

## CHAPTER 4 THE NATURE OF THE AGREEMENT: OFFER AND ACCEPTANCE

*After studying this chapter students should be able to:*

### EXPLAIN THE NATURE OF CONTRACTS

- A contract is a bargain, made between two or more persons, which is legally binding.
- Essentially parties are free to make their own contracts but there are some legal restrictions.
- Courts and statutes may imply terms into contracts.
- Businesses often use standard form contracts. When businesses attempt to impose their own standard forms on each other this will lead to the 'battle of the forms'.
- Contracts may be bilateral or unilateral.

### OUTLINE THE ESSENTIAL ELEMENTS OF A VALID CONTRACT

- Agreement (offer and acceptance of definite terms).
- Consideration (a promise to give, do, or refrain from doing something in return for a similar promise).
- An intention to create legal relations (usually presumed in a business transaction).
- Compliance with required formalities where applicable.
- Capacity to contract.

### UNDERSTAND THE DISTINCTION BETWEEN AN INVITATION TO TREAT AND AN OFFER

- An invitation to treat is a pre-offer.
- Displays of goods in shops and shop windows are invitations to treat.
- Advertisements are usually invitations to treat but may be unilateral offers.
- Applications inviting tenders, catalogues, and prospectuses are invitations to treat.

### DEMONSTRATE KNOWLEDGE OF THE PRINCIPAL RULES RELATING TO OFFERS

- An offer must be clear and the terms of the offer certain.
- An offer must be distinguished from an invitation to treat, a statement giving information or expressing an intention, or a mere puff or boast.
- An offer must be communicated to the other party by the offeror or a reliable third party.
- An offer may be terminated by revocation, lapse of time, death, counter offer, rejection.
- A unilateral contract cannot usually be revoked by the offeror once the act by the offeree is commenced.

### DEMONSTRATE KNOWLEDGE OF THE PRINCIPAL RULES RELATING TO ACCEPTANCE

- Acceptance is the unconditional assent to all the terms of the offer.
- Acceptance in a bilateral contract must be communicated to the offeror by the offeree or his authorized agent.
- If a particular method of acceptance is required, acceptance will only be valid if it is communicated in that way or an equally effective manner.
- Acceptance in a unilateral contract does not have to be communicated.

- Where the postal rules apply, a letter of acceptance is effective when it is put in the post box provided the letter is correctly stamped and addressed.
- The general rule that acceptance must be communicated to the offeror applies to contracts made on the internet.