SCRIPT

INTRODUCTION

Bilateral contract: The contract between [party] and [party] is likely to be a bilateral contract as both parties are exchanging a promise/set of promises to [the promise] which is an act in the future and are executory (performed at some point after the contract is formed).

OR

Unilateral contract: The contract between [party] and [party] is likely to be a unilateral contract as only one promise has been made, that is; [the promise]. The contract is formed when [party] accepts [party's] offer by performing [the task]. At the time the contract is formed, [party's] obligation/promise is executory and [party's] obligation has been executed.

1. The offer of this unilateral contract can be made to the world at large through some sort of reward **(Carlill v Carbolic)**. The right to revoke [party's] offer may be limited after [party's] act of accepting [what is being accepted] has commenced if there is an ancillary contract to keep the offer open **(Mobil v Welcome)**.
2. The contract is formed at the same time [party] performs the obligations of [obligations] without the need to give notice of acceptance prior to the performance. Therefore, in this case of a unilateral contract, consciousness of the offer is an exception to both the objective test applied in bilateral contracts **(The Crown v Clarke)**, and the general rule that external manifestations of acceptance are conclusive. Rather, [offeree's] subjective intention is relevant.
3. [Party's] act of performance, [the act], is executed consideration **(Carlill v Carbolic)** OR
   The bargain requirement is not satisfied because [act] is a conditional gift **(Australian Woolen Mills)**

OFFER

OFFER

An offer may be described as the indication by one person to another of a willingness to contract on certain (disclosed) terms. In this case, the offeror is [the offeror] who is making the offer, and the offeree is [the offeree] to whom the offer is made. In determining whether [possible offer] constitutes an offer, an objective test should be applied **(Carlill v Carbolic).** A reasonable person would likely suggest that [possible offer] is/is not an offer because [facts/circumstances].

Consider:
A reasonable person may construe [possible offer] as a mere puff (exaggerated sales talk) which does not constitute an offer **(Carlill v Carbolic).**

INVITATION TO TREAT

The court would then consider whether the offer can be distinguished from an invitation to treat, that is; an invitation to others to make an offer or enter into negotiations. Such invitations do not constitute an offer because they lack sufficient indication of a willingness to be bound.

Consider:
[Possible offer] may not constitute an offer because it is merely an invitation to treat as goods displayed in shops. In general, goods such as [name the goods] displayed in a self-service shop such as [name the shop] are not through that display alone, considered to be an offer **(Boots)**. As a purchase made in everyday stores, the offer was made by [the customer] when they took [the goods] to the cash register, and the acceptance occurred at the cash register by [the vendor] **(Boots)**.

1. As a good/service offered online, [the good/service] generally (not addressed to one or more specific parties) to [party] using the information system is to be treated as an invitation to treat **(s 14B Electronic Transactions (Victoria) Act (Vic) 2000)**.
    - However, the clear intention to be bound by acceptance suggests it may be more than an invitation to treat.

2. As a public auction, general rules apply. The statements made by the auctioneer such as [the statements] are an invitation to treat. The bid by [party] is the offer which was/was not accepted by the auctioneer's 'fall of the hammer'. These general rules apply despite the auctioneer saying the property was "on the market" or advertised for auction "without reserve" **(AGC v MCWhirter)**. This suggests that [the seller] could withdraw the property before acceptance of the bid, [the seller] could refuse to accept the bid (does not have to sell to the highest bidder), and [the buyer] can withdraw their bid before the acceptance.

3. It is likely that [party] is a tender because they are a potential supplier who have effectively bid for the work submitted through a tender process by the prospective purchaser, [name purchaser], of the goods and services of [the goods and services]. The general rule is that the request for tender for [the request] is an invitation to treat and the tender from [interested supplier] is the offer.
    - There is an exception to these general rules as the call for tenders may sometimes be an offer especially when looking at the particular nature of the communication and the actual wording of the request **(Harvela)**. Analogising to **Harvela**, where the invitation telex was an offer because the words "we bind ourselves to accept" made it an offer rather than an invitation to treat and Harvela accepted the offer by making the highest fixed price, [the tender] may be considered an offer in the circumstances of [facts/circumstances] despite appearing as an invitation to treat on its face.
    - There is an exception to these general rules as the call for tenders may sometimes create a contract re the tender process. Analogising to **Hughes**, where the letter describing the tender process was an offer which was accepted by Hughes lodging its tender, [the tender] may be considered to have created a contract re the tenders as similarly [facts/circumstances].
    - Where Analogising to **Hughes**, where the tender process failed to evaluate tenders in accordance with criteria and accepted a late change by other tender, [the tender] may give rise to a render process contract amidst a competitive rendering process which requires [purchaser] to follow a particular process and treat the tender submissions fairly.

