement to arise, one party must make an offer that is capable of acceptance by another. This offer must clearly indicate a willingness to be legally on specific terms.</td></tr>
<tr><td colspan="2">Definition of offer</td></tr>
<tr><td colspan="2">An offer is defined as an indication by one person (the offeror) to another (the offeree) of a willingness to contract on certain specific terms, with the intention that a binding agreement will result if the offer is accepted (Australian Woollen Mills v Commonwealth)- mere statements of intention to do something in future are not offers)

→ On the facts, [Insert what was said or done by offeror], this appears to show [insert whether or not a willingness to be legally bound was demonstrated].</td></tr>
<tr><td colspan="2">Objective Test- Would a reasonable person believe an offer was made?</td></tr>
<tr><td colspan="2">Whether a statement is an offer is assessed objectively, not subjectively. This question is whether a reasonable person in the positive of the offeree would think the offeror intended to be legally bound by their statement.
(Carlill v Carbolic Smoke Ball Co)- the company's ad was found to be a valid offer because a reasonable person would see it as a serious, especially due to the £ 1000 deposit.

→ On the Facts, [Insert who said what], a reasonable person in [insert offeree]'s position would [insert whether they would view it as an offer or not]. Because [insert reason- e.g. the term were definite/ there was a reward/ the language was vague].</td></tr>
<tr><td colspan="2">Was it an actual offer, or something else?</td></tr>
<tr><td colspan="2">Was all proposals or statements being legally enforceable offers. The following categories are not offer.</td></tr>
<tr><td>Mere Puff</td><td>A mere puff is a statement so obviously exaggerated or promotional that no reasonable person would take it seriously. (Carlill v Carbolic Smoke Ball Co)- although it looked like an add, the deposit of £ 1000 showed it was not a puff.

On the facts, [INSERT PARTY] stated that [INSERT FACT – e.g., "this house is perfect and there's nothing to spend!"]. While this may appear to promise a certain standard, it mirrors the language found in Mitchell v Valherie, where similar advertising phrases like "Nothing to Spend – Perfect Presentation" were held to be mere puffery. Therefore, a reasonable person would likely interpret this as sales talk rather than a binding offer. [Insert why- e.g., it was vague/ humorous/ serious and specific]/</td></tr>
<tr><td>Non-promissory language

Supply of information</td><td>Where language used is vague or uncertain and does not clearly commit the party to be bound, it is not an offer.
Gibson v Manchester City Council- "may be prepared to sell" was to uncertain, not an offer.

→ On the facts, the phrase "[Insert phrase]" is [likely/ unlikely] to be an offer because it lacks promissory intent.

Alternatively, if [INSERT PARTY] merely provided [INSERT FACT – e.g., "I could sell this to you for $1,000"] in response to a request for information, this is akin to the</td></tr>
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<tr><td></td><td>facts in Harvey v Facey, where providing the lowest price was not an offer but a supply of information. The absence of a firm promise and the context would suggest no offer has been made.</td></tr>
<tr><td>Invitation to treat</td><td>An invitation to treat is an invitation to negotiate or receive offers- it is not an offer itself.
Examples include:
• Goods displayed in a shop (Pharmaceutical Society v Boots)
• Advertisements (Partridge v Crittenden)
• Auctions, unless stated “without reserve” (AGC v McWhirter)
• Tenders, unless promise to accept highest/lowest bid (Harvela Investments)
• Online listings (ETA s 14B)

→ On the facts, [Insert whether it was a display/ ad/ website/ public announcement]. This is [likely /unlikely] to be an offer because [insert why-e.g. it was open to the world/ lacked communication/ invited negotiation].</td></tr>
<tr><td colspan="2">Offer sufficiently clear + capable of acceptance
Where [INSERT PARTY] said [INSERT FACT – e.g., “I’ll sell you my car for $8,000, let me know by Friday”], this constitutes a clear, definite, and communicated promise capable of being accepted. It satisfies the objective test, as a reasonable person would believe that [INSERT PARTY] intended to be legally bound if [INSERT OTHER PARTY] accepted.

