Contract I: essential features of a contract

Key facts

- Offer and acceptance are the first stages in establishing an agreement that may form a legally binding contract. The terms that will bind the parties are included here.
- Offers may appear similar to an invitation to treat (which is an invitation to negotiate) but they must be distinguished so as to determine who the offeror is and which party(s) may accept.
- Generally, items on display on the shelves in a shop, advertisements in newspapers, items displaying a price tag in shop windows, and information in auction catalogues have been held to be invitations to treat.
- An offer may be accepted at any point until it is terminated.
- Acceptance can only be made by the offeree or his/her agent.
- Consideration is the bargain element of a contract and may be referred to as the ‘price of a promise’.
- Consideration must be legally sufficient but need not be adequate.
- The parties must intend for an agreement to establish legal relations to create an enforceable contract and presumptions exist for social/domestic agreements and business/commercial agreements.
- The courts will look to the actions of the parties to identify terms of a contract, but remember that these must be drafted carefully and precisely if they are to be relied on as the courts will not rewrite a poorly drafted agreement.
Essential features of a contract

The following features must be present in a contract to make it legally enforceable.

**OFFER**
An expression on willingness to be bound on terms. Terms established by the offeror here – and only those included at this stage form part of the contract.

**ACCEPTANCE**
The party(s) to whom the offer has been made communicates a full and unconditional acceptance of the terms of the offer (exceptions exist in unilateral offers and the postal rule).

**CONSIDERATION**
The bargain element of the contract, also known as ‘the price of a promise’. A simple contract may be a bad bargain, but it must be a bargain to be enforceable.

**INTENTION**
The parties must intend that the agreement is to establish a legally binding contract rather than simply a social/domestic arrangement.

**CERTAINTY**
The terms of the contract must be sufficiently clear and precise to be enforceable.

Unilateral and bilateral contracts

Bilateral contracts are those where one of the parties offers to do something in return for an action by the other party; they exchange promises. For example, one person agrees to wash the other’s car in return for having his/her lawn mowed. Acceptance of the offer must be communicated for an agreement to be established.

A unilateral contract is one where a party promises to perform some action in return for a specific act by another party, although that other party is not promising to take any action. Acceptance may take effect through conduct and need not be communicated. For example, in *Carlill v Carbolic Smoke Ball Co [1893]* the Carbolic Smoke Ball Co advertised its product and stated that it would pay customers £100 if they contracted influenza after using the smoke ball as directed. Carlill was under no obligation to enter the contract, nor was she required to communicate her acceptance of the offer. The contract was only formed when Carlill took her actions (ie by her conduct) and thereby accepted the offer.

**Offer**

An offer is a set of terms under which the *offeror* (the party making the offer) is willing to be bound. An offer is made to the *offeree* (the recipient of the offer) and he/she must accept in the method expressed (if stipulated) by the offeror.
Invitation to treat

An invitation to treat is a willingness to accept offers or enter into negotiations. In this context, the word ‘treat’ means to negotiate, and hence it can be viewed as an invitation to negotiate for a good or service. The justification for invitation to treat is pragmatic, as without it, retailers would be making standing offers to the whole world which, if they were unable to fulfill, would result in a breach. Examples can be seen where traders sell goods in advertisements, auctions, and negotiations.

Exception do exist, and where greater details are present in adverts with regards to price, quantity, and availability etc, then an advert can amount to an offer rather than invitation to treat (see Leftkowitz v Great Minneapolis Surplus Stores [1957] – although this is a judgment from the United States and is of persuasive authority only).

Advertisement are a potentially problematic area because the words used can lead buyers to assume an offer has been made. The courts will often interpret advertisements in newspapers, magazines, and journals as an invitation to treat. With advertisements generally, whether these are through television, radio, or the internet, the same rules apply.
Invitation to treat

Partridge v Crittenden [1968] 1 WLR 1204

Partridge had placed an advert in a magazine that read ‘Quality British Bramblefinch cocks, Bramblefinch hens . . . 25s each.’ The buyer responded to the advert, sending payment, and he received a bird. Partridge was then charged with offering for sale a bird contrary to the Protection of Birds Act 1954. Partridge’s defence was that the advertisement was not an offer to sell but an invitation to treat and the Divisional Court followed previous rulings and agreed. Therefore no offence had been committed.

