

Contract Law

Offer And Acceptance

Contract
Unilateral – Bilateral Contract
Subjective-Objective Approach To An Agreement
Offer
Invitation To Treat
Counter-offer
Revocation Of Offer, Recall of Acceptance
Acceptance
Postal Rule-Limitation

Contract

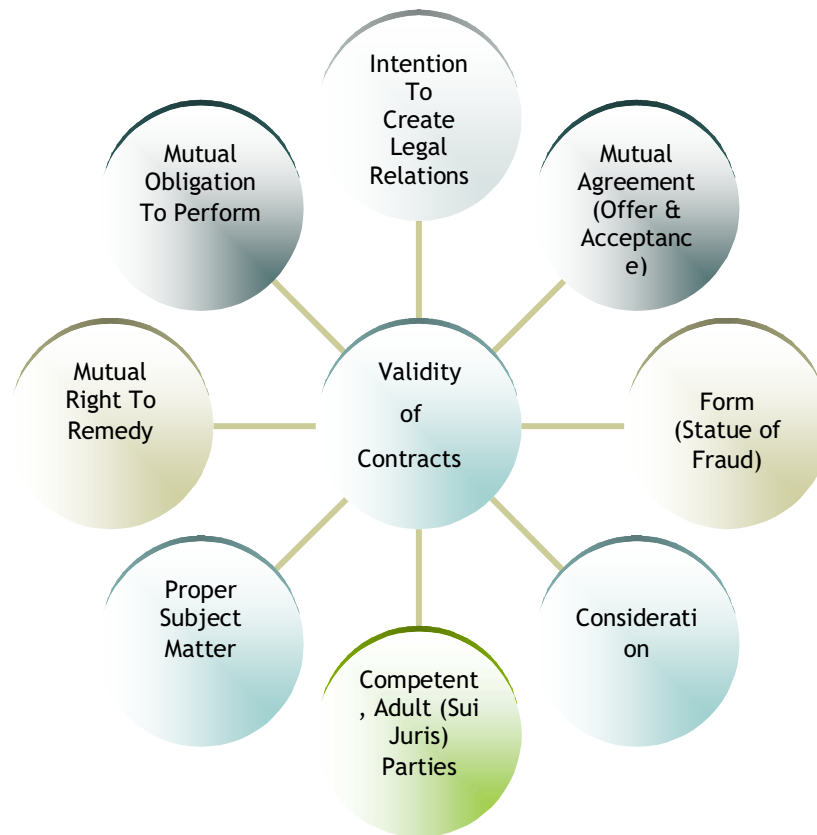
Definition

- ✎ Is an agreement between two or more parties that is intended to be legally binding (enforceable agreement)
- ✎ Legally binding agreement needs of offer, acceptance, **intention to create legal relations and consideration** (difference between social agreement and legal agreement)
- ✎ Is any promise or set of promises made by one party to another for the breach of which the law provides remedies
- ✎ The remedies for the breach of contract is an award of monetary compensation, injunction, & specific performance (quantum meruit)

Essential Element

- ✎ The promise or promises may be express (either writing or oral) or may be implied from circumstances
- ✎ Needs of writing is not essential for contract the Courts of US approved that as long as there is meeting of minds as though there is written, formal, signed contract then contract exists
- ✎ However, for certain type of contract signed writing contract is needed (*Statute of Fraud*)
- ✎ Mass production and nationalisation have led to the standard form contract
- ✎ Freedom of contract is modified by some acts such as *Consumer Credit Act 1974 & Unfair Contract Act 1977* (regulate the extend of terms in a contract)

- ⌘ Law sometimes implies some terms into contract to observe certain standard of behaviour *s.12-15 Sale Of Goods Act 1979* (terms such as the fitness, title, and quality of goods into the sale of goods contract)



