

FORMATION OF A CONTRACT:

The traditional approach to finding the **agreement** is to classify negotiations into **offer** and **acceptance**. However, there have been criticisms that courts artificially classify agreements in this way. To find an offer capable of acceptance the test is usually an objective one - what the parties appear outwardly to have agreed. (**Lord Brightman-The Leonadis**)

The significance of classifying negotiations into offer and acceptance is that new terms cannot be introduced into the contract afterwards unless both parties agree, and any variation of existing terms may require fresh consideration.

OFFER:

Requirements of a Valid Offer:

An **OFFER** can be **defined** as: "A proposition put by one person (or persons) to another person (or persons) coupled with an intimation that he is willing to be bound by that proposition".

- An offer may be made in writing, orally, or by conduct. It must be communicated to the offeree. It is not possible to accept an offer that you are unaware of. E.g. as in reward cases **R. v Clarke**
- An offer is a definite promise to be bound on specific terms. It cannot be vague. **Scammell v. Ouston** ("HP terms")
- Only a valid contractual offer can bind an offeree to a contract on acceptance. Anything less than an offer will not have this effect and will still form part of the negotiating stage. Thus it is crucial to distinguish an offer from:

a mere supply of information -Harvey v. Facey (despite use of the words "offer" & "acceptance")

an invitation to treat e.g.

- **display of goods-Fisher v. Bell** (flick knife - shop windows = invitation to treat)

- **self service stores-Pharmaceutical Society of GB v. Boots Cash Chemists** (prosecution offering drugs for sale - self serve)

Note:- there is some doubt whether, in particular circumstances, a window display could be an offer if the words used and the circumstances were definite enough as in **Carlill** (below).

-**auctions- Payne v Cave** (request for bids = invitation to treat; bid = offer; fall of hammer = acceptance BUT for auctions held 'without reserve' the invitation to make offers is effectively a unilateral offer to the highest bidder that cannot be revoked once the bid is made. - **Barry v. Heathcote Ball & Co (Commercial Auctions, Ltd)**

-**advertisements - Partridge v. Crittenden** (wild birds - advertisements = invitation to treat)

Contrast with: **Carlill v. Carbolic Smoke Ball Ltd** (flu - offer to the world at large re conduct)

- A **unilateral offer** could be described as one-sided. It only impose obligations to perform one side of the bargain at a time. When the offer is made, no one is legally obliged to take it up, or do anything, including the offeror. E.g. rewards
- A **bilateral offer** consists of a promise in exchange for a promise. The exchange of promises imposes legal obligations on both parties, even though neither party has performed yet. A common illustration of this is ordering goods from a seller once the seller accepts.
- An offer may only be accepted while the offer is open. An offer is terminated and therefore no longer capable of acceptance in any of the following circumstances.

Termination of Offer:

- **Acceptance by offeree**
- **Lapse of time -Ramsgate Victoria Hotel v. Montefiore:**
- **Revocation by Offeror-Byrne v. Van Tienhoven** (must take place before acceptance)

(NB: **option to purchase** where offeror promises to keep offer open by a separate contract -**Routledge v. Grant**)

+ controversy over revocation of a unilateral offer once offeree has embarked upon performance-**Errington v. Errington & Woods**

• **Rejection or Counter-Offer by Offeree - Hyde v. Wrench**

- **Death of offeror - Bradbury v. Morgan.**

ACCEPTANCE:

- an offer may only be accepted by the person to whom it is made. However, it is possible to make an offer to a group or even to the "world at large" **Carlill v. Carbolic Smoke Ball Ltd**
- acceptance must be unconditional "mirror image rule" or it is a **counter-offer -Hyde v. Wrench**. Distinguish this from a **request for information - Stevenson v. McLean**
- Acceptance by conduct – **Carlill v. Carbolic Smoke Ball**
- Battle of the forms - **Butler Machine Tool v. Ex-Cell-O Corp Ltd**
- Cross-Offers - **Tinn v. Hoffman**