LEGAL WRITING SKILLS

A GUIDE TO WRITING ESSAYS AND ANSWERING PROBLEM QUESTIONS

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Legal Writing Skills

A Guide to Writing Essays and Answering Problem Questions

This exercise is then repeated with respect to Question 2 – a question on the Human Rights Act 1998, which tests knowledge and appreciation of both constitutional law and the English legal system.

This question is used primarily to illustrate the relevant techniques in how to address and answer the question that has been set by the module leader. Section A contains a poor answer to the question, although the mistakes and style will not be as abject as that employed in Question 1.

Again, you are invited to identify any shortcomings and mark them on the essay before consulting the author's criticisms and recommendations. A much improved answer is then provided in section B, together with observations and recommendations for further improvement.

It is hoped that at the end of this chapter, you will have a clear idea of how – and how not – to write an essay and what qualities are needed for a sound answer. You should then be able to employ those skills in your law assessments for the remainder of the course, although it may take some time before you perfect these skills.

NOTE

These (good) essays should not be used as up-to-date and authoritative sources for researching your own assessments; they are intended for guidance on style and structure and referencing and are not reproduced as academic sources to be used or cited in your work. You also risk a charge of plagiarism if you use them in your work.

QUESTION 1: CONTRACT LAW ESSAY

EXAMPLE QUESTION

By the use of case law explain the distinction between an offer and an invitation to treat. Why is the distinction so important?

This question could appear on a variety of undergraduate and sub-degree courses, although some undergraduate institutions might not offer such a basic question.

The area should be familiar to most law students, and the question is a relatively straightforward one, although it does require the student to grasp the rationale of the legal area as well as the substantive rules.

The word limit given for the question is 2,000 words, but such questions may give a lesser word limit depending on the level of the course and the particular institution.

The student is on the first year of his LLB degree and is submitting this work as part of a module entitled '100 LAW – Law of Obligations (Contract)'. The module leader is Maureen Williams.

The following guidance is given to all students.

Students are expected to display the legal and other study skills outlined in their student handbook. In relation to the particular question, the student must:

- Show an appreciation of the distinction made in the law of contract between offers and invitations to treat.
- Use case examples to illustrate how the courts make that distinction.
- Explain and appreciate the factors that are considered by the courts in distinguishing between offers and invitations to treat.
- Explain why the distinction is important in relation to that legal area.

A: A poor essay

This essay highlights bad practice in writing legal essays. We then suggest how that practice might be improved so as to reflect the standard of skills and knowledge one is expected to display at undergraduate level.

Imagine that you are the module leader who set this question.

- What is wrong with the following essay? To what extent has the author addressed the question?
- Point out any irrelevant information and indicate where he has failed to clearly explain cases or concepts.

- Circle and correct any spelling and typographical mistakes, plagiarism and poor referencing and citation skills.
- With regard to any poor grammar, clumsy presentation and so on, suggest ways in which the work could have been presented in a more coherent and clearer fashion.
- Explain briefly what you believe the question was asking and how you would have planned and approached the question.

The answer

Offers and invitations: A conceptual illusion?

Before answering the specific question asked by this question it is vital to outline the characteristics of a contract. All contracts don't have to be in writing but can be made not in writing, although some have to be in writing. They must all have consideration and if they are broken then the plaintiff (or as he is now known the complainer) can sue for damages or get monetary awards. A contract can come to an end by breach, frustration or agreement.

With that sorted out, there is a difference between an offer and an invitation to treat and it is a very important one. The courts employ a variety of conceptual tools to make this distinction, although at times they adopt a more elaborate conceptual structure.

Examples of invitations to treat are the advertising of goods for sale in a paper (SEE the case of Prtridge and Crittenden (1968] 1wlr 1204), goods being sold by tender (see the case of Garinger and SON VERSUS Gough (1896), or by an auction, the displey of goods in a shop window Fisher -v- Bell (1961) 1qb' and a bus company advertising the times of their busess.

It is sometimes difficult to distinguish between an offer and an invitation to treat and the courts have had a lot of trouble doing it. As the classification of any act or statement as being either an offer or an invitation to treat depends on intention to be bound rather than upon any a priori principle of law it is not easy to reconcile all the cases or there reasoning.

What needs to be done now is to look at some of the cases where the court have made the distinction between an offer and an invitation to treet. We will then be able to see how they make the distinction and how important it is to make a distinction between an invitation and an offer. As I have said before it is difficult to make a distinction and the courts find it very difficult as well, even though they do this sort of thing for a living.

Let us look at the case of Fisher and Bell (1961). Here a flicknife was displayed in a window and the shopkeeper was done under the Flicknife Act for trying to sell a flicknife without a licence. In court he was founf not guilty because he hadn't offered the flicknife but merley invited a man (or woman) to buy it. Similarly in Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd (1952 QB 765) goods were dispayed on a supermarket shelf and the customer picked them upand took them to the cash desk. The Boots company were charged with selling drugs under the drugs law but again they were not convicted because they had never offered them for sale, only invited them to be sold.