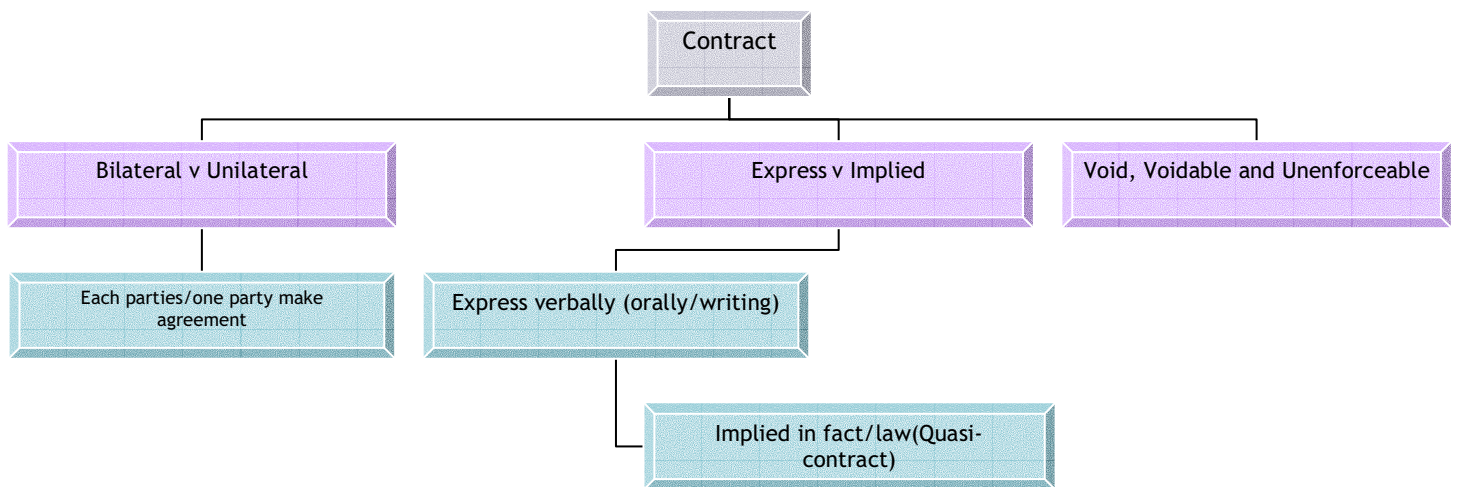
Determination Of Agreement

- ⌘ Is determined objectively not subjectively
- ⌘ Contract is the outcome of 'consenting minds' 'consensus ad idem'
- ⌘ The older theories 'contract requires the party to have a true meeting of minds between the parties.
- ⌘ This is unsatisfactory, as other parties have no means of knowing their counterparts' undisclosed intentions or understanding
- ⌘ But outcome of 'consenting minds' also misleading as parties are judged by what they have said, written, or done, and not by what in their mind. Thus, an objective standard is applied

The Objective Test

- ✎ Contract is an agreement giving rise to obligation which are enforced/recognised by law
- ✎ The objective test ; ‘ a person is bound “whether his real intention may be” if “ a reasonable man could believe that he was assenting to the term proposed by the other party and that other party upon that believe enters into a contract with him”
- ✎ The objective test is as a safeguard from prejudice for the offeree
- ✎ Exception is only when the offeree knew that the offeror have no real intention to make a contract
- ✎ Agreement formed when a party accepts an offer made by other, it should be certain and final

Type of Contract



Termination of Contract

- ✎ Escape from contract;
 - mutual / unilateral mistake
 - Misrepresentation of facts inducing another party
 - Duress inducing another party
 - Lack of capacity to contract (infancy, influence of drugs/alcohols/mental illness)
 - Unconscionability
 - Violation of public policy/illegality
 - Absence of a writing evidence
 - Impossibility or unwillingness to perform contract (repudiation)
 - Misleading/ deceptive conduct by one of the party (tort of deceit)
 - Frustration of purpose of the contract without default by either party

Offer

Offer defined – Objective Test

- ✎ Offer is an express of willingness to be bound by specific terms, made with intention that it shall become binding as soon as it is accepted by person to whom it is addressed¹
- ✎ Cannot be vague²
- ✎ Must be communicated
- ✎ It may be in writing, orally, by conduct, a combination of these methods
- ✎ Three (3) different situations where the role of objective test differ
 - B believe that A intends to be bound --- objective test
 - B knows that A has no intention --- x objective test
 - B has never thought about A intention --- x objective test, as the main purpose is to safeguard B, but don't care about the risk

Conduct as an Offer

- ✎ Offer can be expressly or by conduct made to an individual, a group of people (specific offer - bilateral offer) or to the world at large (general offer – unilateral offer)
- ✎ Tender is an offer by conduct even if it contradicting *Unsolicited Goods And Service Act 1991*

Invitation To Treat (ITT)

- ✎ ITT is an invites other party to enter into negotiations.
- ✎ Thus the different between offer and ITT is depends on the exclusive criterion of intention
- ✎ Wording is not conclusive in each matter. E.g;
 - 'offer' *Harvela Investment v Royal Trust Co. of Canada (C.I) 1985, Spencer v Harding, Clifton v Harding*
 - 'acceptance' *Bigg v Boyd Gibbons Ltd 1971*
- ✎ Stereotype situation distinction is decided by evidence adduced and not by intention

¹ Moran v University College Salford – clerical mistake

² Gunthing v Lynn 1831

The Mere Supply Of Information

- ⌘ Before an offer is made, the preliminary stage of communication which involves response to a request for information and other similar request.
- ⌘ So, it is just a supply of information and not an offer

Harvey v Facey 1893

The plaintiff telegraph the defendant "Will you sell the Bumper Hall Pen? Telegraph the lower cash price". The defendant telegraphed in reply, "Lowest price for Bumper Pen Hall £900". The plaintiff then telegraphed, we agree to buy Bumper Pen Hall for £900 asked by you.

