

Contract Law Revision

Formation of a contract: Offer and Acceptance

- A contract is only formed in law where the following can be shown to exist:
 - An agreement (mutuality) – valid offer followed by valid acceptance.
 - Consideration
 - Intention.
- **Butler Machine Tool Co:** L. Denning – judges should decide whether a contract existed by examining all the evidence rather than sticking to strict offer and acceptance terms.

Offer

- An unconditional statement of a person's intention to be bound by terms of offer made.
- An invitation to treat is an invitation to a part to make an offer to buy – not the same as an offer.

Invitation to treat

- Goods displayed on shelves in a shop: this is not an offer, but it is an invitation to treat (invitation to the buyer to make an offer to buy).
 - **Boots** case: contract is made at the cash desk – the customer an offer to buy and it is up to the shop assistant to agree to the sale – if they do then it is an acceptance and the contract is formed.

Situations which are not invitations to treat

- Certain wordings may be of particular significance – may change an offer to an invitation to treat and vice versa.
- Advertisements involving a unilateral offer: same rule as invitation to treat applies but it will not if the advert indicates a willingness to be automatically bound to those who perform the acts stated in the advert.
 - **Carlill** case: 'carbolic smoke ball' designed to cure the flu. Ad stated that anyone who contracted the flu after using the smoke ball (in accordance to guidelines) would receive £100. Mrs. Carlill used it as directed, but contracted the flu. She sued the company for the £100. The company contested that the advertisement could not give rise to liability. Held that it was a valid offer as the company had intended to be bound.
- A statement of price where an offer is also intended: when other parties act on the statement in fact, it may be an offer.
 - **Biggs:** negotiations for a house. Court held that seller's first letter of acceptance of a lower price was an offer that the seller had accepted.
- Competitive tendering: invitation to tender is an invitation to treat but if the advertisement agrees to a certain outcome, it is bound to do so.
 - **Harvela:** The claimants submitted a fixed price bid for shares in the defendant's company. Another party made a referential bid; of a fixed amount more than any other offers. A referential bid is not binding in law, therefore the claim was accepted.
- Auctions advertised as 'without reserve': auctioneer is promising that no reserve price will be on the goods. The goods will be sold to the highest bona fide buyer.
 - **Barry v Davies:** there is a binding bilateral contract not to apply any reserve price, therefore to sell it to the highest bidder. Person entitled to damages.

Communicating the offer

- The offer must be communicated to the offeree in order to be accepted. An offeree cannot accept an offer which they know nothing about.

- **Taylor v Laird:** Taylor was commander of ship; gave up his position and continued as a crew member back home. Wanted to claim wages. The ship owner was unaware of Taylor's decision, and did not receive an offer from Taylor to work in another position.
- An offer can be made both to one person or the whole world: an offer can be made to any number of people; anyone who has actual notice of the offer can be classed as an offeree and can accept
 - **Carlill:** she was not a genuine offeree; no offer had been made personally, but she had accepted the offer by buying the smoke ball and then contracting the flu.
- Offeree must have knowledge of the offer: if the offeree is unaware of the offer, he cannot say to have accepted.
 - **IRC v Fry:** while an offeree can accept a unilateral offer which prescribed its manner of acceptance, by acting in that manner there had to be knowledge of the offer when act was done. IRC did not know of offer therefore there was no acceptance.

Certainty

- The terms on which it is intended that the contract will be formed must be certain. If there was any doubt, the offeree would not know what he was accepting therefore there would not be a contract.
 - **Guthing v Lynn:** 'lucky' is a vague word – cannot be an offer.
 - **White v Bluett:** son owed father money on a promissory note; father died and executors tried to recover the money. Son claimed he had an agreement with father that the debt would be forgotten if he did not complain about father's assets being distributed – held that the alleged promise was too vague.
 - **Foley:** where performance of the contract has already begun, the courts may be more willing to enforce the contract.