Negotiations occur between parties in the contract process. Questions of item, price, quantity, and the terms surrounding any possible contract may come under consideration by the parties. This can lead to disagreements as to when an offer may have been made that is capable of acceptance. The courts have had to look to the parties’ statements and other evidence to ascertain their true intentions (%Harvey v Facey [1893]).

Mere negotiations between parties are insufficient to create a contract and the courts will not imply an offer in these situations. Similarly, a request for information will not amount to an offer capable of acceptance, or be considered a counter-offer that would extinguish the offer.

Gibson v Manchester CC [1979] 1 WLR 294

Gibson was a tenant and occupier of a Council house. He had wished to purchase the house under the ‘right to buy’ scheme. The Council wrote to Gibson informing him that it might be willing to sell the property and Gibson responded saying he wished to go ahead with the purchase. When political control of the Council changed, the policy of right to buy was revoked. Gibson claimed a breach of contract as the Council refused to continue with the sale but the House of Lords held that the Council never made an offer to sell and hence there could be no valid acceptance. All that had occurred in this case were the first steps towards negotiations for a sale which never reached fruition.

Storer v Manchester CC [1974] 3 All ER 824

The Council sent Storer an application form to purchase his council house which, once completed by him, it promised to sign and complete the sale. He completed the form as per the instructions but the Council failed to sign and return the application as promised. Again, a change in political control of the Council led to a reversal of the Council house sale programme including Storer’s sale, but it was held that a contract had been formed. The letter from the Council was a firm intention to proceed with the sale when Storer returned the application form, and the Council was bound to proceed with the sale.
Invitation to treat

Termination of an offer

An offer may be terminated as a result of the actions of the offeror or by expiry due to the passage of time. It is advisable for the offeror to include terms as to when the offer will expire. This prevents confusion and requires the courts to consider the aspect of reasonableness.

The following are examples of how an offer can be terminated:

- the offeror’s death: an offer not accepted before the offeror’s death dies with him/her. If the offer has been accepted and then the offeror dies, where practicable, the contract must still be performed (by the dead person’s estate or executors: *Bradbury v Morgan* [1862]). This will not apply to contracts involving personal service (here the contract will be frustrated);
- expiry of a fixed time limit: if the time limit for acceptance expires, then the offer dies and cannot be later accepted;
- offer expires after a reasonable time: a contract may include a time limit after which the offer will expire. Where none exists, the offer will automatically expire after a reasonable time (which is dependent on the facts of the case). See *Ramsgate Victoria Hotel v Montefiore* (1865–66);
- rejection: where the offeree rejects the offer, it is destroyed (this can be explicit in words or through his/her conduct);
- a counter-offer: negotiations involve offers and counter-offers, but a counter-offer acts to ‘kill the original offer’ (*Hyde v Wrench* [1840]); and

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*Hyde v Wrench* [1840] 3 Beav 334

An offer of the sale of property was answered with a counter-offer of a lower amount. This counter-offer destroyed the first offer so it could not later be accepted.

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- revocation: The offeror may revoke the offer at any time before it is accepted; even where he/she has promised to keep the offer open for a specific period of time (insofar as it is communicated by the offeror/reliable third party: *Dickinson v Dodds* (1875–76)). If such an element appears in an examination question, remember to identify the exception to this general rule where the offeree has provided consideration for the offer remaining open.

In situations of ‘unilateral’ contracts the option to revoke the offer may be more difficult. For example, in *Carlill* [1893], it would be quite unrealistic to communicate the revocation to every person who may have seen the advertisement in a newspaper, but taking reasonable steps (such as another advertisement in the same newspaper revoking the offer) may be acceptable.
Acceptance

The acceptance of the offeror's terms must be unconditional. In many cases this may consti-
tute a 'yes' or 'no' reply to an offer made. There are situations where such a simple exercise
may not be possible and it requires the courts to give direction as to how acceptance may be
established. An offer may be accepted by conduct; silence, however, can never constitute
acceptance.