The court held that there is no contract concluded as the reply of defendant is just and mere statement of price.

Gibson v Manchester City Council 1979

The council sent to tenants details of a scheme for the sale of council houses. The plaintiff immediately replied, paying the £3 administration fee. The council replied: "The corporation may be prepared to sell the house to you at the purchase price of £2,725 less 20 per cent. £2,180 (freehold)." The letter gave details about a mortgage and went on "This letter should not be regarded as a firm offer of a mortgage. If you would like to make a formal application to buy your council house, please complete the enclosed application form and return it to me as soon as possible." G filled in and returned the form. Labour took control of the council from the Conservatives and instructed their officers not to sell council houses unless they were legally bound to do so. The council declined to sell to G.

In the House of Lords, Lord Diplock stated that words italicised seem to make it quite impossible to construe this letter as a contractual offer capable of being converted into a legally enforceable open contract for the sale of land by G's written acceptance of it. It was a letter setting out the financial terms on which it may be the council would be prepared to consider a sale and purchase in due course.

- ⌘ In the course of negotiations for a sale, the vendor states the price at which he will sell, that may be an offer which can be accepted

Bigg v Boyd Gibbins Ltd 1971

A statement says "For a quick sale , I would accept £ 26,000...if you are not interested in this price would you please let me know immediately'. Held it was an offer. Had agreed on a price and made a contract.

Advertisement and Other Display

- ✎ Advertisement for return of lost, information leading to arrest/conviction of the perpetrator of crime is offer³
- ✎ Those are the unilateral contract, in addition there is no further bargaining⁴
- ✎ However for bilateral contract, it is not offer as there is further bargaining of assuring himself that the other party is able to perform his part of the contract⁵
- ✎ Advertisement for auction⁶, advertisement for scholarship exam⁷, circulation of price-list by wine merchant are ITT⁸
- ✎ Notice on entrance car park is offer, it is accepted by driving into the car park⁹
- ✎ Display of deck chair for hire...it is an offer¹⁰

Carlill v Carbolic Smokeball Co (1893)

The manufacture company offered to pay £100 reward will be paid by the Carbolic Smoke Ball Company to any person who contract the increasing epidemic of influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed direction supplied with each ball. £1,000 was deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter.

BOWEN LJ, “It is not like cases which you offer to negotiation, or you issue advertisement that you have got a stock to sale, or house to let, in which case there is no offer to be bound by any contract. Such an advertisement are offers to negotiate – offer to receive offer - offer to chaffer.”

Partridge v Crittenden 1968

Advertisement 'Bramble finch cocks and hens' for sale not contravening Protection Of Birds Act 1954. Held to be an invitation to treat.

Lord Parker, “ I think that when one is dealing with advertisements and circulars, unless they indeed come from manufactures, there is business sense in their being constructed as invitations to treat and not offers for sale.”

Display of Goods

- ✎ Display goods (with a price tag) or advertising goods for sale is to invites customers to make offer to purchase. General rule ‘ is an ITT no offer’

³ Gibbons v Proctor 1891

⁴ Carlill v Carbolic Smoke Ball Co. 1893

⁵ Partridge v Crittenden 1968

⁶ Harris v Nickerson

⁷ Rooke v Dawson 1895

⁸ Grainger & Sons v Gough

⁹ Thronton v Shoe Lane Parking 1971

¹⁰ Chaperton v Barry U.D.C.

FISHER V BELL 1961

Display of flick knives not contravening Restriction of Offensive Weapons Act 1959. Held to be an invitation to treat.

PHARMACUTICAL SOCIETY OF GREAT BRITAIN V BOOTS CASH CHEMISTS (SOUTHERN) 1952

Display of articles on shelves under the supervision of a registered pharmacist not contravening Pharmacy and Poisons Act 1933. Held to be an invitation to treat.

- ❏ In a petrol station put petrol in tank is when the contract concluded¹¹

Auction Sales

- ❏ General Rule ‘ the offer is made bidder and accepted by the auctioneer when he signifies his acceptance in customary manner (fall of hammer)^{S.57(2) Sale of Goods Act 1979}
- ❏ There is two situation of auction;
- reserved : the highest bidder must be higher price than the reserve, but the auction hold no liable if he by mistake accepts the lower price as the is no contract between he and the owner
 - without reserved¹² : no contract between the highest bidder and the owner if the auctioneer refuses to accept highest bid but the auctioneer liable to the highest bidder in other separate contract

Payne v Cave

Sale by auction is only complete when the auctioneer announces its completion by the fall of the hammer.

