

## Offer and Acceptance

**Offeror** - Party who makes the offer.

**Offeree** - Party to whom the offer is made.

### Offer

The indication by the offeror to the offeree of a willingness to contract on certain terms.

**Objective test** - Whether a reasonable person in the offeree's position would believe the offeror's outward manifestations (statement or conduct) constitutes an offer.

### Acceptance

Unqualified/mutual assent to the terms of an offer.

Communication of acceptance is effective when and where it is received by the offeror -

Latec Finance, Brinkibon

Postal acceptance rule - acceptance occurs when letter posted and is a method contemplated and intended by offeror- *Adams v Lindsell*

Electronic Transactions Act - presumes time and place of receipt of electronic communications

Must be communicated by the offeree to the offeror - *Latec Finance*

Acceptance may not be inferred from silence - *Felthouse v Bindley* (1862)

Exceptions

Acceptance inferred from conduct, where offeror has knowledge of such conduct - *Empirnall Holdings, Brambles*

Offeror may dispense with need to communicate acceptance - *Carbolic Smoke Ball* - Unilateral contracts

Parties at *ad idem*.

Consciousness of the offer

Exception - Unilateral contract

*The Crown v Clarke* (1927) 40 CLR 227

The acceptance must be in response to the offer.

The subjective intention of the offeree is relevant.

**Objective test** - Would a reasonable person consider the parties to have reached agreement having regard to their external manifestations - *Fitness First (Australia) v Chong* (2008)

NSW SC

*The Electronic Transactions (Victoria) Act 2000 (Vic)*

\* Does not contain oral communications

Sent to a designated address - effective when capable of being retrieved by addressee

Not sent to a designated address - effective when both capable of being retrieved by addressee and the addressee is aware that the communication has been sent to that address

### **Bilateral Settings**

Both parties exchange a promise for each to do something in the future (executory)

*Gibson v Manchester City Council [1979] 1 WLR 294*

- 'May be prepared to sell' and request for 'formal application' were not a clear proposal to be bound hence not an offer.

### **Mere puff**

An exaggeration which no reasonable person would take seriously - *Leonard v Pepsico*

### **Invitation to treat**

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

An invitation to others to make an offer or enter into negotiations.

Lacks sufficient indication of willingness to be bound.

- Examples: advertisements, goods displayed in shops/online, property at auction, request for tenders.

**Online proposals:** Invitation to treat.

*Electronic Transactions (Victoria) Act 2000*

- A proposal addressed to general parties online to form a contract through electronic communications.
- Goods or services offered online generally to be treated as an invitation to treat unless clear intention to be bound by acceptance.

**Public auctions:** Invitation to treat.

- The auction is an invitation to treat.