How to Pass Business Law
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How to Pass Business Law

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Preface

It might be best to begin by stating what this little book is not.

It is not an alternative to a textbook, nor is it a summary of the law.

It is, as its title suggests, an aid to assist business/commerce students pass their core first year business/commercial law subjects.

This book explains how to approach business/commercial law scenario-style exam questions in the key areas of law that are covered in most first year core business/commercial law subjects at Australian universities.

Succeeding in business/commercial law, like many things in life, requires a combination of knowledge and skills. A book such as this, on its own, is of limited value. Merely reading about skills is not enough.

This book focuses on building skills, such as the ability to identify issues and structure answers. These skills must be practised. The knowledge component develops when students engage with their lecturers (and lecture notes), tutors (and tutorial notes), textbooks, supporting learning materials (in print and online) and their fellow students, in formal workshops or seminar situations and in informal student-formed study groups.

To assist students practise the skills that this book focuses on, a number of worksheets/tables have been presented. These aim to guide students when they are formulating their approach to questions on certain topics. A number of answer structures are also provided, which highlight structure and approach. These should not be considered a substitute for thorough study of the subject areas.

The scope of this book does not include every topic of every business/commercial law subject. It is not intended to. Instead, it sets out to use three key aspects of such subjects to highlight an approach to answering questions and developing required skills that can then be applied to other topics. These may even be used in other law subjects that students encounter during business/commerce degrees, such as corporations law and taxation law.

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Mark Bender
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Author Dedications

This book is dedicated to Chris, Colleen, Ann and Harry Bender
and
Do Dinh Kiem
INTRODUCTION

As lecturers, we have taught business law to over 15,000 students during our careers. Not all of them have passed the first time, but we have learned what the successful students do, and we know how to deal with and prepare for what many students see as their biggest problem — exams.

This book is not a study guide; it is not a collection of case summaries, and it is certainly not a textbook. There are plenty of books out there that fill these roles well. What this book does is set out some practical approaches, tips or tricks to help students who are new to the study of business law prepare for their exams. It is intended to be a companion to other learning resources, such as textbooks, lecture slides and the student’s own notes.

Succeeding in business law exams depends on successful triage (ie how something is ordered and/or prioritised). Being able to successfully triage requires knowledge and an effective approach. This book focuses on the approach, in other words, how to apply the knowledge to scenario-style assessment questions, such as the questions used in most business law exams.

As already mentioned, this book is intended as a companion to a textbook, and so provides only an overview of key approaches, rather than the law itself. You (the student) will also need to use your textbook, your own notes from lectures and discussions with your lecturers, tutors and other students to develop your knowledge and pass your exams.

This book is about helping you to identify what law to apply to the different types of exam questions you will face.

0-005 The principles of passing business law

Principle 1 — Getting on the right track

In exams, many students write an “ok” answer to a question, but not the question being asked. Sometimes this is called “picking the issue” or “spotting the topic”. In our experience, being able to do this successfully is one of the keys to succeeding in business law.

Principle 2 — Don’t meet an issue for the first time in the exam

This is linked to Principle 1. The only effective way to prepare for an exam is to have practice looking at exam-style questions and figuring out exactly what is being asked, then preparing your own answer.

Most universities teach business law using lectures and tutorials. We have found that successful students typically prepare answers to tutorial questions, whereas unsuccessful students often do not.
It is also important to be aware that just preparing tutorial answers is not enough. The end of semester exam is commonly used in business law subjects and typically covers a number of different topics. So, there is a much larger range of potential issues to be aware of and understand than what may be found in a tutorial question where students know which chapter the question relates to.

Successful students will practise doing questions where the topic (or relevant chapter of the text) is not known.

**Principle 3 — Where are the marks?**

Often students write good answers to another question; there are no marks for answering the wrong question. Learning how to plan answers to questions will ensure that once you are “on the right track” you pick up most of the marks that are available — a bit like picking up the coins in a *Mario Bros* game.

**Principle 4 — Get feedback**

Ensure you ask for feedback from teaching staff or other students so you know that you are on the right track. Feedback helps you to determine where to focus your study time.

