

What is a contract?

Remedies for breach = damages/injunction/specific performance

- **Damages** = most important/frequently used remedy
 - Payment of compensation, in terms of \$\$
 - Different in contracts to other elements of law
 - To put innocent party in position they would have been in, if the contract was successfully completed
 - Only if damages > legal costs, is it worth pursuing

A contract has three main ingredients:

1. existence of an **agreement** b/w the two parties
2. **intention** to create a legally binding contract
3. **consideration**

-contract does not necessarily have to be in writing; however this is the preferred form as there is evidence

- except for guarantees, land transactions, mortgages and leases over 1 year

-a contract is a legally enforceable agreement; all contracts are agreements, but not all agreements are contracts

-normally courts make a diagnosis whether there is an agreement by identifying a distinct offer and distinct acceptance

- sometimes this is not practical – Clark v Earl of Dunaven and Mount Earl [1897]
 - In rare cases, where there is clear intention to enter into a legally binding agreement, a contract is enforced, even if there is no clear, separate offer and acceptance
 - Yacht race; there was a collision. According to act regarding ships, damages would be limited to weight; however the Yacht Club Association stated all damages must be paid
 - Entered race by signing separate letters to the club
 - There was found to be a contract between all participants

Offeror – person who makes the offer

Offeree – person who is made the offer

Other things affecting a contract?

1. Capacity (e.g. are both old enough)

- A minor, for the purposes of making a contract, is anyone under 18
- Contract b/w adult and minor is enforceable by the minor, but not the adult
- Court has wide powers to adjust the rights of the parties if one is a minor

2. Legalist (e.g. is the contract to do something against public policy)

3. Duress

- "improper pressure"
- A contract made under duress may be set aside by the court
- Duress may be physical threats, but it can be "economic" (i.e. threats to cause economic loss)
- [The Atlantic Baron \[1978\]](#)
 - If a contract is made under economic duress, it may be declared void in which case money paid under the contract may be recovered in a quasi contract for "money had and received"
 - Only exceptions are (1) where circumstances have changed to the extent that, by the time of avoidance, it is possible to put the parties back in their original position and (2) where the threatened party affirmed the contract
 - Parties entered into a contract for the construction of a ship
 - Builder demanded higher price than original quote, and threatened to stop build
 - Purchaser paid this, but one year later got the increased amount back

4. Undue influence

- not mentally capable/aware
- PROVISIO – must be aware of the disability

5. Mistake

- a mistake influencing the mind of one or more of the parties may provide sufficient grounds for court intervention involving setting aside the contract

- **Unilateral mistake** – when one party was influenced by the mistake to make a contract, and the other party knew of the mistake
- **Common mistake** – mistake made by both parties, influencing both of them to make the contract. Must be the same mistake
- **Cross purposes mistake** – made by both parties but each made a different mistake about a factual or legal matter

6. Improper inducement

- incorrect statements
- misleading and deceptive conduct

Offer and acceptance

An offer may be accepted at any time, provided it has not (apart from unusual circumstances):

- Been terminated by the offeror
- Been rejected by the offeree
- Or lapsed

-timing is important in contracting and in business. What would be a good deal on Monday may not be a good deal on Tuesday. So if you make an offer, remember you are on risk that it may be accepted at any time.

Offer

-an offer is a manifestation of willingness to enter into a contract on the terms proposed should those terms be accepted – a statement of intention of itself, whether or not made to the world at large is not sufficient

Harris v Nickerson [furniture auction]

- auction to take place just north of London; stated that particular items of furniture would be for sales
- Harris travelled to auction; specific items had been withdrawn; brought action
- Not every declaration of intention leads to a contract being formed between the two parties; **was not an offer, just a statement of intention**

-a clear intention must be apparent from the circumstances of an offer that the person making it will be bound immediately if it is accepted by

the offeree. Anything less is insufficient, and if the circumstances are ambiguous, that will prevent an offer coming into existence

Harvey v Facey [best price, not an offer]

- owned was asked for his best price on the property
- came back with a statement, saying the value
- other party “accepted” the deal; owned wasn’t offering for sale
- was statement of “my best price is _____” an offer?
- Court found it was **ambiguous** and **not an offer**

An offer can be inferred from conduct

Interfoto Picture Library Ltd v Stilleto Visual Programmes Ltd

- Sent the defendants 47 transparencies; which they replied 2 may be used
- None were used; but the transparencies were held by the defendants. Penalty clause was included on delivery note
- Contract came into effect when plaintiffs sent the transparencies, and the defendants opened the envelope and called the plaintiffs
- The penalty clause was found to be exorbitant however; and damages were changed

Invitations to Treat

-an ITT is different to an offer

-**ITT** – invitation to others inviting them to deal (treat). It is an offer to receive offers

-an offer is a manifestation of intent to be **bound by contract on acceptance** so it is different from an offer to receive offers

- ADDRESSING THE AMOUNT OF SUPPLY TURNS ITT TO OFFER

advertisements

-normally an ad will only be an ITT

-main reason – normally a **limited number** of goods will be available and the seller would not normally assume an obligation to supply to anyone who responds to the ad

-if the seller did he/she may run out of supplies and be unable to perform their contract with all the people accepting the offer

