

## STEP 2: HAS THERE BEEN AN OFFER MADE?

Offer = a clear indication by one person to another of a **willingness to be bound** to certain terms **and proposes an exchange**.

An offer is a manifestation of **willingness to enter into a bargain**, which justifies the other party in understanding that their assent to the bargain is invited and will conclude it. (*Gibson v Manchester City Council*)

**An offer is determined objectively.**

The test is whether it would appear 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 (*Gibson v Manchester City Council*)

OFFEROR – makes the offer (Buyer)

OFFEREE – accepts or declines offer (Seller)

### A. IS THERE AN OFFER?

**Question: Was there an offer between the parties? Did X make an offer to Y [specific person (Bilateral) v unspecified (Unilateral)]?**

- Objective test: Would a reasonable person view the documents/words/conduct as an offer (*Carlill*)
- “Would it appear to be an offer to a reasonable person in the position of the offeree, that the offer was intended and that a binding agreement would be made upon acceptance?” (*Carlill*)
- Often the **language** of the offer will be decisive (*Gibson v Manchester City Council*)
- Courts interpret objectively not subjectively - just because called an offer doesn’t matter (*Taylor v Johnson*)

### B. WILLINGNESS TO BE BOUND WITHOUT FURTHER NEGOTIATION

**Question: Does the offer present a willingness to be bound without further negotiation (*Gibson v Manchester City Council*)?**

- This means the offer **cannot be**:
  - an invitation to treat (*Boots*)
  - request for information (*Stevenson, Jacques & Co*)
  - preliminary negotiation / supply of information (*Gibson v MCC*)
  - Statement of government policy (*AWM*)
  - mere puff (*Carlill*)

- too vague or uncertain. Language must not be equivocal (*Mobil v Wellcome*)
- use the language of command (*Brambles Holding Ltd v Bathurst City Council*)

- Must demonstrate a willingness to be bound (*Gibson v Manchester City Council*). The courts looked at the objective manifestations or actions of the parties to ascertain their intentions.
- **Requires a definite promise to be bound on specified terms** (price, subject matter, date, but additional terms can depend on the context of the sale) and **without need for further negotiations**
  - a) Carlill – (\$100 reward ‘will be paid’ – offer to the public at large), Gibson – (‘may be prepared to sell’ were fatal to any suggestion of a willingness to be bound)
  - b) Carlill – (\$1000 in the bank – shows sincerity in the matter – intention to be bound)
  - c) Mobil – must not use vague language (offering to ‘find a way’ to bring a promise about)

| Distinguished from supply of information / preliminary negotiations ( <b>not offer</b> )  | Offer distinguished from ‘mere puff’ ( <b>not offer</b> )  | Invitation to treat ( <b>not offer</b> )  |
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| <ul style="list-style-type: none"> <li>➤ <i>Gibson v Manchester City Council</i> <ul style="list-style-type: none"> <li>➤ ‘it was but a mere step in the negotiations’</li> <li>➤ Lack of communication in terms of the wording – rendering the communications as nothing more than negotiations</li> </ul> </li> <li>➤ <i>Harvey v Facey</i> (1893) AC 552 <ul style="list-style-type: none"> <li>➤ A mere statement of the lowest price at which a vendor will sell is not an offer to sell at that price to a person making the enquiry</li> </ul> </li> <li>➤ <i>Mobil Oil Australia v Wellcome International</i> (1998) <ul style="list-style-type: none"> <li>➤ Too vague to be an offer</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>➤ A mere puff is a statement containing exaggerated claims and assertions about the products or services that no reasonable person would take seriously</li> <li>➤ Is this exaggerated sales hype or definite promise to be bound?</li> <li>➤ <i>Carlill v Carbolic Smoke Ball Co</i> (1893)</li> <li>➤ ‘Reward will be paid Carbolic smoke Ball Company to any person who contracts...influenza...after having used the ball three times daily for two weeks according to the printed</li> </ul> | <p>Shop sales:</p> <ul style="list-style-type: none"> <li>- Shop window, shelves (classified as an invitation; not an offer)</li> <li>- <i>Fisher v Bell</i> (English) <ul style="list-style-type: none"> <li>*”the owner of a shop, who displayed a flick knife in a shop window had not committed the statutory offence of “offering” the knife for sale”.</li> </ul> </li> <li>- <i>Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd</i> <ul style="list-style-type: none"> <li>* English court – determine when an offer occurred in a self-service pharmacy in order to determine whether sales took place under supervision of registered pharmacist</li> <li>* it was decided that the offer occurred when the customer took the products to the checkout – the store accepted the offer.</li> </ul> </li> </ul> <p>Auctions:</p> <ul style="list-style-type: none"> <li>• Holdings of public auction is usually regarded as invitation to treat.</li> <li>• The auctioneer does not make an offer to sell but takes offers from those present</li> <li>• CL approach reflected in the sale of goods by auction is complete when auctioneer announces its completion and until such announcement, a</li> </ul> |