TERMINATION OF OFFER

1. The offer of [the offer] could be revoked at any time before [party's] acceptance (even if the offeror promised to keep it open) by words or action inconsistent with continuance of offer **(Dickinson v Dodds).** [Party's] revocation was effective when it reached (is communicated) to [the offeree] by [offeror] or some other reasonably reliable source **(Dickinson v Dodds).**
    - As an offer to the public at large, [the offer] can be revoked in the same way (or other way with the same coverage) that it was made
    - [Offeror's] promise to hold the offer open [facts/circumstances] is binding at common law because consideration of [the consideration] has been in return for that promise **(Goldsborough Mort).** This is an exception to the general rule that an offer can be revoked any time prior to acceptance **(Goldsborough Mort)**.
    - There is no universal rule that a unilateral offer cannot be revoked before acceptance (even where the offeree has begun performance) **(Mobil Oil)**. Generally, a unilateral offer can be revoked before acceptance, however a remedy may be available under an implied estoppel not to revoke; and estoppel **(Mobil Oil)**

2. As the offer is open for a specific period, it will lapse at the end of that specific period. <u>OR</u>. As there is a

specified period, the offer will lapse after a "reasonable time". What is "reasonable" will depend on the context applying the objective test of what a reasonable person would consider a reasonable time to be. Therefore, a reasonable person in these circumstances would likely construe a "reasonable" time to be [conclusion].

3. Despite there being no clear authority on whether the offer will lapse on death of offeror, there is a general rule that an offer will lapse on death of the offeror, where the offeree knows of the death. In light of [deceased's] death,there is an implication that the offer may still be accepted before notice unless personal services are required **(Fong v Cili).**
   - The option contract remains enforceable against [deceased's] estate unless personal services of deceased are required; or intent of option was that it was not exercisable after death **(Laybutt)**

4. The offer may be terminated because of a failure by [offeree] to satisfy the stipulated circumstances of [the circumstances] in which the offer will stay open before the offer can be accepted. These express conditions were not satisfied by [offeree] by [actions that resulted in the failure].
   - If [offeror] did not do so expressly, it may still be obvious to an objective observer that the offer was made on the basis of the certain circumstances of [the implied circumstances].
   - It could be argued that these circumstances change as a result of [what caused the circumstances to change], the offer lapses (**Financings Ltd v Stimson).**

5. As [offeree] has rejected the offer by [action] it is no longer available for acceptance.
   - [Offeree's] actions of [action] can be considered a counter offer which is treated as a rejection. The rejection offer, however, may in the circumstances [circumstances] be treated as remaining open and available for acceptance by [offeror] on the basis of mutual assent manifested conduct **(Heydon J in Brambles)**
   - [Offeree's] actions of [action] can be considered a 'mere inquiry' which is distinguished from a counter offer and thus is not a rejection that terminates the offer (**Stevenson, Jaques & Co)**

ACCEPTANCE

Acceptance is an unqualified assent to the terms of an offer. When determining whether conduct amounts to acceptance, an objective test is applied to consider whether a reasonable person would consider the parties to have reached agreement having regard to their external manifestations (**Fitness First)**.

Acceptance must be communicated to the offeror by the offeree **(Latec Finance)** in any reasonable way unless a particular method of acceptance is prescribed by the offeror. In this case, [offeree] has communicated their acceptance of [offeror's] offer by the reasonable means of [the reasonable way] OR by the [offeror's] prescribed method of [the prescribed method].

The contract was formed when [offeree's] acceptance was communicated to [offeror] when the acceptance was received at [when] and [where] **(Latec Finance; Brinkibon)**.

