Recognising an Offer

Offer is a signed statement/action with clear and specific terms which show intention to be legally bound if accepted (Carill v Carbolic Smoke Ball Co)

Smith v Hughes Objective approach: Offer is how it appears to the offeree (reasonable in the offeree’s shoes) and not what was intended by the offeror. OT Africa v Vickers whatever intention may be, he conducts himself that a reas man would believe that he was assenting to the terms, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party’s terms. - if they ought to have known there was a mistake. (Harvey v Facey) Mere response to a query is not an offer

Willingness to Contract

Payne v Cave Offer implies a willingness to be immediately bound to an agreement when it is accepted. Acceptance @ fall of the hammer. Invitation to Treat (No Intention to Legally Bind)
The supply of information is not an offer.

Harvey v Facey Mere statement of the lowest price holds no implied Response to query is not an offer. Grainger & Sons v Gough Circulars, which provide information about items for sale and their prices, are regarded as invitations to treat. Pharmaceutical Society of Great Britain v Boots Cash Chemists Advertisements are merely invitations to treat. Acceptance is when charged on goods.

Termination of Offer

Rejection: Outright refusal = offer extinguisher (Hyde v Wrench)
Revocation: Must be communicated before acceptance Payne v Cave
Lapse of Time: If no time is prescribed, the offer must be accepted within a reas time. Ballas v Theophilis Offer will last for a reas time.
Change in Circumstances Dysart Timbers Ltd v Neilson. An offer would lapse in circumstances not expressly provided for in the offer, if they constituted a fundamental change in the circumstances on which the terms of the offer were based.

Conditional offer: Offer not capable of being accepted until condition fulfilled.

Failure of Condition If a condition upon which the offer is made is not fulfilled the offer will lapse Financies v Stimson.

You can have an offer that ceases to be capable of accepting unless a condition is met. Buhrer v Tweedle

Death of Offeror: Offer terminates if the death is known to offeree. Death of Offeree: Offer ends upon death of offeree. If the offeror dies and the offeree has not been notified it is still possible for the offeree to accept the offer, thus binding the offeror’s estate

Acceptance

Ascertainment of an Acceptance
Robinson v Hemachandra Court is interested when assessing whether or not there was acceptance in objective view. Would reasonable person think D had accepted and was bound by contract?
Reasonable person in offeror’s shoes would regard that as a mistake.

Acceptance by Conduct
Brodgen v Metropolitan Ry Co If conduct indicates acceptance, binding. Offeror may stipulate the manner of acceptance by advising the offeree that if he/she wishes to accept the offer, the offeree should perform stipulated acts waiving the need to communicate acceptance. Can be express or implied.

Airways Corp v Geyserland NZ: Exception: If the other party knows of intention to NOT accept, can’t apply the conduct argument. Contract is meeting of the minds. (Didn’t agree to air fees by continuing normal practice) - if one shows protest. A objects to a term in a proposed agreement & B is aware of this, B cannot claim A accepted through conduct as they knew A objected to offer.

Acceptance ONLY by the Offeree
Lee v Sayers NZ: Only offeree is capable of accepting the offer. Offer can be made to persons, class of persons, or to the world. Held: offer can only be accepted by the person who the offer is made to (offeree)

Unqualified Assent
Agreement to all terms of the offer, and parties intention to be bound immediately considered unqualified acceptance.

Counter-offers: (Changing the terms of the offer) Hyde v Wrench A counter offer rejects the original offer therefore offeree can no longer accept original offer. Repororo Stores v Trelow A counter offer is one which adds to or changes the terms of the offer (not acceptance). Acceptance requires unreserved assent to the exact terms of original offer. Powierza v Daley An inquiry will not extinguish a counter offer. Held: Because P talked to agent and asked him whether D will accept it was why it was regarded as enquiry and not counter-offer. Requests for Further Information: Stevenson v Muirclan clarification of one or more terms only communicates interest. Cross-offers
Tinn v Hoffman & Co Cross offers are not an offer & acceptance. Both are offers. Acceptance must take place in reliance upon an offer. If the offeree performs a particular act that corresponds to the terms of the offer without knowledge of the offeror, there is no agreement.

Communication of Acceptance
Kennedy v Thomassen Acceptance must be communicated to the offeror for contract to be formed

Waiver of Communication Commerce Commission v Telecom Mobile Exception: An offer can waive the requirement that acceptance be communicated either expressly or impliedly e.g. box open = acceptance.

Prescribed Mode of Communication Allrite Industries v P & C Gill Contractors 2002: Offeror can stipulate that acceptance must be signified only in a specified manner. BUT A mere indication does not preclude acceptance by other modes of communication as long as they are not less advantageous to the offeror.

Postal Rule Adams v Lindsell The rule operates only where the post is an acceptable method of communication (eg. the offer was made by post or it is stipulated in the offer that the post is acceptable).

Exception to Postal Rule: Holwell Securities v Hughes If offer precludes acceptance by post, then this is the exception to the postal rule. Instantaneous communication. Generally, contract will be formed when acceptance of the offer is communicated to the offeror & received.

Entores v Miles Fair East Corp Postal rules do not apply to instantaneous communication. Acceptance happens when it is received. Estoppel: If offeror’s fault he didn’t receive the acceptance, he may be estopped in denying he received it. Face to face communication, telephone conversations and telex messages = instantaneous communication. Brinkbion v Stahag Stahl Variations in how instant com is sent. Postal rules do not apply to instantaneous communication.

Electronic Transactions Act 2002, ss 2, ss 9 – 13 = @11 main point = email, text messages: As soon as they enter the system | NB: Act declares but doesn’t invalidate postal rule being applied to email, txt etc.

Petterson v Goathard Application of ‘designation’ from s11(a). Electronic communication that has been used between parties (such as sending official notices(offer)) previously can be inferred as designated. Threshold is very low in NZ.

Unilateral Contracts
Acceptance by doing something. Acceptance by completion (which is different than acceptance by conduct).

Carlill v Carbolic Smoke Ball Co: Requirement for acceptance to be communicated often impliedly waived. Acceptance is affected by the offeree by performing the requirements that are specified by the offeror. Revocation of a Unilateral Offer Mobil Oil Australia v Lyndel Nominees Part performance. No universal rule that an offeror is not @ liberty to revoke once the offeree commences performance of the sought act of acceptance

Reliance on a Unilateral Offer R v Clarke: One has to act on faith and reliance on offer | Merely knowing it is not enough | one has to truly rely on the advert | Action must not be accidental to the offer/award.

Beyond Offer and Acceptance
NZ Shipping Co v AM Satttherwaite & Co Judiciary suggest to look at the interactions between the parties as a whole.

Boulder Consolidated v Tangaere When it gets difficult we can look at what is passed between the parties and decided if there was a contract. View of the reas man.

Intention and Certainty

Intention to Create Legal Relations
Domestic and Social Agreements (eg familial)
Jones v Padavatton Presumption that agreements not intended to have legal force in social/domestic relationships:

Reasonable bystander (RB) test to ascertain whether binding. RB aware of what passed b/w pty’s. Presumption against intention to create legal relations. Unless words used in the contract indicate a legal intention. Fleming v Beever (STARTING POINT) No presumption in NZ that social agreement is legally binding. Must find legal intention. CT held there was a legal agreement – each case turns on its facts.