

The Definition of an Offer

1. *Nielsen v Dysart* an offer is a specific set of terms the offeror is prepared to be bound should the acceptance be communicated within a reasonable time while the offer is still alive.
2. (UK) *Crest Nicholson (Londinium) Ltd v Akaria Investments Ltd* [2010] EWCA Civ 1331m [25]; in determining whether an offer has been made 'the correct approach is to ask whether [the offeree] (having the knowledge of the relevant circumstances which [the offeree] had) acting reasonably, would understand that [the offeror] was making a proposal to which he intended to be bound in the event of unequivocal acceptance'
3. *Banks v Williams* (1912) 12 SR (NSW) 382, 390-1; for a valid offer to exist it must be communicated to the offeree. if the offeree learns of the offer from an unauthorised person, there is no offer for the offeree to accept. Once the offer is communicated to the offeree, the offeree has the power to transform it into an agreement by accepting it.

The existence of an offer

1. *Carlill v Carbolic Smoke Ball Co* (1893) 1 QB 256 Bowen LJ described an invitation to treat as follows, '[In cases] in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell or house to let there is no offer to be bound by any contract. Such advertisements are offers to negotiate – offers to receive offers – offers to chaffer (haggle), as I like to think, some learned judge in one of the cases has said'.
2. The case of *Harvey v Facey* [1893] AC 552, 4.15 text, states that in a sale of property, such as land, for "considerable value" does not constitute a contract where a mere statement of an acceptable price is made.

3. *Pattison and Pattison v Mann* (1975) 13 SASR 34 - a statement which does not reference a matter one would ordinarily expect in a negotiation indicates agreement is yet to be reached.
4. *Gibson v Manchester City Council* [1979] 1 All ER 972 “may be prepared [to sell]” is an invitation to begin negotiation for a contract. Canvassing interest does not constitute an offer.

Circulars, catalogues and advertisements

5. *Leftkowitz v Great Minneapolis Surplus Store* 86 NW 2d 689 (1957) found that an “advertisement” for lack of a better word and used in the case, which left no room for negotiation and defined clear and specific conditions would be considered a unilateral offer.

Display of goods.

6. *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401 holds that goods on display within a small store such as a pharmacy are not an offer, they are an invitation to treat. This is because there is usually an owner or manager on hand with the authority to accept or reject an offer to purchase.

Termination of an Offer

Lapse in time

7. *Empirnall Holdings Pty Ltd v Machon Paul Partners Pty Ltd* (1988) 14 NSWLR 523, 534; What constitutes reasonable time depends on the facts and circumstances of the case.

Rejection

8. *Hyde v Wrench* (1840) 49 ER 132 - A counter offer is an implied rejection. Wrench offered to sell land to Hyde for £1000. Hyde countered to buy for

£950 which Wrench refused. Hyde then purported to accept the first offer of £1000. The court held that the counter offer was an implied rejection.

9. One must confuse the request for more information as a rejection of the offer which thus does not terminate the offer and indeed leaves it quite open. *Powierza v Daley* [1985] 1 NZLR 588, 561. Cooke J; whether an inquiry or a rejection is determined from the mind of a reasonable onlooker'.
10. *Stevenson Jacques & Co v McLean* (1880) 5 QBD 346 – is a practical example of the above two examples. Jacques sent a letter inquiring about credit terms. McLean took it as rejection and sold to someone else.

Revocation

1. The starting point is that other than in cases of an option – which will be given slightly separate treatment below, an offer can be withdrawn at any time before acceptance. There must be communication of the revocation – see *Financings Ltd v Stimson* [1962] 3 All ER 386; Paragraph 4.53 Text; The revocation *must be communicated to the offeree or someone authorised to receive such a communication*. See paragraph 4.56 Text; *Dickinson v Dodds* (1876) 2 Ch D 463.