**Principle 5 — Merely memorising will not help you pass**

Passing business law is *not* about memorising and copying material out in your exam. It is about learning the basics of the law and applying these basics to a situation.

**Principle 6 — Model answers are not the answers**

Model answers that someone else has prepared will *not* help you pass if you do not know how to apply the material to exam scenarios.

**Principle 7 — Know your learning style**

There is no such thing as passive learning. You don’t get fit by watching someone else work out. You also don’t learn how to do exam questions by only listening to lectures or tutorials and not trying out the questions yourself. Be active — write answers, talk to fellow students and ask questions.

**Principle 8 — Passing is all about patterns, processes and having a “recipe”**

There are only so many ways questions can be asked in a business law exam. As you are studying, you should be building a plan, establishing a pattern, process or flowchart, or creating a checklist that you can use as your “recipe” to guide you through the different steps you need to address the issue in the question and answer it correctly.

**Principle 9 — You don’t have to know every detail to pass or do well**

Passing business law is as much about technique and approach as it is about knowledge.

**Principle 10 — Planning**

There is a saying: “Proper prior planning prevents poor performance.” We believe this is the best way to sum up what successful students do, both when preparing for exams and when they are actually answering questions in exams.
Most business law exams have some reading time. This should be considered as planning time — where you think about what the issues are. Look for clues, key words or phrases that will help to put you on the right track with your answer. Don’t focus on including too much detail. Your task is merely to build a “skeleton” and divide the question up into smaller chunks that you can later answer.

0-010 Triage

Passing business law is a bit like administering first aid.

Paramedics and emergency medical staff are taught very early on about the importance of “triage”. If you Google the word “triage”, you will see that it is described as something along the lines of: “to decide the order of treatment of (patients or casualties).”

When there are a number of injured people, the paramedics and/or emergency medical staff must first work out which patients are to be treated first, and what is wrong, then proceed to apply their knowledge and skills.

Like first aid, when you sit for an exam you won’t know exactly what the questions will be about. You will need to work out quickly what to write about, and then you will need to apply your knowledge and skills.

This book is divided into three parts which deal with the key topics in most business law subjects. It is also structured in a similar way to some textbooks. To ensure that you are in the right place, you need to “triage” and prioritise the order of how information will be addressed.
PART 1: CONTRACT LAW

1-005 Helpful hints

When faced with a question concerning contract law, it is important that you read the question carefully and ask yourself: What is the question asking of me? Although it might be tempting to write about all the legal principles relating to an aspect of contract law (eg contract formation), the question might only be asking you to focus your discussion on one or two legal principles. It is critical that you correctly identify what is being asked of you and that you answer the question accordingly. This applies to exams as well as the assessments that you are required to complete to obtain your final business law mark.

Most assessments (eg essays, exam questions) will specify a word limit. It is essential that you adhere to the word limit, otherwise you may be penalised (sometimes in the order of 10%) for exceeding the word limit assigned. To ensure that you do not exceed the word limit, focus on only addressing the legal principles that directly relate to the assessment question being asked. We will not be discussing completion of assessments any further in this book as students tend to have more difficulty with exams. There are many books and online resources available that offer advice and guidance on writing essays and assignments. Most universities also offer workshops and learning skills support in areas such as writing and research.

With any assessment, whether it is an exam question or other form of assessment, it is best to read the question first before reading the complete set of facts of the question. The question is usually situated at the end of the facts of the question. The reason why you should read the question first is so that you can identify the key facts in the question. These will assist you to answer the question and to disregard irrelevant facts. Once you have read the question, you can ascertain what the question is asking of you, and approach the facts with the question in mind.

1-010 Common errors

Following are some errors commonly made by students when answering questions in this area of law:

- Students not reading the question carefully and not answering the question asked of them.

With respect to the topic of contract formation, there are a number of possible questions that the examiner might ask relating to different aspects of contract formation. Read the question carefully and make sure you understand what the question is asking you to address.
• Students stating the relevant legal principles without citing the underpinning case authorities or legislation.

