

# *CONTRACTS*

Course Summary

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## Offer

“An offer is a statement of terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive”

## Remedies

- *Nielsen v Dysart Timbers Limited* [2009] 3 NZLR 160 at 168 (Tipping and Wilson JJ)

“Only persons who are offerees are entitled to accept the offer”

- *T W Hedley (Investments) Pty Ltd v Richardson Plant Hire Pty Ltd* [2005] QSC 99.

## Meeting of the minds, “consensus ad idem”

“The notion of the meeting of the minds ‘is practically the foundation of English law upon the subject of formation of contracts’”

- *Household Fire & Accident Insurance Company (Limited) v Grant* (1879) LR 4 Ex D 216 at 220 per Thesiger LJ.

Summary under postal acceptance rule

## Invitations to Treats vs Offers

An advertisement is an offer to negotiate – offers to receive offers – as opposed to legally binding offers.

- *Carlill v Carbolic Smoke Ball Co* [1893]

*Summary:* flu ball case, women used as described and still contracted the flu. Carbolic claimed it was only an advertisement.

*Court held:* advertisement containing specific terms and “offered” to the public was not “a mere puff” (an advertisement). Carbolic has deposited funds to cover the reward and made it known, public could assume their ‘extravagant promise’ was serious.

## General rule about advertising.

Advertisements, catalogues, circulars and promotions listing prices are invitations to treat, not offers.

- *Partridge v Crittenden* [1968] 2 All ER 421

## Exception to the “general rule” of advertising.

- *Lefkowitz v Great Minneapolis Surplus Store* 86 NW 2d 689 (1957)

*Summary:* Fur coat case, advertisement was “first come, first served.” First person to turn up was a man and they refused to sell it to him. Was it an offer or an ITT?

## **Remedies**

*Court held:* it was an offer, specific performance was promised on the basis of requested performance. He has “turned up first” and therefore accepted the “offer.” Once the offer is accepted, new terms can’t be imposed (e.g. house rule that he be female).

## **Display of goods**

generally considered an invitation to treat and NOT an offer. Technically, the customer makes an offer at the displayed price which the retailer then ‘accepts.’