**CONTRACT – OFFER AND ACCEPTANCE (lectures 2 & 3)**

A contract is “an agreement giving rise to obligations which are enforced or recognised by law. The factor which distinguishes contractual from other legal obligations is that they are based on the agreement of the contracting parties” – Tretial. Essential elements: Agreement- offer and acceptance; ICLR and consideration, capacity to contract, compliance with formalities where applicable, absence of vitiating factors.

An agreement = a clear and certain offer made and an equally clear, unequivocal acceptance is communicated. An offer is: “expression of willingness to contract on specified terms made with the intention that it is to become legally binding as soon as it is accepted by the person to whom it is addressed”.

An acceptance is: “If whatever a man’s real intention… he so conduct himself that a reasonable man would believe that he was assenting…, and that other party upon that belief enters into the contract, the man thus conducting himself would be equally bound as if he had intended to agree…” – Smith v Hughes. The test for agreement is the meeting of minds, which is assessed objectively by the courts.

**Communication of an offer can be in writing, orally and conduct to the offeree – Taylor v Laird, Bloom v American Swiss Watch Co.**

**Termination of an offer**

An offer remains open until it is terminated or it is accepted and must reach the offeree – Routledge v Grant. Termination by:

1. Rejection – counter offer – Hyde v Wrench. Battle of the forms – Butler Machine Tool v Ex-Cell-O (ct looks at all does to decide)
2. NB A counter-offer must be distinguished from a mere request for information – Stevenson, Jacques v McLeod. Revocation of rev. Anytime before acceptance (Perry v Cave), but not after it has been made known to the offeror (Byrne v Tienhoven).
3. Revocation must have reached offeree before acceptance is sent. It can be communicated by a 3rd party – Dickinson v Dodds.

**NB Revocation of unilateral offer. Anytime before complete performance(GNR v Wilm.) but not before acceptance (Perry v Cave), but not after it has been made known to the offeror (Byrne v Tienhoven).**

3. Lapse of time – Time nut it depends on commodity (Ramsgate Victoria Hotel c v Montefiore);Death (Bradbury v Morgan); Non-fulfillment of a condition precedent (Financings v Stinson)

An offer is either going to have an acceptance, request for further information or rejection/counter offer.

**What is an offer?**

1. specified terms – must be clear and concise – Garthv v Lynn
2. Addressed to offeree.
3. Show a statement of intention to enter into a legal relationship – Gibson v Manchester CC. cf Storer v Manchester CC (it was held to be a clear and certain offer)

**What is not an offer?**

Invitations to treat are not offers. They invite the offeree to enter into negotiations:

1. Advertisements (Partridge v Crittenden)
2. NB EXCEPTION: Grainger v Gough – rule doesn’t apply if person is a manufacturer, could create more stock
3. Displays of goods (Fisher v Bell/Pharmaceutical society of GB v Boots cash chemists).

**NB EXCEPTION: Unilateral offers (made to the world).** An offer which can be accepted performs an act ie a promise to do, or not do an act. See: Carlill v Carbolic Smoke Ball; Bowrman v ABTA. BUT NOTE Leonard v PepsiCo (contract would lead to absurdity as it was not the intention of the offeror). In Lefkowitz v Great Minneapolis Surplus it was limited.

3. Invitations to tender – where a person seeking to have work carried out invites people to submit conditions. The legal standing of a tender is ITT -Spencer v Harding.

**NB NOTE:** Blackpool & Hyde Aero Club v Blackpool BC – was held to be an offer as the parties were invited and there were strict conditions re offers. Harvela Investments Ltd v Royal trust Co. of Canada.

4. Auctions – Payne v Cave (The offer occurs when bidder places their bid and acceptance – auctioneer brings the hammer down).

**NB NOTE:** Barry v Davies re auctions with reserves.

5. Share prospectuses – ITT. The application by people wanting to purchase shares is the offer.

**What is acceptance?**

- unconditional agreement to all the terms of the offer.

2. Generally must be communicated to the offeror – Felthouse v Bindley. “If I don’t hear anymore from you I’ll consider the horse mine” NB Silence cannot be acceptance.

**BUT NOTE:** Taylor v Allen – acceptance by conduct.

3. Must be by offeror

**FOR EXAMPLE:**

A response to the offer – R v v c; he didn’t know there was a offer; Williams v Carwardine – public policy issue report crimes so was valid.

5. May be communicated by an authorized by 3rd party – Powell v Lee.

**EXCEPTIONS:**

1. Unilateral Offers – Carlill v Carbolic Smoke Ball.
2. Negligent conduct of offeror – Entores v Miles Far East. Offeror didn’t have ink in fax machine so didn’t receive fax from offeree. Ct said purpose was there.

**Postal Rule**

To be able to rely on postal rule:

1. Must be properly posted – Re London and Northern Bank. It has to be put in post box.
2. Lost or damaged (still valid) – Houseof Fire and Carriage Accident Insurance Co v Grant.
3. Missaddressed?: Depends on why it has been missaddressed. Getrede-import Gesellschaft v Continar.

**EXCEPTIONS:**

1. Must be reasonable to use post ie same method or discount them.
2. PR must not cause ‘manifest inconvenience and absurdity’ – Holwell v Blackpool v Hughes.

**OFFEROR can cancel the postal rule – Holwell v Armstrong.** It was clear that acceptance not a post then not valid.

**CONSEQUENCE:**

1.second thoughts can be too late -Byrne v Van Tienhoven. Offeror unable to revoke – bound when acceptance posted.
2. Offerors bound when acceptance posted (uncertainty for offeror).
3. Offeror can’t retract but Scottish authority (palely persuasive) states you can do this – Dunmore v Alexander. Most point in English law. CF Thomas v James

**INSTANTANEOUS COMMUNICATION**

1. Actual communication is required – Entores v Miles Far East – receipt rule. Postal rule does not apply.
2. Taken to have been received within office hours – The Brimnes.
3. Outside office hours? Mondial shipping v Astarte shipping. Valid next working day, but no universal rule – Brikinibton Ltd v Shugat Stalin

**PRESCRIBED MODE OF ACCEPTANCE**

1. Be explicit and equally efficacious method will suffice eg “By fax only” – Manchester Diocesan Council for Education v Commercial & general investments.
2. If none prescribed – Tinn v Hoffman & Co. Any equally efficacious offer will suffice if you don’t discount them.
3. Party intended to be advantaged can waive – Yates building co v Pulley