- ❏ Mere advertisement of an auction to be held is not an offer

Harris v Nickerson

The plaintiff is one of the bidder who went to the auction which was cancelled by the defendant. Advertisement on auction was invitation to treat, just to initiate offers and purchasers have no legal complaint if they have wasted their time and money coming to the sale.

Blackburn J, “This is certainly a startling proposition and would be excessively inconvenient if carried out. It amount to saying that anyone who advertises a sale by

¹¹ Esso Petroleum v Commissioner of Customs & Excise 1976

¹² Warlow v Harrison

publishing an advertisement become responsibility to everybody who attends the sale for his cab hire or traveling expenses.

- without reserve

Warlow v Harrison

Defendant was an auctioneer had a repository for the sale of horses. Advertisement was made by the auction at the repository as such " the three following horses, the property of a gentleman, without reserve. The plaintiff bid 60 guineas which was the highest bid. The owner, Mr Henderson bid 61 guineas. The plaintiff was informed the last bidder was the owner and declined to bid further. The defendant knocked the mare down to Mr. Henderson and enter his his name on the sale book as purchaser.

Held :

The judgement of the Queen's Bench Court was reaffirmed. As the auction was advertised as without reservation thus bid cannot be made by neither the owner nor anyone on his behalf. In addition the advertisement was made by the auctioneer thus he has the authority(contract) to sell on the behalf of the owner. The owner breach the contract. The commission of the auctioneer should be given and the plaintiff is entitled to the judgment of the court.

Tender

- ❏ Is not an offer, and the person request for tender doesn't bound to the higher tender
- ❏ Invitation to the tender is not an offer ^{Local Government Act 1988 s.4(2)}

Spencer v Harding

There was an "offer to sell by tender". Held such notice was invitation to treat.

- ❏ Specific date to submit is stated on the advertisement of tender is no consider as an offer but the party on bound to consider the tender.

Blackpool Aero Club v Blackpool Borough Council (1990)

BBC invited tenders to operate an airport, to be submitted by noon on a fixed date. The plaintiffs tender was delivered by hand and put in the Town Hall letter box at 11am. However, the tender was recorded as having been received late and was not considered. The club sued for breach of an alleged warranty that a tender received by the deadline would be considered. The judge awarded damages for breach of contract and negligence. The council's appeal was dismissed by the Court of Appeal.

Timetable And Passenger Tickets

- ✎ Issuing advertisement stating the times at and condition under which trains would run is an offer¹³ Railway Act 1998 s.123
- ✎ And for the bus service there is three different views on the point of contract concluded.

View/Point of ..	Offer	Acceptance
1	Running bus	By applying ticket/getting on the bus
2	Asking ticket =ITT, issuing it	Accept ticket
3 (advance book'	Issuing ticket	Accepting booking

Sales of Shares

- ✎ In commercial language, makes an “offer to public”, asking them to subscribe for share but they reserved right to decide how many to allot to each applicant
- ✎ Issuing later to existing shareholder informing rights of them is not an offer, it just a mere information of their rights¹⁴

¹³ Denton v G.N.Ry 1856

¹⁴ Jackson v Turquand 1869

Termination Of Offers

- ✎ Termination of offer can be done before the offer is accepted
- ✎ The termination must be communicated with the offeree
- ✎ There are two categories of termination ;
 - a) by the act of parties
 - b) operation of law

By The Act of Parties

A. Acceptance

- ✎ Once an offer is accepted by the party whom it is subjected to, then the offer cannot be terminated
- ✎ As a binding contract is formed, so the offer ends.

B. Rejection/ Counter-offer

- ✎ Once the party said 'no', the offer is terminated and no contract is made
- ✎ The terms of the offer must be accepted fully, even if he attempts to accept an offer on new terms, the original offer is terminated and counter-offer is made
- ✎ In the counter-offer, the offeror becomes offeree and vice versa.

Hyde v Wrench (1840)

*6 June W offered to sell his estate to H for £1000; H offered £950
27 June W rejected H's offer, 29 June H offered £1000. W refused to sell and H sued for breach of contract.*

Lord Langdale MR held that if the defendant's offer to sell for £1,000 had been unconditionally accepted, there would have been a binding contract; instead the plaintiff made an offer of his own of £950, and thereby rejected the offer previously made by the defendant. It was not afterwards competent for the plaintiff to revive the proposal of the defendant, by tendering an acceptance of it; and that, therefore, there existed no obligation of any sort between the parties.

