

# Contract A: Case Summaries

## Week 1: Offer

<i>Carlill v Carbolic Smoke Ball Co</i> [1893] 1 QB 256	
<b>Trigger word</b>	Smoke ball to prevent flu. Unilateral contract.
<b>Facts</b>	D advertised reward for anyone who got the flu while using the ball. P got the flu. D refused to pay the reward. P claimed there was a contract.
<b>Issue</b>	Was there a contract if no offer had been made to a particular person and P had not notified of her acceptance of any offer? No period stipulated and no consideration. Promise or mere puff?
<b>Decision</b>	Carlill was entitled to the reward. There was a unilateral contract comprising the offer (by advertisement) of the Smoke Ball and the acceptance (by performance of conditions stated in the offer) by Carlill.
<b>Principle</b>	The advertisement constituted an offer of a unilateral contract which she had accepted by performing the conditions stated in the offer. Acceptance need not be notified before performance.
<i>Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd</i> [1953] 1 QB 401	
<b>Trigger word</b>	Display of goods in chemist. Offer distinguished from invitation to treat
<b>Facts</b>	Self serve pharmacy, Required by law to be sold in the presence of a pharmacist.
<b>Issue</b>	What stage of purchase in a self-serve store is there an acceptance of offer? Is the customer bound to a purchase once they place an item in their basket?
<b>Decision</b>	D was not in breach as the contract was completed on payment. Customers must be regarded as making an offer when they present the items to the cashier and are not bound until the cashier has accepted that offer. This was supported by the fact that customers are able to return and substitute items selected from the shelves.
<b>Principle</b>	Good on display are invitation to treat not an offer; the customer makes an offer when they take the goods to the register.
<i>AGC (Advances) Ltd v McWhirter</i> (1977) 1 BPR 9454	
<b>Trigger word</b>	Auctions. No reserve. Invitation to treat?
<b>Facts</b>	P put up property for sale without a reserve. Highest bid was \$70,000 below reserve. P then withdrew the reserve and a bid of \$70,500 was made. P did not accept the bid (concerns about payment) and the property was knocked down to the earlier bidder.
<b>Issue</b>	Did removing the reserve at auction constitute an offer to sell to the highest bidder or was it an invitation for offers?
<b>Decision</b>	Bidders at auctions make offers that may or may not be accepted. Withdrawal of a reserve does not change this. Did not alter the general rule. The holding of an auction without reserve did not constitute an offer and did not bind the vendor to sell to the highest bidder.

***AGC (Advances) Ltd v McWhirter (1977) 1 BPR 9454***

<b>Principle</b>	An auction is merely an invitation to treat. Offer is accepted by the auctioneers 'fall of the hammer'. Auction without reserve did not bind them to accept the highest bid.
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***Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd [1986] 1 AC 207***

<b>Trigger word</b>	Tenders
<b>Facts</b>	Selling shares, two companies asked to submit tenders and explicitly specified that it binds itself to accept the highest bid from the two. H bid the most but another company said (101K more than any other offer)..
<b>Issue</b>	When a person invites tenders and expressly binds itself to accept the highest bid is that person liable for breach of contract if the highest bidder is not accepted?
<b>Decision</b>	Call for tenders was held to be an offer because the vendor promised to accept the highest bid. The invitation to submit tenders amounted to an offer due to the specification. A unilateral contract was formed.
<b>Principle</b>	Parties inviting tenders should carefully consider the terms, conditions and wording of the invitation. Failure to do this may result in unintended contracts being created between the tenderer and the party inviting tenders.

***Dickinson v Dodds (1876) 2 Ch D 463***

<b>Trigger word</b>	Revocation of offer/termination of offer
<b>Facts</b>	DO offered to sell DI his house for \$800. He promised to keep offer open to him until Friday. On Thursday Do accepted an offer from a third party and sold the house to them.
<b>Issue</b>	Whether the defendants promise to keep the offer open until Friday morning was a binding contract between the parties
<b>Decision</b>	Statement made by Dodds was nothing more than a promise and no binding contract was formed.
<b>Principle</b>	Offer can be revoked any time before there is acceptance. Also stated that communication by a friend or other party that an offer had been withdrawn was valid and would be treated as if it came from the person themselves.