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|  | <p>direction supplied with each ball. 1000 pounds is deposited with the Alliance Bank, regent Street, showing our sincerity in the matter’.</p> <p>➤ An offer can be made to the whole world</p> | <p>bid retracted</p> <ul style="list-style-type: none"> <li>Auctions without reserve <ul style="list-style-type: none"> <li>AGC (Advances) Ltd v McWhirter</li> </ul> </li> <li>* Did not alter general rule</li> <li>* holding an auction without reserve did not constitute an offer and did not bind auctioneer to sell to the highest offer</li> <li>Tenders <ul style="list-style-type: none"> <li>Each tender constitutes an offer</li> <li>Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd <ul style="list-style-type: none"> <li>Call for tenders was held to amount to an offer because the vendor promised to accept the highest bid</li> </ul> </li> </ul> </li> </ul> |
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| <b>NO</b>  | Mere <b>statement of price</b> of which someone would contract if they decided to sell   | Harvey v Facey   |
| <b>YES</b> | <b>Automatic vending machines</b> - offer when says ready to receive money   | Thornton v Shoe Lane   |
| <b>YES</b> | Notice at entrance to <b>automatic car park</b> is an offer<br><b>Note:</b> Customer accepts terms by taking ticket and entering, after that point no new terms can be added | Thornton v Shoe Lane   |
| <b>YES</b> | <b>Offer to purchase tickets</b> - accepted when have had time to read the terms and not return the ticket, or boarding the plane in some circumstances                      | Thornton; MacRobertson   |
| <b>NO</b>  | <b>Invitation to treat</b> - not offer   | Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd |

### C. AN OFFER MUST PROPOSE AN EXCHANGE

**Question: Does the offer propose an exchange of promises or performance of an act?**

NOTE: this will depend on if bilateral or unilateral

- I. An exchange of the promisor's promise in return for either:
- (Bilateral contract)** A return **promise** from the promisee OR
  - (Unilateral contract)** The **completed performance** of an act by the promisee (Australian Woollen Mills v Cth)  
[the offer must specify the 'price' for which the promisor's promise can be 'bought' (see Carlill; Aust Woollen Mills)]

**Question: Is the offer a statement of government policy or relate to a conditional gift?**  
**Has the offeror expressly or impliedly requested the doing of the act by the offeree?**  
**Has the offeror stated a price which the offeree must pay for the promise?**

II. Offer distinguished from statements of policy, conditional gifts etc

- **Aust Woollen Mills** distinguished a unilateral contract from a conditional gift:  
If A says to B in Melbourne, “I will pay you 100 pounds on your arrival to Sydney”, this alone does not establish the existence of a contract on B’s arrival in Sydney. B must establish that the money was to be paid in return for B travelling to Sydney.
  - Has the offeror expressly or impliedly requested the doing of the act by the offeree?
  - Has the offeror stated a price which the offeree must pay for the promise?
- Was the offer made in order to induce the doing of the act? **Australian Woollen Mills v Cth**

**Question: Is there a relationship of ‘quid pro quo’?**

- III. There must be a ‘quid pro quo’ (**Australian Woollen Mills v Cth**)  
Act cannot just be a condition. Must be a promise offered in consideration of an act.

This for that between offeree’s act and the offeror’s promise. Unilateral – in return for the performance of an act. Bilateral – in return for a promise.

**Australian Woollen Mills** – buying the wool was merely a condition precedent to the entitlement to the subsidy. It was not intended as the consideration for a promise to pay the subsidy, there was no offer or request or invitation to purchase wool or anything else suggesting that ‘payment of subsidy’ and the purchase of wool were regarded as related in such a way that the one was a consideration for the other.

IF **YES** to all of the above – then there is an offer between X and Y.

If any answer is **NO**, no offer exists between X and Y.

**Conclusion:** Therefore, based on the facts provided, and applying the common law decisions on whether an offer exists, there appears to be an offer in existence between X and Y.

### STEP 3: IS THE OFFER STILL OPEN?

#### Question: Is the offer still open to be accepted, or has it been revoked, lapsed or extinguished?

At the time the offeree went to accept the offer was the offer still open to be accepted?

- An offer will not remain open forever

#### RULES:

1. Can be revoked anytime prior to acceptance (except if has an option for consideration)
2. Revocation only effective if communicated to offeror

#### LOOK FOR:

- Whether the offer has been **revoked**? Can be **revoked PRIOR to acceptance** only if **no consideration** paid already. (*Goldsbrough Mort v Quinn*) Revocation must be communicated (doesn't matter how and what form). (*Dickinson v Dodds*)
- If **unilateral contract** (made to whole world) An offer may still be revoked if the offeree has begun to fulfil the act (*Mobil Oil Australia v Wellcome International Pty Ltd*)
- Has a **counteroffer** been made? This constitutes a rejection of the offer. (*Butler Machine*) NOTE: Must distinguish a counteroffer with request for information.
- Whether the offer has **lapsed**? Timeframe expired? Person died?

