



# Introductory Lecture

## Law of Contract



# Learning Objectives

- At the end of this lecture, you should be able to:
  1. Explain the nature of a contract
  2. Outline the essential elements of a valid contract
  3. Understand the distinction between an invitation to treat and an offer
  4. Demonstrate knowledge of the principal rules relating to offers
  5. Demonstrate knowledge of the principal rules relating to acceptance and revocation

What is a Contract?

*...a branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it...*

Anson's Law of Contract



# Contract – Definition

- What makes something ‘contractual’?
  - Is it a ‘thing’: piece of paper, small print, writing etc.
  - Is it a process: negotiation, sign something
  - Is it a property ascribed by the courts to private relationships
    - If so, on what basis do the courts ascribe contractual responsibility?
- Contracts-in-Law
  - At law, a ‘contract’ is a legally enforceable transaction
  - What gives an agreement a contractual quality?

# What do the courts want?

- 3 types of transaction are given legal recognition as 'contracts-in-law'
  - **Bi-lateral** (synallagmatic): promise  $\leftrightarrow$  promise
  - **Uni-lateral**: promise  $\leftrightarrow$  requested act/performance
  - **Deed**: formal process and document creates obligation



# What makes these 'contractual?'

- All in varying degrees contain elements of:
  - Agreement
  - Promise
  - Exchange
- So, a contract is a legally enforceable transaction rooted in:
  - **Promises:** express, implied, imputed, constructed
  - Promises are **reciprocated** (i.e., exchanged) for:
    - Another promise
    - Requested performance
  - Promises create **reasonable reliance** or **expectations**
  - Promises made in the form of a **deed**

# How is a contract then made?



Promises take the form of Agreement



Promise is given in Exchange for something of sufficient and adequate value – *legal consideration*



Promise made with the Intention that should it be broken it will be enforced in court

How is a  
Contract  
made?

Contractual Duty

=

Agreement +  
Consideration + Intention



# Definition of a Contract?

- An agreement between two or more persons, which is legally binding
- A contract **need not** be in writing
  - A valid contract can be made by word of mouth, by conduct or in writing
- But of course, some contracts must be in a certain form
  - Conveyance of land
  - Transfer of shares
  - Mortgages/debt agreements

# Standard Form Contracts

- Type of contract utilised by many large businesses
- The terms of such contracts are set out on a standard, written document prepared by the organisation, and any person wishing to contract with the organisation can either accept the terms as stated, or refuse the contract, but cannot negotiate different terms

# Standard Form Contract

- Consumer Credit usually include terms such as:
- *'...Your Credit Limit will be £1,500.00 or such other amount as we tell you about from time to time...'*
- *'...We will charge £20.00 each time you miss a payment or a Direct Debit from your account is returned unpaid for any reason but no interest is payable on late payments...'*
- *'...The APR is 28.6% (variable)...'*
- *'...We will charge £2.50 for each payment made by any method other than by Direct Debit...'*



# Forms of a contract

- Deed – written legal agreement signed by both parties in the presence of a witness
- Required in writing? – In order to be enforceable in the courts, certain transactions must be in writing and signed by both parties
- Conduct? Intentions are a matter of inference