

# Contracts

## Offer

An offer takes the form of proposing a particular course for examination by the defendant with a view to the defendant choosing between acceptance or rejection in light of that examination (*Brambles Holdings v Bathurst CC*)

- It does not use the language of command (*Brambles Holdings v Bathurst CC*)

It must be capable of being converted into a legally enforceable contract on acceptance (*Gibson v Manchester CC* p44)

- It does not merely invite the continuance of negotiations - e.g. through the use of indeterminate language such as 'may be prepared to...'
- It uses the language of commitment (*Mobil Oil v Wellcome International* p60)

The offer must be made in order to induce the doing of the act (*Australian Woollen Mills v Commonwealth*)

## **Unilateral Offer**

*Carlill v Carbolic Smoke Ball* (1893) (p 42)

- Unilateral offer: an offer which is accepted by performance of the act
  - Anyone who performs the condition accepts the offer
  - No need to inform the offeror that they accepted the offer – 'the person who makes the offer gets the notice of acceptance contemporaneously with his notice of performance of the condition'
  - In this case, it was shown by the language of the offer and the nature of the transaction that notice of acceptance apart from the performance was neither expected or required (extract from the character of the transaction that notification is not required, this is the case for advertisements p49)
- An offer does not have to be directed at particular individual or group of individuals – can be directed at the public

*MacRobertson Miller Airline Services* (1975)

Barwick: The airline was not in contractual relations with the intending passenger until it had provided him with a seat, the issue of the ticket acts a receipt for payment of the fare

- Passenger is given a seat, retention by the airline company of the fare prepaid is dependant on the performance of carriage
- Passenger makes an offer which the airline accepts by carrying them (there was no contractual obligation until the seat was provided)
- Exemption is the ticket too wide to constitute offer and acceptance (ticket does not oblige the airline to carry the passenger, as such, the 'exemption of the ticket in this case fully occupies the whole area of possible obligation')

Stephen: ticketing cases suggest that as soon as the passenger boards the transportation, they by conduct accept the offer made in the form of the ticket

- By analogy to ticketing cases: the offer is when you are given your ticket, and the acceptance occurs when the passenger boards the plane
- Note: this may be inappropriate where there is no opportunity to consider the terms of the offer before accepting (p 53)

## **Offers as distinct from Invitations to Treat**

*Pharmaceutical Society of Great Britain v Boots Cash Chemists* (1953)

- Display of goods in a shop front is not an offer but an invitation to make an offer by bringing the item to the counter, the buyer's offer is accepted by the acceptance of the price

## **Revocation of an Offer**

### 1. Options (*Goldsborough Mort & Co v Quinn* (1910))

- Option: a right to make a purchase subject to certain conditions
  - The feature which distinguishes an option from a mere offer is the consideration.
  - An option for value is not revocable during the period for which it is given

### 2. Unilateral Contracts (*Mobil Oil Australia v Wellcome International* (1998))

- There is no universal principle that an offeror cannot revoke the offer once the offeree has commenced the performance of the act which is the acceptance and the consideration

There may be an implied ancillary contract to not revoke, to find this look at (p 64):

- How well defined is the act? Is it reasonable to imply that someone intended to make an offer irrevocable once someone has commenced doing something as vague as 'working toward a goal'?
- Is there a benefit to the offeror at a detriment to the offeree? Where the performance of the act is mutually beneficial there is a less strong case for holding that the offeror should be bound to not revoke