An offer may have ceased to be effective at the time of a purported accepted because it has:

| Revoked (withdrawn)   | Rejected   | Lapsed   |
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| <ul style="list-style-type: none"> <li>• Generally an offer can be revoked at any point before acceptance (<i>Goldsbrough Mort v Quinn</i>) (<i>Dickinson v Dodds</i>)</li> </ul> | <ul style="list-style-type: none"> <li>• <u>Rejection of an offer by the offeree extinguishes the offer</u> (<i>Tinn v Hoffman</i>)</li> </ul> | <ul style="list-style-type: none"> <li>• If time specified- lapse at expiry of that time</li> <li>• No time period specified?</li> </ul> |

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| <ul style="list-style-type: none"> <li>An offer cannot be withdrawn if there is an option agreement (<u>Chappil &amp; Heart v Nestle</u>)</li> <li>If there is <b>no consideration given</b> for promise its <b>nudum pactum</b></li> <li>Revocation is only effective when communicated to the offeree (<u>Stevenson Jaques v McLean</u>) <ul style="list-style-type: none"> <li>No exception is made for withdrawal via post (<u>Byrne &amp; Co v Leon Van Tienhoven &amp; Co (1880)</u>)</li> <li>May be communicated by a third party (<u>Dickinson v Dodds</u>)</li> <li>Can be inferred from conduct (<u>Dickinson v Dodds</u>)</li> <li>No particular form of revocation is required. All that is required is that the offeror in some way conveys (directly or indirectly) to the offeree that he or she has changed his or her mind about the offer (<u>Dickinson v Dodds</u>)</li> <li>If you reject an offer or you propose a counteroffer than that offer is extinguished</li> </ul> </li> <li><b>Unilateral contracts?</b> <ul style="list-style-type: none"> <li>An offer may still be revoked if the offeree has begun to fulfil the act (<u>Mobil Oil Australia v Wellcome International Pty Ltd</u>)</li> <li>Unless there is an implied ancillary contract not to revoke</li> <li>Whether it is unjust for the offeror to revoke the offer depends on: <ol style="list-style-type: none"> <li>Whether the offeror knows that the offeree has commenced performance</li> <li>Whether the offeree understands that incomplete performance is at his or her own risk</li> <li>Whether the parties intended that offeror should be at liberty to revoke</li> <li>Whether the acts towards performance detrimental to the offeree.</li> </ol> </li> </ul> </li> <li><b>Option</b> = promise to hold an offer open is binding if consideration has been given in return for that promise.</li> </ul> <p><u>Goldsborough</u> - Promise to hold offer open is <b>binding if consideration given in return for that promise</b></p> <p>An option to purchase a property as a contract for the sale of that property, conditional upon the option being exercised within the specified period (as defined in <u>Goldsborough, Mort &amp; Co Ltd v Quinn</u>)</p> <p>Death offer lapses at death of offeror OR when offeree knows of death → <u>Fong</u></p> | <p>(1873) 29 LT 271, 278)</p> <ul style="list-style-type: none"> <li>What amounts to rejection: <ul style="list-style-type: none"> <li>The making of a <b>counter offer</b> by the offeree = a rejection of the original offer (<u>Hyde v Wrench (1840) 49 ER 132</u>)</li> <li>A request for information must be distinguished from a counter offer (mere request for information will not operate as a rejection (<u>Stevenson Jaques v McLean</u>))</li> </ul> </li> </ul> <p>Even if an offer is rejected, it may not come to an end...it might be repeated, otherwise revived or remain available for acceptance or adoption as the basis of mutual assent manifested by conduct (<u>Brambles v Bathurst CC</u>)</p> | <ul style="list-style-type: none"> <li>Lapses after a reasonable period of time has passed or on the basis that the court can infer rejection from the offeree's failure to accept the offer within a reasonable time (<u>Manchester Diocesan Council for Education v Commercial &amp; General Investments Ltd (1970)</u>)</li> <li>Reasonable time depends of circumstances (shorter for verbal offer to buy a car, longer for written offer to buy land)</li> <li>If an offer is stated to be subject to an implied condition and that condition lapses, the offer lapses too (<u>Financings Ltd v Stimson</u>)</li> <li>Offers may be subject to an implied condition that document is ineffective until signed by all the parties (<u>Neill v Hewens</u>)</li> </ul> <p>Most offers die when either party dies</p> <ul style="list-style-type: none"> <li>If the offeror dies, then the offer may still be accepted if the offeree accepts before they receive notice of the death (<u>Fong v Cilli (1968)</u>)</li> </ul> |  |
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**EXAMPLE:**

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| Sam offers to sell Angela his computer for \$1,000 and tells her she has 24 hours to make up her mind. Two hours later Angela hears from a friend that Sam has just sold his computer to Marsha. Angela rings Sam and tells him she is accepting his offer. Who is entitled to the computer?  | Marsha  |
| Would your answer change if Angela paid Sam \$10 to hold open the offer to purchase the computer?   | Yes. Angela has paid consideration for the promise to keep the offer open. This is an option and a legally binding contract                             |
| Bob says to Jane, 'I offer to sell you this painting for \$1000 cash.' Jane replies, 'Would you consider taking a cheque?' Bob says 'No'. The next day Jane rings Bob and says: 'OK, I accept your offer and will pay \$1,000 cash'. Bob refuses to sell Jane the painting, having sold it to Alan, who will pay \$1,500. Is there a contract between Bob and Jane? | Yes, because Jane has only asked for information and she did not know about the sale to Alan. She did not reject the offer and Bob did not withdraw it. |
| Revocation of an offer is effective however it is communicated to the offeree. Which case provides a precedent for this rule?   | Dickinson v Dodd  |

