

BUSINESS LAW – KEY ELEMENTS (lecture 1 & 2)

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” – Trietl. 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 conducts 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 cts.**

What is an offer?

1. specified terms – must be clear and concise – *Gurthing 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 performance of an act ie a promise in return for an act. See: *Carlill v Carbolic Smoke Ball*; *Bowerman 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*.

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 acceptance when 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 McLean*

2. Revocation. Anytime before acceptance (*Payne v Cave*), but to be valid it must 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 Witham*), but note *Errington v Errington & Woods*. If an advert then revocation must have equal notoriety – *Shuey v USA*.

3. Lapse of time – Time but it depends on commodity (*Ramsgate Victoria Hotel co v Montefiore*); Death (*Bradbury v Morgan*); Non-fulfillment 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.

1. Must be a mirror image – *Hyde v Wrench*. Can’t snatch a bargain – *Hartog v Colin shields*.

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 Allon* – acceptance by conduct.

3. Must be by offeror – *Boulton v Jones*.

4. As response to the offer – *R v Clarke* – he didn’t know there was an offer; *Williams v Farwardine* – 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 Lindsell*. It is valid when acceptance is put in post box. NB. Postal rule does not apply to 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 Contimar*.

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 Securities v Hughes*.
3. Offerors can’t just the postal rule – *Holwell Securities v Hughes*. It was clear that acceptance not via 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. Offeree can’t retract but Scottish authority (purely persuasive) states you can do this – *Dunmore v Alexander*. Moot 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 – *Brikinkibon Ltd v Stahag 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 Pulleyn*

Contracts made electronically – governed by Electronics Commerce (EC Directive) Regs 2002. Websites= ITT. Emails = receipt rule applies