- Given that [offeree] posted their acceptance via the non-instantaneous communication of [e.g. post, telegram], the postal acceptance rule may apply. As such, the contract was made when and where the acceptance was posted by [offeree] when [when it was posted in mail], despite being received some time later <u>OR</u> lost in the post **(Adams v Lindsell).** The finding that the contract is contemplated by the posting of the letter of acceptance can be justified given [offeror] contemplated and intended that their offer might be accepted by the doing of [the act of acceptance] when [facts/circumstances] **(Tallerman)**.
  - Given, however, the communication was instantaneous [e.g. fax, telex], the rule does not apply **(Brinkibon)**.
- The form of communication of [the type of electronic communication] likely satisfies the definition of "Electronic communications" in **s 3** of the Electronic Transactions Act (Vic) 2000 ('ETA'). This is because [the

electronic communication] is a communication of information in the form of data text or images by means of electromagnetic energy **(a)** OR sound by means of electromagnetic energy where the sound is processed at its destination by an automated voice recognition system **(b)** [e.g. voice mail converted to text, email, text, fax, online communications].

- The ETA prescribes that the time of receipt is the time the electronic communication reaches the addressee's [(name of addressee)] electronic address unless otherwise agreed **(s 13A(1)(a))**. OR. In the absence of a designated electronic address, the ETA prescribes that the time of receipt is the time when both the electronic communication reaches the addressee [(name of address)] unless otherwise agreed, and the the address has become aware that it has been sent to that address **(s 13A(1)(b))**.
- The ETA prescribes that the time of dispatch of the electronic communication was the time when it leaves the information system of [the information system] under control of [party who sent it] **(s 13(1)(a)** OR if it has not left an information system under control of the originator, the time it is received by the address **(s 13(1)(b))**.
  - This applies even though the place where the information system supporting an electronic address is located may be different from where it was dispatched **(s 13(2)).**

- [Party's attempted acceptance] likely does not constitute acceptance as acceptance may not be inferred from silence **(Felthouse v Bindley)**.
  - However, [party's] silence in addition to their conduct of [conduct] may amount to acceptance **(Empirnall v Machon Paull; Brambles)**
- As [offeree] has attempted to vary/add to the proposed terms of the original offer, their acceptance has now become a 'counter-offer' and the original offer is terminated under the traditional 'last shot' approach which prevails in Australia **(Butler Machine Tool)**. As the [parties] terms are conflicting, there is now no contract OR [party's] conduct amounted to acceptance OR there may be non contractual relief (e.g. estoppel).
- As a ticket case, the identification of offer and acceptance poses problems due to the varying process of ticketing and often new terms and exclusion clauses being present. The 'conventional analysis' here is that the ticket from [company] is an offer which [purchaser] has accepted/rejected after they had reasonable opportunity to do so **(MacRobertson)**.
  - Analogising to **Barwick CJ** in **MacRobertson**, where there were no contractual obligations before the purchaser boarded the plane and as such the offer was the passenger presenting themselves at the airport which the airline accepted by carrying them, the ticket here would [analysis].
  - Analogising to **Oceanic**, where the contract was formed when the passenger paid the fare and was issued an exchange order before presenting themselves for boarding on the cruise, the ticket here [analysis].
  - Analogising to **Baltic**, where the contract was made at the time the tickets were issued and retention of the ticket did not amount to acceptance, the ticket here [analysis].

CONSIDERATION

Consideration is a detriment or liability voluntarily incurred by the promisee, or a benefit conferred on the promisor at the instance of the promisee, in exchange for the promise. In this case, the promisee is [promisee] as they are seeking to enforce the promise of [promise] and must provide consideration, and the promisor is [promisor] as they are making the promise sought to be enforced. The rules as to consideration asks whether parties intend to enter a legally binding bargain **(Atco Controls Pty Ltd)**, which contributes to the indivisible trinity (consideration, offer and acceptance) of the identical notion of a bargain **(Hamsom, The Reform of Consideration 1938).**

- Used commonly where there may be some doubt of consideration being provided, a deed is a promise made in a particular form and subject to particular rituals by which a person notifies the community that they most solemnly means and intends it to be binding. This case is likely a deed per the language of "Signed Sealed and Delivered by [name] in the presence of [witness]" / "Execution as a Deed", the agreement is not supported by consideration, which is a *nudum pactum* (naked agreement) and is unenforceable.