**STEP 4: HAS THERE BEEN AN ACCEPTANCE?****What is acceptance?**

- An **unqualified assent** to the terms of the offer
  - Is the question whether offer has been accepted determined **objectively v subjectively**. Meeting of the minds (subjective) **OR**
  - Look at **external manifestations of assent**? How would a **reasonable person** interpret the conduct of the offeree? Signature?  
**Conduct / actions of parties?** (Empirnall v Machon Paul (1998) (Fitness First v Chong))

Can be:

- Express** Assessed objectively, court looks to outward manifestations of assent (Empirnall)
- Implied** by conduct (Empirnall, Brambles)
- In a **unilateral** contract communication is either **contemporaneous with performance** (Lindley LJ in Carlill) or **unnecessary** (Bowen LJ in Carlill)

**Elements**

- I. Nexus
- II. Correspond
- III. Communication

## A. DID X ACCEPT THE OFFER?

**Question: Did X accept Y's offer? Is there an unqualified assent to the terms of the offer (Brambles)?**

LOOK FOR:

- Determined objectively as to whether a reasonable person view the documents/words/conduct as acceptance?
  - Can be express – determined by the facts, formal acceptance OR
  - Can be implied/by conduct if no formal acceptance of the offer. (Empirnall)
- Did X make a counteroffer?
  - Did the offeree try to vary the terms of the offer? If so, no acceptance (Brambles)
- Was X silent?
  - constitute acceptance (Felthouse)
  - Exception: Did X take the benefit of the offer? If so, acceptance may be inferred from conduct (Empirnall, Brambles)

## B. IS ACCEPTANCE IN RESPONSE TO THE OFFER AND CORRESPOND TO THE OFFER?

**Question: Is the acceptance in response to the offer and does it correspond with the offer?**

Acceptance must be in **response** to the offer (R v Clarke) and must **correspond** with the offer with an unequivocal assent to the exact terms (Butler Machine Tool).

If Bilateral - The offeree must be aware of the offer and the offeror must the act in response to the offer.

If unilateral – acceptance may be via conduct.

| Nexus   | Correspond   |
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| Acceptance must be of and <b>in response to the offer</b> (R v Clarke)<br>Agreement = joint declaration of will of the parties<br>Bilateral contracts - nexus issue rarely arises<br><b>Unilateral contract:</b> <ul style="list-style-type: none"> <li>➤ was the act really done by the offeree as an acceptance of the offer? (Crown v Clarke; Cth v Aust Woollen Mills)</li> <li>➤ Offeree aware of offer (Crown v Clarke)</li> <li>➤ Offeree must <b>perform act in response</b> to offer (Crown v Clarke)</li> </ul> | Acceptance must correspond with the offer (Butler Machine Tool)<br>Acceptance must amount to an unequivocal statement, or form of conduct, by the offeree indicating assent to the terms of the offer (Brambles v Bathurst City Council (2001)).<br>Seeking to add/change terms? <ul style="list-style-type: none"> <li>- Acceptance?</li> <li>- Counter offer?</li> <li>- Rejection?</li> <li>- Mere inquiry?</li> <li>- Commercial posturing (Hyde v Wrench; Stevenson Jacques v McLean, Butler Machine Tool; Brambles)</li> </ul> <b>Battle of Forms</b> (Butler Machine Tool):<br>where both parties use their own standard printed forms and seek to impose their terms on the other party <ul style="list-style-type: none"> <li>➤ Conflict approach:</li> </ul> |



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|  |  | <ul style="list-style-type: none"> <li>- Treats exchange of terms as a battle requires the court to determine which set of terms has prevailed</li> <li>- Battle will be won by either the one who fires the last shot or by a party who is most persistent in insisting that their own set of terms should prevail</li> <li>➤ Synthesis approach: <ul style="list-style-type: none"> <li>- Requires the court to build a contract from the two sets of terms</li> </ul> </li> <li>➤ <b>Butler</b> : synthesis approach should be last resort</li> </ul> |  |
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### C. WAS THE ACCEPTANCE COMMUNICATED?