It is not enough to simply recite legal principles without also discussing the cases or legislation from which the legal principles are derived.

• Students not taking care to carefully review the course materials, assessment instructions and assessment marking matrix or grid (if it is made available).

Some courses will require you to not only cite the relevant case authorities or legislation, but also discuss the case authorities and/or legislation in detail. For instance, in addition to citing the relevant case authority, you may be required to discuss the facts, legal issue and judgment of the relevant case. The course materials, assessment instructions and assessment marking matrix or grid should specify what is expected of students. If you are uncertain as to whether you are required to discuss case authorities and/or legislation in detail, you should consult your lecturer or tutor.

• Students stating the legal principles, case authorities and/or legislation, but not applying the law to the facts of the question.

If you only recite the legal principles, case authorities and/or legislation, and you do not apply the law to the facts of the question, you have only effectively completed half of the task. Approximately half of the allocated assessment marks are allocated to your discussion of legal principles, case authorities and/or legislation. The remainder are allocated to your application of the law (ie your application of the law to the facts of the question). Therefore, if you do not apply the law to the facts of the question, you will not obtain a strong grade in your business law unit, despite knowing the law. In the study of law, application of law is just as important as knowledge of the law itself.

CONTRACT FORMATION

1-105 Snapshot of the law

To succeed in this topic you need to be familiar with the key elements of a legally binding agreement. For a legally binding agreement to exist, three elements must be present:

1. intention to form a legally binding agreement
2. agreement, and
3. consideration (in circumstances when the contract is not executed by deed).
Intention to form a legally binding agreement

A contract is only legally enforceable if the parties intended to be legally bound by the agreement. Put another way: Did the parties intend for the contract to be legally enforceable if either party did not perform their contractual obligations?

Intention to form legal relations must be either “express” or “implied”. Given such an intention is rarely explicitly expressed, courts will often be called upon to determine whether such intention can be implied in the given circumstances. To determine whether such implied intention existed, the court applies two objective presumptions:

1. Parties of a domestic or social relationship are assumed not to intend to enter into a legally binding agreement (ie parent and child, siblings, friends, etc) (*Balfour v Balfour* [1919] 2 KB 571).

2. Parties of a commercial/business relationship are assumed to intend to enter into a legally binding agreement (ie business partnerships, commercial contractors, etc) (*Esso Petroleum Ltd v Commissioners of Customs & Excise* [1976] 1 All ER 117).

Although the courts rely on the above presumptions, the presumptions can be rebutted, provided that the party wishing to rebut the presumptions can present evidence to the contrary (*Merritt v Merritt* [1970] 2 All ER 760 and *Commonwealth Bank of Australia v TLI Management Pty Ltd* [1990] VR 510).

Agreement

Where the parties have entered into a contract by way of a written document, it is rare that the existence of an agreement will be disputed. However, in circumstances where there is no written document (eg where the parties have instead communicated verbally and liaised through a variety of methods, such as through letter or email exchanges), it may be disputed whether an agreement has been reached.

An agreement is comprised of an “offer” and “acceptance”. To establish that an agreement exists, a court must be satisfied that an offer was made and that it was subsequently accepted unconditionally.

Offer

An offer is a statement, made by one party to another party, of the terms by which he or she is willing to be contractually bound. The person making the offer is referred to as the “offeror”. The person to whom the offer is addressed is the “offeree”. An offer must be a definitive statement made by the offeror to the offeree of the terms that he or she is willing to be bound by (*Harvey v Facey* [1893] AC 552).

Once the offer is accepted, an agreement is formed. Generally, the following examples lack certainty and so are not considered to be offers:

- puffs
- advertisements (*Partridge v Crittenden* [1968] 2 All ER 421)
- goods displayed on shelves (*Pharmaceutical Society v Boots Cash Chemist (Southern) Ltd* [1953] 1 QB 401)
- tenders, and
- auctions (*Harris v Nickerson* (1873) LR 8 QB 286).
Offers must be communicated before an offeree can accept the offer. Offers can be communicated in one of three ways:

1. directly to the offeree
2. to a group of people (which the offeree is a part of) (R v Clarke (1927) 40 CLR 227), or
3. to the world at large (Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256).

