

OFFER

An indication by the offeror to the offeree, by words or conduct, to be legally bound by certain terms if offeree is willing to be bound by those same terms: *Carlill*

THREE ELEMENTS

1. Offer must contain all the essential terms, and those terms must be sufficiently clear
2. Must Be Made to Another Party
3. Must indicate a preparedness to be legally bound.

Test 1: Intention to be bound: Can the alleged offer, using a reasonable person test, be regarded as being accompanied by an intention on the part of [P1] to be contractually bound, (*Carlill v Carbolic Smoke Ball Co*)

WHAT IS NOT AN OFFER:

Pre Contractual Statements- not considered an offer b/c do not manifest an intention to be bound immediately by acceptance, but only a willingness to sell or discuss them.

Mere puff: statement which made in advertising a product to induce someone to enter a contract, but they are so far fetched that no reasonable person would believe are true

A mere supply of information: *Harvey v Facey*: where a price was supplied in response to a query about what the lowest price was; held that if the supply of information (such as price) is not accompanied by a willingness to be bound, it is not an offer

An invitation to treat :

- 1) **Display of Goods in Shop Window** (*Fisher v Bell*) (knife in display not for sale, but Inv. To Tr.)
- 2) **Marked Prices on Shelf** (*Pharmaceutical Society v Boots Cash Chemists*) displaying medicines with price tags on shelves in a supermarket was a mere invitation to treat, and the customer made the offer when taking the goods to the check-out; or
- 3) **Listing of Goods in a Periodical or Mail Order Catalogue-** an AD IS NOT an offer (*Partridge v Crittenden*)

TICKETS the issue of a ticket is an offer which can be accepted or rejected by the customer after they have had a reasonable opportunity to consider the conditions on the ticket. (*MacRobertson Miller Airline Services v Commissioner of State Taxation*)

Tentative Conclusion: Based on the above, it is [unlikely/likely] that [P1's] statement was [an invitation to treat, a mere supply of information or mere puff]. As such, [P1] [could/could not] be deemed to have intended to be bound.

Test 2: Communication: acceptance must have been in response to and as a result of knowledge of the offer's existence and terms: *R v Clarke*. By [apply facts], [P1's] offer to [P2], [was/was not] communicated.

- On offer becomes effective once it is communicated to offeree or his agent. *Cole v Cottingham*
- Offeree must be aware of offer and intend to accept it (*R v Clarke*) i.e Reward- can't claim if become aware later.

Test 3: Withdrawal: An offer cannot be accepted by [P2] if [he/she] knows it has been withdrawn: *Dickinson v Dodds*
[P1's] offer can be terminated by:

Lapse of Time: there can be an express time limitation or it can be implied by what is reasonable in the circumstances: *Manchest Diocesan for Education v Commercial & General Investments Ltd* – 1) Implied into offer that if not accepted within reasonable time, offer withdrawn 2) If not accepted within reasonable time, offeree must be regarded as having refused it.

Death of an offeror: usually impossible to make an agreement, but if the acceptance is made before notice of the offeror's death, the offeror's estate may be bound by the agreement: *Bradbury v Morgan*;

Death of the offeree: usually an offer cannot be accepted by the offeree's executors: *Reynolds v Atherton*; unless offer intended to be capable of being accepted by executors *Carter v Hyde*

Failure of a condition: to which the offer was subject: *Masters v Cameron*

Rejection by the offeree: *Hyde v Wrench*: a rejection is irrevocable; but this can be distinguished from a mere enquiry: *Stevenson Jacques v McLean*: where there was an enquiry as to what the limits of the offer were;

Counter-offer: in a counter offer, the offeree becomes the offeror and that counter offer may be accepted or rejected. *Brogden v Metropolitan Railway*

Revocation: occurs when the offer has been withdrawn: *Payne v Cave*. A promise to keep an offer can be revoked, *Routledge v Grant*, unless the offeree has given consideration for that promise in which case it then becomes irrevocable (**option**): (*Goldsborough Mort v Quinn*)

Communication of revocation: done in similar manner to what offer was made in. offer may be terminated at any time before accepted. Once it has been accepted, it becomes irrevocable: *Great Northern Railway Co v Witham*.

