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5th edition

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PEARSON

Pearson Education Limited

Edinburgh Gate
Harlow CM20 2JE
United Kingdom
Tel: +44 (0)1279 623623
Web: www.pearson.com/uk

First published 2008 (print)
Second edition published 2009 (print)
Third edition published 2013 (print and electronic)
Fourth edition published 2015 (print and electronic)
Fifth edition published 2017 (print and electronic)

© Pearson Education Limited 2008, 2009 (print)
© Pearson Education Limited 2013, 2015, 2017 (print and electronic)

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ISBN: 978-1-292-08686-6 (print)
978-1-292-08724-5 (PDF)
978-1-292-08723-8 (ePub)

British Library Cataloguing-in-Publication Data

A catalogue record for the print edition is available from the British Library

10 9 8 7 6 5 4 3 2 1
20 19 18 17 16

Front cover bestseller data from Nielsen BookScan (2009–2014, Law Revision Series).
Back cover poll data from a survey of 16 UK law students in September 2014.

Print edition typeset in 10/12pt Helvetica Neue LT Std by SPI Global
Print edition printed and bound in Malaysia

NOTE THAT ANY PAGE CROSS REFERENCES REFER TO THE PRINT EDITION

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Acknowledgements

This book is dedicated to STG.

We are, as ever, grateful to all who offered feedback on the last edition of *Law Express: Contract Law*, particularly the anonymous academic reviewers who provided some suggestions for improvement. We have been pleased to incorporate these as best we could.

We'd really like to hear what you think of the book, which you can do by visiting www.finchandfafinski.com, Twitter @FinchFafinski or email to hello@finchandfafinski.com.

Emily Finch and Stefan Fafinski

Publisher's acknowledgements

Our thanks go to all reviewers who contributed to the development of this text, including students who participated in research and focus groups which helped to shape the series format.

Introduction

Contract law is one of the core subjects required for a qualifying law degree, so it is a compulsory component of most undergraduate law programmes. It is usually taught as a first- or second-year subject as many of its concepts are relatively straightforward.

This revision guide will help you to identify the relevant law and apply it to factual situations, which should help to overcome preconceived notions of the 'right' outcome in favour of legally accurate assessments of the liability of the parties. The book also provides guidance on the policy underlying the law and it identifies problem areas, both of which will help you to prepare for essay questions. The book is intended to supplement your course materials, lectures and textbooks; it is a guide to revision rather than a substitute for the amount of reading (and thinking) that you need to do in order to succeed.

Contract law is a vast subject – you should realise this from looking at the size of your recommended textbook – so it follows that a revision guide cannot cover all the depth and detail that you need to know and it does not set out to do so. Instead, it aims to provide a concise overall picture of the key areas for revision – reminding you of the headline points to enable you to focus your revision, identify the key principles of law and use these effectively in essays and problem questions.

REVISION NOTE

Things to bear in mind when revising contract law:

- Do use this book to guide you through the revision process.
- Do not use this book to tell you everything that you need to know about contract law but make frequent reference to your recommended textbooks and notes that you have made yourself from lectures and private study.
- Make sure that you consult your syllabus frequently to check which topics are covered and in how much detail.
- Read around the subject as much as possible to ensure that you have sufficient depth of knowledge. Use the suggested reading in this book and on your lecture handouts to help you to select relevant material.








- Take every possible opportunity to practise your essay-writing and problem-solving technique; get as much feedback as you can.
- You should aim to revise as much of the syllabus as possible. Be aware that in contract law many questions that you encounter in coursework and examination papers could combine different topics, e.g. contract formation, misrepresentation and mistake. Therefore, selective revision could leave you unable to answer questions that include reference to material that you have excluded from your revision; it is never a good idea to tackle a question if you are able to deal with only part of the law that is raised.
- Take the time to acquire as many past examination papers from your institution as possible. While this book gives guidance to certain types of questions, you should try to answer previous questions from your own institution. This will ensure that you are familiar with the structure and requirements of your own examination and give you plenty of exposure to the types of question preferred by your own institution.

Before you begin, you can use the [study plan](#) available on the companion website to assess how well you know the material in this book and identify the areas where you may want to focus your revision.