Standard form contracts

These are often used by businesses to simplify contracts. Using standard terms and condi-
tions removes the requirement for individual negotiation with customers (subject to compli-
ance with the various statutory obligations). When two businesses are trading and each has its
own standard form contract then problems can arise when attempting to ascertain on which
set of standard terms the contract has been made. To determine which set of terms forms
the contract, a court will look at which was the last set of terms to be used in the exchanges
between the parties before the contract was performed. This is the 'last shot' principle and is
illustrated in the following case:

Butler Machine Tool Co Ltd v Ex-Cell-O Corporation (England) Ltd [1979] 1 WLR 401

The companies contracted for the supply of a machine but each used its own standard form
contract, one with a price variation clause present, and one without. Hence, the case involved the
'battle of the forms'. It was held that as Ex-Cell-O had included an acknowledgement strip that
Butler signed and 'accepted', the contract was based on these terms, without the price variation
clause.

Butler is always used where the question involves business disputes over standard form
contracts; the 'battle of the forms'. Remember, the courts are more 'robust' in determining
agreements with businesses and the courts will use first/last shot approaches to determine
which contract is effective.

Communication of acceptance

For a valid contract to exist, the terms of the offer must be accepted by the offeree. This
means:

- outward evidence of the offeree's intention to accept an offer has to be demonstrated
  (in unilateral and bilateral contracts) and communicated (in bilateral contracts) in
  order for effective acceptance;
- silence is not effective acceptance (*Felthouse v Bindley* [1862]);

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Acceptance

- the offeree may deviate in the method of acceptance stipulated in the offer if the alternative method is as fast or quicker than that in the offer (Yates Building Co Ltd v R J Pulleyn & Sons Ltd [1975]); and

- acceptance may be evidenced through conduct (such as in Carlill [1893]). In Alexander Brogden v Metropolitan Railway Co [1877] a contractual document had been drafted by the principals of the companies and was used in negotiations between the parties. Whilst it had not been signed, it was sufficient that the intentions from the parties’ actions enabled an agreement to be deduced.

Postal rule of acceptance

The general rule established with the post (importantly, where it is a valid means of acceptance) is that acceptance is valid on posting, not the receipt of the acceptance, insofar as the correct address and postage were included in the sent letter (Adams v Lindsell [1818]). This applies where the letter was delayed (The Household Fire and Carriage Accident Insurance Company v Grant [1879]).

The postal rule is not effective, however, in situations where the express terms of the contract state that the acceptance must be received and in writing. In Holwell Securities v Hughes [1974] Lawton LJ stated that the postal rule would not be used where to do so would ‘produce manifest inconvenience and absurdity’.

Revision tip

Always be aware that the postal rule should be discussed but is only applicable where the post is a valid means of acceptance. If the parties have expressly provided that it will not be considered as valid acceptance, or where the parties require the acceptance to be received in writing, then the standard rule of communication of acceptance remains.

Instantaneous communication

Compared with the postal rule, in cases involving instantaneous forms of communication, the courts have traditionally reverted to the common rule of acceptance being effective when communicated and received.

Entores v Miles Far East Corporation [1955] 3 WLR 48

Entores, based in London, made an offer by telex to agents of the defendants (based in Holland). This offer was accepted through telex received in Entores’ offices in London. On the issue of where the contract was established (due to a dispute) it was held that due to the nature of instantaneous means of communication, acceptance is effective when received, not when posted. The contract was concluded in London.
Consideration is a necessary component of all contracts (unless the contract is made by deed). Consideration in contract law is merely *something of value* that is provided and which acts as the inducement to enter into the agreement. The definition most definitively used is from the seminal case, *Currie v Misa* (1874–75), but it is sufficient at this stage to recognise consideration as the bargain element of a contract – ‘the price of a promise’ or ‘the badge of enforceability’.