An offer will lapse within a reasonable period of time (Ramsgate Hotel Co v Montefiore (1866) LR 1 Exch 109), provided the offer was not withdrawn prior to being accepted (Routledge v Grant (1828) 130 ER 920) or lapsed by virtue of a counter-offer (Hyde v Wrench [1840] 49 ER 132).

Acceptance

An acceptance is a statement of unconditional assent to the terms of the offer made by the offeror. Any acceptance that seeks to amend the terms upon which the offer was made is not a valid acceptance. The following statements are not considered to be acceptance:

- counter-offers (Hyde v Wrench [1840] 49 ER 132), and
- conditional acceptance (Masters v Cameron (1954) 91 CLR 353).

Only the offeree can accept the offer made by the offeror.

An agreement is formed once the acceptance has been communicated to the offeror. When and where the agreement is made will depend on the type of communication used.

Acceptance can be communicated through the following methods:

- **Verbally**: An agreement is formed once the offeror receives the offeree’s acceptance.
- **Conduct**: An agreement is formed once the offeror receives the offeree’s acceptance. However, in circumstances where an offer is made inviting potential offerees to accept the offer by carrying out specified tasks, an agreement is formed when the offeree performs the specified task (Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256).
- **Post**: If indicated by the offeror, an agreement is formed once the acceptance letter is posted (Henthorn v Fraser [1892] 2 Ch 27).
- **Email**: An agreement is formed once the acceptance email is registered by the offeror’s specified information system. (In Australia, this is regulated by state and territory legislation. See, for example, the Electronic Transactions (Victoria) Act 2000.)
- **Fax**: An agreement is formed once the acceptance fax is registered by the offeror’s fax machine (Brinkibon Ltd v Stabag Stahl und Stahlwarenhandelsgesellschaft mbH [1983] 2 AC 34).

Consideration

In circumstances where the contract is not executed by deed, both parties must provide consideration. A contract is executed in deed where the contract is written, signed, witnessed, sealed and delivered by the parties to the contract.

Consideration is the promise provided by each party to the agreement. The consideration provided does not have to be of equivalent value to the consideration received in exchange. However, the consideration must have some legal value (Eleanor Thomas v Benjamin Thomas (1842) 2 QB 851). Therefore, consideration can be a promise to do or not do something, or provision of payment or an item in exchange for the promise received.

Consideration can be classified in the following ways:

- **Executed consideration**: This is a form of consideration where a party performs the consideration. For example, payment for a coffee immediately upon ordering (Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256).

- **Executory consideration**: This is a form of consideration where a party promises to perform the consideration in the future. For example, a party promises to pay for a car once it has been delivered (Musumeci v Winadell Pty Ltd (1994) 34 NSWLR 723).

- **Past consideration**: This is consideration that has taken place in the past. Past consideration is not good consideration as the recipient does not stand to benefit from the consideration as the consideration has already occurred (Roscorla v Thomas (1842) 3 QB 234).

1-110 Question example

James Hues owns and runs a successful café and catering business, Café Express, in the heart of St Kilda, Melbourne. He is tired of working long hours and decides to sell Café Express. James contacts Williams and Associates Real Estate Agents (Williams and Associates) to arrange the sale of the business.

Williams and Associates place an advertisement in the local newspaper advertising Café Express for sale. The advertisement reads:

**URGENT SALE**

Café Express

Café Express, located in the heart of St Kilda (situated off Fitzroy Street), is available for sale. This rare business opportunity will not be on the market for long!

All furniture, equipment and current stock inclusive of the business sale.

Sales are approximately $750,000 per annum (excluding GST) and owner-operator profits are approximately $120,000 per annum (calculated based on the average earnings from the past five years).

All reasonable offers above $350,000 will be considered. For more information or to make an offer, please contact John Williams on 0456 789 012 or enquiries@williamsandassociates.com.