#### Question: Did Y communicate their acceptance of the offer?

- General rule: acceptance is effective upon communication (**Brinkibon**). When acceptance is received, acceptance is communicated (**Latec Finance Pty Ltd v Knight**)

#### LOOK FOR:

- Has acceptance been communicated? What form? When? Where? If a method is specified by the offeror, the acceptance must use that method (**Machester**) If not designated method, any method will be effective (**Machester**)

#### If no formal communication:

- Generally silence will not = acceptance (**Felthouse v Bindley**)
- Instead examine the conduct of parties. **Conduct** may even indicate acceptance, despite express words to the contrary (**Empirnall**)
- Open to find acceptance where offeree with **a reasonable opportunity to reject the offer** of goods and services takes the benefit of them (**Empirnall** – neither party signed contract)

#### Timing of communication/ acceptance:

- Postal rule – accepted when posted (**Henthorn**)(**Brinkibon**)
- Email (electronic) – when capable of being retrieved (sent and received) when email arrives. **Electronic Transactions Act 2000**.
- Fax and telex - • Acceptance occurs when the telex is received by the offeror (**Brinkibon**) • A contract is formed wherever the contract is received (**Brinkibon**) • The same principle is applied to fax messages (**Reece Bros v Hamon-Sobelco**)

#### What if no offer and acceptance?

(**Brambles**) “ Where no offer and acceptance can be identified, it is relevant to ask whether an agreement can be inferred – mutual assent has been manifested and whether a reasonable person in the position of each party would think there was a concluded bargain”

#### EXAMPLE:

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| Jim emails Judy at 1pm: "I offer to sell you my contract law textbooks for \$100". | Agreement is reached when the email arrives in Judy's email server at 7pm. |
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| Judy responds at 3pm: "How about \$80". Jim replies at 6pm: "Done". Jim's reply arrives in Judy's email server at 7pm. Judy reads the email at 9pm. When is agreement formed?   |   |
| On Monday Jim posts Judy a letter offering to sell his contract law textbooks for \$100. On Tuesday Judy receives the letter and posts a letter back to Jim offering to purchase the textbooks for \$80. On Wednesday Jim posts a letter back to Judy agreeing to sell the books for \$80. Judy receives the letter from Jim on Thursday. When is agreement formed? | On Wednesday when Jim posts his letter.   |
| <i>Carlill v Carbolic Smoke Ball Company</i> , <i>Australian Woollen Mills v Cth</i> , <i>Mobil Oil Australia v Wellcome International</i> . Is notification of acceptance required for unilateral contracts?   | Yes   |
| Acceptance must be made in response to and in reliance upon the offer   | True  |
| <b>Silence as acceptance</b><br>The ratio decidendi of <i>Felthouse v Bindley</i> can be best described as:   | An offeror cannot, by stating in their offer that silence will be deemed to be acceptance, effectively impose a contract on an offeree.   |
| The general rule that acceptance must be communicated was upheld in <i>Felthouse v Bindley</i> . How did the court find that acceptance had been communicated when there was no written contract?   | The court found that acceptance could be implied from conduct that was "an external manifestation of assent to the offer".  |
| <b>Mode of acceptance</b><br><i>Manchester Diocesan Council for Education v Commercial and General Investments Ltd</i>  | <p><b>Who made the offer?</b><br/>Technically, the defendant (Commercial and General Investments) made the offer, as it was made in response to a tender from the plaintiff (Manchester Diocesan Council for Education). However, the plaintiff set the terms of the tender.</p> <p><b>What conditions did the plaintiff include in the tender document regarding acceptance?</b><br/>The plaintiff stated that the person whose tender was accepted would be notified by a letter sent through the post addressed to the address given on the tender.</p> <p><b>Can an offeror prescribe the mode of acceptance in an offer?</b><br/>Yes! Offerors may make the mode of acceptance a term of the offer.</p> <p><b>What happens if the offeree doesn't comply with the prescribed mode of acceptance?</b><br/>It depends on whether the mode of acceptance used by the offeree is 'less advantageous' to the offeror. Where the mode of acceptance is not less advantageous, then there will still be a binding contract.</p> <p><b>What does an offeror have to do to mandate a particular mode of acceptance?</b></p> |

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|   | <p>The offeror must make it clear in the offer that they will only be bound if the offer is accepted in a particular manner. This requires clear language that the mode of acceptance is mandatory.</p> <p>Yes there was a binding contract. The method of acceptance - sending the letter to the defendant's solicitors - was no less advantageous to the defendant, so acceptance was effective and the contract was formed.</p> |
| Let's imagine that Philip inspected the yacht and then emailed his offer to Janet. She emailed him back to say she would get back to him in a few days. Then she posted her letter of acceptance and, before Philip received it, he emailed her his withdrawal, would this change your answer?  | Yes The <b>postal acceptance rule</b> would not apply because the parties had been communicating by email and Philip would not think that Janet would communicate her acceptance by post.  |
| Janet is interested in selling her yacht. She posts out an advertisement to the local yacht clubs and asks them to distribute it around their club and to their members. Philip sees Janet's advertisement and on Monday he goes to check out the yacht. He offers her \$10,000 to take the yacht with immediate delivery. Janet has a couple of people interested and explains that she will post her response in the next few days as she does not have email. On Tuesday morning Philip changes his mind and posts Janet a withdrawal of his offer. On Tuesday afternoon Janet decides to accept Philip's offer and posts her acceptance. On Wednesday Philip is surprised to receive Janet's acceptance because he withdrew his offer. Janet is surprised to receive Philip's withdrawal of offer and hopes to be able to sell him the yacht as his offer was the highest. Is there a contract and when is it formed? | Yes there is a contract. The contract was formed when Janet posted the acceptance to Philip on Tuesday afternoon   |