For example, X may offer Y his mobile phone for free, informing Y that the phone will be given at a specific time and place, and that X intends this to be a legally enforceable contract. Y agrees. If X does not give the phone to Y as agreed, is an enforceable contract established? No – Y has given nothing to X for the agreement to provide the phone. This is a bare promise and as such it lacks consideration and cannot amount to an enforceable contract.

Consideration must be given in return for the promise made, and it must move from the *promisee*. The promisee may exchange promises with the *promisor*, or he/she may provide some act or forbearance to establish good consideration.

There are two types of consideration: executed and executory.

**Executed**

Executed consideration is often seen in unilateral contracts and involves one party making a promise in return for an act by the other party. The offeror has no obligation to take action on the contract until the other party has fulfilled his/her part. For example, A offers B £100 to build a wall, payment to be made on completion. B completes the building work and is entitled to the payment from A. If B did not want the work, or did not complete it, A would not have paid the £100.

**Executory**

Executory consideration is performed after an offer is made and is an act to be performed in the future (hence *executory*). It is an exchange of promises to perform an act. This form of consideration is frequently seen in bilateral contracts and may lead to a valid contract being established. For example, X orders a computer with the promise to pay for it on delivery, and Y promises to deliver the computer and receive the payment. The fact that consideration has not yet occurred but will take place in the future does not prevent it being ‘good’ consideration and in the event of, for example non-delivery, this may lead to a breach of contract (assuming the remainder of the essential features are present).
Other factors in consideration

**Consideration must be sufficient (not adequate)**

Consideration must have some legal, material, value but it does not need to be adequate in relation to a ‘fair’ price for the contract. Per Blackburn J in *Bolton v Madden* [1873], ‘the adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court . . .’

Even if an item is of little value in itself, it may represent a benefit to one of the parties and therefore can be good consideration, eg chocolate bar wrappers in *Chappell & Co Ltd v Nestle Co Ltd* [1959].

**Consideration must not be past**

Where a promise is made *after* the completion of an act, the act itself is not sufficient to provide consideration to enforce the promise. The promisor is not obtaining a benefit for his/her promise – the benefit has already been received.

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**Re McArdle, Decd. [1951] 1 All ER 905**

A tenant had made improvements to a property and afterwards a promise was made by the landlords to repay the expenditure for the materials used. Such payment was not made and in an action for recovery of this sum it was held that no contract had been established. The agreement to pay was made after the work had been undertaken and there was no clear intention or expectation that payment would have been made.

The decision rested on the fact that since all the repair work had been completed before the document had been agreed, the consideration was wholly past and the agreement to ‘repay’ the expenditure (£438) was a *nudum pactum* (a promise made with no consideration to support it).

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**Looking for extra marks?**

Compare this general rule with *Lampleigh v Brathwaite* [1615], where the defendant, who had killed another person, requested the claimant to obtain a pardon from the King. Lampleigh was successful and as a result, Brathwaite made a promise to pay £100 for the service, but this payment was never made. It was held that Lampleigh was able to recover the £100 because the court felt that both parties must have contemplated that payment for the service would be made.

The following are necessary to claim an enforceable contract exists with past consideration:

- the act that is the subject of the contract must have been requested by the promisor;
- there must have been in the contemplation of both parties that payment would have been made; and
- all the other elements of a valid contract must have existed.
Consideration

Existing duties

Consideration must be ‘real and material’ and as such, if the promisor is merely receiving what he/she is already entitled to, then there is no consideration furnished (Collins v Godefroy [1831]). The Privy Council held in Pao On v Lau Yiu Long [1980] that an existing duty owed to a third party can be good consideration.

This rule seeks to ensure that improper pressure cannot be applied to renegotiate a contract on better terms for the promisee. In Stilk v Myrick [1809] the captain of a vessel on a voyage promised the existing crew an equal share of the wages of two seamen who had deserted (and who could not be replaced). The wages were not provided and in the action to recover the wages, the court held that there was no consideration provided in support of the promise. The seamen were under an existing duty to ‘exert themselves to the utmost to bring the ship in safely to her destined port’.