Stephanie Shee, a close family friend of James, notices the advertisement in the newspaper and telephones James directly. Stephanie, knowing how much James wants to leave the hospitality industry, offers to purchase Café Express for $300,000. As Stephanie’s offer is $50,000 below the minimum asking price, James is hesitant to accept the offer. Stephanie tells James to think...
about her offer and to get back to her at the end of the week, but no later than the coming Friday at 5 pm.

Without consulting Williams and Associates about the offer, James decides to accept Stephanie’s offer. On Wednesday morning, James emails Stephanie telling her that he is willing to sell Café Express to her for $300,000.

On Wednesday afternoon, John Williams from Williams and Associates contacts James and informs him that an anonymous investor has provided a written offer to purchase Café Express for $400,000. James tells John to accept the offer on his behalf.

James immediately calls Stephanie and tells her to ignore the email he had sent her earlier that day. Stephanie is very angry and believes that they have formed a legally binding contract.

1-115 Common questions assessed in this area of law

A question concerning contract formation will generally ask you one (or a combination) of the following questions:

1. Did the parties possess the necessary intention to form a legally binding agreement?
2. Did the parties reach an agreement (ie was an offer and acceptance reached)?
3. Is consideration required in the given circumstance and, if so, has sufficient consideration been provided?
4. Did the parties ultimately form a legally binding agreement?

1-120 Answer structure — Question 1

Q1: Have James and Stephanie demonstrated an intention to form a legally binding agreement?

*Hint: The question asks you to only consider whether James and Stephanie have demonstrated an intention to form a legally binding agreement. Therefore, there is no need to discuss the other elements of contract formation, ie agreement and consideration.*

<table>
<thead>
<tr>
<th>Principles of law — checklist</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Intention to form a legally binding agreement</strong></td>
</tr>
<tr>
<td>• Define “intention to form a legally binding agreement”.</td>
</tr>
<tr>
<td>• How do the courts determine whether a party intends to form a legally binding agreement?</td>
</tr>
<tr>
<td>• What presumptions do the courts apply in determining whether a party intends to form a legally binding agreement?</td>
</tr>
<tr>
<td>• Are the parties of a domestic or social relationship? <em>(Balfour v Balfour [1919] 2 KB 571)</em></td>
</tr>
<tr>
<td>• Are the parties of a commercial or business relationship? <em>(Esso Petroleum Ltd v Commissioners of Customs &amp; Excise [1976] 1 All ER 117)</em></td>
</tr>
<tr>
<td>• Are the presumptions rebuttable?</td>
</tr>
<tr>
<td>• Can a party demonstrate that, despite the parties’ domestic or social relationship, the parties did intend to be legally bound to the agreement? <em>(Merritt v Merritt [1970] 2 All ER 760 and Commonwealth Bank of Australia v TLI Management Pty Ltd [1990] VR 510)</em></td>
</tr>
</tbody>
</table>

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## Applying the law to the facts of the example question