## CASES

| CASE   | AGREEMENT  |  |   |
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|  | ISSUE  | RATIO  | FACTS   |
| OFFER  |  |  |   |
| Gibson v Manchester City Council<br>[1979] 1 WLR 294 | Was there an offer? <b>Can 'may be willing to sell'</b> constitute an offer? | Lord Diplock set out a conventional and exceptional approach to analyse offer and acceptance. This case was conventional and involved examining the "true construction" of the documents.<br>Offers must be: clear and definite promise to be bound without any further negotiation. | Council sent a letter setting out potential sale of council housing and invited Gibson to apply, Gibson applied without price and the new Council abandoned the scheme. |
|  |  | <b>DECISION</b><br>Lord Diplock: There may be certain types of contract, though I think they are exceptional, which do   |   |

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|   |   | <p>not easily it into the normal analysis of a contract as being constituted by offer and acceptance; but a contract alleged to have been made by an exchange of correspondence between the parties in which the successive communications other than the first are in reply to one another, is not one of these."</p> <p>An offer needs to be a clear promise. It will be judged objectively to see if the parties thought it was a contract.</p> |  |
| <p>Carlill v Carbolic Smoke Ball Co<br/>[1893] 1 QB 256</p>                                     | <p>Was there a contract between the parties or was it '<b>mere puff</b>'?</p>   | <p>Universal contracts are binding when a. a specific offer is made, it is not necessary to notify acceptance and the offer is accepted through performance.</p> <p>A unilateral contract can be made to the world; however, an offer can only be made to the person who accepts the offer. E.g.: lost dogs for a reward.</p>  | <p>Carbolic claimed their product prevented influenza and colds. In an ad they offered a 100 pound offer of the product did not work for the purchaser. They said they deposited 1,000 pounds into a bank to schrew their offer. Mrs Carlill used the ball and contracted influenza.</p>   |
|   |   | <p>DECISION</p> <p>Lindley LJ: There was an offer 'to anybody who performs the conditions named in the advertisement. and <b>anybody who performs the condition accepts the offer</b>'.</p> <p>A unilateral contract existed. Mere puff was dismissed as Carbolic showed sincerity in depositing 1,000 pounds into the bank for rewards</p>  |  |
| <p>Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) [1953] 1 QB 401</p> | <p>Was the store making an offer to <b>sell goods on the shelves</b>? Where does the offer and acceptance take place?</p> | <p>Invitations to treat are not offers, they invite the customer to make an offer to purchase goods. The store then accepts the offer by selling them the goods</p>  | <p>Boots organised a self-service and the store was arranged so the customers could choose items. Tills were supervised by pharmacist, under s18(1) of the UK Pharmacy &amp; Poisons Act 1933. Customer picks up item makes purchase. Customers need to purchase drugs without supervision of a pharmacist. Boots was charged with being in breach of the Act for not supervising purchases.</p> |
|   |   | <p>DECISION</p> <p>No, the offer is made by the customer when they place the items in front of the cashier or at the counter. The showing of goods was an invitation to treat, where the customers made the offer to purchase the goods where the pharmacist could reject the offer.</p>   |  |

|  | TERMINATION OF OFFER   |   |  |
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| Goldsbrough, Mort v Quinn (1910) 10 CLR 674                    | <b>ISSUE</b><br>Could Quinn revoke his offer? Could the Quinn <b>revoke the offer after having accepted</b> consideration for keeping the offer open for one week? | <b>RATIO</b><br>If consideration is given for an option, the option cannot be revoked by the offeror. An option consists of a promise founded on valuable consideration to sell. Goldsbrough had accepted the offer before the end of the week. Because there was consideration of 5s the contract cannot be revoked before its expiry period.  | <b>FACTS</b><br>Q wanted to sell property to the applicant, G. Q had made an offer, with the option to the application without realizing he had made a mistake in the offer. Q then reneged the offer before the option time was over. G is appealing believing that Q is liable. The option of 5 shillings was paid. The option was accepted, meaning the option was open for one week. before the option lapsed, Q tried to revoke his offer and sell to another party. G sought specific performance. |
|  |  | <b>DECISION</b><br>An option means nothing unless it has consideration. e.g.: I'll pay you \$5 if you hold it for 1 week. The court found that the option was not revocable and Goldsbrough had accepted the offer before the due lapse of the option, therefore there was a contract. Just because you promise to keep it open means nothing; unless they have accepted money, then they have to keep it open. The court found that there had been a contract form |  |
| Mobil Oil Australia v Wellcome International (1998) 81 FCR 475 | <b>ISSUE</b><br>Can an offer in a unilateral contract be <b>revoked if the other party has begun performance?</b>  | <b>RATIO</b><br>You can revoke even if the performance has begun, however they cannot unless there is an implied ancillary contract not to revoke the offer, OR estoppel.   | <b>FACTS</b><br>Mobil's scheme offered franchises who score 90% or better in the Circle of Excellence judging in each of the six years following 1991 would be granted 9-year renewal at no cost. Mobil abandoned the Circle of excellence judging so the franchisers couldn't be judged.  |
|  |  | <b>DECISION</b><br>There is no offer, it was too vague. Should Mobil be prevented from relying (drawing back) on its promise? No because there was no detriment. Why wasn't equitable estoppel found? Because there was no detriment to the franchiser, they painted and 'spruced up' there stations.   |  |
| Dickinson v Dodds (1876) 2 ChD 463                             | <b>ISSUE</b><br>Can you accept an offer  | <b>RATIO</b><br>The offeree must be informed of the revocation. A   | <b>FACTS</b><br>Wednesday 10 June, Dodds offered to  |