Guided tour

How to use features in the book  and on the companion website 

Understand quickly

-  **Topic maps** – Visual guides highlight key subject areas and facilitate easy navigation through the chapter. Download them from the companion website to pin on your wall or add to your revision notes.
-  **Key definitions** – Make sure you understand essential legal terms.
-  **Key cases and key statutes** – Identify and review the important elements of essential cases and statutes you will need to know for your exams.
-  **Read to impress** – These carefully selected sources will extend your knowledge, deepen your understanding, and earn better marks in coursework and exams.
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-  **Test your knowledge** – How well do you know each topic? Test yourself with quizzes tailored specifically to each chapter.
-  **Podcasts** – Listen as your own personal Law Express tutor guides you through a step-by-step explanation of how to approach a typical but challenging question.

Revise effectively

-  **Revision checklists** – Identify essential points you should know for your exams. The chapters will help you revise each point to ensure you are fully prepared. Print the checklists from the companion website to track your progress.
-  **Revision notes** – These boxes highlight related points and areas where your course might adopt a particular approach that you should check with your course tutor.



Study plan – Assess how well you know a subject prior to your revision and determine which areas need the most attention. Take the full assessment or focus on targeted study units.



Flashcards – Test and improve recall of important legal terms, key cases and statutes. Available in both electronic and printable formats.

Take exams with confidence



Sample questions with answer guidelines – Practice makes perfect! Consider how you would answer the question at the start of each chapter then refer to answer guidance at the end of the chapter. Try out additional sample questions online.



Assessment advice – Use this feature to identify how a subject may be examined and how to apply your knowledge effectively.



Make your answer stand out – Impress your examiners with these sources of further thinking and debate.



Exam tips – Feeling the pressure? These boxes indicate how you can improve your exam performance when it really counts.



Don't be tempted to – Spot common pitfalls and avoid losing marks.



You be the marker – Evaluate sample exam answers and understand how and why an examiner awards marks.

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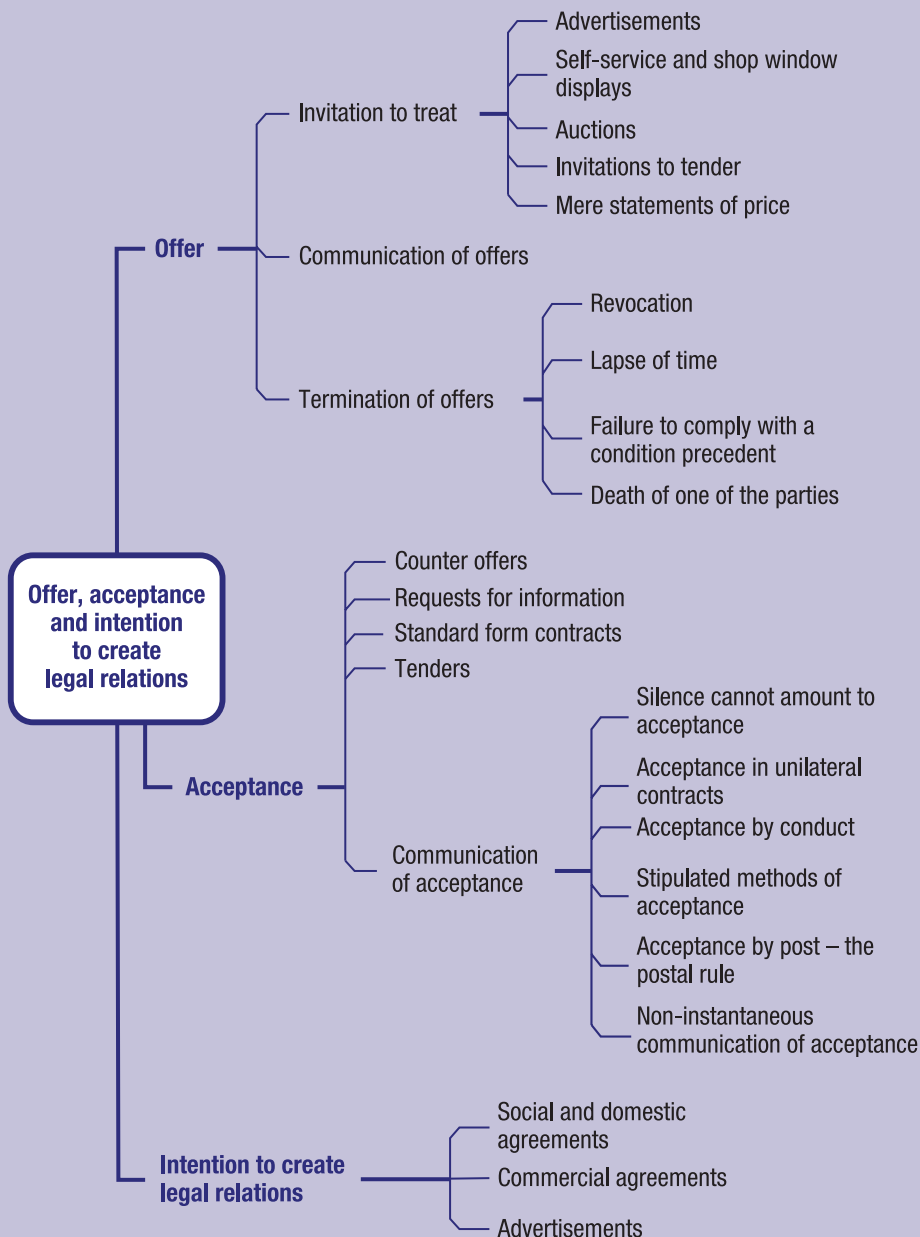
Agreement and contractual intention

