

**1. FORMATION**  
**IS THERE A VALIDLY FORMED CONTRACT?**

**1.1 IS THERE AN OFFER?**

- “Would it appear to be an offer 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?” > *Carlill v Carbolic Smoke Ball Co*

**IF YES >**

**Was the statement puffery?**

- Promotional statements and claims that express subjective views which no ‘reasonable person’ would take literally
  - > *Carlill v Carbolic Smoke Ball Co*
- An offer must be more than a “mere puff”

**Was the statement an invitation to treat or negotiate?**

- > *Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd*
- Taking the item off the shelf is an invitation to treat not an offer – an offer is taking it to the register and scanning it is the acceptance (self-service)

**Was the statement a counter offer?**

- An offer accepted with some modifications
- Counter offer = rejection of offer
- Was there a new element introduced?
  - > *Butler Machine Tool Co Ltd v Ex-Cell-o Corp*
  - A contract does not exist until the original offeror accepts the modified terms

**IF YES TO ANY = NOT AN OFFER**  
**IF NO TO ALL = AN OFFER >**

**1.2 WHAT TYPE OF OFFER WAS IT?**

**Was the offer made to a specific person?** = Bilateral contract

**Was there one offeror but many unspecified offeree’s?** = Unilateral contract?

### 1.3 TERMINATION OF AN OFFER

#### Was there revocation of the offer?

- When offeree is being informed that offeror no longer wishes to proceed
  - > *Dickinson v Dodds*
    - **Griffiths CJ**: 'An offer can be withdrawn at any time before acceptance but the withdrawal must be communicated to the offeree'
    - Communication of the withdrawal can be made by any reliable third party'
    - **Isaacs J (dissenting)** – 'Unsupported by valuable consideration, the "offer" was a mere promise and could be withdrawn'
  - > *Mobil Oil Australia Ltd v Wellcome International*
    - If offer is made to the whole world, the offeror must use appropriate means to communicate the revocation of the offer to all potential offerees
    - An offer cannot be revoked once acceptance has commenced UNLESS there had been an ancillary agreement that the offer would not be withdrawn

#### Was there lapse of time?

- If there is no time period stipulated in the offer then an offer will end at the expiration of a reasonable period of time (on circumstances)

#### Was there non-occurrence of a condition?

- E.g. Offer to buy something provided it is in sound condition – if you accept the offer and purchase it after it has become unsound then the acceptance becomes ineffective

#### Was there death?

- If a party dies before acceptance of the offer, the offer lapses
  - > *Fong v Cilli*
    - Offeree may accept the offer before the receipt notice of the offeror's death

**IF YES TO ANY = NO LONGER AN OFFER**