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|  | when you know it has been <b>withdrawn</b> ?  | promise to keep an offer open (an option) is itself a contract which must have some consideration, otherwise it is nudum pactum.   | sell Dickinson some houses for the sum of 800 pounds. The offer was to remain open until 9am on Friday 12 June. Dickinson intended to accept the offer. 11 June, Dickinson was informed by another party, Berry, that Dodds had sold the houses. The houses were sold to Allan. Dickinson was sent a formal notice of acceptance to Dodds. Dickinson, Friday morning and accepted the offer. Dodds said it was too late. Dickinson sued for breach of contract.  |
|  |   | <p>DECISION</p> <p>The court found for Dodds. The attempted acceptance made by Dickinson was invalid. The Court found that it was not necessary for Dodds to personally provide notice of revocation. It was not possible for Dickinson to accept an offer that he already knew had been withdrawn. Revocation of an offer: The offeree must be notified of the revocation. It can be through words, conduct or even a third party or through conduct. A third party (Berry) can communicate revocation as long as the offeree is aware of the revocation.</p> |  |
| Stevenson Jaques v McLean (1880) 5 QBD 346 | <p>ISSUE</p> <p>Was the offer able to be revoked by McLean? Were the <b>enquires made</b> by Stevenson a request for further information which made the original offer invalid?</p> | <p>RATIO</p> <p>Offers can be revoked until the offeree accepts. The revocation must be communicated to the offeree before they accept the offer. Stevenson was making a mere enquiry. A mere enquiry is not a counter offer.</p>  | <p>FACTS</p> <p>M was an iron merchant who purchased iron and sold it to third parties. M, via telegram, offered to sell iron for '40s net cash, open till Monday'. On Monday morning, S sent a telegram to M stating 'please wire whether you would accept forty for delivery over two months'. After not receiving response, S.J sent another telegram accepting the original offer. Between these two telegrams, M had sold the iron to another party and then notified S.J, who weren't aware of the notification. M claimed that he did not have a contract with S.J because they</p> |

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|                             |  |  | had revoked his offer and because the telegram amounted to a second offer.  |
|                             |  | DECISION<br>The original offer was valid and could still be accepted as Stevenson's request was only for more information, it was not a counter offer. And the revocation was not communicated Stevenson before Stevenson accepted the offer.  |   |
|                             | ACCEPTANCE   |  |   |
| R v Clarke (1927) 40CLR 277 | ISSUE<br>Nexus<br>Can Clarke claim the reward even though he gave information so he could clear himself, not for the reward. | RATIO<br>The information needed to be ‘given in exchange for the offer’. If you are already doing something or providing a defence, then you are not able to receive the reward.<br>Acceptance: Nexus Must be in response to the offer, otherwise there are no contractual liabilities.                            | FACTS<br>Clarke claimed a reward for giving information that led to the conviction of a murderer who killed two policemen. Clarke was a suspect for the case. There was a reward for information, which he seen in May. However, Clarke gave the information in while he was on trial himself as an accessory for murder. Clarkes evidence cleared himself. He told the police it was "exclusively in order to clear himself". Clarke tried to sue the Crown for £1,000 promised as reward. |
|                             |  | DECSION<br>Clarke could not get the reward money. Clarke gave the information to clear his name, not in response to the offer for reward. This was a unilateral case. The court saw that he was already obligated to form a defence for himself and he did not rely on the offer.                                  |   |
| Felthouse v Bindley         | ISSUE<br>Can acceptance by inferred from <b>silence</b> ?  | RATIO<br>Silence count accept a contract. Conduct, however can.<br>Acceptance: An offeror cannot by stating in his offer silence can be deemed as acceptance. The reason is, if the nephew did not need to accept, it would be a burden to reject an offer. He would have to work to reject and nothing to accept. | FACTS<br>The Felthouse wrote a letter to his nephew Felthouse saying that he wanted to purchase a horse and considered the horse his if he didn’t reply to the terms. The auctioneer, Bindley, then accidentally sold the   |