***Goldsbrough Mort & Co Ltd v Quinn (1910) 10 CLR 674***

<b>Trigger word</b>	Revocation/termination of offer. Consideration.
<b>Facts</b>	Q owned land. Offered G the right to purchase land within 1 week for \$5. Before the week was up and any offer, he withdrew the offer. G accepted the offer within the week but W refused to sell the land to G.
<b>Issue</b>	Had a contract been formed between Goldsbrough and Quinn?
<b>Decision</b>	Enforceable contract was formed.
<b>Principle</b>	The offeror could not withdraw before the expiration of the promised period because the promise to keep the offer open was supported by consideration (\$5).

***Mobil Oil Australia Ltd v Wellcome International Pty Ltd (1998) 81 FCR 475***

<b>Trigger word</b>	Revocation after performance has started. Unilateral contract.
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***Mobil Oil Australia Ltd v Wellcome International Pty Ltd (1998) 81 FCR 475***

<b>Facts</b>	M told its franchisees that they would reward franchisees who live up to 90% over 6 years. Reward was vague but would be extension of tenure with no cost. Abandoned scheme after 4 years despite time and money spent trying.
<b>Issue</b>	Can a unilateral contract be revoked after performance has been partly performed?
<b>Decision</b>	No offer. Statement was too vague and uncertain. Even if there were an offer M entitled to revoke unilateral offer although performance had commenced.
<b>Principle</b>	A unilateral offer may be revoked at any time (even after performance has begun) unless there is an implied ancillary contract not to revoke the offer once the offeree commences performance.

***Fong v Cilli (1968) 11 FLR 495***

<b>Trigger word</b>	Acceptance after death. Lapse and death of offeror.
<b>Facts</b>	Contract for sale of land. C were tenants and F owned the land.
<b>Issue</b>	Can a purchaser of a property accept an offer even though they knew that the person who had offered to sell the property had died?
<b>Decision</b>	No acceptance and therefore no contract.
<b>Principle</b>	Offeree can not accept an offer after the offeror's death where the offeree knew of the death before acceptance.

***Laybutt v Amoco Australia Pty Ltd (1974) 132 CLR 57***

<b>Trigger word</b>	Dead while offer still open.
<b>Facts</b>	L owned land and A was going to buy it. L died while the offer was still open. Offer was to be made to 'me'. A told L's widow he accepted
<b>Issue</b>	Was this valid acceptance
<b>Decision</b>	Not acceptance and no contract.
<b>Principle</b>	HCA held that as a general rule that upon the death of a party to a contract his liability is passed onto his representatives (his widow). The rule does not apply if the performance of a contract depends on the personal skill of the offeror.

***Neilson v Dysart Timbers Ltd [2009] NZSC 43; [2009] 3 NZLR 160***

<b>Trigger word</b>	Application for leave. Failure of condition and changed circumstances.
<b>Facts</b>	D obtained judgment against N for \$315,000 under guarantee given by N for their company. N disputed liability under guarantee and applied for leave to appeal. N offered to pay \$250,000 for full satisfaction of their debt and D's solicitors were urged to get instructions from client. 3 hours after leave for appeal was granted, observing the possible risks of the leave, D accepted the offer. N claimed it was no longer available for acceptance.
<b>Issue</b>	Was the offer still open for acceptance or had it lapsed?
<b>Decision</b>	Offer was still available for acceptance and it had not lapsed.
<b>Principle</b>	An offeree cannot reasonably expect to be able to accept an offer if the basis on which it was made has fundamentally changed.

*Stevenson, Jaques & Co v McLean* (1880) LR 5 QBD 346

<b>Trigger word</b>	Rejection/counter offer/mere inquiry. Iron
<b>Facts</b>	M wrote to SJ offering to sell an iron at \$40 and that the offer would be open until Monday. On Monday morning, SJ telegram M asking if he would accept \$40 over 2 months and if not what was the longest period he would give. M did not reply and sold all units to another party. D telegraphed SJ and advised they had been sold. Ten minutes later (before the telegraph arrived), SJ sent a telegraph accepting the offer.
<b>Issue</b>	Was there a binding contract? Was the telegram an inquiry for information or a counter offer?
<b>Decision</b>	Held that they were only inquiring for more information about whether the terms of the offer could be changed. This meant the offer was still valid and the second telegram formed a binding contract. Whilst the promise to keep the offer open until Monday was not binding (an offeror can revoke this at any time), there had been no revocation communicated yet.
<b>Principle</b>	A counter offer is treated as rejection (I will give you \$40 instead) and once it has been rejected it is no longer available for acceptance. A mere inquiry is distinguished from a counter offer and not a rejection (is there room for movement in the price etc).