- ✎ And it is different from asking mere information. It depends on the intention, objectively ascertained

Stevenson v McLean (1880)

On Saturday, the defendant offered to sell iron to the plaintiff at 40 shillings a ton, open until Monday. On Monday at 10am, the plaintiff sent a telegram asking if he could have credit terms. At 1.34pm the plaintiff sent a telegram accepting the defendant's offer, but at 1.25pm the defendant had sent a telegram: 'Sold iron to third party' arriving at 1.46pm. The plaintiff sued the defendant for breach of contract and the defendant argued that the plaintiff's telegram was a counter-offer so the plaintiff's second telegram could not be an acceptance.

It was held that the plaintiff's first telegram was not a counter-offer but only an enquiry, so a binding contract was made by the plaintiff's second telegram.

C. Revocation

- ☒ The offer may be revoked by the offeror any time before it is accepted.

Routledge v Grant

The defendant offered to sell his house but stated the acceptance must be made within six weeks...but before the acceptance is made. The offeror then withdraw his offer. The court held that there is no binding contract formed.

- ☒ The withdrawal must be communicated (postal rule do not apply), and not merely by acting inconsistently.

Byrne v Van Tienhoven (1880) Vienna Convention Art 16(1)

*1 Oct. D posted a letter offering goods for sale.
8 Oct. D revoked the offer; which arrived on 20 Oct.
11 Oct. P accepted by telegram
15 Oct. P posted a letter confirming acceptance.*

It was held that the defendant's revocation was not effective until it was received on 20 Oct. This was too late as the contract was made on the 11th when the plaintiff sent a telegram. Judgment was given for the plaintiffs.

- ☒ The revocation must be communicated either direct by the offeror or through the reliable and reasonable third party.

Dickinson v Dodds (1876)

Dodds offered to sell his house to Dickinson, the offer being open until 9am Friday. On Thursday, Dodds sold the house to Allan. Dickinson was told of the sale by Berry, the estate agent, and he delivered an acceptance before 9am Friday. The trial judge awarded Dickinson a decree of specific performance. The Court of Appeal reversed the decision of the judge.

James LJ stated that the plaintiff knew that Dodds was no longer minded to sell the property to him as plainly and clearly as if Dodds had told him in so many words, "I withdraw the offer." This was evident from the plaintiff's own statements. It was clear that before there was any attempt at acceptance by the plaintiff, he was perfectly well aware that Dodds had changed his mind, and that he had in fact agreed to sell the property to Allan. It was impossible, therefore, to say there was ever that existence of the same mind between the two parties which is essential in point of law to the making of an agreement.

- ❧ Unilateral offer made to world at large can be revoked by taking reasonable steps

Shuey v U.S. (1875)

On 20 April 1865, the Secretary of War published in the public newspapers and issued a proclamation, announcing that liberal rewards will be paid for any information that leads to the arrest of certain named criminals. The proclamation was not limited in terms to any specific period. On 24 November 1865, the President issued an order revoking the offer of the reward. In 1866 the claimant discovered and identified one of the named persons, and informed the authorities. He was, at all times, unaware that the offer of the reward had been revoked.

The claimant's petition was dismissed. It was held that the offer of a reward was revoked on 24 November and notice of the revocation was published. It was withdrawn through the same channel in which it was made. It was immaterial that the claimant was ignorant of the withdrawal. The offer of the reward not having been made to him directly, but by means of a published proclamation, he should have known that it could be revoked in the manner in which it was made.

- ❧ Unilateral offer for an act/performance can not be revoked after the act is done

Errington v Errington and Woods (1952)

A father bought a house on mortgage for his son and daughter-in-law and promised them that if they paid off the mortgage, they could have the house. They began to do this but before they had finished paying, the father died. His widow claimed the house. The daughter-in-law was granted possession of the house by the trial judge and the Court of Appeal.

Denning LJ stated: "The father's promise was a unilateral contract - a promise of the house in return for their act of paying the instalments. It could not be revoked by him once the couple entered on performance of the act, but it would cease to bind him if they left it incomplete and unperformed, which they have not done. If that was the position during the father's lifetime, so it must be after his death. If the daughter-in-law continues to pay all the building society instalments, the couple will be entitled to have the property transferred to them as soon as the mortgage is paid off; but if she does not do so, then the building society will claim the instalments from the father's estate and the estate will have to pay them. I cannot think that in those circumstances the estate would be bound to transfer the house to them, any more than the father himself would have been."

⌘ Exception

- Communication when? Received? Opened? Read by responsible person?

When it's open in ordinary course of business or would have been so opened if the ordinary course was followed

- Delivered to the address where the offeree moved out without informing the offeror. The revocation is valid.

