

THE FACT OF THE AGREEMENT LECTURE 2 (CH4)

Offeror – is the person making the offer.

Offeree – is the person to whom the offer is made.

Promisor – the person making the promise, the person sought to be bound by the promise he or she has made.

Promisee -the person to whom the promise was made and who seeks to enforce the promise (against the promisor)

OFFER:

a statement of terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive – **Neilson v Dysart Timbers Ltd**

A statement that is clear, definite and explicit and leaves **nothing open for negotiation**, it constitutes an offer, acceptance of which will consummate a contract- **Leftkowitz v Great Minneapolis Surplus Store**

Harvey v Facey- **supply of information, no implied contract to sell.**

P: "Will you sell us Bumber hall pen?"

D: "Lowest price 900 pounds"

P: "We agree to buy"

DEFENDANT REFUSED

HELD: D only gave lowest price and did not express their willingness to sell thus no offer. Plaintiff last telegram was an offer to buy never accepted by defendant.

WHAT IS NOT AN OFFER?

- **CIRCULARS, CATALOGUES ETC**- **Not offers but invitations to treat.**
Missing Element: willingness to be bound
 - **Partridge v Crittenden** – advert in a bird catalogue – potential buyer that makes the offer that the advertiser can accept or not.
HELD: Court said if the advert was an offer, they would be bound to sell to anyone that wishes to purchase, **not practical with stock levels.**
 - **Leftkowitz v Great Minneapolis Surplus Store**-
Advertisement stated, "first come first serve". Claimant first to respond, but D refused to sell on basis of house rule to **SELL ONLY TO FEMALES.**
HELD: Held that it was binding because specific language of the advertisement. 'D' therefore did not have right to impose new condition after acceptance.

- **DISPLAY OF GOODS-** Not offers but invitations to treat.

- **Pharmaceutical Company of Great Britain v Boots Cash Chemist-** The goods here required to be sold under the regulated pharmaceutical goods conditions, hence why if it was an offer on the shelf anyone could buy them by accepting the offer and picking them up. By creating the offer at the register, it allowed the sale to be monitored. A registered pharmacist was at the checkout.

- **AUCTION-** Not offers but invitations to treat.

The bidders by bidding make an 'offer' capable of acceptance and upon knocking the item down, a contract is made.

Payne v Cave

- Cave made highest bid for good in an auction
- Cave changed mind & withdraw his bid before auctioneer down his hammer

- A bidder is free to withdraw before it is accepted, the auctioneer does not have to accept a bid and nor the highest bid (**AGC Advances v Nickerson**)

- Where it is stated that the highest bidder will be accepted then the highest bidder will get the contract – **Harvela Investments v Royal Trust Co of Canada**

- **TENDERS-** to tender is to invite bids for a project or accept a formal offer.

- A 'tender' is to test the market by calling for expressions of interest, these would be the offer that can be accepted or rejected – **Meudell v Mayor of Bendigo.**

- Tenders for pleasure flights – invitation to tender was detailed and specific, time specific, Aero club submitted on time but due to a council error the tender was not considered. **HELD:** invitation to tender was an offer to consider all entries, Aero club had accepted by submitting a tender that met all the council's requirement, thus council was liable for damages due to breach of contract — **Blackpool & Flyde Aero Club v Blackpool Council.**

TO WHOM AN OFFER CAN BE MADE:

Can be made to a specific person/ specific persons / class of people or the world at large. Only persons to whom an offer is made can accept **e.g. Carlill**. (although the **offer was open to be accepted by anyone, contracts only arose with those persons who actually performed the conditions** of the offer).

HOW TERMINATED?

The issue of termination often arises when someone attempts to accept the offer and the other person claims the offer has already terminated/ is no longer open for acceptance.

1. Lapse of time:

An offer terminates after either the **time stated expires** or a **reasonable time period** has passed. **What is reasonable?** Depends on the facts and the circumstances – **Empirnall Holdings v Machon Paul**

- e.g. an offer was made to sell bananas at a specific price, the courts would assume the **offer would last say 6 months** max but **probably soon since bananas do not keep**.

2. Rejection:

An **offer once rejected is terminated**, it cannot be subsequently accepted, a **counter-offer is an implied rejection of an offer**.

Hyde v Wrench- offer to sell a property for \$1000, came back with a figure of \$950 that offer was refused and then Hyde tried to accept the \$1000 the court held that no contract arose because the originally offer came to an end with the counter offer, the subsequent \$1000 was another offer that Wrench was free to reject.

However, a **request for information is NOT a counteroffer**, it does not terminate the offer and leaves it open to be accepted – **Powierza v Daley**.

“The line between rejecting an offer and merely inquiring as to a possible variation is a fine one, but the basic test is the effect on a reasonable person standing in the shoes of the offeror”.

Powierza v Daley.

- 2 parties negotiating sale of sale property.
- Sale agreement for \$405K with \$40k deposit
- Powierza agreed to sale price but charged deposit. Vendor refused offer.
- Then agreed original price & sent back but vendor accepted 3rd party.

HELD: Altercation in sale agreement was merely an inquiry and not counter-offer; making original contract enforceable.