

<https://selldocx.com/products/test-bank-contract-law-6e-wishart>
Chapter 2

Type: multiple choice question

Title: Chapter 02 - Question 01

01) What does it mean when we say that the courts apply an objective test of intentions to ascertain what contracting parties have agreed to?

a. The courts look at the parties' actual intentions at the time of contracting and search for common ground.

Feedback: Incorrect. The courts are not interested in the parties' actual or subjective intentions. The question is not what the parties actually intended, but what the other party reasonably supposes that they intended (*Smith v Hughes* (1871)).

Page reference: 46

***b.** The courts look at the parties' apparent intentions reasonably interpreted from their conduct in all the circumstances.

Feedback: Correct. When the courts are called upon to consider whether the parties have agreed to be bound by an agreement, they employ an objective test. This means that, rather than looking at the parties' actual intentions, the courts look at the parties' intentions reasonably interpreted from their conduct in all the circumstances (*Smith v Hughes* (1871)). If a party's actions, objectively assessed, lead a court to conclude that he intended to be bound, he will be bound irrespective of his subjective intentions.

Page reference: 46

Type: multiple choice question

Title: Chapter 02 - Question 02

02) Playtron Industries has rented its business headquarters from Novell Realtors for the past two years. With the third year approaching, Novell decides to raise its £9,000 per month rent to £9,800. The assistant writes to Playtron, but accidentally types £8,900 instead of £9,800. When Playtron receives the offer, they are pleasantly surprised and they immediately accept. Novell realizes the mistake they made upon the receipt of this acceptance and calls Playtex to correct the offer. Have the parties contracted and, if so, for which price?

a. Yes, for £9,800.

Feedback: Incorrect. The test of intentions is not a subjective one, but an objective one (*Smith v. Hughes* (1871)). Playtron could not have known of Novell's intention to increase the rent and had no reason to believe there was a mistake in the offer received.

Page reference: 46, 48, 51-53

***b.** Yes, for £8,900.

Feedback: Correct. Novell's intention, objectively assessed, allows Playtron to conclude that the rent offered was for the price stated in the letter. Novell's actual intention to raise the rental price is of no relevance (see *Centrovincial Estates plc v. Merchant Investors Assurance* (1983)) unless this must have been obvious to Playtron (see *Hartog v. Colin & Shields* (1939)).

Page reference: 5,48, 51-53

c. Yes, for £9,000.

Feedback: Incorrect. Neither according to the objective test, nor to the subjective test of intentions, would this be a viable outcome.

Page reference: 46, 48, 51-53

d. No, the parties have not contracted.

Feedback: Incorrect. The terms of the contract are sufficiently clear and there is no reason for Playtron to suspect a mistake in Novell's offer. The offer has been validly accepted; thus, a contract has been concluded.

Page reference: 46,48, 51-53

Type: multiple choice question

Title: Chapter 02 - Question 03

03) Amazon Ltd is a UK based shipping firm with a large international clientele. Biscayne Co, an Irish lumber firm, which plans to ship an order of timber to Japan, calls Amazon to inform about their prices. Amazon replies that, for a shipment of timber to the Far East, the average price would be £95 per pound. After an hour of negotiations, Amazon says it is willing to

reduce its price to £91 per pound for the large quantity Biscayne is planning to have shipped. An offer is immediately drawn up by an employee of Amazon. Accidentally, he uses a form normally used for international shipments in which all prices are quoted per kilogram. When Biscayne receives the offer for £91 per kilogram, they immediately accept, this being almost half the price Amazon stated on the phone. Has a contract been concluded and, if so, for which price?

a. Yes, for £91 per kilogram.

Feedback: Incorrect. The test of intention is an objective one. From the context of the custom of the trade and the negotiations between the parties, which always discussed the price 'per pound' and never 'per kilogram', Biscayne must have realized, and did in fact know, that a mistake had occurred in Amazon's offer. As such, the offer per kilogram was not validly accepted by a corresponding acceptance by Biscayne and no contract has been concluded between the parties (*Hartog v. Colin & Shields* (1939)).

Page reference: 51-53

b. Yes, for £91 per pound.

Feedback: Incorrect. The test of intention is an objective one. From the context of the custom of the trade and the negotiations between the parties, which always discussed the price 'per pound' and never 'per kilogram', Biscayne must have realized, and did in fact know, that a mistake had occurred in Amazon's offer. As such, the offer per kilogram was not validly accepted by a corresponding acceptance by Biscayne and no contract has been concluded between the parties (*Hartog v. Colin & Shields* (1939)).

Page reference: 51-53

c. Yes, for £95 per pound.

Feedback: Incorrect. The test of intention is an objective one. From the context of the custom of the trade and the negotiations between the parties, which always discussed the price 'per pound' and never 'per kilogram', Biscayne must have realized, and did in fact know, that a mistake had occurred in Amazon's offer. As such, the offer per kilogram was not validly accepted by a corresponding acceptance by Biscayne and no contract has been concluded between the parties (*Hartog v. Colin & Shields* (1939)).

Page reference: 51-53

*d. No, a contract has not been concluded.

Feedback: Correct. The test of intention is an objective one. From the context of the custom of the trade and the negotiations between the parties, which always discussed the price 'per pound' and never 'per kilogram', Biscayne must have realized, and did in fact know, that a mistake had occurred in Amazon's offer. As such, the offer per kilogram was not validly accepted by a corresponding acceptance by Biscayne and no contract has been concluded between the parties (*Hartog v. Colin & Shields* (1939)).

Page reference: 51-53

Type: multiple choice question

Title: Chapter 02 - Question 04

04) Wazu Textile imports wool from India to Britain. The Indian government provides subsidies to exporters of Indian raw materials. In order to make increased profits from the shipment, Wazu decides to mix its Indian wool with inferior quality wool from Nepal and declare all its wool as Indian to the Indian Government. When the wool is auctioned off at a market in Portsmouth, the two lots are separated but given the same identification numbers in the auction catalogue. Comance Co, a UK manufacturer, bids successfully at too high a price for the Nepalese wool, thinking its Indian wool. Have the parties concluded a contract?

a. No, each party contracted for a different subject-matter.

