

## Week 1: Offer, Acceptance & Electronic Transactions

### 1.1 Agreement: Offer

#### 1.1.1 What is an offer?

##### Nature of offer

- **Offer:** Manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it (Restatement (Second) of Contracts , §24, American Law Institute, 1981)
- Must be made to others
  - Can be individual, group of people or public/world at large
  - **Offeror:** Person who makes the offer
  - **Offeree:** Person to whom offer is made

##### Existence of offer

- Word “offer” = NOT conclusive of existence of offer
- Courts use **objective** standard → would it appear to a reasonable person in the offeree’s position that an offer was intended?
- Facts of scenario can lead to consideration of several related questions:
  - What type of manifestation (statement or conduct) constitutes an offer?
  - What if the offeror’s outward manifestation is different from their actual intentions?

#### ***Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256***

##### Facts

- Defendants manufactured a device which claimed to prevent colds & flu
- **13 Nov 1891:** Company placed advertisement stating that an £100 reward will be paid to any person who contracts the increasing influenza, colds or disease caused by taking cold after having used the ball 3 times daily for 2 weeks as directed
- **20 Nov 1891 - 17 Jan 1892:** Carlill used in accordance w/ directions & contracted influenza
- Company refused to pay & said it wasn’t an offer & mere puff → not meant to be legally binding & words were not expressing a promise
- Trial judge held she was entitled to the claim
- She appealed

##### Issue

- Was the statement intended to be a promise or was it a mere puff?

##### Held

- Argument that the advertisement was an offer to the public & accepted the offer when she followed the directions

#### ***Gibson v MCC [1979] 1 WLR 294***

##### Facts

- Council wrote letter to Gibson stating:
  - The council “may be prepared to sell the house to you for a nominated purchase price”
  - “If you would like to make a formal application to buy your Council house, please complete the enclosed application form & return it...”
- Gibson completed the application form & returned it to the Council
- Elections resulted in change of control of the Council & ceased all proposed sales
- Gibson sought specific performance of the contract asking the court to order the Council to sell him the property

## Held

- Judge Bailey held that the documents amounted to offer & acceptance
- Ordered specific performance

## Specific types of offers: Ticket cases

- General rule: ticket = offer
- Usual approach is ticket = offer which passenger can accept or reject after he or she has had reasonable opportunity to accept or reject it
- However general principle is not always applicable
- Some kinds of transactions pose problems for identification of the offer & acceptance for various reasons

### ***MacRobertson Miller Airlines v Commissioner of Taxation (WA) (1975) 133 CLR 125***

#### Facts

- Passengers would inform airline of their requests who would advise them of available prices & flights
- In return for payment of fare they would issue passengers w/ ticket with condition that exempted liability if flight was cancelled & passengers would be entitled to refund
- If agreement → taxes could be levied if it was memorandum → taxed could not be applied

#### Issue

- Was the ticket an agreement or memorandum of agreement?

#### Held

- **Barwick CJ:** Exemption clause left no existence for contract
  - No contract because airline consideration was illusory
  - Terms of ticket does not offer any obligation to carry passenger
  - Ticket = just receipt of payment no prior promise
- **Stephen J:** Ticket was an offer

## 1.1.2 Offers distinguished from invitations to treat

- **Mere puff:** Hyperbole → not to be taken at face value
- Supply of info
- **Invitation to treat:** Invitation to make an offer
  - Price list & catalogues
  - Shop display
  - Reward
  - Auction & tenders

### ***Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) [1953] 1 QB 401***

#### Facts

- Pharmaceutical Society said that Boots infringed *Poisons Act* through self-service arrangements
- By taking an article from the shelf the customer was accepting the offer of Boots Chemists
- Pharmaceutical Society said contract formed & medicine passed when customer took off shelf & put it in basket

#### Issue

- At what stage of a purchase in a self-serve store is there an acceptance of an offer?
- Is the customer bound to purchase once they place an item in their basket?

#### Held

- Goods on display are an invitation to treat NOT an offer
- Customer makes offer when they take goods to register
- Contract is formed when shopkeeper accepts offer of customer to buy the goods

\*ALSO SEE: ***Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256 & *Gibson v MCC* [1979] 1 WLR 294**

### 1.1.3 Revocation or lapse of an offer

- Offer will cease to be available for acceptance when:
  1. Withdrawn/revoked by offeror
  2. Lapses
  3. Rejected by offeree
- Withdrawal only effective when it has been communication to offeree
- Can be revoked any time before acceptance
- May be expressed as being open for acceptance for a period of time. Once the time has passed, the offer lapses
- If no time period specified, then offer lapses after a reasonable period of time has passed
  - Depends on circumstances of offer **E.g.** Verbal offer to sell car will lapse quicker than written offer to sell expensive piece of land
- Generally death of offeror will terminate offer, at least where the offeree knows the offeror has died before acceptance has been communicated (*Fong v Cilli* (1968) 11FLR 495)

