

What do you know about making an offer?

A contract is a legal agreement between two or more parties that is binding in law

The law of Contract is a specialised and complicated area in any legal system, especially English contractual law with much of its development through the courts and precedent. This lesson looks at definitions of a contract, some relevant vocabulary with examples and what is the difference between a genuine offer and an invitation to treat (also with examples).

Aim: To practise the skills of

- **guessing and checking meaning of vocabulary related to contracts using examples**
- **practice case study - to determine its outcome based on legal principles**
- **analysing situations to determine the differences between two points of law**
- **recycling vocabulary - reading and completing a gapped text**
- **discussion - based on information and opinion**

Level: Upper-intermediate and above

Student profile: It is envisaged that students will be studying law, trainees or qualified lawyers.

The lesson is in 7 stages and should take *at least* 90 mins.

Stage 1

Procedure: Students try to work out which of the supplied words can be used to complete answers to questions about contracts. The words used are an introduction to this specialist vocabulary.

If students find this difficult, move on to Stage 2 and once completed return to Stage 1 to complete/check answers

Answers – for a further glossary go to back of this lesson plan:

1. How many elements are there in the formation of a contract, and what are they?
*There are three elements. They are **agreement, intention and consideration***
2. What else is important to the parties when a contract is formed?
*The parties must have **legal capacity***
3. What types of terms does a contract consist of?
*They are either **express and implied***

4. When can a contract be cancelled?

*If it has been induced by **mistake**, **duress** or **undue influence***

5. What rule covers third parties rights under a contract?

*The rule of **privity***

6. How many classes of contracts are there, and what are they?

*Essentially there are two classes. They are **bilateral** and **unilateral***

Stage 2

Procedure: Students put each half of the conversation together to illustrate each of the vocabulary items in Stage 1 and check their meaning. The task could be cut up as a different way of exploiting this exercise.

Answers

1. Have you seen this? We've just had an **offer** for our house in London.
What should we do?
d) I think we should **accept**. We have an agreement and all we need to do is ask our lawyer to draw up the contract as quickly as possible
2. It's got to be a **unilateral** contract.
k) Although we never signed anything you offered a reward to anyone if they found your camera – and I've got it here!
3. I know we have a contract but if you don't agree to pay me more, I won't deliver the next consignment.
f) You can't do that. I already have agreed to sell the order on. That's **duress** and it'll cost me a lot of money.
4. Everybody knows he's an alcoholic. How can he have been **legally capable** of signing that contract?
e) I know. They took him out to lunch, got him drunk and of course he had no idea what he was signing!
5. I'm glad we were able to reach a **bilateral** agreement
l. Yes, if you agree to buy my products at the price we've agreed, I can start delivery next week.
6. I'm sorry; I made a **mistake** about the car.
h) I didn't realise my wife had sold the car yesterday. The contract we sold is void.
7. As a landlord, you should know that you have to look after the stairs and lift in the property. Its not in the agreement
j) It's a well-established principle so it's an **implied term**.

8. You sold that painting for only £600. It's worth at least twice that!
b) Yes, I know, but I never really liked it and **consideration** only has to be sufficient, it doesn't have to be adequate.
9. Did you hear what happened to that poor woman who was married to a man who had financial problems and went to see her bank manager for help?
a) He told her the only way he could help her husband was for her to sign a loan on a house that she owned, and she believed him. This sounds like **undue influence**.
10. It's very important you understand that this term of the contract about packaging cannot be changed. Do you?
n. Yes, it's an **express term**. It's very unusual. I've never seen a term like this before.
11. You still owe my daughter for the jewellery she sold you, don't you? Give me the money now and I'll pass it on to her.
c. Well, I'm afraid you aren't a party to our contract. The rule of **privity** of contract means unfortunately you don't have any rights. I'll pay her directly.
12. I only said I might be interested in selling my boat.
m. It seems as though you have **no intention** in getting rid of it so there's no point in even trying to agree a price.