Revision checklist

Essential points you should know:

- The definitions of offer and acceptance
- The distinction between an offer, an invitation to treat and a counter offer
- The rules on communication and withdrawal of offers
- The rules relating to communication of acceptances
- The presumptions of legal intent that arise in social, domestic and commercial situations

Topic map



■ Introduction

Offer, acceptance and intention to create legal relations are three of the essential elements in the formation of a valid contract.

This chapter will deal with three of the four composite parts of a binding contract. The final part, consideration, will be covered in Chapter 2. Since a contract is an agreement, it follows that, in order for such an agreement to be reached, there must be an offer made by one party which is accepted by the other. Moreover, to distinguish simple informal agreements from those that are enforced or recognised by law, the parties to the contract must intend to create legal relations between each other.

ASSESSMENT ADVICE

Essay questions

Essay questions on contract formation are uncommon. However, if an essay question does arise, it is likely to cover one specific area of the topic in detail – for instance, whether the postal rule has any place in modern times. These sorts of question require an in-depth focus on specific parts of the material. Since offer, acceptance and intention to create legal relations are an immense topic, essays that consider it as a whole are unlikely.

Problem questions

Problem questions on contract formation are very common. They tend to involve a complex set of facts in which various parties communicate various things to each other by various means and at various times. It is often quite daunting to be faced with a lengthy scenario. However, if you are systematic in your approach, breaking down the facts into a sequence of events and dealing with each issue that comes up in turn, then you should end up with a well-structured argument that should be easier for the marker to follow. Since the vast majority of this topic is governed by case law, it is important to remember to support every legal rule that you put forward in furtherance of your argument by an appropriate and relevant case authority.

■ Sample question

Could you answer this question? Below is a typical problem question that could arise on this topic. Guidelines on answering the question are included at the end of the chapter, while a sample essay question and guidance on tackling it can be found on the companion website.

PROBLEM QUESTION

On Wednesday, Tom, a vintage car dealer, placed an advertisement in a weekly motor sports magazine offering to sell a Triumph TR6 for £10,000, cheque accepted. Chris saw the advertisement on Thursday and immediately posted a letter to Tom saying that he would be willing to pay £8,000 cash and leaving his work mobile number. On Friday morning, Tom called Chris on his mobile number. Chris did not answer, so Tom left a message which said: 'I'd prefer a cheque for the advertised amount. So the car's yours for that unless I hear back from you to the contrary.' Chris picked up the message and posted a cheque for £10,000. However, at 6.45 p.m. on Friday evening Tom decided not to sell the car to Chris so he called him back on his mobile and left another message. Chris did not use his work mobile over the weekend and had left it in the office which had closed for the weekend when Tom called. Chris did not pick up the new message until early Monday morning. Chris's letter arrived at Tom's address on Saturday but was not opened by him until late Monday morning. On Saturday, Tom sold the car to Sam for £8,000 in cash. Chris now claims that Tom is in breach of contract.

Advise Chris of his legal position.

■ Offer

KEY DEFINITIONS: Offer, offeror and offeree

An **offer** is an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed.

The party who makes an offer is known as the **offeror**.

The party to whom the offer is addressed is known as the **offeree**.

G.H. Treitel, *The Law of Contract* (Sweet & Maxwell, London, 2003) 8