

**T.C. Yıldız Teknik Üniversitesi**  
**İktisadi ve İdari Bilimler Fakültesi**  
**Borçlar Hukuku (İngilizce) Ara Sınavı 22/11/2022 Süre 60 dakika**

**I. Multiple Choice of Questions (25 points)**

- 1) Which one of the following is not a form of contractual formality?
  - a) A requirement that a contract be executed by deed
  - b) A requirement that a contract be in writing
  - c) A requirement that a contract be witnessed and signed by a judge to verify its legality
  - d) A requirement that a contract be evidenced in writing
- 2) A person's contractual capacity refers to?
  - a) The extent to which that person can enter into a legally binding contract.
  - b) The number of contracts that person is allowed to enter into.
  - c) The formalities that that person must adhere to in order to create a legally binding contract.
  - d) The minimum amount of consideration that person must provide in order to create a legally binding contract.
- 3) Regarding the contractual capacity of a minor, which one of the following statements is true?
  - a) A minor cannot enter into a legally binding contract, and any such contract is void ab initio.
  - b) Minors have full contractual capacity providing that the other party is aware that he is dealing with a minor.
  - c) A contract for the purchase of shares is void if the purchase is made by a minor.
  - d) Generally, a minor who enters into a contract can enforce the contract against the other party.
- 4) In relation to mental incapacity, which one of the following statements is true?
  - a) A contract entered into by a mentally incapacitated person is void if the other party knew of the incapacity.
  - b) A mentally incapacitated person can enter into a binding contract for the purchase of necessities.
  - c) A mentally incapacitated person never has capacity to enter into a legally binding contract.
  - d) Mentally incapacitated persons are always bound by the contracts they enter into.
- 5) What is a unilateral contract?
  - a) A contract in which both parties are legally bound to perform their side of the agreement.
  - b) A unilateral contract is a contract whereby only one party promises to perform an act if the other party performs a stipulated act, but the other party is not under an obligation to perform the stipulated act.
  - c) A contract involving only one party.
  - d) A contract that either party can withdraw from at any time.
- 6) What are the requirements for a valid and binding contract?
  - a) Offer, acceptance, inconsideration, and intention to create legal relations.
  - b) Offer, acceptance, certainty, practicality, and intention to create legal relations.
  - c) Offer, acceptance, certainty, consideration, and reasonableness.
  - d) Offer, acceptance, certainty, consideration, and intention to create legal relations.
- 7) Which one of the following usually amounts to an offer?
  - a) Goods sold through a machine.
  - b) Advertisements.
  - c) Displays of goods.
  - d) An invitation to submit a tender.

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- 8) An offer can be terminated in a number of ways. Which one of the following is NOT an effective way to terminate an offer?
- Rejection by the offeree.
  - Failure of a condition precedent.
  - Revoking the offer following acceptance.**
  - Lapse of a reasonable time.
- 9) What is the principal effect of a counter-offer?
- A counter-offer destroys the original offer and replace it with a new offer.**
  - A counter-offer creates a binding contract based on the terms of the counter-offer.
  - A counter-offer creates a new offer, but the original offer is still capable of being accepted.
  - A counter-offer creates a binding contract based on the terms of the original offer.
- 10) What is the parol evidence rule?
- The parol evidence rule provides that a party may never adduce evidence that seeks to add to, vary or contradict the content of a written document.
  - The parol evidence rule presumes that a written document contains all the terms of a contract, but there are situations where this presumption can be rebutted and a party will be permitted to adduce evidence that adds to, varies or contradicts the content of a written document.**
  - The parol evidence rule provides that parties are free to adduce evidence that seeks to add to, vary or contradict a written document.
  - The parol evidence rule provides that an oral contract is not usually binding.

