

# CONTRACTS LAW1201

## Part A:

### Contract formation:

#### Offer:

##### Defintion:

An expression of willingness to enter into a contract on specified terms (*Gibson*).

##### Objective Test:

Would it appear to a reasonable person in the position of the offeree that an offer was intended? And that a binding agreement would be made upon acceptance? (*Gibson, Carlill*)

Unilateral K	Bilateral K
<ul style="list-style-type: none"><li>- Offeree accepts by performing their side of the bargain. No consideration necessary. (<i>Australian Woollen Mills</i>)</li><li>- Acceptance occurs @time of performance e.g. reward for lost dog <i>AWM</i> – still need 2 parties, but only one party is ever under a contractual obligation.</li></ul>	<ul style="list-style-type: none"><li>- Basically every K</li><li>- At the time a bilateral contract is formed, the obligations of both the offeree and the offerer are executory (will be performed sometime later after the formation of the contract).</li></ul>

#### Invitations to Treat

An invitation to treat is not an offer but an invitation to others to make offers or enter into negotiations.

- Shop sales: (*Boots- chemist case, customer= offer@ checkout*) are examples of invitations to treat.
- Display of goods: ≠ an offer (*Fisher*) -Offer is when the customer (customer = offeror) picks up the goods, and acceptance is the cashier putting the sale through the cash register (*Pharmaceutical Society*)

- Auctions are an invitation to treat; bid is offer, offer is accepted by the auctioneer's "fall of the hammer." (*AGC*- weren't bound to sell to highest bidder). – so seller can withdraw the property before acceptance of bid, refuse to accept a bid, and can withdraw a bid before acceptance (fall of hammer). Auctioneer is not making offer, bidders are making offers.

Tenders: - Person calling for tenders is bound by the conditions they put forth for the tender (*Harvey Instruments*)

- Tenderers are obligated not to withdraw tenders (*Ontario*)
- Implied contract for companies to consider all tenders (*Blackpool and Fylde*)
- If conditions present before submission of tender, then person who submits tender has the ability to accept or refuse the offer made by the person who created the tender opportunity (*Hughes Aircraft*).
- Exceptions:
  - When vendor promises to accept highest bid, **call for tenders is an offer** (*Harvella*)
  - **Letters** describing the tender process and evaluation process **are offers** (not I2T) (*Hughes*)
  - Formal request for tender, specifying same criteria **is an offer**.

Electronic Transfers:

- ETs are treated as **invitations to treat**, rather than offers, unless explicitly referencing acceptance by the customer.
- Contracts between a natural person and an automated system are not immediately invalid just because another natural person isn't involved.
- If someone makes an input error in an automated machine and are not given the opportunity to fix that error, then the person involved is entitled to "withdraw the portion of the communication in which the error was made".

**Ticket Cases:**

- Consider applying the conventional analysis: the ticket is an offer which the purchaser can accept or reject after they have had reasonable opportunity to consider the conditions of the ticket (Stephen J, *MacRobertson*).
- Also consider the alternative judgment made by Barwick CJ, ticket is a receipt of a prepaid fare, comparable to a unilateral contract.
- If terms are present beforehand, it's an offer. (*MacRobertson*) -If there is flexibility in the terms after sale (like with a cancelling a flight) then it is an offer when that sale is made (*MacRobertson*).

## **Termination of an Offer**

### Withdrawal or revocation of offer:

- Any time before acceptance so long as communicated to the offeror (*Dickinson v Dodds*) even if offeror promised to keep it open.
- May be revoked by words or actions inconsistent with continuance of offer (*Dickinson- selling land to 3<sup>rd</sup> party= revocation of offer*)
- Revocation only effective when it reaches (communicated to) offeree by the offeror or some other reasonably reliable source (*Dickinson – revocation was communicated to agent through reliable source*)
- PUBLIC AT LARGE- can be revoked same way offer was made (e.g. newspaper).

### Exceptions:

- Consideration has been paid to keep the offer open (*Goldsborough Mort*) OR
- Unilateral K; performance has commenced and there is an implied contract not to revoke = cannot revoke (*Mobil Oil*).
- Art 16 CISG à offer can be revoked until it is accepted (and until offeree has dispatched acceptance).
- NOT if it states it is irrevocable

- If offeree has acted on reasonable reliance of offer being irrevocable

#### *Article 16*

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer **cannot be revoked**—

(a) if it indicates, whether by **stating** a fixed time for acceptance or otherwise, **that it is irrevocable**; or

(b) **if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.**

#### Lapse:

- Offer available for a certain period of time will lapse at the end of that period. If no period is stipulated, it will lapse after a reasonable period of time.
- **Objective Test** for Determining a Period of Time: How would a reasonable person in the position of the offeree interpret the offer? (*Bartolo v Hancock*)

#### Death of offeror:

- **Contract is still enforceable if there is no notice of death before acceptance** (*Fong v Cilli*)
- Service contract vs otherwise option contracts
- Death of offeror = lapse (especially if K for personal service) (*Fong v Cilli*);
- K promising to keep offer open (option K) = enforceable against deceased estate (*Laybutt*)  
Unless (*Laybutt*)

- Personal services of Deceased required
- Intent of option was that it not be exercisable after death (this case)

#### Failure of Condition and Changed Circumstances

- An offer may be subject to certain conditions that must be fulfilled before acceptance is possible, or subject to a certain condition which, if fulfilled, causes the offer to lapse. (*Financings Ltd v Stimson*)
- **High threshold:** must be a fundamental change in circumstances (*Neilson v Dysart*)

## Rejection and Counter-Offer

- Once an offer is rejected, it can no longer be accepted, this also includes the rejection of counter-offers.
- HOWEVER, a rejected offer can be treated as remaining open on the basis of mutual assent manifested by conduct (if both parties want it to) (per Heydon J, *Brambles*)

## CISG

**Art.19:** A counter-offer can constitute acceptance so long as it does not materially alter the terms.

NOTE: There is a difference between a counter-offer and an inquiry relating to the alteration of terms (*Stevenson*). By questioning, the offeror is not intending to reject the offer, but requesting guidance as to whether to accept. We primarily analyse language to discover which of these categories it will fall into.

Eg. -\$1000 car; "I'll give you \$900" = Counter-Offer vs \$1000 car, "Would you be willing to accept less than \$1000?" = Inquiry

## Unilateral Contracts

No general principle about revocation of offers whilst someone is in the midst of completing the conditions required for acceptance (*Mobil v Wellcome*) - so revocation can arise at any time.

However, **estoppel** will arise only where the offeree is **induced to adopt** the assumption that the offer will not be revoked and relies on that assumption in such a way that he or she will suffer detriment if the offer is revoked (*Crown v Clark*).

**Conclude:** Is offer made out?

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## **Acceptance:**