

Offer

- **Definition:** Proposal or proposition which, if accepted, gives rise to an agreement.
- May be **express** or **implied**
- An offer must be '**promissory**'; it must contain a promise which can be accepted and thus become legally binding – *Harvey v Facey*
- An offer must be distinguished from an '**invitation to treat**'. An invitation to treat is 'an invitation to customers to make an offer'. They include:
 - o **Display of goods for sale** - *Pharmaceutical Society of Great Britain v Boots Cash Chemists, Fisher v Bell* (When B displayed goods (including prescribed drugs) for sale in a "self-service" chemist store, plaintiff claimed that B was guilty of the offence of "offering drugs for sale otherwise than under the supervision of a qualified chemist".) [PG90](#)
 - o **Brochures or circulars** - *Grainger & Sons v Gough* (where a circular listing products and prices from a wine store was held to be only an invitation to treat) [PG90](#)
 - o **Advertisements** - *Partridge v Crittenden* [PG91](#)
 - o **Auctions**
 - o **Tenders**
- If no time is set for lapse of an offer, it will lapse after a **reasonable** time - *Ramsgate Victoria Hotel v Montefiore*. [PG115&332](#). What is reasonable depends on the facts of each case.
- There are **two exceptions** to the general rule that an advert is not an offer:
 - o **if conditions are imposed** that the buyer must satisfy to buy the article advertised.
 - o If the advertisement **offers a reward** to the reader
 - o *Carlill v Carbolic Smokeball Co* [PG81&92](#)

Acceptance (Offer + Acceptance = Agreement)

- **Definition:** 'a clear and unequivocal assent to the offer on **all of its terms**'
- May be **express** or **implied** with there being four main rules.
 1. It must be **clear** and **unequivocal**
 2. The **correct method** must be used
 - In rare cases, the offeror might say (when making the offer):- For example "if you want to accept this offer, you must accept by (say) fax". If he does, acceptance by any method other than fax will not be binding on the offeror.
 - If a method is nominated by the offeror, but not exclusively, that method

Consideration

- **Definition:** an act or forbearance of one party, or the promise thereof, is **the price for which the promise of the other is bought**, and the promise thus given for value, is enforceable" (Pollock L)
- There are **six** rules:
 1. It is required for all **simple contracts**

2. It may be **present** or **future**, but **not past** – *Eastwood v Kenyon* [PG118](#), *Roscorla v Thomas* [PG119](#)
3. It must come from the **promisee**, but **not necessarily go to the promisor**
4. It need **not be adequate**, can be **nominal** – *Thomas v Thomas* [PG124](#), *Chappell & Co Ltd v Nestle Co Ltd* [PG124](#)

Promissory Estoppel

- Promissory Estoppel was confirmed by the Australian courts in *Legione v Hateley* [PG135/6](#)
- There are **5 elements** required to prove promissory estoppel:
 1. There must be **an assumption created in the mind of the plaintiff**. (can be a negative or positive representation)
 2. The defendant had to be **responsible for the assumption**
 3. There must be **reliance on the assumption** by the plaintiff.
 4. The plaintiff acted to their **detriment** (on the basis of the representation)
 5. **Unconscionability** would arise if the defendant were permitted to go back on their representation)
- **Detriment (element 4)** can be prospective

Intention to Create Legal Relations

- There are **2 presumptions that the court applies with regards to intention**:
 - o In **personal, domestic or social agreements**, the Court presumes that the parties did not intend to be legally bound
 - *Balfour v Balfour* [PG75](#), *Cohen v Cohen* [PG75](#) (domestic)
 - *Coward v Motor Insurers*