**II. True false questions (25 Points)**

- Performance of a contractual duty owed to a third party does not amount to good consideration. **FALSE**
- Generally, performance by A of an existing legal duty does not provide fresh consideration for a new promise made by B. **TRUE**
- Generally, the performance of a pre-existing contractual obligation by A does not provide fresh consideration for a new promise made by B. **TRUE**
- Generally, part-payment of a debt does not constitute sufficient consideration. **TRUE**
- Silence does not constitute valid acceptance. **TRUE**
- An offeree can accept an offer of which he was not aware. **FALSE**
- Generally, there is no need for an offeree to communicate his acceptance to the offeror. **FALSE**
- Generally, acceptance need not precisely match the terms of the offer. **FALSE**
- It is vital to be able to distinguish between terms and mere representations. In relation to this, generally, statements of opinion tend not to amount to representations or terms of the contract. **TRUE**
- English courts are required to take into account decisions of the European Court of Human Rights. **TRUE**

**III. Fill in the blank questions (25 Points)**

- An offer** is an expression of willingness to contract, made with the intention that it shall become binding on the offeror, as soon as it is accepted by the offeree.
- An acceptance** is a final and unqualified assent to the terms of an offer, whether by express words or by action.
- Silence** on the part of the offeree (i.e. his mere failure to reject the offeror's offer) does not normally amount to acceptance.

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- 4) **Vague agreements and inchoate (or incomplete) agreements** arise where the parties have not expressed themselves with sufficient clarity on the matter of an essential term. In such cases the contract is unenforceable, because the lack of precision regarding terms in the contract allows either party to avoid its obligations should it so choose.
- 5) **Consideration** is an act or forbearance of the one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.
- 6) The parties must **intend** to be legally bound before the court will recognise the existence of an enforceable contract.
- 7) Any person can enter into a contract. In order to make an enforceable contract, however, the contracting parties must have **capacity** in law to enter into the agreement.
- 8) A **minor** is considered to be any person under the age of 18 years.
- 9) The courts are reluctant to imply terms on the parties' behalf. An irreparable lack of **certainty**, therefore, will lead the court to conclude that the contract is invalid.
- 10) A **term** is a statement that forms part of the contract. A promise amounting to a **term** of the contract will allow a remedy for breach of contract if either an express or an implied **term** was breached by the defendant.

**IV. In text questions (25 Points)**

Philip wants to sell his house and advertises it in the local newspaper at £370,000, giving his telephone number. Jim sees the advertisement and rings Philip and makes an appointment to see the house. Jim likes the house but cannot agree a price with Philip, his highest offer being £367,000, while Philip insists on £370,000. On the following Monday Jim receives a letter from Philip offering him the house for £368,500 and saying that Jim can have until noon on Friday to think about it. On Wednesday evening Jim meets his brother Garrett in their local. Garrett tells him that Philip's son-in-law bought the house earlier that day for £367,000. Jim goes straight home and writes a letter to Philip, accepting his offer to sell at £368,500. He posts the letter immediately and Philip receives it on Thursday morning, but replies by return saying

"You are too late. I have sold the house to my son-in-law."

Advise Jim.

Offer & Acceptance Problem - Sample Answer

The issues which arise in this problem are invitation to treat, counter-offer, the status of a promise to keep an offer open, revocation and the postal rule.

An offer may be defined as a clear, unambiguous statement of the terms upon which the offeror is prepared to contract should the offeree decide to accept. It is important that the offer itself manifest an intention to be bound. If the offeror is merely feeling his way towards an agreement, or initiating negotiations from which an agreement might or might not result, there is no offer. Instead, it constitutes an invitation to treat, an "offer to receive offers". Over the years the courts have held that certain situations constitute invitations to treat rather than offers; for example, goods in a shop window (Fisher v. Bell and Pim v. Minister for Industry & Commerce), goods in a self-service shop (Pharmaceutical Society of Great Britain v. Boots Cash Chemists), auctions (Payne v. Cave and Harris v. Nickerson) and applications for tenders (Harvela v. Royal Trust Company of Canada). Advertisements will generally