CASES

OFFER

CASE/CITATION	FACTS	DECISION / PRINCIPLE
Gibson v Manchester City Council [1979] 1 WLR 294	• Manchester City Council adopted a scheme allowing tenants of council housing to purchase the freehold title to their homes • The Council informed Gibson that they were prepared to sell the Council house he was renting to him and asked him to complete an application form if he wished to make a formal application • Gibson completed the application form • The new Council party would only complete the sales for which there was a binding contract • Council denied there was a binding contract with Gibson	**Held: Appeal allowed** • "May be prepared to sell" and request for a "formal application" make it possible to construe the letter as a contractual offer • No reason to depart from conventional approach of identifying a clear offer and acceptance **Principle**: Courts apply the conventional approach and need to identify an offer and acceptance, accepting exceptional circumstances which is an objective test
Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256	• Carbolic Co made a device called a "Carbolic Smoke Ball" which was claimed to prevent colds and influenza • Carbolic Co placed an AD in several newspapers saying they will pay 100 pounds to whoever uses the smoke ball but still contracts the flu • P purchased a smoke ball from a chemist on the faith of the AD • P contracted influenza • Carbolic Co suggested there was no offer because the advert was not a promise	**Held: P was entitled to recover the 100 pounds** • By employing the objective test, it would appear that the advert was clearly an offer, not a puff • The advert was not too vague or uncertain **Principle**: • A mere puff (exaggerated sales talk) is not an offer • Authority for the objective test in relation to offer • It is possible to make unilateral contracts to the public at large through a sort of reward • Acceptance occurs by performance because the obligation to make acceptance by communication might be waived in unilateral contracts
Pharmaceutical Society v Boots Chemist (1953) UKCA	• Pharmacy and Poisons Act made it illegal to sell drugs except under supervision of a registered pharmacist	**Held: Boots not in breach of legislation** • The goods displayed on the shelves was an invitation to treat

	• Pharmacists were present at check-out	• Customers make an offer to buy the goods at the checkout • Pharmacists could neither accept or reject the offer **Principle:** • Goods displayed in a self-service shop are not through that display alone, considered to be an offer • In relation to purchases made in everyday stores, the offer is made by the customer when they take the goods to the cash register, and the acceptance occurs at the cash register by the vendor • It would be unworkable to say that taking goods off the shelf was an acceptance of an offer, because it implies that the customer could not have a change of mind and return the goods to the shelf before paying for them
AGC v McWhirter (1977 NSWSC)	• Mortgagee auction - vendor (mortgagee) rejected highest bid from mortgagor	**Held: Vendor had not made an offer to sell despite auctioneer declaring that property was "on the market"** **Principle**: • The seller can withdraw the property before acceptance of a bid • The seller can refuse to accept a bid (doesn't have to sell to the highest bidder) • The buyer can withdraw a bid before acceptance
Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd [1986] 1 AC 207	• Royal Trust sent telex to two other stakeholders "inviting" them to make a "single offer" for its shares in A Harvey & Co Ltd • "if any offer made by you is the highest offer received we bind ourselves to accept provided it complies with the terms" • Harvela submitted an offer of $2,175,000	**Held: The invitation was an offer and Harvela accepted it** • The invitation telex was an offer because the words "we bind ourselves to accept" made it an offer rather than an invitation to treat • Harvela accepted the offer by making the highest fixed price bid (Outerbridge's 'referential bid' did