1 - d	2 - k	3 - f	4 - e	5 - l	6 - h
7 - j	8 - b	9 - a	10 - i	11 - c	12 - g

Stage 3

Procedure; Students are asked to determine the outcome of an actual case and decide which of the requirements of an offer are fulfilled.

Court decision:

There was no contract. The agreement was not certain and a reasonable man would not know what exactly had been agreed as important terms such as the rate of interest on hire purchase agreement had not been decided.

Scamell v Ouston [1941] AC 241 (HL)

- communicated – in writing, orally or by conduct – so that the other party may accept or reject it
- made to a particular person, a group of persons or to the whole world

X contains clear, definite and specific terms

√ made with serious intention

Stage 4

Procedure: Students analyse examples in order to help understand the difference between offers and invitation to treat.

Answers:

Offers	Invitations to treat
Cases: B E	Cases: A C D F

Stage 5

Procedure: Students further analyse examples in order to help understand the difference what types of contracts are offers and invitation to treat.

Answers:

Advertising a reward	E
Goods in shops	F
An advertising statement	D
Auction	C
Advertisement: unilateral contract	B
Tender	A

Explanations:

Case A - Tender – an invitation to tender does not normally amount to an offer to contract with the party who submits the most favourable tender – *Spencer v Harding* (1870)

Case B - Advertisement : Unilateral contract - This is an offer which the courts decided it is an offer to the 'world at large' and if accepted there was an agreement – *Carlill v Carbolic Smoke Ball Co.* (1893)

Case C - Auction -This is the Auctioneer's request for bids. Each bid is an offer – *Payne v Cave* (1789)

Case D - An advertising statement - not intended as an offer - *Partridge v Crittenden* (1968), a trade puff - *Carlill v Carbolic Smoke Ball Co.* (1893)

Case E - Advertising a reward – a unilateral offer, analogous to *Carlill v Carbolic Smoke Ball Co.* (1893)

Case F - Goods in shops - Goods displayed in shops are only an invitation to treat, not an offer and shops are not bound to sell goods at the price indicated and a customer cannot demand to buy a particular item on display - *Fisher v Ball* (1960)

Stage 6

Procedure: Students complete gapped text using vocabulary from the lesson

A contract can be **unilateral** or bilateral. If it is a bilateral contract, the parties have duties to each other; however in a unilateral contract one party **promises** to do something in return for an act of the other.

Some advertisements are considered by the courts to be **binding** contracts as it has been held that an offer can be made to the whole world.

If an offer is made by an offeror to the other party, **the offeree**, and is accepted by them, then there is an **agreement**. To be **binding** it must be on specific terms, and one party must show **willingness** to contract, however if they are not prepared accept any offer immediately then this is an **invitation to treat**.

This could be a price ticket in a **shop** as the courts have ruled that they are not bound to sell at the price and the **customer** cannot demand to buy it.

Missing words – use if necessary

<i>shop</i>	<i>agreement</i>	<i>willingness</i>	<i>customer</i>	<i>promises</i>
<i>offeree</i>	<i>invitation to treat</i>	<i>bilateral</i>	<i>binding</i>	<i>unilateral</i>

Stage 7

Procedure: As a group or individual or open class discussion, students discuss or make a presentation about contract law in their own country.

Glossary

consideration	In a contract, one consideration (thing given) is exchanged for another consideration <i>For example:</i> If party A promises to do something for B, A's promise will only be enforceable as a contract if B has provided consideration – usually money but could be some other service.
legal capacity	To enter into a contract all parties must have the necessary capacity. <i>Exceptions:</i> people of unsound mind, drunkards or under the age of 18
express terms	Are clearly stated in the contract
implied terms	<ul style="list-style-type: none"> • Implied by the Court – intended to include to give business efficacy • implied by custom – local custom or trade use • implied by statute
mistake	An error of words or the law, which causes one party or both parties to enter into a contract without understanding the obligations or results
duress	A coercion of will e.g physical violence or threat including economic
undue influence	Improper pressure exerted over one party by the other
privity	A person who is not party to a contract – a third party – cannot sue or be sued on that contract