

LAW OF CONTRACT

Contract: an **agreement** between **two or more parties** under which **legal rights and obligations** are created which will be **enforced** in the **courts**. A contract is a promise or a set of promises that the law will enforce.

- **Primary role of a contract is to:**
 - o Facilitate planning by offering *certainty and stability*.
 - o Allocate risk.
 - o e.g. a student signs a one year lease for a house near campus. **Planning is facilitated** through signing the lease. **Risk is allocated** as the landlord has taken on the risk that housing costs may rise, and the student takes on the risk that they may fall.

Classification of contracts:

- **Simple contract:** all contracts (other than contracts under seal) are termed “simple contracts”. A simple contract may be oral, wholly or partly in writing, or may even be implied by the conduct of the parties. Every simple contract must be supported by consideration.
- **Express contract:** the usual type of contract, where everything is expressed in the contract. e.g. an agreement is signed to buy a car and the price is to be paid by instalments over the next 12 months.
- **Implied contract:** the contract is implied through your conduct. e.g. hailing and entering a taxi. By this act the law implies that you promise to pay the fare to your destination and the taxi driver impliedly agrees to transport you.
- **Bilateral contract:** each person is making a deal. Consists of the exchange of mutual promises, the actual performance of which is to occur at some future time.
- **Unilateral contract:** an offer is made inviting acceptance by actual performance rather than by a promise. e.g. the offer of a reward for the return of a lost dog is accepted by the return of the dog. No obligation on both parties. A unilateral contract “comes into existence when one party promises to do something in return for acts performed by the other party, with the intention of being contractually bound if those acts are performed, and the other party accepts that promise by performing his or her side of the bargain”: *Gippsreal Ltd v Registrar of Titles (2007) 20 VR 127*.

A **valid** contract is one in which all the essential elements are present. It is enforceable by both parties.

A **voidable** contract is one which a party may get out of if that party wishes to do so e.g. a person who was induced to enter into a contract by the other party's fraud may avoid the contract.

A **void** contract is one which, as far as the law is concerned, never existed at all e.g. a contract to commit a crime.

An **unenforceable** contract is one which is prima facie a valid contract but because of some technical defect cannot be enforced e.g. a contract made verbally which is required by statute to be evidenced in writing.

OFFER

An **offer** is a proposal by one party to enter into a legally binding contract with another. The offer may be made in writing, orally or implied by conduct. An offer can only exist if there is a firm promise to do or refrain from doing something. The person making the offer must intend that it can be converted into a binding obligation by acceptance.

Offers v invitations to treat:

- An offer will give rise to binding obligations on acceptance
- An invitation to treat is just an indication of willingness to deal or trade. It is not an offer.
- The display of an article in a shop window, even with a card indicating its price, is not generally an offer but merely an invitation for someone to make an offer of purchase. A prospective purchaser makes the offer to purchase which the shopkeeper may either accept or reject.
- The distinction has relevance to contract formation in today's online marketplace: in *Smith Thomas* the court held that placing an item for sale on eBay did not constitute merely an invitation to treat but was rather an offer to sell the item

Pharmaceutical Society of GB v Boots Cash Chemists [1952]: (offer v invitation to treat)

- Boots Cash Chemists opened the first large self-service pharmacy in England.
- Medicines and drugs were displayed on the shelves for customers to select and take to the register where a qualified pharmacist was always in attendance.
- The *Pharmacy Poisons Act 1933* (UK) required prescribed drugs to be "sold" under the supervision of a pharmacist.
- The Society argued that an offer was made when the chemist placed the drugs on the shelves and the offer was accepted and a contract made when the customer placed the drugs in the basket.
- Boots argued that its placing of the goods on the shelf was an invitation to treat and the customer made the "offer" by taking it to the cashier who "accepted" the offer under the watchful gaze of a registered pharmacist.

- **The court accepted Boots' argument:** "the mere fact that a customer picks up a bottle of medicine from the shelves ... does not amount to an acceptance of an offer to sell. It is an offer by the customer to buy and there is no sale affected until the buyer's offer to buy is accepted ... the sale takes place under the supervision of the pharmacist".

Auction sales: the auctioneer's call for bids is only an invitation to treat. Where a bid is made, such constitutes an offer from the bidder to buy at that price. The auctioneer may then either accept/reject the bid.

Without reserve: an auction where the vendor has not placed a lower limit on the price he/she will accept. (must sell to the highest bidder irrelevant of whether the vendor accepts this price offered): *Barry v Davies* [2000] 1 WLR 1962.

An offer can be made to: a specific person or persons; a particular class of persons; to the 'world at large'

Carlill v Carbolic Smoke Ball Co [1893]: (*who an offer can be made to and mere puff v offer*)

- The Company published an advertisement for its "carbolic smoke ball" claiming it would prevent the onset of influenza and offered to pay 100 Euros to any customer who, despite using the ball as directed, caught influenza.
- The company deposited 1,000 Euros with its bankers, "showing our sincerity in the matter".
- Mrs Carlill saw the advertisement, bought and used a smoke ball as directed, and nevertheless caught influenza.