But the offeree failed to read mail, telex, fax that sent during office hours - effective withdrawal

Operation Of Law

A. Death

- ⌘ Death of either party terminates the contract as the party no longer can breach an agreement
- ⌘ Death of offeror terminates the offer, once the offeror is death the offer is invalid
- ⌘ But if the offer made to world at large then the issue of the offeror's death doesn't play any roles
- ⌘ However, acceptance made by offeree without knowledge of the death is not termination of offer but the offer should involve person nature

Death of Offeror

- ⌘ Guarantee is not terminated(each loan separate acceptance)
- ⌘ But some how, the offer can be terminated if the bank knew that the guarantor has died and his personal representative have no power under his will/for other reasons.
- ⌘ The offer also will not be terminated if the guarantor expressly provided that it can only be terminated by notice given by guarantor even if the bank knows about the death of him.

Bradbury v Morgan (1862)

JM Leigh requested Bradbury & Co to give credit to HJ Leigh, his brother. JM Leigh guaranteed his brother's account to the extent of £100. Bradbury thereafter credited HJ Leigh in the usual way of their business. JM Leigh died but Bradbury, having no notice or knowledge of his death, continued to supply HJ Leigh with goods on credit. JM Leigh's executors (Morgan) refused to pay, arguing that they were not liable as the debts were contracted and incurred after the death of JM Leigh and not in his lifetime. Judgment was given for the plaintiffs, Bradbury.

Death Of Offeree

- ✎ Can not be accepted after the offeree's death^{15 & 16}

15Warrington LJ said that '... an offer made to living person who ceases to be a living person before the offer is accepted ... is no longer an offer at all'

B. Lapse Of Time

- ✎ Where an offer is stated to be open for a specific length of time, then the offer automatically terminates when the time limit expires.
- ✎ However, when there is no specific time is stated then the offer is open for a reasonable time which depends on the circumstances, nature of the subject matter and means use to communicate.

Ramsgate Victoria Hotel Co v Montefiore (1866)

On 8 June, the defendant offered to buy shares in the plaintiff company. On 23 Nov, the plaintiff accepted but the defendant no longer wanted them and refused to pay. It was held that the six-month delay between the offer in June and the acceptance in November was unreasonable and so the offer had 'lapsed', ie it could no longer be accepted and the defendant was not liable for the price of the shares.

C. Conditional Offer

- ✎ An offer may be made subject to conditions
- ✎ Such a condition may be expressly by the offeror or implied by the court from the circumstances.
- ✎ If the condition is not satisfied the offer is not capable of being accepted

¹⁵ Reynolds v Atherton 1921

¹⁶ Kennedy v Thomassen 1929

Financings Ltd v Stimson (1962)

The defendant at the premises of a dealer signed a form by which he offered to take a car on HP terms from the plaintiffs. He paid a deposit and was allowed to take the car away. He was dissatisfied with it and returned it to the dealer, saying he did not want it. The car was stolen from the dealer's premises and damaged. The plaintiffs, not having been told that the defendant had returned the car, signed the HP agreement.

It was held by the Court of Appeal (a) that the defendant had revoked his offer by returning the car to the dealer. (b) In view of an express provision in the form of the contract that the defendant had examined the car and satisfied himself that it was in good order and condition, the offer was conditional on the car remaining in substantially the same condition until the moment of acceptance. That condition not being fulfilled, the acceptance was invalid.

Acceptance

Acceptance Defined

- ✎ Is a final and unqualified expression of assent to the terms of an offer
- ✎ The objective test of agreement applies to an acceptance no less than to an offer
- ✎ Mere acknowledgement of an offer would not be an acceptance; nor is there an acceptance where a person who has received an offer to sell goods merely replies that it is his “intention to place an order”¹⁷
- ✎ An when there is alternative proposal the acceptance must be cleared to which one they are directed to.

Peter Lind & Co. Ltd v Mersey Docks & Harbour Board 1972

An offer to build a freight terminal was made by a tender quoting in the alternative a fixed price and a price varying with the cost of labour and materials. The offeree purported to accept "your tender" and it was held that there was no contract as there was no way of telling which price term had been accepted.

Continuing negotiations

- ✎ the court then look at the whole correspondence and decide.
- ✎ If so there is contract even though one of them, had reservations not expressed in the correspondence. As the performance which was the subject matter of the negotiation has actually been rendered¹⁷

G.Percy Trentham Ltd v Archital Luxfer Ltd 1993

T built industrial units and subcontracted the windows to L. The work was done and paid for. T then claimed damages from L because of defects in the windows. L argued that even though there had been letters, phone calls and meetings between the parties, there was no matching offer and acceptance and so no contract.