Feedback: Incorrect. The problem here is not latent ambiguity between the parties, but the fact that the auctioneer cannot rely on a party's intentions objectively ascertained if he has induced the bidder's mistake.

Page reference: 53-54

*b. No, the auctioneer could not reasonably assume Comance was bidding for Nepalese wool and accept that bid.

Feedback: Correct. While an auctioneer is generally entitled to assume that bidders know what they are bidding for, so that their mistakes provide no ground for voiding contracts, he cannot reasonably assume this if, in the circumstances, he has induced the bidder's mistake.

In this case, he cannot reasonably treat Commance's bid as being for Nepalese wool. The auctioneer may not take an unjust view of the intentions of the other party, nor give a dishonest or misleading view of his own intentions (*Scriven Brothers & Co v. Hindley & Co* (1913)).

Page reference: 53-54

c. Yes, the parties' actions objectively ascertained lead to the conclusion that a contract has been concluded.

Feedback: Incorrect. While an auctioneer is generally entitled to assume that bidders know what they are bidding for, so that their mistakes provide no ground for voiding contracts, he cannot reasonably assume this if, in the circumstances, he has induced the bidder's mistake. In this case, he cannot reasonably treat Commance's bid as being for Nepalese wool. The auctioneer may not take an unjust view of the intentions of the other party, nor give a dishonest or misleading view of his own intentions (*Scriven Brothers & Co v. Hindley & Co* (1913)).

Page reference: 53-54

Type: multiple choice question

Title: Chapter 02 - Question 05

05) Edward is an avid rugby fan. He subscribes to Sports World, a magazine which contains a classified section where private persons and small businesses can advertise their sports memorabilia for sale. One day, he sees an advertisement from Lionel, who owns a sports shop, which reads: 'Special deals on Football, Rugby and Cricket sportswear. Special deal this month: England Shirts from last World Cup. Liquidation Sale. £15 each'. After England's success in the Rugby World Cup, Edward has been at pains to find an English rugby shirt. He e-mails Lionel, immediately ordering two. A week later, Edward receives his package and is surprised to see that the shirts he has bought are the English Football Shirts from the 2002 World Cup. Seeing as the 2006 World Cup is nearing, Lionel wanted to make room for new stock. Have the parties concluded a contract and, if so, on which terms?

a. Yes, for two Rugby World Cup shirts. By advertising in a sports magazine after England won the Rugby World Cup, Lionel gave Edward the impression that the advert was for rugby memorabilia.

Feedback: Incorrect. It may seem as if the parties were objectively agreed, but their agreement suffers from latent ambiguity. By reference to the context, it is impossible to resolve what the content of the agreement is. In this case, objectivity does not favour one outcome above the other (*Raffles v. Wichelhaus* (1864)).

Page reference: 54-55

b. Yes, for two Football World Cup shirts. Edward should have realized that no one would sell English rugby shirts so cheaply after their World Cup victory. The Football World Cup, on the other hand, was in 2002.

Feedback: Incorrect. The parties may have been objectively agreed, but their agreement suffers from latent ambiguity, which is both important and impossible to resolve by reference to the context. In this case, objectivity does not favour one outcome above the other (*Raffles v. Wichelhaus* (1864)).

Page reference: 54-55

***c.** No, the parties were contracting for a different subject matter, Edward for Rugby shirts and Lionel for Football shirts.

Feedback: Correct. It is impossible to give sufficient content to the contract to bind the parties. The parties may have been objectively agreed, but their agreement suffers from latent ambiguity which is both important and impossible to resolve by reference to the context. In this case, objectivity does not favour one outcome above the other (*Raffles v. Wichelhaus* (1864)).

Page reference: 54-55

Type: multiple choice question

Title: Chapter 02 - Question 06

06) If an item is displayed for sale in a store, when has an offer been made and when has it been accepted?

a. The vendor makes the offer by displaying the goods; the customer accepts it by putting an item in his basket or otherwise taking possession of it.

Feedback: Incorrect. If the display is an offer and the customer's act of putting it into the basket would amount to acceptance, then the customer could not thereafter change his mind without being in breach of contract. The display of goods is an invitation to treat, not an offer (*Pharmaceutical Society of GB v. Boots Cash Chemists* (1953)).

Page reference: 57-8

b. The vendor makes the offer by displaying the goods; the customer accepts it by paying for an item at the cash desk.

Feedback: Incorrect. If the display was an offer, then the seller would lose her freedom not to deal with a particular customer and all sales would be compulsory. The display of goods is an invitation to treat, not an offer (*Pharmaceutical Society of GB v. Boots Cash Chemists* (1953)).

Page reference: 57-8

*c. The customer makes the offer by presenting an item at the cash desk; the vendor accepts it by checking the goods out and taking payment.

Feedback: Correct. The display of goods is an invitation to treat, not an offer (*Pharmaceutical Society of GB v. Boots Cash Chemists* (1953)). An offer is made when a customer presents an item at the cash desk. At that time, a vendor can determine whether to accept or reject that offer and whether to proceed with the sale.

Page reference: 57-8

Type: multiple choice question

Title: Chapter 02 - Question 07

07) In which of the following scenarios has an offer been validly accepted?

a. While driving around town, Nathan sees his neighbour's dog and brings it back home to him. His neighbour was offering a £50 reward for anyone who finds the dog, but Nathan was unaware of this.

Feedback: Incorrect. An acceptance must be made in response to a known offer. This means that conduct purporting to be an acceptance cannot conclude a contract if it is done without knowledge of the offer. A person who performs an act without knowledge that a reward has been offered for it cannot claim the reward in contract (*R v. Clarke* (1972)).

Page reference: 70

*b. Quagmire Industries is looking for a new corporate headquarters. After months of negotiations, Relex Realtors faxes them a final offer '£37 million, reply by midnight'. Quagmire faxes an acceptance at 11.55pm, but the ink has run out on Relex's fax. The fax can only be printed out the following morning when the toner is replaced.

Feedback: Correct. In *Entores v. Miles Far East Corp* (1955), Denning LJ explained the rules of acceptance in two-way instantaneous communications. Where the offeror does not receive the timely message of acceptance through his own fault, such as where the ink runs out on his fax or telex, he will be bound.