So in cases of adverts there can never be an offer, only an invitation to treat. However the case of Carlill (1983] 1kb at page 256 is different. (See also the very important case of Bowerman versus ABTA [1995] 145 NLJR 1815.) In that case a woman smoked a smokeball and still caught the flu, even though the Carbolic Smoke Ball Company said she would not. When she sued for the £100 the company said she had never accepted the offer because they had only invited her to smoke the ball and not offered her to smoke the ball. The judge held that there was an offer and she had accepted it by smoking the ball. The company had deposited money in the bank and sothey hade made an offer to smoke balls.

From this case we can see that the distinction between an offer and an invitation to treat is a very difficult one to make, but nevertheless it is an important one. But why should the courts have to make a distinction and does it matter if they don't make a distinction between an offer and an invitation to treat? In answering this we may wish to look at the case of Gibson V Manchester Council (1979) 1aLLer. In this case it was held that the Council had not made an offer, but only an invitation to treat therefore the council were not bound. →

Another illustrative case was that of Harvella Investments v Royal Trust of Canada 1985 2 all ER 966. In this case the vendors of a plot of land sought a single offer for the whole plot from each of the two interested parties, promising to accept the highest offer provided it made other conditions stipulated. Both parties submitted bids complying with the conditions, but while one merely stated a price it was prepared to pay, the other stated both a concrete sum and a referential bid. The court held that the referential bid broke an implied condition of the offer and thus there was no contract. So we can see from this case that sometimes a request for a tender can be held to be an offer: see also the case of Spencer v Harding (1870] LR5CP561 which tells us that averts for tenders are not offers.

So where does that leave us with the question of whether there is a differnce between an offer and an invitiation to treat? It is quite clear that there is a diffenrce, and that the courts have adopted a variety of conceptual tools in order to assist them in their enquiry. However space precludes a full expalanation.

Why then is the distinction important? An offer is an expression of willingness to be bound by contractual relations if the offeree (the one who the offer is made towards) is willing to accept the essential conditions laid down in the offer (made by the offerror who makes the offer). An invitation to treat (made by an invitor to the invited) however is not an offer and can never form the basis of contractual relations because it is only an invitation to treat. It is merley inviting people to enter into a contract and cannot be an offer, the cases above clearly show this. Thus it is very important to make the distinction and that is why the courts want to make the distinction.

Obviously on many occassions offers and invitations to treat are easy to distinguish, like in the case of Carill which was obviously an offer because the woman smoked the smoke ball. On the other hand, the distinction is a very fine one and whilst some commentators prefer to speak in terms of rules, the courts tend to look at the individual facts of each case. In conclusion therefore it is probably safer to proceed on the basis of the single principle that an offer must be sufficiently specific and comprehensive to be capable of immediate acceptance and also as well made with an intention to be bound by the mere fact of acceptance.

If all things were offers then there would be absolute chaos, so the courts have to make a distinction. This is shown in the case of Crainger v Gough (see the page before) where the court held that it was only an invitation to treat and never an offer, otherwise the wineseller would have run out of wine. And in Gibson the council would have run out of houses. So adverts can never be invitations, but in Carlill it was different because they hade made an offer.

Again in conclusion a hidden element of discretion permits the courts to label the facts with the terminology of offer and acceptance, whenever they believe it is fair and reasonable to impose contractual liability. Consider for example the purchase of goods in a self service store. At what point is an agreement completed. Does the customer accept the offer when he or she places the goods in the wire basket? Or does acceptance take place when the customer presents the goods in the wire basket, or when they present the goods to the assistant, or when the assistant accepts the offer by ringing up the price? Or is that merly the offer? Each interpretation is plausible and thus we can see the distinction clearly.

In this essat I have told you how the courts make the distinction between offers and invitations to treat and why they want to make the distinction. In conclusion then an offer is an offer which can be accepted, like in Mrs Carlills' case, wheras an invitation to treat does exactly that – it invites and it is not an offer. The difference is negligible and easy to make in every case apart from some difficult cases like in Gibson. An offer cannot be revoked after it has been accepted, see the very important case of Dikensian v Dodo (1840). An invitation can be revoked because it is not an offer, but merly an invitation. There would be commercial chaos if it was not so. An offer can crystallise in to a contract without further ado, but an invitation can't because it isn't an offer, although sometimes adverts can be offers as illustrated in Carlill.

To conclude therfore there is a clear difference, and indeed distinction between an offer and an invitation to treat and the courts have shown this to be true on a number of occassions. A contract needs an offer, an acceptance, consideration and an intention to create