The Court of Appeal held that the fact that there was no written, formal contract was irrelevant, a contract could be concluded by conduct. Plainly the parties intended to enter into a contract, the exchanges between them and the carrying out of instructions in those exchanges, all supported T's argument that there was a course of dealing between the parties which amounted to a valid, working contract. Steyn LJ pointed out that:

¹⁷ O.T.M. Ltd v Hydranautics 1981

- (a) *The courts take an objective approach to deciding if a contract has been made.*
 (b) *In the vast majority of cases a matching offer and acceptance will create a contract, but this is not necessary for a contract based on performance.*

- ✎ Sometimes the parties continues to negotiate even after they appear to have agreed to the same term
 - The court then look into entire course of negotiation to decide whether counter-offer did in fact concluded the agreement¹⁸
 - If didn't then the negotiation after the formation point of contract did not affect the existence of the contract¹⁹
 - It only will do so if the negotiation formed an agreement to rescind the contract
- ✎ Binding oral contract will not be affected merely by the fact that, after conclusion one party send to other the document containing terms significantly different from those which had been orally agreed²⁰

Acceptance by conduct

Gibson v MCC (1979)

Lord Denning said that one must look at the correspondence as a whole and the conduct of the parties to see if they have come to an agreement.

- ✎ by supplying or despatching goods in response to an offer to buy them²¹, or by beginning to render services in response to an offer in the form of a request for them²²
- ✎ an offer to supply goods can be accepted by using them(4 unsolicited) Unsolicited Goods And Services Act 1971 ss.1,6
- ✎ However the conduct will be effective if the offeree did the act with intention of accepting the offer(objective principle)
- ✎ Buyer is not bind to accept the delivery which amount from orally contract but in significantly different terms²⁰
- ✎ It will not amount to acceptance if the offeree conduct clearly indicate an intention to reject the offer.
- ✎ Even the opening of the package would not amount to acceptance so as to incorporate the printed terms.

¹⁸ The Frotanorte 1996

¹⁹ The Good Helmsman 1981

²⁰ Jayaar Impex Ltd v Toaken Group Ltd 1996

²¹ The Saronikos 1986

²² The Kurnia Dewi 1997

Beta Computers (Europe) v Adobe Systems (Europe) 1996

Where a notice on a package containing computer software stated that opening the package would indicate acceptance of the terms on which the supply was made, and the customer returned the package unopened

- ✎ Offer has been made, or acceptance, by conduct it is often hard to say exactly what terms has been agreed.
- ✎ The difficulty may be so great as to lead conclusion that no agreement was reached at all.
- ✎ But the court has considerable power to resolve uncertainties;
 - offer is silent as to rate of payment – imply term that reasonable amount should be paid
 - import into the contract the terms of another contract between the parties, or a draft agreement between them²³
 - contract between one of them and a third party

Brogden v MRC (1877)

B supplied coal to MRC for many years without an agreement. MRC sent a draft agreement to B who filled in the name of an arbitrator, signed it and returned it to MRC's agent who put it in his desk. Coal was ordered and supplied in accordance with the agreement but after a dispute arose B said there was no binding agreement.

It was held that B's returning of the amended document was not an acceptance but a counter-offer which could be regarded as accepted either when MRC ordered coal or when B actually supplied. By their conduct the parties had indicated their approval of the agreement.

Acceptance must be unqualified

- ✎ a communication may fail to take effect as an acceptance because it attempts to vary the terms of the offer

Tinn v Hoffmann & Co 1873

An offer to sell 1,200 tons of iron is not accepted by reply asking for 800 tons

North West Leicestershire D.C. v East Midlands Housing Association 1981

An offer to pay a fixed price for building work is not accepted by a promise to do work for a variable price

²³ Brogden v Metropolitan Railway 1877

- ⌘ Offer accepted by a reply which varies one of its terms^{below}/by reply which intended to introduce entirely new terms¹⁴. Such a reply is not an acceptance but a counter-offer²⁴ which the original offeror can accept or reject

Brinkibon v Stahag Stahl (1983)

The buyers, an English company, by a telex, sent from London to Vienna, accepted the terms of sale offered by the sellers, an Austrian company. The buyers issued a writ claiming damages for breach of the contract.

The House of Lords held that the service of the writ should be set aside because the contract had not been made within the court's jurisdiction. Lord Wilberforce stated that the present case is, as Entores itself, the simple case of instantaneous communication between principals, and, in accordance with the general rule, involves that the contract (if any) was made when and where the acceptance was received. This was in Vienna.