	• Outerbridge's offer was for $2,100,000 or $101,000 in excess of any other offer	not contain the highest fixed price bid) **Principle**: • Something that may appear as an invitation to treat, whether it is a request for offers to be made, can actually be an offer once looking at all of the circumstances and applying the objective test
Hughes Aircraft Systems International v Airservices Australia (1997) 76 FCR 151	• Hughes unsuccessfully submitted tender for air traffic control services - claimed that tendering process was not complied with • There were 2 valid tender process contracts governing the tender process: 1. CAA letter describing tender process and evaluation criteria (offer: not invitation to treat) wich was accepted by Hughe's signing 2. Formal request for tenders with similar terms (offer), accepted by Hughes lodging its tender	**Held: CAA was in breach of contract** • CAA failed to evaluate tenders in accordance with criteria, confidentiality was not enforced and accepted late change by other tender **Principle**: • Sometimes a request for tenders, in a competitive tendering process, although not itself being an offer in relation to the acquisition of the relevant services that it seeks, it may nevertheless give rise to a tender process contract which will require the person issuing the request for tenders to follow a particular process and treat the tender submissions fairly
Dickinson v Dodds (1876) 2 Ch D 463	• <u>10 June</u>: Dodds offers to sell land to Dickinson - offer open until 9 am 12 June • <u>11 June</u>: Dodds sells the land to third party • <u>Later on 11 June</u>: Dickinson informed about sale to third party • <u>Before 9am on 12 June</u>, Dickinson tried to accept 10 June offer	**Held: There was no contract; offer was revoked** • Dodds revoked the offer by selling the land to someone else • This revocation had been communicated to Dickinson before acceptance (Berry was a reasonably reliable source) **Principle**: • An offeror can revoke an offer any time before accepting the offer • Revocation occurs through conduct inconsistent with the continuation of the offer • The relocation will be effective on communication

		to the offeree
Goldsbrough Mort & Co Ltd v Quinn (1910) 10 CLR 674 *Mort & Co Ltd v Quinn* (1910) 10 CLR	• Goldsbrough paid 5 shillings for the right to purchase land at Bena Billa for 30s per acre "calculated on a freehold basis" within a week • Quinn purported to revoke the offer • Goldsbrough accepted within the week and sought specific performance	**Held: Binding contract** • The offeree paid for the option to have one week to consider the offer. • The offeror could not withdraw before the expiration of the promised period • Judges analysed in two different ways 1. Conditional contract: there was a contract to sell the land subject to a condition 2. There were 2 separate contracts: Option was a preliminary contract to hold the offer open; the exercise of the option created a second contract to sell the land **Principle**: • An option contract (a promise to keep an offer open, for value) is binding, and specific performance can be given
Mobil Oil Australia Ltd v Wellcome International Pty Ltd (1998) 81 FCR 475	• Announcement by Mobil to franchises that if stores achieved more than 90% in Circle of Excellence program for 6 years, they would be entitled to 9 free extra years on franchise • Plaintiff proceeded to get such scores but offer revoked after 4 years and program was cancelled • 5 franchises commenced action against Mobil Oil as a test case (over 150 affected)	**Held: No offer** • Statement was too vague and uncertain to be a contractual obligation • Even if it were an offer, Mobil entitled to revoke unilateral offer although performance had commenced • No implied ancillary contract because: ○ "Commencing" performance is too vague ○ The franchises did not suffer any substantial detriment ○ The franchises were already bound to adhere to Mobil franchisee standards **Principle**: • Whether or not an offer can revoke the offer once the offeree commences performance depends on

NOTES

INTRODUCTION

WHAT IS A CONTRACT?
An agreement or set of promises that the law will enforce (i.e for breach of which the law will provide a remedy) **(Coote)**.
- Contract law is about which promises are enforceable and attract a legal remedy
- Contract law addresses the concepts, principles, rules used to determine the existence and content of binding
- promises and their enforcement or defeasibility in a market economy + considerations of underlying policy

NATURE OF A CONTRACT
- Parties create their own obligations
- A contract is an everyday occurrence in the life of individuals
- A contract underlies almost all commercial and economic activities
- Contract law is foundational to all commercial law subjects