Revocation of offers

- A person making an offer may want to withdraw it – demonstration of freedom of contract.
- It is possible to withdraw the offer any time before it is accepted: once acceptance occurs, the contract is formed and revocation is not possible.
 - **Routledge:** the defendant offered his house on sale for 6 weeks; took house off before 6 wk period ended. Court held that his actions were legitimate as there had been no acceptance.
 - Exception: where the offeree pays money to the offeror to keep the offer open.
- Withdrawal of offer must be communicated: if this is not done, it's unfair treatment, and is invalid.
 - **Van Tienhoven:** series of negotiations took place between two parties over a 3 week period. Revocation of offer was posted on 8th of Oct, but arrived on the 20th. On 11th Oct, defendants had telegraphed their acceptance. Held that the acceptance was valid as the revocation needed to be communicated to be effective, and it was too late.
- Communication of withdrawal can be made by any reliable third party: the third party must be a reliable source of information and someone who both parties can rely on.
 - **Dickinson v Dodds:** Dodds offered to sell houses to Dickinson until a certain date two days after. Dickinson did not accept offer immediately, and a third party informed him that Dodds had withdrawn the offer. He then sent the acceptance letter. Dickinson claimed breach of contract, but the revocation was valid because the third party was reliable.
- Unilateral offer cannot be withdrawn while the offeree is performing: wherever a continuing act amounts to the acceptance then the offeror is unable to withdraw the offer until either the act of acceptance (or contract) is complete, or there is a failure to perform by the offeree. In the unilateral contract, the offeree accepts the offer by performing his side.
 - **Carlill:** contract can be made with anyone who came forward and performed the act of accepting. Secondly, notification of acceptance was synonymous with Mrs. Carlill purchasing the smoke ball.

Termination of offer

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- An offer can be terminated by:
 - Acceptance of the offer by the offeree
 - Rejection of the offer by the offeree
 - Revocation of the offer by the offeree
 - Lapse of time: where no specific date has been set for the offer to terminate, the offer can be said to have lapsed after a reasonable time has passed (**Ramsgate v Montefiore**: no offer can stay open indefinitely).
 - Death by one of the parties: if the offeree dies, representatives cannot accept on his behalf, but may still be bound by an acceptance that is made in ignorance of the offeror's death.
 - Non fulfillment of a condition precedent: if the parties have agreed to meet certain conditions before the contract is validly formed, a failure to do so means that offer has lapsed.

Acceptance

- Final and unqualified agreement to all the terms contained in the offer.
 - Must be a response made with knowledge of the offer
 - Must follow any method for acceptance which was prescribed in the offer.

→ Acceptance must be unconditional

- The response must correspond with the exact terms of the offer (mirror image rule: **Hyde v Wrench**: W offered to sell farm to H; H unconditionally rejected price and offered to pay less; W rejected. H tried to claim breach of contract. Courts rejected Hyde's claim). These consequences will not apply if the response amounts to a request for further information (**Stevenson v McLean**)

→ Ancillary terms should be accepted

- **Jones v Daniel**: Jones tried to sell some land. He sent a 'final' letter with additional terms (including a 10% deposit requirement). Courts held that the ancillary terms could not be contractual until the defendant had agreed to them and accepted them; they were counter offers.

→ Mere enquires do not count as rejection

- Something that is a mere enquiry about the contract, which does not seek to vary the terms, is not a counter offer as it does not reject the terms of the offer (**Stevenson**).

→ A counter-offer can become a term of agreement if accepted

- When a counter offer is accepted, it becomes part of the contract and the original offer is revoked (**Davies & Co.**)

→ Technical counter-offers will not always count as rejection of the offer if they are not important

- When a discrepancy between offer and 'flawed' acceptance was not noticed immediately, the court may ignore the counter offer if the parties have gone on to contract (**Brogden**: coal supply. Formed contract and the claimant made some minor amendments and filled in some blanks and sent it back to the defendant. D filed the document and never communicated their acceptance to the contract. Claimants continued to supply the coal. Dispute arose and it was questioned whether in fact the written agreement was valid. Courts held written contract as valid regardless of not communicating the acceptance as they continued to supply the coal.

→ Courts will not allow a party to benefit from both counter-offer and original offer

- Courts will look at true nature of negotiations, but will not allow parties to introduce meaningless counter offers unlikely to be challenged in order to rely on both counter offer and offer.

→ Acceptance may be in any form as long as it is valid