

## Law of Contract

**Contract** = agreement enforceable at law

1. Types of contracts
2. Essential elements of a binding contract
3. Agreement: offer/acceptance analysis
  - a. Rules about the 'offer'
  - b. Rules about the 'acceptance'
4. Intention to create legal relations
  - a. Domestic
  - b. Commercial
  - c. Letters of comfort

### 1. Types of Contract

**Simple Contracts:** Can be complex in nature

- Bilateral: Needs offer and acceptance
- Unilateral: Offer but not looking for acceptance
- Other Types include: Option, Tender, Auction, Written Oral, Partly oral and partly written

**Formal Contract**

- Deeds: Do not need consideration, need special words, (Quid Pro Quo – Something for something)
- Formalities: Some agreements evidenced in writing, eg: contract for sale of land Some agreements have to be in writing, "signed, sealed, delivered" does not require consideration. eg: cheques

### 2. Essential elements of a simple Contract

1. Agreement (offer + acceptance of the offer)
2. Intention to create legal relations
3. Consideration
4. Genuine consent
5. Legal Capacity
6. Legality

If one element is missing, then **NO CONTRACT** but there may be some sort of other legal outcome.

## 1. Offer

- 'A definite undertaking made with the intention....that is shall become binding...as soon as it is accepted'
- Clear statement of terms on which an offeror is prepared to be contractually bound

**Rules Relating to Offers**

- An offer must be communicated to the offeree: Unless an offer is communicated to an offeree there can be no acceptance. Performance of an act without knowledge of offer not acceptance (**R v Clarke**)
- Can be made to one person, or a group of people – Unilateral Contract **Carlill v Carbolic Smoke Ball Co** – consideration: benefit to offeror or detriment to offeree.
- May be revoked before acceptance

Case: **Thornton v Shoe Lane Parking** – automatic machines are not an invitation to treat but an offer as there is no one to negotiate.

**What is not an Offer?**

- Offer must be distinguished from an invitation to treat (deal)
  - An '*invitation to treat*' is a preliminary communication between the parties during the negotiations
  - What might appear as an offer may contain no definite declaration – will not be honoured on acceptance as the statement is merely an invitation for others to make an offer
  - Examples: price lists, advertisements, calls for tenders, displays of goods in shop windows - NOT an offer to sell the goods
- General presumption that advertisements are invitations to treat.
  - Exceptions: 'advertisements do not create any power of acceptance in potential offerees where the advertisement is clear, definite, explicit and leaves nothing open for negotiation' – Wood J (Leonard v Pepsi Co)

- *Pharmaceutical Society of Great Britain v Boots Cash Chemist (Southern)* - goods on shelf were an invitation to treat, as consumer has to bring goods to counter & make an offer to purchase. Catalogues & price lists are invitations to treat not offers: *Patridge v Crittenden* – advertisement of hen
- *Fisher v Bell* - Putting the knife for display. Designed to protect retailers. Manufacturer is different to a retailer
- A request for information -
  - *Harvey v Facey* – Facey purchasing Harvey's property, will you sell us the Bumper Hall Pen?

### Termination of an offer

- An offer can be terminated by:
  - Lapse of time
  - Condition in offer not fulfilled
  - Death of a party
- Revocation: the formal withdrawal of the offer by the offeror, communication necessary before the acceptance can be made directly by the offeror or by a reliable source  
*Byrne v Van Tienhoven* - may occur any time before acceptance (note: *Goldsborough Mort v Quinn*)
- When effective, offeror has no liability.
- but note that, in the absence of any specific relief (e.g. injunction), a revocation while the offeree is in the process of acceptance can be effective but will render the offeror liable in damages:  
*Mobil Oil Australia Ltd v Lyndel Nominees Pty Ltd* - Dealers who performed in 6 years will be given extra 9 years of franchise with no cost – Held: the offeror can't revoke if offeree is in process of acceptance.

### The offeree's response

- Seek more information: *Stevenson Jacques & Co v McLean*
- Make a counter offer: *Hyde v Wrench*
- Reject the offer
- Accept the offer: contra *The Crown v Clarke*
- Ignore the offer (do nothing)

**It is not always necessary to identify the offer and acceptance to find a contract, as long as parties reach final agreement.**

*Brogden v Metropolitan Railway Company* – the written contract was valid despite no communication of acceptance. The acceptance took place when the contract was received.

## 2. Acceptance

A final and unqualified assent to the terms of the offer made in the manner specified or indicated by the offeror

### Requirements

- must be final (no agreement to agree in the future)
- must be unqualified (accept only what was offered)
- must be communicated to the offeror in the way the offeror specifies

### Rules about the 'acceptance'

- must be made in reliance on offer  
*R v Clarke* - offer must be present in the mind of the offeree – cannot accidentally accept an offer
- must be unqualified - A counter offer is a rejection of an offer/cancellation, Only if it comes from the offeree  
*H v Wrench* – change of land price
- Statement that contradicts the terms of the offer is a counter offer (original offer gone)
- Requesting for more information is not a counter offer. (*Stevenson Jacques and Co v Mclean* 1880)
- Must be in the terms stipulated in the offer [if any]: *Gilbert J McCaul*
- method can be prescribed by the offeror: *Felthouse v Bindley* (1862) – no communication of acceptance before the sale
- Acceptance must be communicated to offeror
- Acceptance by silence is not possible – *Felthouse v Binaley* 1862. Two exceptions
  - Postal situation (see later)
  - Actual performance indicated acceptance (*Carlill v Carbolic Smoke Ball Co* 1893)