

## Offer

- A statement of the terms upon which the offeror is prepared to be bound if acceptance is communicated while the offer remains alive” – Nielsen v Dysart Timbers Limited (
- Must be clear and definite and leave nothing left to negotiate – Leftkowitz v Great Minneapolis Surplus Store

## Invitation to Treat

*‘make me an offer and maybe we can do a deal’*

*Partridge v Crittenden*

- Advertisement in a bird catalogue
- Held the advertisement was an invitation to treat where the potential buyer could make an offer which the advertiser could accept or reject

*Carlill v Carbolic Smoke Ball Co*

- Placed an ad in the newspaper offering a reward of 100 pounds to any person who used the medication and still contracted the influenza
- C purchased the smoke ball and still contracted the influenza
- It was held that there was the necessary will/intention to make the advertisement an offer rather than ‘mere puff’
  - This was due to the fact that the company had set up a special bank account to meet possible claims as a sign of its sincerity in the matter
- The court held that a newspaper advertisement offering a reward for someone, having used the medication in question caught the flu, was held to be an ‘offer’
- It was intended by the public as an offer which was to be acted on

The rationale is that if the seller was seen as making the offer, the number of acceptances might well exceed the total stock held by the seller’

## Display of Goods

- A display is considered to be an invitation to treat
  - *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd*
    - Held that the display of goods was considered to be an invitation to treat rather than an offer
    - The offer was when the customer brought the items to the counter to purchase them
    - The pharmacist had the authority and was at liberty to accept or reject the offer by selling or not selling the item to the customer

## Auction Cases

Bidders are making an offer capable of being accepted

A bidder can withdraw the offer before the hammer goes down

## Termination of an offer

*Revocation* (cancelling or annulment of something by some authority)

- An offer can be withdrawn at any time before acceptance

- If it is accepted whilst the offer is still expressed to be open, and before any attempt is made to revoke it, there exist a binding contract
- Can still withdraw an offer, even if it states to be open for a specified period of time
- The statement to keep the offer open is unenforceable because the offeree has not given consideration for it There must be communication of the revocation
  - Must be communicated to the offeree or someone authorised to receive such a communication – *Dickinson v Dodds*
- Email
  - Specified an email
    - Communication of the revocation occurs when the offeror’s emails enters the offeree’s information system
  - Not specified an email
    - Communication of revocation only occurs when the message comes to their attention
- Posted
  - Not effective on posting but only on receipt

### *Rejection*

- Once rejected is terminated and cannot be subsequently accepted
- Counter offer
  - An implied rejection
  - Having made a counter offer, the counter-offeror cannot then purport to accept the original offer
- Request for information
  - Not a rejection and does not terminate the offer
  - *Stevenson Jacques and Co v McLean*
    - M offered to sell goods to S
    - S responded by seeking credit terms
    - M treated this as a rejection of the offer and sold the goods to somebody else
    - It was held that the offer had not been rejected, as it was a mere request for more information, and therefore the offer still existed
- Instantaneous communication
  - If the relevant words of revocation are drowned out, there is no communication of revocation – *Entores v Miles Far East Corporation*

### *Failure of a condition*

- Can be an express or implied condition
  - Person has to be in a position to sell the car for example
  - Or cleared expressed condition written in the contract

### *Death of the offeror/offeree*

- If the offeror dies before acceptance, and the offeree knows of the death, the offeree cannot accept the offer

### *Lapse of time*

- Terminates by lapse of time, if the time stipulated for acceptance has lapsed or a reasonable time has expired
- Reasonable time

- Depends on the facts and circumstances of the cases – *Empirnall Holdings v Machon Paul Partners Pty Ltd*
  - if an offer was made to sell bananas, the court would hold 6 months or even sooner would make the time lapse for they are perishable
- *Routledge v Grant*
  - Held that a statement or promise to keep an offer open for a period of time is unenforceable if no consideration is given for it

#### Harvey v Facey

- Held that the statement of a price is only a price which you are prepared to sell the item, not an offer

#### Neilsen v Dysart Timbers Ltd

- Held that an offeree cannot reasonably expect to be able to accept an offer if the basis on which it was made has fundamentally changed