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|   |   |  | horse, Felthouse sued Bindley for the selling of the horse.  |
|   |   | <p><b>DECISION</b></p> <p>The court does not want to put burden on the offeree to reject an offer. The general rule of law is that you cannot accept an offer by doing nothing! Not communicating is different to acceptance being nothing</p>   |  |
| Empirnall Holdings Pty Ltd v McMahon Paull Partners Pty Ltd   | <p><b>ISSUE</b></p> <p>Was there a contract even if <b>no one had signed?</b></p>   | <p><b>RATIO</b></p> <p>Conduct can accept an offer. The conduct is objectively tested.</p>   | <p><b>FACTS</b></p> <p>Empirnall were the Property developers they hired an architect to do some work. The architect sent a contract to the property developer who said they don't sign contracts. The architect continued on with the job and was paid by the property developer. The developer became insolvent and claimed that there was no contract because it wasn't signed.</p> |
|   |   | <p><b>DECISION</b></p> <p>Yes. Both parties acted in a way which could be seen by a reasonable person that they had accepted the contract. Therefore, Empirnall had to pay the architect.</p>  |  |
| Brambles Holdings V Bathurst City Council (2001) 53 NSWLR 153 | <p><b>ISSUE</b></p> <p>Whether there was a valid acceptance of a tender. Whether the negotiations between Brambles Holdings and the Council constituted an acceptance of Brambles' tender or if they amounted to a counter-offer?</p> | <p><b>RATIO</b></p> <p>The court determined that in order for a contract to be formed, there must be a clear and unequivocal acceptance of an offer. Mere negotiations or discussions between parties, even if they involve proposed changes to the terms of the offer, do not necessarily constitute acceptance. A contract is only formed when there is a meeting of the minds on all essential terms, without further negotiation required.</p> | <p><b>FACTS</b></p> <p>The case involved a tender process where the Bathurst City Council invited tenders for the sale of land. Brambles Holdings submitted a tender, and there were subsequent negotiations between Brambles and the Council.</p>   |
|   |   | <p><b>DECISION</b></p> <p>Ultimately, the Court held that the negotiations did not result in a binding contract because there was no clear acceptance of Brambles' tender. Instead, the negotiations were deemed to be ongoing discussions, and no contract was formed until all terms were agreed upon without further negotiation.</p>   |  |
| Brinkibon Ltd v Stahag Stahl Und mbH [1983] 2 AC 34           | <p><b>ISSUE</b></p> <p>When &amp; where was the</p>   | <p><b>RATIO</b></p> <p>The Acceptance took place in Vienna, where the offeror</p>  |  |



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|  | contract made? Does the postal acceptance rule apply to a telex communication   | had the acceptance communicated to them.   |  |
|  |   | <p><b>DECISION</b><br/> The offer is accepted when the acceptance is communicated to the offeror.<br/> Acceptance: acceptance takes place when the offeror has received communication of the acceptance.<br/> Exception: Postal Acceptance Rule it does not apply to Telex's but it does apply to non-instantaneous forms of communication.</p>  |  |
| Butler Machine Tool v Ex-Cello Corp (England) Ltd [1979] 1 WLR 401 | <b>ISSUE</b><br>Battle of the forms<br>Can two forms make one contract?         | <b>RATIO</b><br>Acceptance: must mirror the offer.   | <b>FACTS</b><br>Both parties have business forms, there is a price variation clause (allows for fluctuations of the price)   |
|  |   | <p><b>DECISION</b><br/> Yes. Courts are going to try to find that a contract existed.<br/> Battle of the Forms: when both parties have contract forms. Exception – between businesses, if there is a small variation between the acceptance and the offer, the courts will find that a contract exist. The variations cannot be significant.</p> |  |
| Henthorn v Fraser [1892] 2 Ch 27                                   | <b>ISSUE</b><br>Was there still a binding contract between Henthorn and Fraser? | <b>RATIO</b><br>"Where the circumstances are such that it must have been within the contemplation of the parties that, according to ordinary usage of mankind, the post must be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted."  | <b>FACTS</b><br>Fraser called into Henthorn's office to negotiate the purchase of houses. Fraser handed the Henthorn a note giving him the option to purchase some houses within 14 days. On the next day, Fraser withdrew the offer by post, but this withdrawal did not reach Henthorn until 5 P.M. Meanwhile, Henthorn responded by post with an unconditional acceptance of the offer, which was delivered to Fraser after its office had closed. The letter was opened by Fraser the next morning |
|  |   | <p><b>DECISION</b><br/> Henthorn was entitled to specific performance.<br/> Postal Acceptance Rule: acceptance is created when the offeror posts their acceptance, not when the offeror receives it. It does not apply to revocation of offers.</p>  |  |
| Manchester Diocesan Council for Education v                        | <b>ISSUE</b><br>Was there acceptance?   | <b>RATIO</b><br>The method of acceptance prescribed in the tender was  | <b>FACTS</b><br>MD called for tenders relating to  |

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| Commercial [1970] 1 WLR 241, 245-246 |  | not mandatory - here the offeror was made aware of the acceptance by an equally effective method and thus the acceptance was effective.   | property. C&G submitted an offer to buy. The tender stated that acceptance was to be notified to the person whose tender was accepted by letter sent 'by post addressed to the address given in his tender'. MD decided to accept C&G tender and sent their acceptance to the CG's solicitor, which was not the address given in the offer. C&G knew of this acceptance. |
|                                      |  | <p>DECISION</p> <p>The offer was accepted.</p> <p>Acceptance: the mandatory prescribed tender is the paramount way to communicate acceptance to the offeror, however, you are also able to tell them in other means, as long as they know about the acceptance.</p> |  |