Page reference: 75

c. The Port Authority of South East England invites tenders to provide towage facilities for the port of Ramsgate. The invitation states: 'All tenders must be sent by Friday before 12.00pm by registered mail'. Towex sends a tender on Friday at 11.00am by regular mail.

Feedback: Incorrect. Normally an invitation to tender is an invitation to treat. But where conditions are attached to the invitation, a court can apply the two contract analysis for failure to consider a particular tender. If a specific method of acceptance is stipulated by the offer, an acceptance which deviates from that mode cannot bind the offeror. However, where the offeror has not used clear words and the actual mode of acceptance does not disadvantage him, a court will hold the offeror bound (*Manchester Diocesan Council for Education v. Commercial and General Investments Ltd* (1970)). In the present case, the failure to send by registered mail means less certainty for the offeror, especially where the postal acceptance rule applies.

Page reference: 62-4, 71

d. All of the options given are correct.

Feedback: Incorrect. Only in the Quagmire Industries scenario has there been a valid acceptance of an offer. In the other scenarios, the offeree has not validly accepted the offer.

Page reference: 62-4, 70, 71, 75

Type: multiple choice question

Title: Chapter 02 - Question 08

08) In which of the following scenarios has an offer **not** been validly accepted?

*a. Staples Co runs a hardware megastore. For the past three years they've contracted with Ironware, a hardware wholesaler. At the end of the third year Ironware sends Staples the following offer 'If you do not object by 1 January, I will consider the contract extended for one year on same terms'. Staple's board of directors decides to continue the agreement on the same terms by not objecting to the offer.

Feedback: Correct. The acceptance of an offer cannot be conditional on the offeree's silence (*Felthouse v. Bindley* (1862)). It is a general rule that acceptance must be communicated to the offeror.

Page reference: 71-2

b. Techniworks sends Wonderglue Co an offer for a boiler accompanied with their standard form terms, which Wonderglue fails to read. Wonderglue places an order for a boiler accompanied by their standard form terms, which Techniworks never reads. When the boiler is delivered, Wonderglue is given an invoice on the back of which Techniwork's standard form terms are once again printed.

Feedback: Incorrect. This is a battle of the forms case, where the parties purport to conclude a contract by the exchange of forms containing incompatible terms. The parties have validly agreed to the sale of a boiler, but the terms on which that contract was concluded is not entirely clear. The conventional answer is that it depends on which party 'fired the last shot'. The party who gets his terms in last without objection from the other party, who then acts on the 'contract', will succeed in making a contract on his terms (*Butler v. Ex-Cell-O Corporation (England) Ltd* (1979)).

Page reference: 66-7

c. Runner's Weekly offers employees £200 if they successfully complete the London marathon. When Brendan reaches the last five-mile mark as first employee, a representative of Runner's Weekly standing on the sidelines tells him the deal's off. Brendan promptly finishes the race.

Feedback: Incorrect. This is a unilateral contract. Unilateral contracts are concluded by the performance of the stipulated act (*Carlill v. Carbolic Smoke Ball Co* (1893)). In the case of unilateral contracts, there is generally said to be an implied obligation on the part of the offeror not to revoke the offer once the offeree has embarked on the performance (*Daulia Ltd v. Four Millbank Nominees Ltd* (1978)). Runner's Weekly could not revoke the offer and Brendan accepted by completing the race.

Page reference: 78-9

d. All of the options given are correct.

Feedback: Incorrect. Only in the Staples Co scenario has the offer not been validly accepted. In the other two scenarios, the parties have concluded a binding contract by offer and acceptance.

Page reference: 66-7, 71-2, 78-9

Type: multiple choice question

Title: Chapter 02 - Question 09

09) Alan has placed an advertisement for his Beatles records in a local paper. Ben sees the advertisement and sends Alan an e-mail offering £35 for the records. In which of the following scenarios has Ben's offer **not** been validly accepted?

a. Alan, reading his e-mail and without replying to it, immediately sends the records by mail to Ben.

Feedback: Incorrect. Acceptance can be made by conduct as long as that conduct objectively evinces the offeree's intention to accept the offer (*Brogden v. Metropolitan Railway Co* (1877)).

Page reference: 71

*b. Alan meets Clarissa, Ben's sister, at the local supermarket and tells her he accepts Ben's offer. Clarissa promises Alan to tell Ben the following day when they meet for lunch. When Alan returns home from the supermarket, he sees an e-mail from Ben revoking his offer.

Feedback: Correct. Acceptance must be communicated to the offeree. Here, communication took place to a third party who failed to communicate it to the offeree while the offer was still valid.

Page reference: 72

c. Alan immediately posts a letter to Ben telling him his offer has been accepted and that he can come pick up the records. When the letterbox is emptied, the postman accidentally drops Alan's letter, it falls into the sewer and is lost forever.

Feedback: Incorrect. Although the letter never reaches Ben, according to the postal acceptance rule, an offeror is bound at the time that the acceptance is posted, even if the letter is lost so that he never actually receives the acceptance (*Household Fire & Carriage Accident Insurance Co Ltd v. Grant* (1879)).

Page reference: 73

d. All of the options given are correct.

Feedback: By mailing the records to Ben and posting a letter of acceptance, Alan has validly accepted Ben's offer. Where Alan speaks to Clarissa, Ben has revoked his offer before Alan's acceptance was communicated to him.

Page reference: 71, 72, 73

Type: multiple choice question

Title: Chapter 02 - Question 10

10) Foodshopper Ltd, a supermarket operator, has been contracting with Berry's Ltd, a fruit wholesaler, for the past three years. Each year the contract is renegotiated. This year, Berry's sends Foodshopper the following offer '100 kilos of citrus fruits for £250'. Foodshopper calls Berry's and leaves a message: 'Could we agree on 100 kilos for £200?' Berry's fails to respond, and, after a week, Foodshopper amends Berry's written offer with the handwritten messages '100 kilos for £200', 'Please send 400 kilos'. After receiving the altered document, Berry's ships 400 kilos to Foodshopper. Enclosed is an invoice for £1000. Foodshopper responds immediately with the following message: 'We agreed upon £200 per kilo, your invoice is incorrect, will pay £800 by Friday'. Knowing that the citrus fruit will go bad in a week, Foodshopper decides to sell the fruit. Have Foodshopper Ltd and Berry's Ltd concluded a binding contract, and if so, on what terms?

a. No, Foodshopper and Berry's never reached agreement on the terms as evidenced by Foodshopper's amendment and Berry's invoice.

