CONTRACTS
MOUSSA MOURAD

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OFFER

- Objective test – *Toll (FGCT) Pty Ltd* (2004), *Carlill’s case*
- Government subsidies are not an offer but an **invitation to treat** - *Australian woollen Mills Pty Ltd v Commonwealth* (1954)

**Features of an offer**
- Must be definite.
- May be made to a single person or a class of persons.
- Must be communicated. Cannot be accepted without knowledge of existence.
- All terms of the offer must be brought to the notice of the offeree.
- Must be distinguished from an invitation to treat. An invitation to treat is an invitation or an enticement to others to make an offer
- May be revoked any time prior to acceptance
- May have conditions of acceptance.
- May lapse through non acceptance (time) – if date not specified objective test used to consider if period of time was reasonable – *Manchester Diocesan Council for Education v Commercial & General Investments Ltd*

- **Bilateral contracts** – binds both parties to perform an act such as selling a computer, A has to pay and B has to provide the computer
- **Unilateral contracts** – does not immediately pose obligation to perform i.e. offers of reward to the general public for returning a lost dog.
  - Can be made to the public at large – *Carlill v Carbolic Smoke Ball Company* [1893]

- **Not an offer**
  - **Mere puff** – *Carlill v Carbolic smoke Ball company* [1893]
    - Most advertising. Factors such as vagueness of the statement and other factors taken into account objectively.
  - **Mere supply of information** – stating something costs a certain amount does not amount to an offer, you are simply telling the person how much it costs – *Harvey v Facey* [1893]
  - **Invitation to treat** – A person who wants another person to make an offer. Indicating willingness to negotiate entry into a contract as opposed to a willingness to be bound - *Carlill v Carbolic smoke Ball company* [1893]

- **Advertisements**
  - **Catalogues are an invitation to treat** – *Grainger & Son v Gough* [1896]
  - **Newspapers and magazines** – usually not offers depending on language. - *Carlill v Carbolic smoke Ball company* [1893] – would the reasonable person who saw the advertisement see it as an offer?
    - **Terminology** – merely calling something an offer doesn’t make it an offer
    - **Limiting acceptors** – If the merchant limits number of acceptors it is possible to argue that it is an offer to the world at large
    - **Limiting the offer** – one per customer
  - **Internet** – proposal to form a contract not addressed to a specific party is an invitation to treat, unless clearly indicated that the **intention** of the party
making proposal is bound upon by acceptance. *Electronic Transactions Act* 2000 (NSW)

- Display of goods – an invitation to treat – *Fisher v Bell* [1961]

- **Auctions**
  - Advertisements for auction are not offers, auctioneers may withdraw – *Harris v Nickerson*.
  - With a reserve – *Payne v Cave* (1789) or without a reserve – *AGC (advances) Ltd v Mcwhirter* are not offers but invitations to treat.
  - Internet depends on the terms and conditions of the site – *Smythe v Thomas*

- **Tendering** – where builders submit quotes containing a price for which the project can be provided.
  - Advertisement for tender – not an offer – *Spencer v Harding UNLESS*
    - Advertisement indicates highest or lowest bid will be accepted (not made clear that the party is under no obligation to accept any tender made) – *Harvela Investments Ltd v Royal Trusts Company of Canada Ltd*
    - Giving an offer that all tenders would be considered and not considering all tenders in good faith (doesn’t mean they had to accept it, just had to follow the process) – *Hughes Aircraft Systems International v Airservices Australia*.

- **Standing offer** - an offer to provide goods or services over a specified period, accepted every time the offeree places an order. If goods/services not delivered, there will be breach of contract – *The Great Northern Railway Co v Witham* (1873). Offeree under no obligation to order only from the offeror, unless expressly agreed upon – *Colonial Ammunition Co v Reid* (1900)

- **Options** – Ordinarily, offeror may revoke any time before accepted, even if offer open for a time – *Routledge v Grant* (1828). If offeree provides consideration such a payment to keep the offer open for a certain time, offeror is obliged to keep offer open. If not, breach of contract of the option and not the main offer. – *Gilbert J McCaul (Aust) Pty Ltd v Pitt Club Ltd* (1959)

- **Tickets** – Offer is made by handing the ticket. Passenger accepts terms of ticket either by conduct (boarding plane) or by not returning ticket after having a reasonable amount of time to do so *MacRobertson Miller Airline Services v Commissioner of State Taxation (Western Australia)* (1975)
  - Automatic machines – Terms may not be produced once the passenger pays for the ticket. Presence of machine ready to accept money constitutes an offer – *Thorton v Shoe Lane Parking Ltd*

- **Communication** – offer must be communicated to offeree by the offeror or someone authorised by the offeror – *Fitch v Snedaker* (1868)

- **Knowledge** is essential – *R v Clarke* (1927)

- **Termination of offer**
  - Offer can be withdrawn before acceptance – *Goldsbrough Mort & Co Ltd v Quinn* (1910)
  - Must communicate termination to offeree. Communication through third party will suffice – *Dickinson v Dodds*
o Unilateral contracts may be revoked even though offeree was mid way through performance. Circumstances of the case must be examined. May result in residual liability for Tony. – Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd

o World at large – offeror should to the extent possible use the same medium to advise of withdrawal as used to advise of the offer – Shuey v United States

- Rejection by offeree – terminates contract. If offeree changes their mind, a new contract is to be formed. – Stevenson Jacques & Co v McLean. Same thing goes for a counter offer – Hyde v Wrench

- Fate of an offer
  o Failure of condition – i.e A car must be in good condition when rented – Financings Ltd v Stimson.
  o Time – if no time limit set expires after a reasonable time – Balla v Theophilos (1957)
  o Death – usually terminates offer depending on whether death had an bearing on continuation of offer, subject matter of contract, knowledge of death (via death notice) and whether there was an option – Fong v Cili (1986)
  o Supervening capacity – incapable of performing (such as loss of capacity, bankrupt etc)
  o Statutory intervention which makes the offer illegal.

ACCEPTANCE

- Can be expressed or implied – Empirnall Holdings Pty Ltd v Machon Paul Partners Pty Ltd

- Offeree must assent to terms of offer
  o Must have knowledge of, and act in reliance on offer – meeting of the minds or consensus ad idem – Dickinson v Dodds
  o Intend to accept the offer i.e a person who provided information to the police to save himself cannot have intended to accept the $1000 reward for providing information – R v Clarke
  o Only offeree can accept the offer – Reynolds v Atherton (1921) However an offer can be made to a number of offeree’s – Carlill’s case
  o Counter offers are not acceptance – Hyde v Wrench (1840)
  o Conditional acceptance is not acceptance i.e Cameron agreed to sell a farm, masters payed a deposit. One of the parties wanted to be subject to a formal document that’s subject to the approval of the solicitor. Purchaser said no contract existed. – Masters v Cameron (1954)
  o Inquiry does not constitute rejection of offer – Stevenson Jaques & Co v McLean (1880)

- Acceptance must be communicated – Latec Finance Pty v Knight
  o Exception: postal rule – The moment offeree places acceptance letter in the post, they accepted the offer (not when offeror receives it)
    - Email not covered by postal rule, accepted when acceptance received by offeror - Entores Ltd v Miles For East Corp [1955]
    - Negated when actual communication required as opposed to constructive (postal) communication.