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FORMATION

8) OFFER

Types of Contracts

Bi-lateral Contract

- Most contracts are bi-lateral
- Where an offer has been made to a specific person/s

Unilateral Contract

- One where there is one offeror but many unspecified offerees
- Offeror makes a promise which requires the offeree to engage in some act which constitutes acceptance - **Carlill v Carbolic Smoke Ball Company [1893]**

Offer

- An offer will be made where one party represents to another party that they are willing to enter into a contract on certain terms
- The terms of an offer must be complete when the offer is made
- Must be no need for further negotiation between the parties as to what the terms of the offer shall be
- Objective Test
 - Reasonable person in the same circumstances would have thought that the conduct was an offer
 - **Carlill v Carbolic Smoke Ball Company [1893]**
 - The terms of an offer are determined objectively
 - An offer must be more than a “mere puff”
 - An offer can be made to all the world
 - An offeror can prescribe the mode of acceptance
 - Whether particular conduct amounts to an offer is a question to be decided on the facts of each case - **Australian Woolen Mills Pty Ltd v Commonwealth (1954)**

Not Offers

- Invitation to treat
 - Invitation to enter into negotiations, not an offer
 - **Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953]**
 - Auctions
 - **AGC (Advances) Ltd v McWhirter (1977)**
- Tenders
 - Usually seen as invitation to treat. Each party who submits a tender is considered to make an offer
 - Different however where seller indicates that they will accept highest tender. It will be seen as an offer capable of acceptance
 - **Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd [1986]**
 - Seller promised to accept highest bid for the purchase of shares and the court construed that promise as an offer

- Tickets for travel
- Shop displays and catalogues
 - Displaying goods with price - invitation to treat
 - Each individual customer who presents to pay for goods making an offer
(**Pharmaceutical society of Great Britain v Boots Chemist**)
 - Shopkeeper free to accept or reject customers' offers.
 - But if it says it will sell to 'the first 15 customers' then it will probably constitute an offer
- Rewards and prizes
 - Not an offer but an conditional gift?????????
- Requests/ Supply of information
 - In order to determine whether there is a contract or an exchange of information you will need to examine the documents and conduct of the parties
 - **B Seppelt and Sons Ltd v Commissioner for Main Roads (1975)**
 - Note that the use of the word 'offer' is not conclusive in determining the status of the statement.
 - Websites, Brochures, Advertisement are not offers
- Puffery
 - Puffery refers to promotional statements and claims that express subjective rather than objective views, which no "reasonable person" would take literally

Termination of Offers

- Withdrawal
 - General rule - Offeror may withdraw offer at any point prior to its acceptance
 - Can generally withdraw an offer even if they promised to leave it open for a certain period
 - Withdrawal must be communicated with offeree to be effective
 - **Dickenson v Dodds (1876)** - *See Below*
 - The basis of acceptance is that there must be a meeting of the minds between offeror and offeree
 - An offer can be withdrawn at any time before acceptance but the withdrawal must be communicated to the offeree
 - Communication of the withdrawal can be made by any reliable third party
 - **Goldsbrough Mort & Co Ltd v Quinn (1910)**
 - An offer can be withdrawn at any time before acceptance
 - However, where there is consideration for an offer, it cannot be withdrawn.
 - This is more properly analysed as a separate (ancillary) contract called an option to purchase.
 - **Mobil Oil Australia v Wellcome International (1998) 81 FCR 475**
 - In unilateral contracts it is commonly understood that offer cannot be revoked once acceptance has commenced, but this is not a universal rule and depends on the facts .
 - A revocation has to be communicated to all the potential offerees.
 - Different for options
 - Offeree gives the offeror some form of consideration, usually a sum of money to keep the offer open for a certain time
 - **Goldsborough Mort & Co Ltd v Quinn (1910)**
- Lapse
 - An offer open for a certain period of time will lapse at the end of that period.
 - If the duration of the offer is not made clear then it will lapse after a reasonable period of time

- **Manchester Diocesan Council for Education v Commercial & General Investments Ltd [1970]**
- Rejection
 - Once rejected, the offer cannot be accepted unless the offeror decides to renew the offer
 - Distinction between making an inquiry about the possibility of altering contractual terms and the rejection of an offer
 - **Stevenson Jaques & Co v McLean (1980)**
 - Counter offer
 - Original offer rejected, Original offeror needs to accept the counter offer
- Of Unilateral Contracts
 - Problems where the offeror tries to withdraw the offer and the offeree has already commenced performance of the necessary acts
 - Conflicting case law
 - **Veivers v Cordingley [1989]**
 - Held that an offeror cannot revoke an offer once the offeree has commenced performance
 - **Mobil Oil Australia v Wellcome International Pty Ltd (1998)**
 - Held that there is no universal principle that an offeror cannot withdraw an offer where the offeree has commenced performance.
 - Court did state however that in some cases a party who has commenced performance may be able to argue that there was an implied contract not to withdraw the offer.
 - If the offeror dies then the offer may still be accepted if the offeree accepts before they receive notice of the death.
 - Generally an offer is not capable of acceptance where the offeree dies
 - However, the personal representatives of a deceased offeree may accept an offer addressed to the offeree, if the offer is drafted in terms which allow it to be accepted by the personal representatives.