Feedback: Incorrect. The question of whether there is agreement as to terms must be assessed objectively. According to the objective test of intentions, Foodshopper's amendment was a counter-offer which Berry's accepted by sending the fruit (*Brogden v. Metropolitan Railway Co* (1877)).

Page reference: 66-7

b. Yes, the contract agreed upon is 100 kilos for £250. Foodshopper made a new proposal but this was not explicitly agreed to by Berry's. Berry's sent an invoice confirming the initial terms of the offer and Foodshopper proceeded with the sale of the goods.

Feedback: Incorrect. The making of a counter-offer kills off the first offer and leaves only the counter-offer over. This counter-offer was accepted by conduct, the invoice for £1000 came after the contract was already concluded and could never constitute a confirmation of the initial offer. The sale of the goods was in order to mitigate losses and not to confirm any counter-offer.

Page reference: 66-7

*c. Yes, the contract agreed upon is 100 kilos for £200. Foodshopper's amendment was accepted by Berry's when they shipped the fruit.

Feedback: Correct. An amendment to an offer is a counter-offer and amounts to the rejection of the initial offer. The counter-offer can be accepted by conduct where the offeree completes his side of the agreement (*Brogden v. Metropolitan Railway Co* (1877)).

Page reference: 66-7

d. No, since Berry's is providing the goods, it is up to them to make an offer and Foodshopper's amendment has no effect other than to revoke Berry's first offer.

Feedback: Incorrect. Foodshopper's amended offer was a counter-offer, which kills off the original offer and remains as the only valid offer. This offer was accepted by Berry's conduct in shipping the fruit (*Brogden v. Metropolitan Railway Co* (1877)).

Page reference: 66-7

Type: multiple choice question

Title: Chapter 02 - Question 11

11) All Sugar Ltd is a producer of cane sugar. Blucose Ltd operates a glucose processing factory. For the past four years, Blucose has regularly ordered between 150 and 200 tons of sugar from All Sugar. Every year the contract is renegotiated. On 30 November, All Sugar sends out an offer to Blucose: 'We wish to offer you 200 tons of sugar at same price as last year'. On 1 December, Blucose sends out an offer: 'We wish to purchase 200 tons of sugar at same price as last year'. Both parties receive the respective offers on 4 December. On that day, there is a crash in the sugar market. Can Blucose enforce a contract for 200 tons of sugar at last year's price with All Sugar?

a. Yes, a contract was concluded by offer and acceptance on 4 December.

Feedback: Incorrect. There was no acceptance. Rather, there were only two offers. Two identical cross-offers made in ignorance of each other do not amount to a contract (*Tinn v. Hoffman* (1873)).

Page reference: 70

b. Yes, according to the postal rule, an offer is accepted when acceptance is posted. This was done by Blucose on 1 December, a day after All Sugar made an offer.

Feedback: Incorrect. There must be nexus between offer and acceptance. This means that acceptance must be made in response to a known offer. Conduct purporting to be an acceptance cannot conclude a contract if it is done without the knowledge of the offer. Blucose only received knowledge of All Sugar's offer on 4 December and could not accept it before that date.

Page reference: 70

***c.** No, there was no acceptance by either party.

Feedback: Correct. Two identical cross-offers made in ignorance of the other do not amount to a contract, unless or until one is further accepted (*Tinn v. Hoffman* (1873)).

Page reference: 70

d. No, the crash in the sugar market is a frustrating event

Feedback: Incorrect. Frustration plays no role here because no contract has been concluded. There is no acceptance of an offer.

Page reference: 70

Type: multiple choice question

Title: Chapter 02 - Question 12

12) Wilma offers her car, a 1989 Volkswagen Polo, for sale at £750. Vijay sees the advertisement and calls Wilma to ask whether he can come see the car the following Saturday. Wilma proposes to meet on Sunday as she is unavailable on Saturday. Vijay cannot meet on Sunday and decides to send his cousin Sanjay to inspect the car. After Sanjay reports back to Vijay, Vijay calls Wilma to say he's interested but thinks the price is too high. He offers £675 for the car and says his offer is valid until Thursday. On Wednesday, Sanjay sees Wilma on the High Street and tells her that Vijay's no longer interested in the car. Wilma immediately calls Vijay to accept his offer of £675. Has Wilma concluded a contract with Vijay?

a. Yes, for £675. Vijay promised to give Wilma until Thursday to accept his offer and she did so before then

Feedback: Incorrect. An offer is revocable at any time before acceptance. An offer which is open for a specific period of time, also known as an option or a firm offer, is revocable even if the specified period has not expired and even if the offeree has relied upon the promise.

Page reference: 79-80

b. Yes, for £675. Only the offeror can revoke an offer, not a third party. Wilma could accept until Thursday.

Feedback: Incorrect. *Dickinson v. Dodds* (1876) establishes that a revocation may be communicated by a reliable third party even if acting without the offeror's authority.

Page reference: 79-80

c. Yes, Vijay is not yet aware that his revocation has had effect. Until Sanjay communicates this, the offer is still valid.

Feedback: Incorrect. *Dickinson v. Dodds* (1876) establishes that a revocation may be communicated by a reliable third party. An offeree cannot accept an offer he knows to be revoked, whether or not the offeror is aware of the fact that the offeree knows of the revocation.

Page reference: 79-80

*d. No, Vijay's offer was revoked when Sanjay communicated this to Wilma.

Feedback: Correct. An offer is revocable at any time before acceptance. An offer which is open for a specific period of time, also known as an option or a firm offer, is revocable even if the specified period has not expired and even if the offeree has relied upon the promise. *Dickinson v. Dodds* (1876) establishes that a revocation may be communicated by a reliable third party acting without the offeror's authority

Page reference: 79-80

Type: multiple choice question

Title: Chapter 02 - Question 13

13) On 2 May, Boston Technology Ltd receives a letter from Calculatrix Co offering 250 calculators for £7000. On 10 May, Boston Technology sends a letter to Calculatrix in which they accept the offer. This letter reaches Calculatrix on 12 May. On the evening of 7 May, Calculatrix realizes that they have made a miscalculation and that the offer should have been 250 calculators for £7500. On 8 May, Calculatrix sends Boston Technology a letter revoking the offer. Because of the weekend break, this letter only arrives on 11 May. Has there been a contract concluded between the parties? If so, on what date; if not, when was the offer revoked?

a. No, the offer was revoked on 8 May.

