
The Distinction between civil and criminal law

	Civil Action	Criminal Action
Parties	Plaintiff V defendant	State V Person
Burden of proof	On plaintiff	On state Eg) councils Police, so on
Standard of proof	On balance of probabilities More likely or probable than not – more than 50% likelihood	Presumption of innocence exists So must prove guilt beyond reasonable doubt. If not, defendant must be acquitted Why state government should prove that I am guilty? <u>Due to presumption of innocence.</u> We are being innocent until proven to be guilty beyond reasonable doubt.
Outcome	Win/lose Winner gets remedy it seeks	Guilt or innocence Guilt – fine and/or imprisonment or other order depending on type of offence.

Intention to create legal relation (Rule) : there are 4

essential components of a contract, all of which have to be proved to exist unless the other party agrees that a contract exists. The four essential components are **offer**, **acceptance**, **intention** and **consideration (exchange of value)**. In order to decide whether intention to be legally bound exists in any given fact situation, the courts apply two presumptions. A presumption is a probable outcome, but it can be rebutted (defeated) by strong contrary evidence.

Elements of a Contract/Agreements

1. Valid Offer
2. **Acceptance** of Offer
3. **Consideration** from both parties – what the party brings into the bargain. Eg. Money, Trade
4. **Intention** to be legally bound – intention for both parties entering a legally binding contract.
5. Capacity to contract – the law protects vulnerable people. (Drunk, underage, disable, ill)
6. Legality of subject matter – whatever the contract is about should be legal.

Party is entering a contract under free will

Can be written, verbally or a combination of both.

Terms, conditions and warranty – conditions that are included in agreement

- **Definition:** The parties to a contract must intend their agreement to be legally enforceable in a court of law, for it to be legally binding.

• Presumptions

Domestic, family or social arrangement	Commercial Contracts																		
Presumption: <ul style="list-style-type: none"> • No intention to be legally bound – (if an agreement is made between two people concerning a Domestic or social agreement, the court will assume or presume that there was no intention to create legal outcomes, presumed by court to be NOT legally binding. Since there is, usually, no legal relationship involved.) 	Presumption: <ul style="list-style-type: none"> • Intention to be legally bound – if an agreement is made in a business or commercial context, the court will assume that there was intention to create legal obligations. Commercial agreements are presumed to be intended to be legally enforceable (Edwards v Skyways Ltd)³ 																		
Rebuttal : The onus of proof (Burden of proof) is borne by the party seeking to rebut the presumption ((These presumptions can be rebutted by leading strong contrary evidence to defeat the presumption.))	It is more difficult to rebut than the first presumption																		
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Offer (Rule)

: An offer can be revoked at any time prior to its acceptance by the offeree. The exception is if some value is paid by the offeree to the offeror to keep the offer open, in which case the offeree is said to have acquired an option. During the option period, the offeror may not contract with any other party, since to do so would result in a breach of the option agreement.

- **Definition:** A proposal or proposition which, if accepted, gives rise to an agreement. The person making the offer (the offeror) will make it to a person, or a group of persons, or the world at large (offeree)
 - An offer may be expressed (written or verbal), or implied (from conduct or behaviour).
 - An offer must be 'promissory'; it must contain a promise which can be accepted and thus become legally binding (**Harvey v Facey**).
 - Not just puff - (**Carlill v Carbolic smoke ball Co**)¹⁰
 - Can be made to – individual / group / world at large (**Carlill v Carbolic smoke ball Co**)¹⁰
 - If no **time** is set for lapse of an offer, it will lapse after a reasonable time (**Ramsgate Victoria Hotel v Montefiore**).

- **Invitation to treat** is not an offer but an indication that offers are requested.

Display of goods for sale is an invitation to treat (Pharmaceutical Society of Great Britain v Boots cash chemists (southern) Ltd)⁸. customer is making an offer and JB HI accept the offer.
Distribution of a circular or brochure is not an offer (Grainger and Sons v Gough)⁹
Tender (Quote as well) is an invitation to treat. Calling for tenders is an invitation to treat. VS Submitting a tender is making an offer VS notification to successful tendering party is an acceptance by advertiser. .the time that email heat the server (not the time that the person open the email.
Auction is an invitation to treat Auctioneer in calling for bids is an invitation to treat VS the resultant bids are offers.
Advertisement is an invitation to treat (Partridge v Crittenden)

- 2 **exceptions** make advertisement become offer:
 - conditions** are imposed, that the buyer must satisfy to buy the article advertised/ the ad offers a **reward** to the readers (**Carlill v Carbolic smoke ball Co**)¹⁰ eg) An advertisement for reward – reward for lost dog
 - This type of offer is **NOT** an invitation to treat, and is a **unilateral contract** where all the offeree(s) need to do is to fulfil the requirements of the offer.

Bilateral contract (mutual contract) – two promises : one from offeror and the other from offeree.

Unilateral contract (one way) – offeror is not looking for a promise. **Performance is acceptance of the offer.**
Eg) reward for lost dog

- **Cross offer:** Two identical offers are not the same as an offer and an acceptance. One of the offer must be accepted (**Tinn v Hoffman**).
- **Counter-offer:** *If seeks to change or modify important terms of original offer* A counter offer extinguishes the original offer. It gives rise of a new offer and replaces the original one. The offeree cannot revive the replaced offer, unless the offeror restates the original offer (**Hyde v Wrench**).

- **A request for information** does not destroy the original offer: **the offer is still open for the offeree to accept (**Stevenson Jacques & Co v Mclean**)**. The court decided that the communication was a request for information, that there was accordingly a contract formed. There is still strings attached **so must be answered by offeror** to the request for the information.

Counter-offer change some conditions of the original offer	requests for information does not intend to change any condition form the original offer, or unrelated to the original offer but merely asking for information that has not been mentioned in the original offer
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- An offer can be **revoked** at any time before it is accepted, even if the offeror says he will leave it open for a defined time period (**Routledge v Grant**). - Offer could be withdrawn within the six week period in this case. Whoever post first (not whoever receive the first)
- Unless some **consideration** is given by the offeree to the offeror to keep the offer open for an agreed period of time (**Goldsborough Mort & Co Ltd v Quinn**). - some value is paid by the offeree to the offeror to keep the offer open, in which case the offeree is said to have acquired an **option**.
- A revocation is ineffective, having been received after the contract is formed - **Byrne v Van Tienhoven**¹⁷ - revocation is not affected by the postal rule. ((revocation must actually be received by offeree prior to acceptance))

Postal rule :: the date of sent is valid.

Revocation postal rule :: the date of received is valid

Van ^{1/10} Sent offer	-----> offer sent	Bryan ^{11/10} received offer
A letter of ^{8/10} Revocation sent	-----> revocation	acceptance ^{11/10} sent from Bryan
:the court held that the contract was complete on October 11, and the letter of revocation was thus ineffective, having been received after the contract was formed.		