Stilk v Myrick has to be compared with Hartley v Ponsonby [1857] where the sailors in this case were promised additional money if they completed their voyage after half of the ship’s crew had abandoned the vessel. The court held they were entitled to the extra pay as they exceeded their existing duties due to the significant risk of continuing the voyage with insufficient crew.

Note performance of an existing duty may be held as good consideration where the promisee has actually conferred on the promisor a benefit or has assisted him/her in avoiding a detriment, and no unfair pressure or duress was used in the renegotiation.

Williams v Roffey Bros. & Nicholls (Contractors) Ltd [1991] 1 QB 1

Roffey Bros, building contractors, entered into a contract with a Housing Association to refurbish a block of flats. Roffey subcontracted various carpentry jobs to Williams who could not complete the work as his agreed price was too low to enable him to operate at a profit. Williams informed Roffey that he would be unable to complete the work and Roffey agreed to pay a further sum in excess of the original to Williams for the work to be completed at the agreed date (this would assist Roffey, among other reasons, in avoiding delay penalties). Roffey refused to pay the additional money promised on the basis that Williams had only performed an existing duty.

The Court of Appeal held that the promise to pay the additional sum was binding. Despite Roffey’s argument to the contrary, consideration was provided as Roffey did receive a benefit, or at the very least would avoid a detriment, through the completion of the work and the avoidance of the penalty fee and/or the difficulty in hiring a new subcontractor.

Looking for extra marks?

Identify the importance of the decision in Williams v Roffey in which it appeared the requirement for a variation of the contract had to be supported by fresh consideration. However, note its limitation to obligations for debt and in particular compare with the cases Re Selectmove [1995] and Foakes v Beer (1884).
Consideration

Part payment as consideration

As a general rule, part payment of a debt will not prevent the party owed money from later claiming the balance as there is no advantage for the party taking a lower sum than that owed (Pinnel’s Case (1602)). A debt may be extinguished by proving something else of value other than money (a good or a service) has been provided, whether this is to the value of the sum owed or not (as consideration need not be adequate).

There are the following exceptions to the rule regarding part payment:

- if the party has paid a lower amount, but has done so at an earlier date, then this may amount to good consideration;
- if there have been goods or another benefit provided along with the lower payment then this may also provide good consideration; and
- the major exception to this rule, alongside the others noted above, is the doctrine of promissory estoppel.

Doctrine of promissory estoppel

The rule of part payment not being good consideration was established through the common law, but courts also created an equitable defence which stops a party that has made a (gratuitous) promise from reneging. Essentially, it seeks to suspend rights rather than to extinguish
Consideration

them (although this is a moot point in many instances, see Tool Metal Manufacturing Co v Tungsten Ltd [1955]).

Central London Property Trust v High Trees House Ltd [1956] 1 All ER 256

High Trees House leased a block of flats from Central London Property Trust in 1937. With the outbreak of war, and the consequent bombings in London, occupancy of property was reduced. In order to reduce the adverse effects, including it being unoccupied, High Trees entered into a new agreement under which the rent would be reduced by half. In 1945, the flats were full and Central London Property claimed for the full rent to be paid. It was held by the High Court that when the flats became fully let, the full rent could be claimed. However, Denning J stated (albeit obiter dicta) that any attempt to claim the balance of rent from 1940 to 1945 would not be allowed under the doctrine of promissory estoppel as High Trees relied on the promise made not to claim the full rent.

This is an unusual case and its rule was made obiter, so this limits its reliance as a precedent; however the promise was enforceable even though unsupported by consideration. This was because of the existing relationship between the parties, the parties had intended to act upon the agreement, they also actually acted upon it, and the promisor intended to create legal relations.

Revision Tip

Promissory estoppel is a complicated area of law and cases exist that challenge the application of the doctrine. In a question involving promissory estoppel, knowledge and critique of these cases will ensure the highest marks. Further, highlight the uncertainty of whether its use removes the obligations completely or whether they may be reintroduced following reasonable notice. Consider cases such as Hughes v Metropolitan Railway Co (1877) and Jorden v Money (1854) when explaining the judgment of Denning J in the High Trees case.

