Held an invitation to treat could give rise to a binding contractual obligation to consider tenders conforming to the conditions of the tender in these circumstances.

1) Tenders had been solicited by council from specified parties who were known to council.

2) There were absolute conditions governing submission including an absolute deadline.

Vending Machines: machine is offer; acceptance is when money is inserted. Thornton v Shoe Lane Parking Ltd – Lord denning stated that an automatic machine which issued tickets outside a car park made a standing offer which was accepted when money was inserted.

Acceptance: Acceptance is the unqualified (with no conditions) expression of agreeing to the terms of the offeror. Does not need to be made in words, can be made in conduct like in Carlill v Carbolic Smoke Ball Co. (1893) and must be clear that the offeree did so in the intention of accepting the offer, where acceptance took place once C undertook conditions stated on advertisement. Acceptance must be communicated, must match the exact terms set and agreement must be certain. Where new terms are added and not all are accepted, it is not acceptance but a counter offer, as shown in Hyde v Wrench (1840) – held where a counter offer is made the original offer is destroyed. This is known by courts as the 'mirror image' rule to decide whether a contract has been concluded, to accept the offer the terms must be all accepted and to introduce new or modified terms is a rejection and counteroffer.

Communication of Acceptance: Acceptance is valid when it's brought to the attention of the offeror, so must be clearly communicated. In Entores V Miles Far East Corp (1955) – Lord Denning stated that if an oral acceptance is drowned out by an overflying aircraft, such that the offeror cannot hear the acceptance, there's no contract unless the acceptor repeats it after the aircrafts gone. Also if via telephone a line goes dead, acceptance is incomplete. If a person in ignorance of the offer performs acts requested by the offeror, he is not entitled to sue as in a contract. R v Clarke (1927) – Reward was issued for 2 murderers, C to protect himself helped the Crown, although having seen the reward had no intention of claiming it. Held where the party had forgotten about the reward at the time of giving information was not entitled to reward. Silence will not amount to acceptance, nor can the offeror impose a contractual obligation upon offeree stating unless they expressly reject the offer, they will be held to have accepted it. Felthouse v Bindley (1862) – C entered negotiations with nephew saying if he didn't hear further from nephew, he would consider the acceptance, held that the nephews silence did not amount to an acceptance.

Certainty: To create a binding contract, agreement must be expressed by parties in a sufficiently certain form for courts to enforce, parties must know what they are getting in to. Scamell v Ouston (1941) – It was stated that 'parties must so express themselves that their meaning can be determined with a reasonable degree of certainty', no need for complete certainty.. British Steel Corp v Cleveland Bridge (1984) – courts less likely to find

- **Fraudulent misrepresentation** (burden of proof on claimant) - Lord Herschell defined fraudulent misrepresentation in Derry v Peek (1889) as a statement which is made either:
    I. knowing it to be false,
    II. without belief in its truth, or
    III. recklessly, careless as to whether it be true or false

- **Negligent Misrepresentation** - under s.2 (1) Misrepresentation Act 1967 - a negligent misrepresentation is a statement made without reasonable grounds for belief in its truth. The burden of proof being on the representor to demonstrate they had reasonable grounds for believing the statement to be true. Hedley Byrne v Heller – established test for negligent misrepresentation: if D carelessly made false statements, if it was reasonable for C to rely on statement, if there was a special relationship.

- **Wholly Innocent Misrepresentation** - exists where the representor can demonstrate reasonable grounds for belief in the truth of the statement - s.2 (1) Misrepresentation Act 1967.

Remedies for Misrepresentation – Rescission, "undoing" the contract (terminating contract) or claiming damages. The right to rescind the contract may be lost where:

- Where a third party requires the rights in the goods eg: where they have been sold on or subject to a charge or mortgage, rescission will not generally be granted as it will prejudice the third party. If however, the representee does an act to rescind the contract before a sale has taken place the 3rd party has not acquired any rights which was held in Car & Universal Credit (1964).
- Where the representee affirms the contract: if the representee does an act to adopt the contract, or demonstrate a willingness to continue with the contract after becoming aware of the misrepresentation they will lose the right to rescind: Long v Lloyd (1958).
- Through lapse of time: Overlong delay after discovering right to rescind: Leaf v. International Galleries (1950).
- Where restitution in integrum impossible: Where it is impossible to restore the parties to their pre-contractual position, eg where the goods have perished or have been consumed, the right to rescind will be lost.

Mistake

There are three different types of mistakes recognised. Unilateral, mutual and common.

client, religious advisor – disciple, doctor – patient. In most cases NOT husband and wife as held in Midland Bank v Shephard (1988) & also employer and employee however in Mathews v Bobbins (1980) it was allowed as the circumstances found that there was undue influence in this. If a suspicious transaction takes place within presumable relationships, undue influence can be used providing the transaction is one which cannot readily be explained by the relationship of the parties, as held in RBS v Etridge (2001) – shows that in order to use undue influence a transaction cannot be based solely because of the relationship of the parties. Here the burden of proof lies with the influencing parties to disprove undue influence.

- Class 2B – there is no automatic presumption here, must be proven by the claimant, it must also be proven that there was trust and confident in the relationship. Any relationship is capable of amounting to this. The important distinction between 2A and 2B is that the trust and confidence in the relationship must be proved. Lloyds Bank v Bundy (1975) – held bankers and clients don't really have trust and confidence in a relationship unless they are known to each other personally as in this case. Credit Lyonnaise Bank (1997) – held relationship of trust and confidence can be seen in employer and employee relationships

Discharge - Breach

There are 4 possible ways a contract can be discharged (brought to an end):

- by parties performing according to the terms of the contract
- by parties agreeing to abandon/ discharge the contract
- by operation of law
- by breach which was defined by Diplock - "where a party without lawful excuse fails or refuses to perform what is due from him under the contract, or performs defectively, or incapacitates himself from performing."

Consequences:

- other party always has right to claim damages
- other may also have right to stop performing their obligations under the contract
- other party may also have the right to lawfully bring the contract to an end.

There are 2 types of breaches:

- **'Straightforward' breach** – where there exists a breach of condition this will enable the innocent party the right to repudiate the contract in addition to claiming damages. Contract cannot be discharged by a breach of warranty. Breach of an innominate term will justify innocent party terminating when breach has very serious consequences for the innocent party. Hong Kong Fir – held consequences of the innocent party was not serious enough.
- **Anticipatory breach** - Where a party indicates their intention not to perform their contractual obligations, the innocent party is not obliged to wait for the breach to actually occur before they bring their action for breach. Hochster v De la Tour (1853) - agreed to be a courier for 3 months but before the contract begun it was ended. This gives the innocent party the option to either sue immediately or continue with the contract themselves and wait for the breach to occur before bringing their action.