<table>
<thead>
<tr>
<th>Intention to form a legally binding agreement</th>
<th>Application of the law to the facts of the example question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Relevant facts of the example question</td>
<td></td>
</tr>
<tr>
<td>● Stephanie is a close family friend of James.</td>
<td>● Applying the presumptions that the courts rely on to determine whether the parties intended to form a legally binding agreement:</td>
</tr>
<tr>
<td></td>
<td>■ Are the parties of a domestic or social relationship? → Yes, James and Stephanie are close family friends.</td>
</tr>
<tr>
<td></td>
<td>■ Are the parties of a commercial or business relationship? → No, but James and Stephanie appear to have entered into a commercial or business agreement. The agreement was for the sale of a business in exchange for $300,000.</td>
</tr>
<tr>
<td></td>
<td>● Given that James and Stephanie have a social relationship, it is presumed that James and Stephanie did not possess the intention to form a legally binding agreement. However, it appears that the parties have entered into a commercial agreement as the agreement was for the sale and purchase of a business in exchange for a substantial amount of money, ie $300,000. In the given circumstances, it is arguable that the presumption regarding parties of a social relationship is rebuttable as the parties did possess the intention to form a legally binding agreement.</td>
</tr>
<tr>
<td></td>
<td>● Stephanie knows how much James wants to leave the hospitality industry.</td>
</tr>
<tr>
<td></td>
<td>● Is there evidence on the facts to suggest the presumption is rebuttable? → The fact that Stephanie is aware that James wants to leave the hospitality industry is not an indication of the closeness of their relationship. The advertisement placed by Williams and Associates advertising the sale of Café Express is an indication to the world at large of James’s desire to leave the hospitality industry.</td>
</tr>
<tr>
<td></td>
<td>● Stephanie offers to purchase Café Express for $300,000, which is $50,000 below James’s minimum asking price.</td>
</tr>
<tr>
<td></td>
<td>● Is there evidence on the facts to suggest the presumption is rebuttable? → The fact that Stephanie offers to purchase Café Express for $50,000 below the minimum asking price to which James accepts is not an indication of the closeness of their relationship. It is very common business practice to barter and make offers below the minimum asking price. Also, the offer to purchase Café Express for $300,000 is a competitive commercial rate for a business.</td>
</tr>
<tr>
<td></td>
<td>● James does not consult with Williams and Associates regarding Stephanie’s offer.</td>
</tr>
<tr>
<td></td>
<td>● Is there evidence on the facts to suggest the presumption is rebuttable? → The fact that James did not consult Williams and Associates regarding Stephanie’s offer is not common commercial practice. Although this fact does not assist in rebutting the presumption, it does not support the presumption either.</td>
</tr>
</tbody>
</table>
Reach a conclusion

Intention to form a legally binding agreement: Did the parties possess the necessary intention?

On the balance of probabilities, it appears that James and Stephanie did possess the necessary intention to form a legally binding agreement, despite being parties of a social relationship.

¶1-125  Answer structure — Question 2

Q2: Have James and Stephanie reached an agreement?

Hint: The question asks you to only consider whether James and Stephanie have reached an agreement. This is evident in the way the question is framed. The question does not ask you to consider the other aspects of contract formation, ie intention to form a legally binding agreement and consideration. Therefore, you should only focus your answer on addressing whether an agreement was reached between the two parties, namely whether an offer and acceptance was reached between the parties.

Principles of law — checklist

Agreement

● Define “agreement”.

Offer

● Define “offer”.

● Does the statement contain the terms that the offeror is willing to be contractually bound? (*Harvey v Facey* [1893] AC 552).

● Are the terms of the offer definitive? If no, is the statement any of the following:
  ■ puffs? (Partridge v Crittenden [1968] 2 All ER 421)
  ■ advertisements? (*Partrige v Crittenden* [1968] 2 All ER 421)
  ■ goods displayed on shelves? (*Pharmaceutical Society v Boots Cash Chemist (Southern) Ltd* [1953] 1 QB 401)
  ■ tenders?, or
  ■ auctions? (*Harris v Nickerson* (1873) LR 8 QB 286).

● How was the offer addressed/made?
  ■ Was it directed to the offeree?
  ■ Was it directed to a particular class of people (which the offeree belonged to)? (*R v Clarke* (1927) 40 CLR 227)
  ■ Was it directed to the world at large? (*Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256).

● Is the offer still in existence?
  ■ Has the offer been withdrawn prior to the offeree accepting the offer? (*Routledge v Grant* (1828) 130 ER 920)
  ■ Has a reasonable period of time passed causing the offer to have lapsed? (*Ramsgate Hotel Co v Montefiore* (1866) LR 1 Exch 109)
  ■ Has the offer lapsed by virtue of a counter-offer? (*Hyde v Wrench* [1840] 49 ER 132).

Acceptance

● Define “acceptance”.

