

Aman, a car dealer, has a number of conversations with clients in his showroom.

Bert states that he wishes to buy a particular Candida car on display in the showroom at £10,000, but Aman says that he could not sell it for less than £10,500. Aman says no more to Bert, but Bert assumes that the car is his for £10,500.

Aman offers to sell a Delissimo car to Emma for £15,00 and says that she can let him know by Friday if she wants the car. On Thursday afternoon Fred pays Aman £20,000 for the same car. Emma sends Aman an e-mail on Friday to say that she wants the car.

Aman makes an offer to sell a Grandino car, priced £22,000 to Harry who says he will think about it. Harry posts a letter to Aman the same day to say that he does want the car. Later that day Harry changes his mind and sends a fax message to Aman to say that he no longer wishes to buy the car after all.

Consider whether Aman has made binding contracts with Bert, Emma, Fred and Harry.  
[50]

This problem relates to offer and acceptance when forming a contract. In order for a contract to be made you need valid offer from the offeror and acceptance from the offeree. An offer is a proposal made in certain terms by the offeror with the intention of being bound by the proposal. Offers may be made in words, writing or conduct.

In displaying his goods Aman is not providing offers to sell, merely invitations to treat. Invitations to treat are invitations for people to make offers; they are not offers because Aman could find that his supply of cars is less than the amount needed. There are many kinds of invitations to treat; this kind is goods on display established in the case of **Fisher v Bell 1961**. Bert made a valid offer to Aman by offering to buy the car at £10,000 yet this offer was revoked when Aman made a counter offer of £10,500 as established in the case of **Hyde v Wrench 1840** where an offer was made to sell at £1,000 but the buyer refused and made an offer of £950 which was rejected, the buyer then tried to accept the original offer of £1,000 but the court held that this offer was revoked by the buyer making a counter offer. However it was laid down in the case of **Felthouse v Bindley 1862** that silence is not acceptance. In the case and uncle told his nephew that if he (the uncle) did not hear from him then he could assume his nephew's horse was his for an agreed price. The uncle did not hear from his nephew and the horse was then sold at auction and the uncle tried to sue the auctioneer but it was held that mental acceptance is not acceptance and that acceptance must be communicated.

Aman has made a valid offer to Emma to sell the car for £15,000 and the offer is open until Friday. Emma sends Aman an e-mail on Friday to let him know. As the acceptance was sent via instantaneous communication the postal rule does not apply, however the rules regarding acceptance via e-mail are indistinct as there have been no precedents set in case law as yet regarding instantaneous communication. Many English courts are likely to apply to e-mails, the principle set in **Brinkibons case** regarding faxes that any fax received out of office hours is deemed to be received the next working day. However in the **Electronic Commerce Directive (2000/31/ec)** it is stated that an e-mail is deemed to have been served the second day after the day on which it is transmitted. In Emma's case this would be after the time period she had agreed to had elapsed.

Aman has made a valid offer to sell the Grandino car to Harry for £22,000. When Harry posts his letter to Aman stating his acceptance a valid contract is made as the postal rule applies as stated in the case of **Adams v Lindsell (1818)**. The case of **Byrne v Van Tienhoven** also proves the binding nature of acceptance. However cases regarding recall of acceptance rarely occur and there has been no precedent set on this matter in case law. The courts may be willing to accept the termination of the contract as Aman will probably receive the fax stating that Harry does not want the car BEFORE he receives the acceptance and may re -

sell the car. Therefore withdrawal of it is fair to say that withdrawal of acceptance by a speedier method at this stage of the contract would not disadvantage the offeror (namely Aman). All of the offers in this case study are bilateral, meaning that both sides promise to either give or do something in exchange for something else.

In considering whether Aman had made a binding contract with his customers there are various legal concepts to bear in mind. Bert's offer of £10,000 was revoked via counter offer from Aman. However it is debatable whether Aman was making a counter offer for Bert to accept or merely refusing the first offer. In any case Bert had not communicated his intent to buy the car there has been no contract formed between the two. Silence is not acceptance. In Emma's situation the lapse of time has led to the revocation of the offer as the precedent of **Ramsgate Hotel CO V Montefiore**. Fred has made a valid contract with Aman, as the offer to Emma was revoked. both parties have provided offer, acceptance and consideration in the form of £20k for car and so the contract is valid, Emma has no legal claim on the car. However, if Emma had accepted the offer by post or phone then it would be a different state of affairs as Aman made the offer to her first. Harry has made a valid contract with Aman as he accepted via post. However, as previously stated it would be debatable in court.

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