Offer communicated?
The offer must be brought to the attention of the offeree to be effective. If [INSERT PARTY] was unaware of the offer, or had not received it prior to purported acceptance, no contract arises. (See R v Clarke (1927); Taylor v Johnson).</td></tr>
<tr><td colspan="2">Unilateral Offer</td></tr>
<tr><td colspan="2">An unilateral offer is a promise made to the world at large, accepted by performing a specific act. (Carlill v Carbolic Smoke Ball Co)- the ad was a unilateral offer; acceptance occurred through use of the product.

→ On the facts, [Insert statement] was directed at [insert audience] and offered a reward for [insert performance]. This is resembling a unilateral offer because it promised something in return for performance, not a reciprocal promise.</td></tr>
<tr><td colspan="2">Termination of offers</td></tr>
<tr><td colspan="2">Even if a valid offer has been made, it must be open at the time of acceptance. Offers may be terminated in the following ways:</td></tr>
<tr><td>Revocation</td><td>An offer may be revoked at any time before it is accepted, but the revocation must be communicated to the offeree. (Dickinson v Dodds)- communication via a third party was sufficient to revoke the offer.

→ On the facts, [Insert how revocation was made or learned]. Because [insert party] was made aware of the revocation, the offer [was/was not] terminated before acceptance.

If [INSERT PARTY] attempted to accept after [INSERT OTHER PARTY] revoked the offer, the acceptance would not be effective unless [INSERT PARTY] had no notice of the revocation (Goldsborough Mort v Quinn). Revocation is only effective upon communication to the offeree.</td></tr>
<tr><td>Option contracts (exception)</td><td>If the offeree has given consideration to keep the offer open for a specific period, the offer cannot be revoked during that time. (Goldsborough Mort v Quinn)- the offer was irrevocable because consideration was provided for the option.</td></tr>
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	→ On the facts, [Insert if consideration was paid to keep the offer open]. Therefore, offer [was/was not] revocable.
Revocation of unilateral offers	Revocation of a unilateral offer may not be allowed once the offeree has commenced performance, epically where there is reliance. (Mobil Oil Australia v Lyndell Nominees)- the court may protect offerees where revocation would be unconscionable. → On the facts, [Insert whether performance had started and whether there was reliance]. Therefore, revocation is [likely/ unlikely] to be permitted. If this is a unilateral contract (e.g., [INSERT FACT – "$500 to whoever finds my dog"]), and [INSERT PARTY] had already commenced performance, revocation may be restricted. Courts may imply a collateral contract not to revoke the offer or invoke estoppel if [INSERT PARTY] relied on the promise (*Carlill v Carbolic Smoke Ball Co; Mobil Oil Australia*).
Death of offeror	If the offeree knows the offeror has died, the offer lapses. If unaware, the result is unclear. (Re Irvine)- awareness of death rendered the offer invalid. → On the facts, [Insert whether either party died and whether this was known]. The offer [is/ is not] likely to survive.
Failure of condition	If the offer was subject to an express or implied condition that is not satisfied, the offer terminates. → On the facts, [insert condition and whether it was met]. This means the offer [remained valid/ was terminated].
Rejection and counteroffer	If the offeree rejects the offer, or makes a counteroffer, the original offer is terminated. (Hyde v Wrench)- counter offer destroyed original offer. A mere inquiry is not a rejection. (Stevenson v Mclean)- asking about terms did not terminate the offer. → On the facts, [Insert party's] response was [a rejection/ a counteroffer/ a mere inquiry], so the original offer [was/was not] terminated.
Conclusion	
It is [likely/unlikely] that [insert offeror] made a valid offer to [insert offeree]. The statement or conduct shows [insert summary], and a reasonable person would [insert belief]. The offer was [still open/ revoked/ lapsed] at the time of the purported acceptance. On balance, [INSERT PARTY]'s statement of [INSERT FACT] is [insert your conclusion – e.g., "not a valid offer as it constitutes only a supply of information", OR "a valid offer as it displays intention to be bound, certainty of terms, and was communicated to the offeree"]. Accordingly, [INSERT OTHER PARTY] would [be able / not be able] to accept it in law and form a binding agreement.	