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## Introduction to English Law

### Lecture 7: Contract Law

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## Elements of a Contract


- Formation
- Contents of the contract
- Factors that vitiate a contract
- Discharge of a contract
- Remedies for breach
- Rights and liabilities of third parties

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## Section 1

### Formation of a Contract

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## Formation of a Contract – Intro (1)

Offer

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Acceptance

Consideration

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Intent to create legal relations

Counter offer,  
rejection ...

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## Section 2

### Offer

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## Elements – Offer (1)

*Carlill v. Carbolic Smoke Ball (1893)*

**An offer is an expression of a willingness to contract on certain terms made with the intention that a binding agreement will exist once the offer is accepted**

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## Elements – Offer (2)

**Problem cases**

*A. Offer v. Invitation to Treat*

**Advertisements and other notices**  
Need to distinguish unilateral offer from advertisement.

*Harris v. Nickerson (1873)*  
Auctioneer advertised that certain goods would be sold at a certain location on a certain date. P turned up but the lots he required had been removed.

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## Elements – Offer (3)

**Displays of goods for sale**  
Does the display of goods in a window amount to an offer?

*Fisher v. Bell (1961)*  
Flick-knife in window. Seller prosecuted under Restriction of Offensive Weapons Act 1961.

*Pharmaceutical Society of GB v. Boots (1953)*  
Goods on shelf. Needed to place in basket and at desk, supervised by registered pharmacist.

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## Elements – Offer (4)


**Ticket cases**

*Chapelton v. Barry UDC (1940)*  
Sign by some deck-chairs for hire constituted a offer, which the P<sup>s</sup> had accepted when he took two of the deck-chairs. The tickets were mere receipts.

How are timetables and passenger tickets considered?

*Cokcerton v. Aznar SA (1960)*  
Tickets have been held to be contractual documents on the basis that the proffering of the ticket by a bus conductor is an offer which is accepted by taking the ticket.

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## Elements – Offer (5)

**Tickets (Problem cases)**

*Wilkie v. London Passenger Transport Board (1947)*  
Timetable amounts to an offer which is accepted by the passenger when applying for ticket or boarding the bus.

Still undecided!

*B. Offer v. Request for Information*


*Harvey v. Facey (1893)*  
Will you sell us Bumper Hall Pen? Telegraph lowest cash price. This was just a request for information.

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# Section 3


## Acceptance

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## Elements – Acceptance (1)

**A final unqualified expression of assent to all the terms of an offer**

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## Elements – Acceptance (2)


**The Fact of Acceptance**

*A. Mode of Acceptance*

- Orally, or
- In writing, or
- Inferred from conduct. But here problems:

***Weatherby v. Banham (1832)***  
 Offeror offered to supply goods to the offeree by sending the goods to him, acceptance of the offer arose when the offeree began using the goods. Such a set of circumstances must, however, be treated with caution. Now Unsolicited Goods and Services Act 1971.

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## Elements – Acceptance (3)

*B. Counter Offers*

***Hyde v. Wrench (1840)***  
 D offered to sell his farm for £1,000. P at first made a counter-offer of £950, but two days later agreed to pay £1,000. D refused to complete sale and P brought an action for specific performance. Held: No contract since the counter-offer of £950, the effect was such to destroy the original offer.

**Conditional Acceptances**  
 What's the difference between conditional acceptance and counter-offer?

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## Elements – Acceptance (4)

**Clarification of the Terms**


***Global Tankers v. Amercoat Europa (1975)***  
 Question is whether an offeree is replying with a counter-offer or not is whether a reasonable person would regard the acceptance as "introducing a new term into the bargain".

*C. Communication of Acceptance*

**General Rule**

***Powell v. Lee (1908)***  
 D decided to appoint the P as headmaster of a school. The terms of the appointment were never communicated to the P. Thus no contract.

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## Elements – Acceptance (5)

**Exceptions**

1. Postal Rule

***Brinkibon Ltd v. Stahag Stahl und Stahlwarenhandelsgesellschaft GmbH (1983)***  
 Acceptance is effective when it is placed in the control of the Post Office, that is, put into the postbox or handed to an officer of the post authorised to receive/collect letters

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## Elements – Acceptance (6)

**Exceptions**


2. Instantaneous forms of communication

***Entores v. Miles Far East Corporation (1955)***  
 P<sup>s</sup> were a company based in London dealing with D<sup>s</sup> (USA) with agents in The Netherlands. Both had telex. Offer by telex, acceptance by telex. Writ only possible in England, if the contract had been concluded in England.

CoA held: Parties in same position as if in the same room. Thus formed when acceptance received by agents in London, not when telex was sent in A'dam.


**NB:** Obiter dicta of Lord Denning: also applies to telephone calls.

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## Section 4

# Consideration

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## Elements – Consideration (1)

**Comparison**

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graph TD
    A[Comparison] --> B[Romanist countries  
Doctrine of causa]
    A --> C[English law  
Doctrine of consideration]
    A --> D[Germanic countries (and NL since 1992)  
Neither doctrine]
    
```

Can be compared because requirement above and beyond intention 20


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## Elements – Consideration (2)

**Introduction**  
Promises are only enforceable where indication that intend to be bound  
Can be in the form of:

- Form*, e.g. a deed
- Reciprocity*, e.g. consideration
- Reliance*, e.g. promissory estoppel

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## Elements – Consideration (3)


**Solution**  
Idea that the promisee should not be able to enforce a promise unless he has given something in return. Classic definition:

**Currie v. Misa (1875)**  
Either some right, interest, profit or benefit to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

**Principles**

1. Consideration may not be past
2. Consideration must move from promisee, but not necessarily to promisor
3. Consideration must be sufficient, though not necessarily adequate

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## Elements – Consideration (4)


**Consideration Defined**

Benefit to the promisor (person benefiting from promise)  
Detriment to the promisee (person making the promise)

**Conditions:**  
I will give you £500 if you break your leg  
You can have my flat if you move in and look after it

**Gifts:**  
If you buy 4 gallons of petrol, you will receive a World Cup coin

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## Elements – Consideration (5)

**Principle 1: Executed/Executory but not past**

Past consideration by promisee is no consideration

**Exceptions**

**Lampleigh v. Braithwait (1615)**  
B had killed another and asked Lampleigh to secure a pardon. L went to considerable effort and expense. B subsequently promised to pay £100. B then failed to pay.

**Pau On v. Lau Long (1980) Lord Scarman**

Conditions:

- (a) act must be done at the promisor's request
- (b) parties understood that the act was to be paid
- (c) payment enforceable if had been promised in advance

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