Note the limitation of the doctrine:

- it may only be used as a shield not a sword (as a defence to an action); and
- as an equitable remedy, it is not available to a party who has acted inequitably.

Promissory estoppel would potentially allow for the enforcement of an agreement to accept a portion of a debt in full settlement and this possibility has been acknowledged in Collier v P & MJ Wright (Holdings) Ltd [2007] (pending full trial on this point in the future).

Consideration is often linked with the concept of privity of contract, where the contract involves, or is for the benefit of, a third party. This is because the party who benefits from the contract has not provided any consideration and hence has no rights or obligations under the agreement.

Privity of contract

The doctrine establishes that only parties to a contract may sue or be sued on it, and consequently provides rights and imposes obligations on those parties alone. This is important as
Consideration

many situations involve contracts where a right or benefit is to be provided for a third party (although consumer contracts may allow for a third party to enforce a contract made specifically for his/her benefit).

The two elements necessary to enforce a contract are:

- the claimant must be a party to it (*Dunlop Tyre Co v Selfridge* [1915]); and
- there must be consideration provided by the promisee (*Tweddle v Atkinson* [1861]).

Privity of contract could, in certain circumstances, produce unfairness and inconvenience to the parties. As a consequence the common law has created many exceptions such as agency, collateral contracts, trusts, insurance contracts, restrictive covenants, and contracts for interested groups. Statute has also provided for third party action on a contract.

**Contracts (Rights of Third Parties) Act 1999**

The legislation was not enacted to replace the common law rules but rather to add rights for the third party. It enables a third party to enforce the terms of a contract if the contract expressly provides for it, or if the contract confers on him/her some benefit (unless the contract did not intend that the relevant term should be actionable by the third party).

The Act enables the third party to enforce the contract and seek damages as he/she would have been able to if he/she had been a full party to it. However, the third party will be unable to claim these damages if the injured party has already claimed the damages.

The second section of the Act continues protecting third parties by preventing the parties from varying or cancelling the contract without the third party’s permission unless this has been expressly stated in the contract. There are limitations to the Act such as preventing a contract being enforced by a third party against employees in contracts or in contracts concerning the carriage of goods.

**Intention to create legal relations**

‘Legal relations’ means that the parties view the agreement as a legally enforceable contract and a breach of the contract could result in a remedy being sought. The existence of ‘legal relations’ can be examined in terms of the sphere in which they might originate, social/domestic or business/commercial.

**Social/domestic**

Here, the presumption is that the parties do not intend to create legal relations. In *Balfour v Balfour* [1919] an agreement between a husband and wife regarding payment for the wife’s maintenance was considered not to be legally binding. However, the presumption involving a married couple is not made when the married couple are separated (*Merritt v Merritt* [1970]).
**Consideration**

This presumption against the creation of legal relations applies to arrangements involving friends and social acquaintances where a prior history exists between the parties (*Hadley and Others v Kemp and Another* [1999]).

Where such parties make an outward sign that they intend the agreement to be legally binding, this will be effective (*Simpkins v Pays* [1955]).

**Business/commercial**

Between commercial parties, intention to create legal relations is presumed unless the parties establish an agreement to the contrary (*Rose and Frank Company v J R Crompton* [1925]).

**Revision tip**

Remember the presumptions, but also look out for expressed intentions that either a business/commercial agreement is to be ‘in honour’ only and hence not legally binding, or conversely, that a social/domestic agreement intends to be legally binding.

**Certainty of terms**

The terms of the contract must be certain if they are to be considered sufficiently precise to be enforced by a court. The courts will not rewrite a contract that has been incorrectly or negligently drafted. However, the courts use following tactics to identify the terms and the true intentions of the parties:

![Diagram of Intention to create legal relations]  

**Figure 2.2** Presumptions identifying the existence of intention
Key cases

• particular customs in a trade that may assist in removing uncertainty in the parties’ intentions (*Shamrock SS Co v Storey & Co* [1899]); and

• the previous dealings between the parties to ascertain any terms omitted in a contract (*Hillas & Co Ltd v Arcos Ltd* [1932]).