● Was the offer addressed to the person seeking to accept it?
### Principles of law — checklist

- Was the statement an unconditional assent to the terms of the offer? If no, is the statement any of the following?
  - acceptance subject to a condition? (eg “subject to contract” term (Masters v Cameron (1954) 91 CLR 353)), or

- Has the offeree communicated acceptance? If yes, which method did the offeree employ? (NB: This will affect when and where the agreement formed):
  - verbal?
  - conduct? (Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256)
  - post? (Henthorn v Fraser [1892] 2 Ch 27)
  - email? (see, for example, the Electronic Transactions (Victoria) Act 2000), or
  - fax? (Brinkibon Ltd v Stahag Stahl und Stahlwarenhandelsgesellschaft mbH [1983] 2 AC 34).

### Applying the law to the facts of the example question

#### Agreement

- To determine whether an agreement was reached between James and Stephanie, the legal aspects of offer and acceptance must be considered.

#### Offer: Who made the offer?

<table>
<thead>
<tr>
<th>Relevant facts of the example question</th>
<th>Application of the law to the facts of the example question</th>
</tr>
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</table>
| Williams and Associates placed an advertisement in the local newspaper advertising Café Express for sale. | • Does the statement contain the terms that the person is willing to be contractually bound? → Yes.  
• Are the terms of the offer definitive? → No, the statement was an advertisement.  
• How was the offer addressed/made? → Directed to a particular class of people.  
• Is the offer still in existence? → Yes.  
• The advertisement placed by Williams and Associates was not an offer because it did not satisfy the legal requirements of an offer as the terms of the offer were not definitive. |
| Stephanie offers to purchase Café Express for $300,000. Stephanie tells James to think about her offer and to get back to her at the end of the week, but no later than the coming Friday at 5 pm. | • Does the statement contain the terms that the person is willing to be contractually bound? → Yes.  
• Are the terms of the offer definitive? → Yes.  
• How was the offer addressed/made? → Directed to the offeree.  
• Is the offer still in existence? → Yes.  
• Stephanie’s offer to purchase Café Express meets the legal requirements of an offer. |
| On Wednesday afternoon, John contacts James and informs him that an anonymous investor has provided a written offer to purchase Café Express for $400,000. | • Does the statement contain the terms that the person is willing to be contractually bound? → Yes.  
• Are the terms of the offer definitive? → Yes.  
• How was the offer addressed/made? → Directed to the offeree. |
Applying the law to the facts of the example question

| ● Is the offer still in existence? → Yes. |
| ● The anonymous investor’s offer to purchase Café Express meets the legal requirements of an offer. |

Acceptance: Which offer was accepted?

| Relevant facts of the example question | Application of the law to the facts of the example question |
| ● On Wednesday morning, James emails Stephanie telling her that he is willing to sell his business, Café Express, for $300,000 to her. | ● Was the offer addressed to the person seeking to accept it? → Yes. |
| | ● Was the statement an unconditional assent to the terms of the offer? → Yes. |
| | ● Has the offeree communicated acceptance? → Yes, by email. Provided the email was registered by Stephanie’s specified information system, i.e., Stephanie’s email account, the acceptance will be deemed to have been communicated. |
| | ● Therefore, James’s email meets the legal requirements of an acceptance |

Reach a conclusion

Agreement: Has an agreement been reached?

| Relevant facts of the example question | Application of the law to the facts of the example question |
| ● James immediately calls Stephanie and tells her to ignore the email he had sent her earlier that day. Stephanie is very angry and believes that they have formed a legally binding contract. | ● On the balance of probabilities, an agreement was formed between Stephanie and James. Stephanie offered to purchase Café Express for $300,000 and James accepted by email. Once James’s acceptance email was registered in Stephanie’s email information system, an agreement was formed between the parties. |
| | ● Therefore, James’s attempt to withdraw the acceptance email constitutes a breach of contract. |

1-130 Answer structure — Question 3

Q3: In the given circumstances, does James or Stephanie have to provide consideration? If so, on the facts, has either party provided consideration?

Hint: The question asks you to only consider whether the agreement between James and Stephanie requires the provision of consideration and, if so, has either party provided the requisite consideration. Therefore, there is no need to discuss the other elements of contract formation, i.e., agreement and intention to form a legally binding agreement.

Principles of law — checklist

Consideration

| ● Was the contract executed in a deed? If not, then consideration is required. |
| ● Define “consideration”. |