Hearing a Revocation By Third Party: Can be by any means, it does not need to be done personally, if the offeree becomes aware through a reliable third party it will suffice: *Dickinson v Dodds*

(a) Where the defendant had offered to sell a house to the plaintiff and promised to keep the offer open until Friday, the plaintiff then heard on Thursday that the house had been sold and he immediately accepted the offer and subsequently sued for damages. The Court found that even without the express revocation, the plaintiff knew the offer was terminated just as surely as if the defendant had told him, therefore he could not accept it.

Revoking a unilateral contract where the offer can only be accepted by completing performance of an act, there is some authority to support the proposition that once performance has begun, there is an implied subordinate promise to keep the offer open until performance is complete, where consideration for the subordinate promise is commencing the act: *Veivers v Cordingley*, (*Carlill v Carbolic*).

However, there is authority that suggests that the offer made in exchange for completion of act is REVOCABLE even if the act has

been partly performed., *Mobil v Wellcome International*: The offer can be stopped, but the offeror may be liable to separate damages. Eg injunctive relief to stop the revocation of the offer.

Tentative Conclusion: Based on the above it can be concluded that [P1's] offer [is/not] capable of being accepted by [P2].

ACCEPTANCE

THREE ELEMENTS

1. 1)The acceptance must be 'in response' to the offer
2. 2)The Offeree must accept the terms of the offer (as exclusive); and
3. 3)That acceptance must be communicated to the offeror

OBJECTIVE TEST – Acceptance can be by conduct if the offeree behaves in such a way that a reasonable person would believe they are assenting to the terms of the offer: *Carlill v Carbolic Smoke Ball Co*

- An expression, by words or conduct, of [P2] of assent to the terms of the offer in the manner prescribed by the offer: *Carlill v Carbolic Smoke Ball Co*
- Generally acceptance can only be made by [P2] or by [his/her] agent: *Reynolds v Atherton*

Rules of Acceptance:

1)Can only be Accepted by those person to whom the offer was made: *Boulton v Jones*, or there can be an offer to the world at large: *Carlill v Carbolic Smoke Ball Co*, or buy his agent: *Reynolds v Atherton*

2)The offeree must be aware of the offer and intend to accept it: *R v Clarke*.

3)When method of communication is instantaneous then contract is formed when and where acceptance is received. *Brinkibon v Stahag Stahl*

4)Acceptance must be unqualified and correspond with the offer: **Test 1**

5)Acceptance must usually be communicated: **Test 2**

POSTAL RULE: *Henthorn v Fraser* : "Where the circumstances are such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted."

Test 1: Precise Terms: It is necessary for [P2's] acceptance to be absolute, unqualified and in the precise terms of the offer made by [P1]: *Hyde v Wrench*

1)An offer can be accepted by [P2's] conduct: *Carlill v Carbolic Smoke Ball Co*

(a) Where the offer stipulated conduct that, if performed, would constitute an acceptance, namely smoking the smoke ball in accordance with the instructions.

2)But a request for information is not a rejection: *Stevenson Jacques v McLean*

If [P2's] acceptance was not in the same terms as [P1's] offer it is a:

Counter Offer: which destroys the original offer and there is no agreement: *Outer Suburban Property v Clarke*

Battle of the forms: the terms of the offer contained in the last form submitted will govern the contract. Each new form is a counteroffer, rejecting the former offer: *Butler Machine Tool Co Ltd v Ex Cell O corporation*

Test 2: Communication:

General Rule: The Offeree is free to specify how the acceptance is to be communicated (*Manchester Diocesan v Commercial & General Investments*) Acceptance is only effective when communicated to offeror.

[P2's] acceptance must have been effectively communicated to [P1]: *Byrne v Van Tienhoven*.,