- ⌘ There must be precise verbal correspondence between offer and acceptance
- ⌘ There is acceptance if the acceptance departed from the wording of the offer by making express some terms that law would imply, new provision by way of indulgence to offeror, asking for extra time to pay but prepared to perform it even if the request is rejected

The Battle Of Forms

- ⌘ Printed contract formed raises problem with regard to the rule that offer correspond to acceptance
- ⌘ There are two types of situation to be discuss;
 - 1) Offeror order supply of goods or services, and offeree replies that he is willing to supply goods or services on his 'usual conditions'. The acceptance is a counter-offer that offeror may accept or reject. He may accept by receiving the goods or services. Thus contract base on the counter-offer formed.
 - 2) Offeror and offeree both purport to contract with reference to his own terms(which may conflict)¹⁷

²⁴ For Exception Vienna Convention Art 19(2)

B.R.S. v Arthur V. Crutchley Ltd 1967

The claimants delivered a consignment of whisky to the defendant for storage. Their driver handed the defendant a delivery note purporting to incorporate the claimant's "conditions of carriage". The note was stamped by the defendants; 'Received under [the defendants'] conditions'. It was held that this amounted to a counter-offer which the claimants had accepted by handing over the goods, and the contract therefore incorporated the defendant's and not the claimant's conditions.

- ✎ The case give support to the so-called "last shot" doctrine – contract results on the terms of the final document in the series leading to the conclusion of the contract

Butler Machine Tool v Ex-Cell-O Corporation (1979)

The plaintiffs offered to sell a machine to the defendants. The terms of the offer included a condition that all orders were accepted only on the sellers' terms which were to prevail over any terms and conditions in the buyers' order. The defendants replied ordering the machine but on different terms and conditions. At the foot of the order was a tear-off slip reading, "We accept your order on the Terms and Conditions stated thereon." The plaintiffs signed and returned it, writing, "your official order ... is being entered in accordance with our revised quotation ...".

The Court of Appeal had to decide on which set of terms the contract was made. Lord Denning M.R. stated:

In many of these cases our traditional analysis of offer, counter-offer, rejection, acceptance and so forth is out-of-date. This was observed by Lord Wilberforce in New Zealand Shipping Co Ltd v AM Satterthwaite. The better way is to look at all the documents passing between the parties and glean from them, or from the conduct of the parties, whether they have reached agreement on all material points, even though there may be differences between the forms and conditions printed on the back of them. As Lord Cairns L.C. said in Brogden v Metropolitan Railway Co (1877):

... there may be a consensus between the parties far short of a complete mode of expressing it, and that consensus may be discovered from letters or from other documents of an imperfect and incomplete description.

Applying this guide, it will be found that in most cases when there is a "battle of forms" there is a contract as soon as the last of the forms is sent and received without objection being taken to it. Therefore, judgment was entered for the buyers.

- ✎ The above case is concerning about the affect on the agreement upon submission of a document containing terms before the alleged contract is made, however if the situation is another way round, the contract will not be effected²⁰ unless they are in turn accepted as variation of the contract, either expressly or by conduct.

Acceptance Of Tenders

- ⌘ Submission of tender usually amounts to an offer, and the effect of an acceptance of the tender depends on the interpretation of the documents;
 - 1) tender submitted for the construction of building – acceptance creates binding contract unless expressly stipulated that there will be no contract until certain formal document have been executed
 - 2) Tender made for indefinite amount, acceptance of it just formed a ‘standing offer’ which will turn to separate contract each time an order is placed. The offeree is not liable if he did not make any order (otherwise, expressly or by necessary implication indicated in his invitation for tender that he would do so)²⁵ – once order has been placed, the offeror is bound to fulfill it
- ⌘ Whether he can withdraw before an order has been placed, or void liability with regard to future orders, depends on the interpretation of the tender;
 - 1) “I will supply such quantities as you may order” – he can withdraw before definite order is placed
 - 2) “I hereby bind myself to execute any orders which you may place,” and if there is some consideration for this undertaking - he will not be entitled to withdraw

Acceptance By Tender

- ⌘ Exceptional case where an invitation for tenders amount to an offer(offeree binds himself to accepts the highest tender to buy)
- ⌘ Acceptance then takes the forms of the submission of a tender
- ⌘ Problems arises when tenders is submitted in the form of “referential bid”

Harvela Investments Ltd v Royal Trust Co. of Canada (C.I) Ltd 1986

An invitation for the submission of "offers" for the purchase of shares was addressed to two persons; it stated the prospective sellers bound themselves to accept the "highest offer". One of the person to whom the invitation was addressed to made a bid of a fixed sum while the other submitted a "referential bid" undertaking to pay either a fixed sum or a specified amount in excess of the bid made by other, whichever was the highest amount.

It was held that the submission of the "referential bid" is ineffective and the contract is concluded with the claimant.

The House of Lords stressed that the bid were, by the terms of the invitation, to be confidential.

²⁵ Harvela Investments Ltd v Royal Trust Co. of Canada (C.I) Ltd 1986

- ⌘ In this circumstance, the object of the invitation, which was ascertain the highest amount which each of the persons to whom it was addressed was willing to pay, it would have been defeated by allowing it to be accepted by a “referential bid”