THEORIES OF CONTRACT LAW
1. Classical contract theory
   - The set of ideas and assumptions that underpinned the development of contract law in England and the US during the 19th century
   - The parties were regarded as self-interested individuals who created their own private law through agreement
   - Freedom of contract should be respected by the courts Moral obligation (Charles Fried)
2. Moral obligation (Charles Fried)
   - A moral obligation arises from the making of a promise because the promisor has invoked a convention that gives the promisee moral grounds to expect the promised performance
3. Consensual understanding (Randy Barnett)
   - A person who manifests an intention to assume a legal obligation invokes the institution of contract and thereby incurs a moral obligation to perform that promise
4. Economic efficiency (Michael Trebilcock)
   - The functions of contract law are: to prevent opportunistic behaviour by enforcing contractual obligations; to provide a set of default rules and thus save parties the effort and expense of negotiating all the terms of their transactions; to fill gaps in contracts, to address market failures
5. Social understanding
   - A rich combination of normative approaches and theories of obligation which draws on a complex mixture of values and influences
6. Critical legal theory
   - A set of contradictory formal rules that serve an ideological function
7. Feminist perspectives
   - Seen as reflecting a masculine viewpoint with emphasis on abstract rules and its disregard of values
   - Its representations of women can be seen to have a negative effect
8. Contract of social relations (Jean Braucher)
   - Contract law plays a significant regulatory role in determining the validity of contracts, interpreting the language and conduct of the parties and filling substantial gaps in agreements
9. Contract as obligations
   - Common law recognises three fundamental obligations owed by individuals to each other: obligation to perform certain promises; obligation to avoid causing harm to others in certain situations; obligation to restore unjust gains

BILATERAL V UNILATERAL CONTRACTS

1. Bilateral
   - Most contracts
   - 2 parties
   - Both parties exchange a promise or set of promises for each to do something in the future
   - Both parties' promises are executory (to be performed at some point after the contract is formed)
2. Unilateral
   - Typically reward scenarios
   - 2 parties to the contract
   - Only 1 promise is made
   - B accepts A's offer when B performs the task
   - At the time the contract is formed, A's obligation/promise is executory and B's obligation has been executed
   - Unique aspects of contract formation:
     - Offer: May be made to the world at large **(Carlill v Carbolic)**; Right to revoke may be limited after act of acceptance has commenced if there is an ancillary contract to keep the offer open **(Mobil v Welcome)**
     - Acceptance: Contract is formed at the same time B performs the obligations (no need to give notice of acceptance prior to performance)
     - Consideration: The act of performance is executed consideration **(Carlill v Carbolic)**; Bargain requirement not satisfied if it is a conditional gift **(Australian Woollen Mills v Cth)**

OFFER

WHAT IS AN OFFER?

An offer may be described as the indication by one person (the 'offeror') to another (the 'offeree') of a willingness to contract on certain (disclosed) terms.

- An objective test should be applied **(Carlill v Carbolic Smoke Ball Co)**
- It is possible to make unilateral contracts to the public at large through a sort of reward **(Carlill v Carbolic Smoke Ball Co)**
- A mere puff (exaggerated sales talk) is not an offer **(Carlill v Carbolic Smoke Ball)**

Offeror: Person who makes the offer
Offeree: Person to whom the offer is made

OFFER DISTINGUISHED FROM INVITATION TO TREAT

Invitation to treat: An invitation to others to make an offer or enter into negotiations. Not an offer because it lacks sufficient indication of willingness to be bound

1. Goods displayed in shops **(Pharmaceutical Society v Boots Chemist)**
   - In general, goods displayed in a self-service shop are not through that display alone, considered to be an offer
   - In relation to purchases made in everyday stores, the offer is made by the customer when they take the goods to the cash register, and the acceptance occurs at the cash register by the vendor
2. Goods offered for sale online **(s 14B Electronic Transactions (Victoria) Act (Vic) 2000)**
   - Goods or services offered online generally (not addressed to one or more specific parties) to parties using the information systems is to be treated as an invitation to treat (unless clear intention to be bound by acceptance)

3. Public auctions
    - General rules
        - Statements made by the auctioneer is an invitation to treat
        - The bid is the offer
        - The offer is accepted by the auctioneer's 'fall of the hammer'
    - These general rules apply even when the auctioneer says a property is "on the market" or advertised for auction "without reserver" **(AGC v McWhirter)**, meaning that:
        - The seller can withdraw the property before acceptance of a bid
        - The seller can refuse to accept a bid (doesn't have to sell to the highest bidder)
        - The buyer can withdraw a bid before acceptance
4. Requests for tenders
    - Tenders are:
        - A prospective purchaser of goods and services who will often assess potential suppliers through a tender process, these suppliers are the tenders
        - The suppliers effectively bid for the work through submitting tender
        - Often used for the sale of commercial or residential property
        - Often used by governments contracting
    - General rules:
        - Request for tenders is an invitation to treat
        - The tender from the interested supplier is the offer
    - Exceptions to the general rules:
        - Sometimes the call for tenders may be an offer **(Harvela Investments Ltd)**
        - Sometimes the call for tenders will create a contract re the tender process **(Hughes Aircraft Systems International)**
    - When a potential purchaser of goods or services issues a request for tenders, that would usually be considered an invitation to treat, however, there are some qualifications:
        - Looking at the particular nature of the communication and the actual wording of the request for offers **(Harvela Investments Ltd)**
        - Even though the request for tenders may only be an invitation to treat in relation to ultimately entering into the contract for the supply of the goods and services for which they are enquiring, there will often be a tender process contract created, whereby the request for tenders is an offer that competitive tender process is conducted in a fair mode **(Hughes Aircraft Systems International)**