Feedback: Incorrect. An offer is only revocable by the offeror if it is communicated to the offeree before the offeree's acceptance takes effect. Specifically, a postal revocation does not take effect on posting, but must be brought to the mind of the offeree (*Byrne v. Van Tienhoven* (1880); *Henthorn v. Fraser* (1892)).

Page reference: 73, 79-80

*b. Yes, the offer was accepted on 10 May.

Feedback: Correct. According to the postal acceptance rule, where it is reasonable for the offeree to accept by post, acceptance takes place when the offeree posts the letter of acceptance (*Adams v. Lindsell* (1818)). However, a postal revocation does not take effect on posting, but must be brought to the mind of the offeree (*Byrne v. Van Tienhoven* (1880); *Henthorn v. Fraser* (1892)).

Page reference: 73, 79-80

c. No, the offer was revoked on 11 May and Boston Technology's acceptance only reached Calculatrix on 12 May.

Feedback: Incorrect. Where acceptance is sent by mail, an exception is made to the rule that it must reach the offeror to have effect. In that case, the offer is accepted when it has been posted (*Adams v. Lindsell* (1818)).

Page reference: 73

d. Yes, the offer was accepted on 12 May.

Feedback: Incorrect. The general rule is that an offer is accepted once it has reached the offeror. However, an exception exists where an acceptance is communicated by post (*Adams v. Lindsell* (1818)).

Page reference: 73

Type: multiple choice question

Title: Chapter 02 – Question 14

14) On 4 April, Alison offers Betty an antique clock for £2000. Betty spends a week mulling over the offer. On 13 April, she sends Alison a letter stating she'd be willing to buy it for £1500. The next day, while looking through an antiques catalogue she sees that a similar clock has recently been auctioned off at £5000. Betty realizes that if Alison refuses her counter offer she may lose the clock altogether. She immediately sends another letter on 14 April accepting the original offer. Betty's first letter containing the counter offer arrives on 16 April; her second letter accepting the original offer arrives on 18 April. Have the parties concluded a contract and, if so, when?

a. No, Betty's counter-offer killed off Alison's original offer on 13 April.

Feedback: Incorrect. While a counter-offer amounts to a rejection of the original offer (*Hyde v. Wrench* (1840)), a rejection of offer only takes effect once it has been communicated to the offeror (16 April), not upon its posting (13 April).

Page reference: 66, 73, 80

*b. Yes, Betty has accepted Alison's original offer of £2000 on 14 April.

Feedback: Correct. A counter-offer amounts to a rejection of the original offer (*Hyde v. Wrench* (1840)). However, a rejection of an offer only takes effect once it has been communicated to the offeror. An acceptance by post, on the other hand, takes effect when the offeree posts the letter of acceptance (*Adams v. Lindsell* (1818)). Thus, an offeree who posts his rejection, then changes his mind, and posts his acceptance before the rejection arrives, would logically be able to bind the offeror, although the rejection letter arrives first.

Page reference: 66, 73, 80

c. No, Betty's counter-offer killed off Alison's original offer on 16 April.

Feedback: Incorrect. While a counter-offer amounts to a rejection of the original offer (*Hyde v. Wrench* (1840)), a rejection of an offer only takes effect once it has been communicated to the offeror (16 April). An acceptance by post will take effect once the offeree posts the letter of acceptance (*Adams v. Lindsell* (1818)). Thus, an offeree who posts his rejection, then changes his mind, and posts his acceptance before the rejection arrives, would logically be able to bind the offeror, although the rejection letter arrives first.

Page reference: 66, 73, 80

d. Yes, Betty accepted Alison's original offer of £2000 on 18 April.

Feedback: Incorrect. An acceptance by post takes effect once the offeree posts the letter of acceptance (14 April) and not only when it comes to the notice of the offeror (18 April) (*Adams v. Lindsell* (1818)).

Page reference: 73

Type: multiple choice question

Title: Chapter 02 - Question 15

15) Jim sells videocassettes over the internet and has recently acquired two copies of Hitchcock's 1960 masterpiece 'Psycho'. On 1 June, he places the following message on his website: "'Psycho', only £30, limited stock, first come, first served! Reply by e-mail".

Three interested people see the advert:

- Alan sends Jim an e-mail at 2.30am on 2 June. He writes 'I'd like a copy of "Psycho". I can pay by credit card'.

- Barney sees Jim's telephone number on his website. At 12.45pm on 2 June, Barney leaves the following voicemail message: 'I'd like to buy three copies of "Psycho"; would that be possible? Call me back'.

- Chris sends an e-mail at 7.45am on 3 June saying: 'I'd like a copy of "Psycho". I've sent a cheque to the address on your website'.

On the morning of 2 June, when Jim tries to start his computer it crashes. While his computer is being repaired, Jim decides to go hiking. On 3 June at 8.00am, Jim starts up his fixed computer. While he's opening his inbox, Jim listens to his voicemail. The first e-mail he opens is from Chris. While he's reading the e-mail, Jim hears Barney's message. Jim sends a copy of 'Psycho' to Barney and Chris. Jim then replies to Chris: 'The video is in the mail', but doesn't contact Barney. Finally he reads Alan's message and replies: 'Sorry, all copies have been sold'. When Chris receives the video, he is shocked to see that he's been sent the wrong film. He's never heard of Hitchcock and thought he was buying the 1998 version of 'Psycho'. Which of the following is **true**?

a. Alan and Barney have contracted with Jim. They were the first to respond to his offer. The acceptance was communicated to Jim when he received the e-mail, not when he read it.

Feedback: Incorrect. Jim's advertisement was not an offer but an invitation to treat. This could not be accepted by Alan or Barney. Alan's reply was an offer, but this was refused. Barney's reply was a request for information, not an offer, and could not be accepted.