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constitute invitations to treat. In *Partridge v. Crittenden*, the plaintiff placed an ad in *Cage and Aviary Birds* which stated "Bramblefinch cocks and hens, 25s each". He was convicted of the offence of offering for sale a live wildbird. His conviction was quashed on appeal, where the court held that advertisements were merely invitations to treat so that he could not have committed the offence of "offering for sale". Though as a general rule advertisements merely constitute invitations to treat, it is possible for an advertisement to be construed as an offer, if the court feels that it displays a definite intention to be bound (*Carlill v. Carbolic Smoke Ball Co.*, *Lefkowitz v. Great Minneapolis Surplus Store* *R v. Warwickshire County Council*). When an offer is accepted, it is essential that the offeree accept the exact terms of the offer. If, instead of doing so, the offeree introduces a new term, he is making a counter-offer, the effect of which is to destroy the original offer. In *Hyde v. Wrench* the defendant offered to sell his farm for £1,000. The plaintiff agreed to buy, but at £900. A few weeks later the plaintiff accepted the offer of £1,000. The court held that there was no contract. By stating he would buy the farm for £900 the plaintiff had made a counter-offer, which destroyed the original offer so that it could no longer be accepted. Another example of a counter-offer is the case of *Wheeler v. Jeffrey*. If the offeree intends to accept the offer as it stands, and looks for some further information about the offer, he does not make a counter-offer but a request for information which does not destroy the offer. A good example of this is found in *Stevenson v. McLean*. In general, the offeree's acceptance of the offer must be communicated to the offeror. The postal rule however is an exception to this. If the acceptance is posted, acceptance is complete the moment the letter is placed in the post box. The postal rule was first set out in *Adams v. Lindsell*. It applies even if the letter never arrives (*Household Fire Insurance v. Grant*) though it will not apply if the letter was not properly stamped or addressed, if it was unreasonable at the time to use the post or if the offeror expressly or impliedly stated that the rule would not operate (*Holwell Securities v. Hughes* and *Kelly v. Cruise Catering*). An offeror is entitled to revoke his offer at any time until it has been accepted. In *The Guardians of the Navan Union v. McLoughlin*, the defendant was held to be entitled to revoke his offer because the plaintiff's acceptance had not yet been communicated to him. Even if the offeror promises to keep his offer open for a certain period, he is still entitled to revoke. In *Routledge v. Grant* the offeror promised to keep his offer open for six weeks but revoked after three. The court held that he was entitled to do so. An offeror's promise to keep his offer open is not legally binding because it is unsupported by consideration. If the offeree provided even a nominal consideration (eg. £1) for the promise to keep the offer open then the offeror cannot revoke. It is essential that revocation be communicated to the offeree. The postal rule does not apply to revocation, therefore a letter of revocation does not take effect until it is received by the offeree (*Byrne v. Van Tienhoven*). Revocation need not necessarily be communicated by the offeror. In *Dickinson v. Dodds* the defendant offered to sell his house to the plaintiff, and promised to keep the offer open for two days. The following day a third party told the plaintiff that the defendant had sold to someone else. The plaintiff immediately purported to accept the offer. The Court of Appeal held that the offer had been validly revoked and could not therefore be accepted by the plaintiff. The facts of *Cartwright v. Hoogstoel* also involved revocation by means of a third party. It is difficult to know exactly when a third party can validly revoke an offer. If the information comes from a reliable source it will presumably operate to revoke the offer. On the other hand, will mere gossip be sufficient? This is a question of fact, to be decided on the circumstances of every case.

Philip's advertisement in the local paper is an invitation to treat. It merely gives him a telephone number and a price; there is nothing more that might transform it into an offer. Jim then makes an offer of £67,000 which is destroyed by Philip's counter-offer of £70,000. Jim then makes a

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fresh offer of £68,500 and gives Jim until noon on Friday to think about it. The fact that Philip impliedly promised to keep the offer open is irrelevant here because his promise was not supported by consideration. He is entitled to revoke before noon on Friday. Two days later Jim hears from his brother Garrett that the house has already been sold. Does this constitute a revocation of Philip's offer? An offer can be revoked at any time prior to acceptance, and revocation need not necessarily be communicated by the offeror. The validity of the revocation in this case depends on Garrett's reliability. If he were a notorious gossip, with a tendency to get his facts wrong, then the revocation would probably not be effective. If, on the other hand, he were reliable and truthful the offer would be validly revoked. If a court were to find that Garrett was an unreliable source, the offer would not have been revoked on Wednesday night and would therefore have been capable of acceptance when Jim hurried home to write to Philip. According to the postal rule the acceptance would have taken effect the moment the letter was posted, therefore Jim would have had a valid contract to buy the house that night. Philip's letter telling Jim that the house had already been sold would not have operated as a revocation of his offer because it would already have been accepted.

In conclusion, I consider that the outcome of this problem depends on Garrett. If he is a trustworthy, reliable source, then the offer was revoked on Wednesday night in the pub. If he is not reliable, then a contract came into existence between Jim and Philip the moment Jim posted the letter on Wednesday night.