What is an offer?
1. specified terms – must be clear and concise – Garth 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)

NB EXCEPTION Grainger v Gough – rule doesn’t apply if person is a manufacturer, as could create more stock

2. 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 performed may act ie a promise to perform an act. See: Carlill v Carbolic Smoke Ball; Bowman v ABTA. BUT NOTE Leonard v Pepisco (contract would lead to absurdity as it was not the intention of the offeree). 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.

BUT NOTE: Blackpool & Flyde 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 accepts – when the auctioneer brings the hammer down).

BUT NOTE: Barry v Davies re auctions with reserves.

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

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 docs to decide)

NB A counter-offer must be distinguished from a mere request for information – Stevenson, Jacques v McLoughlin – revolved around. Anytime before acceptance (Pinn v Cave), but not after. It must in fact be communicated (Byrne v Van Tienhoven).

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 Wilham), but note Errington v Errington & Woods. If an advert then revocation must have equal notoriety – Shea v USA.

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

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

An response to the offer – R v c they didn’t know you as an offer. Williams v Jarvisward – 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.

3. The Postal Rule – Adams v Lindsey. It is valid when acceptance is put in post box. NB Postal rule does not apply t emails – see Electronic Commerce (EC Directive) Regulations 2002.

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) – Household Fire and Carriage Accident Insurance Co v Grant.

3. Misaddressed? Depends on why it has been misaddressed. Getreide-import Gesellschaft v Continmar.

EXCEPTIONS:
1. Must be reasonable to use post ie same method or not when postal strike is on – Henthorn v Fraser.

2. PR must not cause ‘manifest inconvenience and absurdity’ – Holwell Smith v Hughes.

3. Offeror can out of the postal rule – Holwell Smith v Hughes. 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. Offer can’t retract but Scottish authority (purely persuasive) states you can do this – Dummore 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 – Brikinkholt Ltd v Shahag 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