Per Lord Wright ‘It is a necessary requirement that an agreement in order to be binding must be sufficiently definite to enable the court to give it a practical meaning. Its terms must be so definite, or capable of being made definite without further agreement of the parties, that the promises and performances to be rendered by each party are reasonably certain.’

**Revision Tip**

Where a meaningless term is included in the agreement, then this term, but not necessarily the entire contract, may be held unenforceable (*Nicolene Ltd v Simmonds* [1953]).

**Key cases**

<table>
<thead>
<tr>
<th>Case</th>
<th>Facts</th>
<th>Principle</th>
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<tr>
<td><em>Hyde v Wrench</em> [1840] 3 Beav 334</td>
<td>Wrench offered to sell land for £1,000 to Hyde. Hyde replied with an offer of £950 that was rejected. Later, Hyde attempted to accept the original offer and pay £1,000 for the land, but this was rejected.</td>
<td>Upon an action for breach of contract it was held that if Hyde had unconditionally accepted Wrench’s offer to sell at £1,000 an enforceable contract would have been established. The counter-offer of £950 had (implicitly) rejected the first offer, which made it impossible to accept it at a later date.</td>
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<tr>
<td><em>Carllill v Carbolic Smoke Ball Co</em> [1893] 1 QB 256</td>
<td>A £100 reward was offered by the defendant to anyone who used its smoke ball and contracted influenza. When the claimant brought an action for the £100, the defendant claimed, <em>inter alia</em>, that the offer was a ‘mere puff’.</td>
<td>The Court of Appeal held a valid contract was in existence and the £100 was payable. The contract had been accepted through conduct, and money deposited in the bank for the settlement of claims demonstrated their sincerity.</td>
</tr>
<tr>
<td><em>Rose and Frank Company v J R Crompton</em> [1925] AC 445</td>
<td>The two companies began trading with a third company. The three companies entered into an agreement regarding sales and purchases incorporating a clause that the agreement was in honour only and not legally enforceable.</td>
<td>The House of Lords held that the arrangement had not created a binding contract because of the ‘in honour’ clause which had removed this essential feature of a valid contract.</td>
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Exam questions

Problem question

Gordon works as a salesman in the Orange Computers Inc store. His contract of employment provides for an annual salary of £10,000 and commission payments (at 7%) on any computers and peripherals he sells. In the last three years the commission payments have amounted to an average of £11,000.

In 2008 the world economic downturn adversely affected the store. The manager, Fred, informs Gordon that the business is in severe financial trouble and that he must reduce the firm’s outgoings. In response, Fred asks Gordon if he will forgo his salary for 2009, 2010, and 2011, and simply accept payments of commission. Fred explained to Gordon that this was required of him (and all other staff) or the business would probably not survive and it would have to be wound up owing substantial debts to creditors. As such, Gordon accepted the variation of the contract.

In 2010 the economy began to grow, and in small part due to governmental incentives for investment in information technology, the store has managed to trade its way through the difficult times and is making a healthy profit. As such, Gordon feels that he should be able to receive his wages for 2011 and not simply have to rely on his commission as agreed in 2009. He also wishes to know if he can claim for his wages from 2009 and 2010 as Orange Computers Inc has sufficient profits to repay this money.

Advise Gordon whether he can obtain his wages for 2011, and also whether he would have any claim for the wages he agreed not to accept in the years 2009 and 2010. (Restrict your answer to the contractual issues rather than any employment obligations that may be present.)

An outline answer is available online at http://www.oxfordtextbooks.co.uk/orc/concentrate/

Essay question

Compare and contrast the approach taken by the courts when determining the acceptance of an offer through the post and using instantaneous forms of communication. Why were opposing rules established and what impact does this have for the parties?

An outline answer is available at the end of the book.