Page reference: 57-8, 66

b. Barney and Chris have concluded contracts with Jim. Their replies to Jim were offers and Jim accepted these by promptly sending the videocassettes.

Feedback: Incorrect. Jim could not accept Barney's reply because it was not an offer, but a request for information. Chris's reply is an offer, but Jim's acceptance does not mirror it because the subject matter of the acceptance is different. No contract was therefore concluded.

Page reference: 57-8, 66

c. Alan and Chris have concluded contracts with Jim. Jim stipulated that replies must be made by e-mail, whereas Barney replied by telephone.

Feedback: Incorrect. At best, Jim's advertisement was an invitation to treat. Alan's reply was an offer, but this was rejected by Jim. Chris's reply is an offer, but Jim's acceptance does not mirror it because the subject matter of the acceptance is different. No contract was therefore concluded.

Page reference: 57-8, 66

*d. None of the parties have concluded a contract with Jim.

Feedback: Correct. Jim's advertisement was not an offer, but an invitation to treat. Alan's and Chris's reply by e-mail were offers. Barney's reply to Jim by telephone was not an offer but a request for information, which Jim could not accept by conduct. Jim and Chris did not contract for the same subject-matter, so Jim's acceptance did not mirror Chris's offer (*Raffles v. Wichelhaus*). Jim has rejected Alan's offer so it can no longer be accepted. However, Alan may be able to claim damages from Jim for failing to abide by his promise of 'first come, first served'. This promise gave rise to a unilateral contract which was accepted by Alan when he sent his e-mail to Jim (*Blackpool v. Blackpool & Fyde Aeroclub* (1990)).

Page reference: 54-5, 57-8, 66

Type: multiple choice question

Title: Chapter 02 - Question 16

16) Which of the following agreements is likely to be too uncertain to be enforced?

a. 'The supplier agrees not to accept offers from third parties during a six week negotiation period with the purchaser'.

Feedback: Incorrect. Agreements not to negotiate with third parties, 'lock-out' agreements, are enforceable if there is a time-limit on their duration (*Pitt v. PHH Asset Management Ltd* (1993)), but unenforceable if no time-limit is specified (*Walford v. Miles* (1992)) because that would indirectly impose a duty to bargain in good faith which is unenforceable for lack of certainty.

Page reference: 91-92

b. 'The vendor agrees to sign the contract of sale, if the purchaser obtains a comfort letter from his bank'.

Feedback: Incorrect. This contract is conditional on the purchaser obtaining a letter of comfort. By making this agreement, the vendor has deliberately discouraged the purchaser from dealing elsewhere by encouraging the belief that a contract had been concluded as long as the condition is fulfilled (*Storer v. Manchester CC* (1974)). If the purchaser obtains the letter, the vendor would be prohibited from backing out. This case is not similar to sales 'subject to contract'.

Page reference: 86

*c. 'In the event of a crash in the market value of the product, the parties agree to renegotiate a new price in good faith'.

Feedback: Correct. An agreement to negotiate in good faith cannot be enforced due to want of certainty (*Walford v. Miles* (1992)), unless there is reference to some objective criteria or identifiable standard which allows the court to judge whether it has been breached (*Petromec Inc v Petroleo Brasileiro SA Petrobras* (2005); *Emirates Trading Agency v Prime Mineral Exports Private Ltd* (2014)).

Page reference: 91-95

Type: multiple choice question

Title: Chapter 02 - Question 17

17) Which of the following agreements is too uncertain to be enforced?

a. 'The parties agree that the price will be determined by the buyer in six month intervals'.

Feedback: Incorrect. An agreement will not be unenforceable for uncertainty where the parties have agreed that an essential term will be resolved by a stipulated mechanism for

ascertainment. One method is to leave it up to one of the contracting parties. The potential for unfairness in one party being left at the mercy of the other is met by the court implying in standards of reasonableness).

Page reference: 94-6

b. 'The parties agree that the price will be determined by the seller in six month intervals'.

Feedback: Incorrect. An agreement will not be unenforceable for uncertainty where the parties have agreed that an essential term will be revolved by a stipulated mechanism for ascertainment. One method is to leave it up to one of the contracting parties. The potential for unfairness in one party being left at the mercy of the other is met by the court implying in standards of reasonableness).

Page reference: 94-6

***c.** 'The parties agree that the price will be determined by both of them in six month intervals'.

Feedback: Correct. An 'agreement' which omits an essential term, or a means of determining such a term, does not amount to a contract (*May and Butcher v. R* (1934)).

Page reference: 94-95

d. All of the options given are correct.

Feedback: Incorrect. Only the agreement 'The parties agree that the price will be determined by both of them in six month intervals' is too uncertain to be enforced. An 'agreement' which omits an essential term, or a means of determining such a term, does not amount to a contract (*May and Butcher v. R* (1934)). An agreement will not be unenforceable for uncertainty where the parties have agreed that an essential term will be revolved by a stipulated mechanism for ascertainment. One method is to leave it up to one of the contracting parties.

Page reference: 94-6

Type: multiple choice question

Title: Chapter 02 - Question 18

18) Mindset Industries Co is interested in taking a 90% stake in New Age Computers Co. The parties agree that they should wait a month before the shares are transferred to avoid a fall in value. A month later, the shares lose 30% of their value and Mindset refuses to cooperate on the transfer. In which of the following scenarios could Mindset get out of the agreement by alleging it is too uncertain to be enforced?

a. Because of the haste with which the parties concluded the agreement, they forget to stipulate a contract price for the shares.

Feedback: Incorrect. Where the parties are silent as to the price of goods or services supplied, the buyer must pay a reasonable price (section 8 Sale of Goods Act 1979; section 15(1) Supply of Goods and Services Act 1982; section 51 Consumer Rights Act 2015). These provisions are inapplicable where the parties have stipulated that they will later agree the price.

Page reference: 90

b. The parties stipulated that the contract price would be determined by an arbitrator appointed by the English Institute of Arbitration. Mindset now refuses to appear before the tribunal.

Feedback: Incorrect. An agreement will not be unenforceable for uncertainty where the parties have agreed that an essential term will be revolved by a stipulated mechanism for ascertainment. The courts are slow to invalidate a contract for uncertainty where there is an arbitration clause.