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

##### **Facts**

- Proposal to sell land to brothers as joint purchasers
- Document was signed by Mr Goon and 1 of the brothers
- Mr Goon died shortly after
- Lawyers forwarded document to other brother
- Offer could not be accepted after death of offeror
- Both brothers had to sign to be contractually binding

#### ***Laybutts case***

##### **Facts**

- Laybutt owned piece of land & granted option to Amacote to purchase land
  - Could be exercised by providing notice in writing on or before 24th of Oct & by payment to particular agent by deposit
  - Laybutt died & widow was sole beneficiary
  - Amacote served notice on widow
  - Widow lawyer said option could not be exercised because vendor died
  - When party dies that party liability passes on to personal representative but does not apply if performance of contract relies on personal skill of the party
  - Liability would not lapse but accrue to representative
- In some cases, where the offer is really an option (**E.g.** Conditional contract - Goldbrough's case) it might still be enforced if the grantor of the option dies before the option is exercised

### Revoking an offer

- Offeror might promise to hold offer open for certain time
- Even so offeror may withdraw the offer before specified acceptance period
- However promise to hold an offer open for specified period will be binding if consideration has been given by the in return for that promise by the Promisee
- Agreement in the situation is often referred to as option &/or conditional contract

#### ***Goldsbrough Mort v Quinn* (1910) 10 CLR 674**

##### **Facts**

- Quinn owned piece of land & granted Goldsbrough the right to purchase the land within 1 week at a specified price
- Before expiration of the week & before acceptance of the offer, Quinn withdrew the offer
- Goldsbrough accepted the offer within the week
- Goldsbrough sued for specific performance

##### **Issue**

- Was the document an offer or option & could be withdrawn before the week was up?

#### Held

- A mere promise **E.g.** To keep offer open for certain time, not supported by consideration is not enforceable as there is no agreement yet
- **Griffith CJ:** Offer may be withdrawn at any time before acceptance. A mere promise to leave an offer open for a period of time is nothing because no agreement had been reached

1. Once offer has been rejected it is no longer available for acceptance
2. However a rejected offer may in all circumstances be treated as remaining open & available for acceptance on the basis of mutual assent manifested by conduct (Brambles Case)

#### 1.1.4 Counteroffers

- Counteroffer is treated as a rejection of the original offer
- “Mere inquiry” is to be distinguished from a counteroffer = NOT a rejection of the offer
- *Stevenson, Jacques & Co v McLean* [1880] 5 QBD 346 → held that phrase ‘Please wire whether you would accept forty for delivery over 2 months, or if not, longest limit you could give’ was mere inquiry not counteroffer

#### 1.1.5 Revocation of offer & unilateral contracts

- Offer made in exchange for doing of an act (unilateral contract) becomes irrevocable once the offeree has started to perform the terms of the offer
- However this general principle was rejected by the Full Federal Court in *Mobil Oil Australia v Wellcome International P/L* (1998) 81 FCR 475

#### *Mobil Oil Australia v Wellcome International P/L* (1998) 81 FCR 475

##### Facts

- Mobil set goals for franchisees to reach a certain goal with the reward for a franchise renewal w/out cost
- Franchisees were informed of this & 3 years later, Mobil wanted to revoke the offer
- Franchisees sued for breach of contract
- Content of the contract according to Wellcome International: Mobil had made an offer by promising to renew the franchise without cost in exchange for franchisees achieving a 90% score when judged by the Circle of Excellence

##### Issue

- Can an offer be revoked once made?

##### Held

- Full court rejected the notion that the offeror cannot revoke an offer once the offeree has commenced the act
- ‘It is not accepted that there is a universal proposition that an offeror is not at liberty to revoke the offer once the offeree has commenced the performance of the sought act for acceptance.’ – Lockhart, Lindgren and Tamberlin JJ [CB p60]
- The offeror will only be prevented from revoking the offer where there is consideration

## 1.2 Agreement: Acceptance

### 1.2.1 What can accept an offer & how is this determined?

#### What constitutes an offer?

1. Offer must be accepted before a binding agreement is formed
2. Acceptance must be communicated to the offeror
3. Acceptance becomes effective when communication is received by offeror

#### Unilateral & bilateral contracts

- Acceptance occurs when offeree responds to the offer before it has expired by:
  - **Bilateral:** Making a promise to the offeror **OR**