TERMINATION OF OFFER

1. Revocation of offer by offeror
    - General rules:
        - Can occur at any time before acceptance (even if the offer promised to keep it open) **(Dickinson v Dodds)**
        - By words or action inconsistent with continuance of offer **(Dickinson v Dodds)**
        - Effective when it reaches (communicated) to the offeree (by offeror or some other reasonably reliable source) **(Dickinson v Dodds)**
        - Offers to the public at large can be revoked in the same way (or other way with the same coverage) that the offer was made
    - Expectations:
        - Options **(Goldsborough Mort)**
            - A promise to hold an offer open is binding at common law if consideration has been given in return for that promise
            - This is an expectation to the general rule that an offer can be revoked any time prior to acceptance

- Unilateral contracts **(Mobil Oil)**
  - If a unilateral contract performance has commenced, and there is an implied contract not to revoke or an estoppel
  - There is no universal rule that a unilateral offer cannot be revoked before acceptance (even where offeree has begun performance)
  - Generally, a unilateral offer can be revoked before acceptance, however a remedy may be available under an implied estoppel not to revoke; and estoppel

2. Lapse of time
   - Offer may be open for a specific period and will lapse at the end of that specified period
   - If no period is specified, the offer will lapse after a "reasonable time" (What is "reasonable" will depend on the context applying the objective test of what a reasonable person would consider a reasonable time to be)
3. Death of offeror/offeree
   - Offer will lapse on death or offeror (where offeree knows of the death). Implication that an offer may still be accepted before notice unless personal services are required **(Fong v Cili)**
   - Option contracts remain enforceable against deceased estate unless:
     - Personal services of deceased require; or
     - Intent of option was that it not exercisable after death **(Laybutt v Amoco Australia Pty Ltd)**
   - No clear authority on whether the offer will lapse on death of offer, however
4. Failure of a condition and changed circumstances
   - Express conditions: The offeror may stipulate circumstances in which an offer will stay open or lapse, or which must be satisfied before an offer can be accepted (eg. offer subject to broad approval)
   - Implied conditions: If the offeror does not do so expressly, it may still be obvious to an objective observer that the offer was made on the basis of certain circumstances. It may be that if these circumstances change, that the offer lapses **(Financings Ltd v Stimson)**
5. Rejection by offeree
   - Once an offer has been rejected it is no longer available for acceptance
   - A counter offer is treated as a rejection
   - A 'mere inquiry' is distinguished from a counter offer and not a rejection **(Stevenson, Jaques & Co)**
   - A rejection offer many in all the circumstances be treated as remaining open and available for acceptance on the basis of mutual assent manifested by conduct **(Heydeon J in Brambles)**

ACCEPTANCE

CONDUCT CONSTITUTING AN ACCEPTANCE

Acceptance: An unqualified assent to the terms of an offer.
Objective test: Would the reasonable person consider the parties to have reached agreement having regard to their external manifestations **(Fitness First)**

- Unilateral contracts
  - Consciousness of the offer is an exception to the objective test **(Crown v Clarke)**
  - The acceptance must be in response to the offer, exception to the objective test in **Crown v Clarke**.
  - This is an exception to the general rule that external manifestations of acceptance are conclusive
  - The subjective intention of the offeree is relevant

COMMUNICATION OF ACCEPTANCE

1. Acceptance must be communicated to the offeror by the offeree **(Latec Finance)** in any reasonable way unless a particular method of acceptance is prescribed by the offeror
   - Exceptions:
     - Acceptance inferred from conduct **(Empirnall Holdings; Brambles)**