

The Passionate Shepherd

Where there's muck ...

I. Fill in the gaps with one word.

Contracts

In order to form a contract, the essential elements are:

1. offer
2. acceptance
3. consideration
4. capacity
5. _____ (1) to create legal relations
6. no _____ (2) factors

Offer

An offer is a promise to do or not to do something in sufficiently clear _____ (3), that may be accepted by another. An offer should be _____ (4) from an invitation to _____ (5) and a mere expression of intention to do or not to do some act. Offers do not necessarily need to be made to one person – that may be made to the _____ (6) at large or to specific groups of people.

The significance of an offer is that when it is accepted (_____ (7) to the other essential criterion, below) the contract is formed.

In addition to being accepted, an offer may be _____ (8), a counter-offer may be made, the offer may _____ (9) or the offeror may withdraw the offer, such that it is no longer available to be accepted.

Option Agreements prevent an offer being withdrawn for a period of time.

Acceptance

When an offeree (the "acceptor"), accepts an offer, the contract is formed. Acceptance may be in writing, orally or _____ (10) by conduct and silence cannot _____ (11) to acceptance of an offer other _____ (12) in unilateral contracts or the postal acceptance rule applies.

Consideration

Consideration is a promise, an act, or a promise _____ (13) to act and represents the value in the contract. For example, in a services contract for services, one person will promise to perform services (the consideration of one party), and the other will promise to pay money in exchange for the service (the other party's consideration). Consideration in a contract may be _____ (14), executed or past. _____ (14) consideration is a promise that will be performed in the future, executed consideration is a promise that has been performed thus giving rise to the obligation _____ (15) the offeror to perform their promise, and past consideration is where a promise is performed before the formation of the contract and as such _____ (16) be used to bind the other party to the contract: importantly, past consideration is not sufficient to form a _____ (17) contract.

Consideration must move from the promisee, as the English common law system does not enforce _____ (18) as the civil law system does. Also, consideration need not be

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_____ (19), but must be sufficient. That is to say that there is no requirement in law that the value of the consideration between the parties must be equal or near equal _____ (20) there has been no _____ (21) factors.

Capacity

In order to enter a contract, a party must have the legal capacity to do so, and as such cannot be a _____ (22) or a minor (subject to the Minors' Contracts Act 1987). Under this Act for _____ (23) minors are able to enter into contracts for _____ (24).

Intention to create Legal Relations

The parties must intend that the offer and acceptance be binding upon them. There is a _____ (25) operating in commercial contracts that the parties intend to create legal relations.

Construction of Contracts: General Principles

The interpretation of the terms of a contract is a question of law and exclusively within the jurisdiction of the judge. Courts will _____ (26) contracts, rather than make contracts. Each term does not need to be completely _____ (27): a judge will give each term its ordinary and everyday meaning _____ (28) there is some basis to depart from this general rule. As a matter of construction, the parties are to be confined to the terms contained within the four corners of the document in which they have chosen to record their agreement. Construction places emphasis on the _____ (29) intentions of the terms contained in a contract and not the parties actual intentions. Accordingly, even though one or more terms may be ambiguous the contract does not _____ (30) for uncertainty.

Privity of Contract

The doctrine of privity of contract consists of two general rules: firstly, a third party cannot be subjected to a _____ (31) of contract to which he is not a party. The second is that a person who was not a party to a contract could not sue _____ (32) the contract in order to obtain the promised performance. This rule has been altered by the introduction of the Contracts (Rights of Third Parties) Act 1999.

Assignments of Contractual Rights

The burden of a contract cannot in principle be transferred so as to _____ (33) the original contracting party without the consent of the other party. There are two exceptions. If the contractual rights have been assigned, those rights will be subject to the original contract. An instance of this, *Britain & Overseas Trading Ltd v Brooks Wharf Ltd*, an exemption clause in the original contract was binding on the _____ (34) of the contract. Such cases are examples of the "conditional benefit" principle. This principle applies where the right which has been assigned is on the condition that certain restrictions are observed. These are an _____ (35) part of the right, so that the burden is annexed to the benefit of the contract. Therefore, the person with the benefit must perform the burden, or otherwise _____ (36) the benefit. Whether a conditional benefit arises is dependent upon the proper construction of the contract.

The second exception is the pure benefit and burden principle, which _____ (37) in the case *Tito v Waddell (No.2)*, where the rights given in the contracts were not qualified nor conditional on certain obligations, but still rendered the defendants liable.