Page reference: 95

***c.** The parties stipulated that the price can only be determined by a chartered accountant agreed by both parties. Mindset now refuses to cooperate in agreeing an accountant.

Feedback: Correct. The court can substitute a solution for the parties' stipulated machinery where the latter fails to come into effect and is *not* essential (*Sudbrook Trading Estate Ltd v. Eggleton* (1983)). However, the parties' stipulated machinery may be essential if a particular valuer is appointed because of his special skill, knowledge or particular judgement. In that case, the court will not substitute for the essential machinery and the agreement will not bind if the machinery fails, for instance, because one party fails to cooperate (*Gillatt v. Sky Television Ltd* (2001)).

Page reference: 95-6

Type: multiple choice question

Title: Chapter 02 - Question 19

19) Chris and Harris have been friends all their lives. Harris has a successful dotcom business. He asks Chris, who works as a computer programmer at a large software company, if he could pass by that weekend to help him modernize his website. Working together proves very demanding on their relationship, with Harris throwing Chris out of his apartment when Chris has almost completed the job. For a similar job, Harris would have had to pay a computer programmer £800. Can Chris request this amount from Harris?

a. No, the parties did not agree a price beforehand.

Feedback: Incorrect. Where the parties are silent as to the price of goods or services supplied, the buyer must pay a reasonable price (section 8 Sale of Goods Act 1979; section 15(1) Supply of Goods and Services Act 1982; section 51 Consumer Rights Act 2015). However, this provision is inapplicable if the parties did not intend to create legal relations in the first place.

Page reference: 90, 96

b. Yes, Harris should have expected to pay Chris for his services and the price should be a reasonable one.

Feedback: Incorrect. The law creates a presumption in the case of social and domestic agreements that parties do not intend to create legal relations. This strong presumption is rebuttable by clear evidence of contrary intention. The courts are more willing to find intention to be bound where one party has detrimentally relied upon the agreement (*Parker v. Clarke* (1960)) or in business or other contexts in which the transaction is not a manifestation of the parties' relationship but is incidental to it or symbolic of its ending (*Snelling v. Snelling* (1973)). Neither exception is present here and, without an intention to create legal relations, no contract can be found.

Page reference: 96, 100-101

***c.** No, Chris and Harris never intended to create legal relations.

Feedback: Correct. The law creates a presumption in the case of social and domestic agreements that parties do not intend to create legal relations. This strong presumption is rebuttable by clear evidence of contrary intention. The courts are more willing to find intention to be bound where one party has detrimentally relied upon the agreement (*Parker v. Clarke* (1960)) or in business or other contexts in which the transaction is not a manifestation of the parties' relationship but is incidental to it or symbolic of its ending (*Snelling v. Snelling* (1973)). Neither exception is present here and, without an intention to create legal relations, no contract can be found.

Page reference: 96, 100-101

d. No, Chris has not finished the entire job.

Feedback: Incorrect. As a general rule, if an obligation must be entirely performed before it can trigger payment, part performance will free the other party from his obligation to pay. However, where the contract breaker has substantially performed his obligations, the 'entire' obligations rule is suspended and the innocent party cannot withhold payment but may set off (i.e. deduct) any loss suffered from the incomplete or defect of performance (*Dakin (H) & Co Ltd v. Lee* (1916)). This rule does not apply here since the parties did not intend to create legal relations in the first place.

Page reference: 96

Type: multiple choice question

Title: Chapter 02 - Question 20

20) Beth is an elderly widow who is diagnosed with terminal cancer. As she has only six months left to live, she asks her friend Lucy, an unmarried schoolteacher, whether she will move in with her on the condition that she runs errands and drives Beth to her appointments. Lucy lives in a rent-controlled apartment in town. After a month of constant quarrelling, Beth asks Lucy to leave. The only apartments Lucy can find cost almost twice as much as her old place. Can Lucy sue Beth for damages resulting from breach of contract?

a. No, this was a social arrangement; the parties never intended to create legal relations.

Feedback: Incorrect. The law creates a presumption in the case of social and domestic agreements that parties do not intend to create legal relations. This strong presumption is rebuttable by clear evidence of contrary intention, such as where one party has detrimentally relied upon the agreement (*Parker v. Clark* (1960)).

Page reference: 100

b. No, the terms of the contract were insufficiently clear. The parties never agreed what the duration of their contract would be.

Feedback: Incorrect. The application of the objective test of intentions would lead a court to conclude that the contract was for as long as Beth had to live or, in any case, for a reasonable time. In any case, the agreement is not so vague as to prevent its enforcement (*Jones v. Padavatton* (1969)).

Page reference: 99-100

***c.** Yes, the arrangement between the parties is a contract and Beth has breached her obligations under it.

Feedback: Correct. The law creates a presumption in the case of social and domestic agreements that parties do not intend to create legal relations. This strong presumption is rebuttable by clear evidence of contrary intention, such as where one party has detrimentally relied upon the agreement (*Parker v. Clark* (1960)).

Page reference: 99-100

Type: multiple choice question

Title: Chapter 02 - Question 21

21) Which of the following statements is **false**?

a. Commercial parties can always agree that their relationship is without any intention to create legal relations, thereby depriving the courts of any say in its enforcement.

Feedback: Incorrect. This statement is true. In contrast to social agreements, commercial agreements attract a strong presumption that the parties intend to create legal relations. There is no reason why, however, the parties should not be entitled to agree that they are bound only by honour and do not intend to create a legal relationship. A clear expression of this arrangement will have the effect of rebutting the presumption.

Page reference: 101-2

***b.** An agreement between a husband and a wife can never be enforced in court.

Feedback: Correct. This statement is false. There exists a strong presumption against an intention to create legal relations in family and social contexts. However, this presumption is rebuttable by clear evidence of contrary intention, for instance, where a husband and wife operate in a business context, or if they are separated or about to separate.

Page reference: 98

c. An agreement between friends can be made with an intention to create legal relations.

