

FORMATION OF A CONTRACT

AGREEMENT- OFFER

Gibson v Manchester Council [1979] 1 WLR 294

Material Facts	<p><u>House of Lords</u></p> <ul style="list-style-type: none"> - Manchester CC proposing to sell house; letter 10/2/1971 to Gibson (tenant of Council Housing). <div style="text-align: center;"><i>“The Corporation may be prepared to sell the house to you for ... £2,180 If you would like to make formal application ... please complete the enclosed application form.”</i></div> - Gibson completed the application form and returned the form to the Council - Local government election - new local council stopped all proposed sales, including that to Gibson - Gibson sought to enforce the sale (by specific performance)
Issue:	<p>Was there a contract? Was there offer and acceptance?</p>
Ratio Decidendi: Decision	<p>Held: TJ—for Gibson / Court of Appeal—for Gibson (2:1)</p> <ul style="list-style-type: none"> - Lord Denning: “look at the correspondence as a whole and at the conduct of the parties and see therefrom whether the parties have come to agreement on everything that was material” (departed from conventional approach of offer and acceptance) <p>Held HL—for Council – Lord Diplock:</p> <p>No reason here to depart from conventional approach of construing the documents to identify a clear offer and acceptance (though refers to the possibility of exceptional types of contracts” “which do not fit easily into the normal analysis of offer and acceptance”).</p> <p>“may be prepared to sell” and request for “formal application” were fatal and make it impossible to construe this letter as a firm contractual offer</p> <ul style="list-style-type: none"> - Does not indicate that by the mere application it was entering into a formal contract <p>Objective test: “An offer is an objective manifestation of willingness to be bound by certain terms, upon the acceptance of those terms by the relevant party” - per Denning LJ</p>

Carlill v Carbolic Smoke Ball (1893) 1 QB 256

Material Facts	<p><u>Queen’s Bench Divisional Court, (Court of Appeal) UK</u></p> <ul style="list-style-type: none"> - Mrs Carlill used (or at least claimed to have used) the smoke ball as directed for four weeks - She contracted the flu - Claimed for the £100 - Carbolic refused to pay - Mrs Carlill sued for breach of contract
Issue:	<p>Was there a contract?</p>
Ratio	<ul style="list-style-type: none"> » Unilateral contracts can be made to the public at large » No need to communicate acceptance <p>Carbolic argued: - Advert was not a promise (or offer); was mere puff:</p> <p>Held: Objective test: would it appear to a reasonable member of the public that an offer was intended? Clearly an offer; not a puff (why else the £1000 <u>deposit</u>)</p> <p>No offer can be made to the world at large: Held: It is possible to make offer to the public at large</p> <p>Too vague and uncertain to be an offer - no time limit: Held: advert was not too vague or uncertain: time limit would be by reference to a reasonable time</p> <p>Mrs Carlill did not communicate acceptance: Held: acceptance occurs by performance. Acceptance need not be notified before performance.</p> <p>No consideration moved from Mrs Carlill Held: consideration was: advantage to Carbolic gained by use of the ball to promote sales, and detriment to Carlill in her inconvenience in using the ball</p>

MacRoberton Miller Airline Services v Commissioner of State Taxation (WA) (1975) 133 CLR 125

Material Facts	The airline's passengers reserve a seat on flight, pay fare, and then receive a ticket Ticket contained conditions giving the airline the right to cancel a flight or a booking without incurring any liability
Issue:	Whether airline ticket is an agreement (for tax purposes?) - In particular whether the ticket was chargeable with stamp duty as an 'agreement' or a 'memorandum of agreement'
Ratio	<p>Held: -Ticket did not record the terms of an agreement (but for different reasons)</p> <p>Barwick CJ: - no because of exemption clause Sweeping exemption left no room for obligation to carry the passenger - Terms of conditions was so broad that there was no promise – the airline had the right to cancel the flight therefore no promise to carry the passenger - In any case, passenger makes the offer by presenting at the airport, and airline accepts by carrying (ie, no contract until passenger provided with a seat on airplane). The ticket is a receipt of the prepaid fare.</p> <p>Stephen J: - no – ticket is the offer -Adopted “conventional analysis” - ticket constitutes an offer by the airline capable of acceptance or rejection by the passenger when he/she has had reasonable opportunity to read the condition. -Thus ticket only records terms of an offer. - No tax liability because this is merely an offer, yet to be accepted</p> <p>Jacobs J - no – both of the above reasons</p>

INVITATIONS TO TREAT

» **Shop Sales**

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 QB 401

Material Facts	- <i>Pharmacy and Poisons Act</i> made it illegal to sell drugs except under supervision of a registered pharmacist. - Pharmacists were present at the self serve check-out acting as supervisors
Issue:	Was having the goods on the shelf an offer capable of acceptance by taking them off the shelf? If so, Boots would have been in breach of the legislation.
Ratio Decidendi: <i>Decision</i>	<p>Held: - The goods being displayed on the shelves was an invitation to treat - Customers make an offer to buy the goods at the checkout - Pharmacists could either accept or reject the offer - Boots therefore not in breach of the legislation</p> <p>Why? – It would be unworkable to say that taking the goods off the shelf was an acceptance of an offer, because it implies that the customer could not have a change of mind and return the goods to the shelf before paying for them</p>

» **Online Sales** [s.14B of Electronic Transactions Act \(Vic\) 2000 – Invitation to treat regarding contracts:](#)

» **Auctions**

AGC (Advances) Ltd v McWhirter (1977) 1 BPR 9454

Material Facts	Mortgagee auction - vendor (mortgagee) able to reject highest bid from mortgagor. Vendor had not made an offer to sell despite auctioneer declaring that property was “on the market”.
Ratio Decidendi:	Held: Auctions – are generally invitations to treat, and bids are the offers

» **Tenders**

Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd [1986] 1 AC 207

Material Facts	<p>House of Lords -Royal Trust sent telex to two other shareholders “inviting” them to make a “single offer” for its shares in A Harvey & Co Ltd - “if any offer made by you is the highest offer received we bind ourselves to accept... provided [it] complies with the terms...” - Harvela submitted an offer of \$2,175,000 - Outerbridge’s offer was for “\$2,100,000, or \$101,000 in excess of any other offer”</p>
Ratio Decidendi:	<p>Held: - Clearly an offer, not an invitation to treat = “invitation” telex was an offer - Held that the single sum bid was to be accepted - not the referential bid - Harvela accepted the offer by making the highest fixed price bid (Outerbridge’s “referential bid” did not contain the highest fixed price bid)</p>