Feedback: Incorrect. This statement is true. The law creates a presumption in the case of social and domestic agreements that parties do not intend to create legal relations. This strong presumption is rebuttable by clear evidence of contrary intention. The courts are more willing to find intention to be bound where one party has detrimentally relied upon the agreement (*Jones v. Padavatton* (1969)) or in business or other contexts in which the transaction is not a manifestation of the parties' relationship, but is incidental to it or symbolic of its ending (*Snelling v. Snelling* (1973)).

Page reference: 100-101

d. None of the options given is correct.

Feedback: Incorrect. The statement 'An agreement between a husband and a wife can never be enforced in court.' is false; the other statements are true.

Page reference: 98, 100-101

Type: multiple choice question

Title: Chapter 02 – Question 22

22) Brightlights Ltd, a lighting and electrical company, run a TV commercial at lunchtime on Monday offering special snail-shaped lamps free 'to any of our customers who buy a new chandelier in our Spring sale and send proof of purchase to our head office'. They also publish the offer in the Daily Comet. In which situation would Brightlights' unilateral offer have been validly revoked before Dora's acceptance?

a. Dora sees the advert in her Monday morning copy of the Daily Comet and decides to buy a chandelier. On Tuesday, Brightlights Ltd runs a TV commercial saying 'Spring sale now ended – even bigger bargains in our Summer sale'. Dora does not see this, and buys a chandelier from Brightlights' Dorking branch on Wednesday. She sends a copy of her receipt to the head office, and receives a note back saying that the offer has ended.

Feedback: Incorrect. There would be a binding contract here since Brightlights' second TV commercial would not amount to effective revocation of the offer. An offer in a newspaper advertisement can generally be revoked by a similar advertisement (*Shuey v US* (1875)). This means that the offer would still be open when Dora commenced performance, and a unilateral offer cannot normally be revoked once the offeree has commenced performance (*Errington v Errington* (1952)). Communication of acceptance to the offeror is not required for a unilateral contract (*Carlill v Carbolic Smoke Ball Co*).

Page reference: 78-80

b. Tom notices the advertisement in the Daily Comet and circles it. He does not have a car, and it is snowing, so he puts on his ski boots and immediately sets out for his local Brightlights store. En route, after walking for an hour, he is knocked down by a lorry and spends four days in hospital. On Friday, he reads in the Daily Comet that Brightlights' New Year's sale has now ended but attempts to buy the chandelier anyway.

Feedback: Incorrect. Tom had commenced performance before Brightlights effectively revoked the offer by setting out for his local Brightlights' store. Communication of acceptance to the offeror is not required for a unilateral contract (*Carlill v Carbolic Smoke Ball*). A unilateral offer cannot normally be revoked once the offeree has commenced performance (*Errington v Errington* (1952)).

Page reference: 78-9

*c. Sally rings up Brightlights' head office and leaves a message saying that she has seen their commercial and could they please reserve two snail lamps for her.

Feedback: Correct. There would NOT be a binding contract here since unilateral contracts are only concluded by the performance of the stipulated act. Communication is legally irrelevant (*Carlill v Carbolic Smoke Ball*). Brightlights' would be free to revoke the offer until Sally commenced performance.

Page reference: 78-9

Type: multiple choice question

Title: Chapter 02 - Question 23

23) If a supermarket chain agrees to buy land for a potential store 'subject to contract', and then spends time and money obtaining planning permission for the site, what can the supermarket chain claim if the seller then refuses to conclude the deal but, instead, sells the land at an enhanced value due to the planning permission, to a rival bidder?

a. A claim in promissory estoppel for the land.

Feedback: Incorrect. There would be no claim in promissory estoppel here, since promissory estoppel requires a clear and unequivocal promise or representation as to future conduct which indicates the promisor's intention not to insist on his strict legal rights against the promisee (*Woodhouse v Nigerian Produce Marketing Co Ltd*). There is no existing legal relationship here. Promissory estoppel only operates defensively, and cannot create a cause of action to enforce a new or additional right. However, a restitutionary claim for a *quantum meruit* for work done would be awarded to reverse the unjust enrichment to the seller of having obtained planning permission through the supermarket chain's efforts (*Yeoman's Row Management Ltd v James Cobbe* (2008)).

Page reference: 102-3, 148-9, 152

b. A claim in specific performance to have the land transferred to it.

Feedback: Incorrect. There would be no contract here since the agreement was expressly made 'subject to contract'. However, a restitutionary claim for a *quantum meruit* for work done would be awarded to reverse the unjust enrichment to the seller of having obtained planning permission through the supermarket chain's efforts (*Yeoman's Row Management Ltd v James Cobbe* (2008)) Page reference: 101, 102-3

*c. A restitutionary claim for a *quantum meruit* for work done.

Feedback: Correct. A restitutionary claim for a *quantum meruit* for work done would be awarded to reverse the unjust enrichment to the seller of having obtained planning permission

through the supermarket chain's efforts (*Yeoman's Row Management Ltd v James Cobbe* (2008)).

Page reference: 102-3

d. A claim in proprietary estoppel for the land.

Feedback: Incorrect. There would be no claim for proprietary estoppel since the contract was 'subject to contract, and the seller did not promise that the supermarket chain would get an interest in its land. . However, a restitutionary claim for a *quantum meruit* for work done would be awarded to reverse the unjust enrichment to the seller of having obtained planning permission through the supermarket chain's efforts (*Yeoman's Row Management Ltd v James Cobbe* (2008)) Page reference: 102-3, 156-7

Type: true-false

Title: Chapter 02 - Question 24

24) True or false? Express or implied agreements to use 'best endeavours' will not be enforced by the courts because they are too uncertain and it is too difficult to determine whether breach has occurred.

a. True

Feedback: Incorrect. Although the courts have been unwilling to enforce duties to negotiate in good faith where it is difficult to determine whether breach has occurred (*Walford v Miles* (1992), they have been willing to enforce obligations to make 'best endeavours' (*Jet2.com Ltd v Blackpool Airport Ltd* (2012)).

Page reference: 91-4

*b. False

Feedback: Correct. Although the courts have been unwilling to enforce duties to negotiate in good faith where it is difficult to determine whether breach has occurred (*Walford v Miles* (1992), they have been willing to enforce obligations to make 'best endeavours' (*Jet2.com Ltd v Blackpool Airport Ltd* (2012)).

Page reference: 91-4