Partridge v Crittenden

- ad placed in a classified section, stating birds for sale at a set price
- it was illegal to sell, offer for sale, or have in possession any live bird
- was charged with **offering** the birds for sale; but note not possession or sale
- no offence committed b/c the ad was an ITT

-the advertisers intention is the deciding factor

-offer may be made by an advertiser if the offeror's intention to be bound to acceptance is **clear**, such as where a bank account is provided as proof of legitimacy (Carbolic Smoke)

-otherwise, it may just be a puff

Carlill v Carbolic Smokeball Company

- ad stated 100 pounds would be given to anyone who used the product and then got influenza; also stated 1000 pounds was put in their bank account
- Carlill bought and used the product and then got the flue
- CSC was bound

-ITT – an ad to carry passengers on a fixed schedule at a fixed price may be an offer – acceptance is by conduct, i.e. to board the vessel and in this case to tender the current fare

Pitcaithly & Co v Thacker (1904)

- advertised steam ship service; no price mentioned in the ad, but there had been a uniform price for a long time
- respondent boarded the ship, and captain came around asking for 1 pound, more than the usual fare; and refused to pay
- held that ad amounted to promise to carry passengers at usual times for the usual fare
- in reliance of this promise, and having been willing and ready to pay the usual fare; a contract was created
- the appellants, as common carriers, were bound to take the respondent

-a further example

- an offer may be made to the world at large, the motive for accept this is irrelevant

Williams v Carwardine

- offered money as a reward for information regarding brother's death, that leads to conviction
- witness gave evidence that lead to conviction; and thus was entitled to the reward

Display of goods in a shop window

-ITT – placing items in a shop window with a price tag – ITT not an offer
– *Fisher v Bell*

Fisher v Bell [knife in window]

- knife in window, with price tag behind it
- was illegal to offer weapons for sale
- Bell said this was an ITT; not an offer
- Courts agreed; as required C's acceptance

Goods displayed in a self service setting

-ITT – display in a supermarket or self service setting is normally an ITT and not an offer

Pharmaceutical Society of GB v Boots Cash Chemist

- sale of poison required a registered pharmacist
- store had a self service layout; two woman put poison in their baskets, went to the counter and paid
- found that goods being on the shelf constitutes an ITT; not an offer

Why goods in a self service setting will normally be ITT

-if an offer, not an ITT, a seller would have to supply anyone who selected a product. This is unlikely to be what was intended by the shopkeeper particularly if illegal to sell the product to the person in question
-property in goods would pass on selection, making it harder for the seller to ensure they are paid
-once goods had been selected, the buyer could not change their mind

Communication of offer

-offer must be communicated to the **intended** offeree in order to be effective
-this means the offeree must be **aware** of the existence of the offer before she can accept it

- in a US case a person gave info leading to the conviction of a criminal but he could not receive the reward b/c he had not seen the ad for the reward – lol GG fgt
- neither can a person accept an offer if it has been directed at **someone else**

A "puff"

Puff – must be distinguished from an offer. It is a mere advertising gimmick which is couched in extravagant language which would not be believed by a reasonable person

-the ad in Carlill's case was argued to be a puff [note it was **not successful**]

Termination of offer

By revocation

- general rule = offer may be revoked any time BEFORE acceptance
- will be revoked if it is later varied from what it was when originally made
- revoked at the exact moment the revocation is communicated to the offeree
- however an offer may be irrevocable for a period of time agreed by offeror and offeree if that agreement is supported by consideration
- for example, the offeree may persuade the offeror to keep an offer open to sell her house in return for a promise to pay her \$50
- if the promise to hold the offer open is not supported by consideration, the general rule applies and the offeror may revoke her offer contrary to her promise. But note that a contract need not have consideration if it is the form of a deed

Revocation must be communicated

- where the circumstances are such that it must have been within the contemplation of the parties that the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted

Henthorn v Fraser

- H was given offer to buy F's prop
- A day later, a letter was sent, withdrawing the offer; after H had posted his letter accepting it

- property was sold to someone else
- CoA, stating that it was understood parties would communicate by mail → plaintiff was entitled to specific performance

Postal rule

- if it is reasonable in circumstances to negotiate an agreement by post, a letter of acceptance is deemed to have been communicated when it is posted (even if it takes time to arrive/may never arrive)
- only applies if acceptance by post is appropriate
- BUT it is sufficient if the revocation comes to the offeree's attention otherwise than directly from the offeror as long as a reasonable person would regard the info as reliable
- acceptance when the letter is **posted**
- can be extended to telegrams**

-An offer may be withdrawn before acceptance w/o any formal notice to the offeree, if the offeree has actual knowledge that the person who made the offer has done some act inconsistent with the continuance of the offer

Dickinson v Dodds

- Dodds left offer to Dickinson to buy his prop, which would expire in two days
- day before expiry, Dickinson was informed someone else had brought it by his agent
- Dickinson tried to register his acceptance; but Dodds each time decline acceptance on basis that he had sold to someone else
- COA → offer to Dickinson was effectively withdrawn

Termination of an offer by rejection

- it is settled law that rejection puts an end to an offer; cannot be revived by acceptance **without consent** of offeror
- rejection does not terminate offer unless actually communicated
- if offeree rejects the offer but later has a change of heart and elects to accept, the acceptance will be effective if it reaches the offeror before the rejection

termination by lapse of time

- may be couched in terms that it will expire automatically at a given time

-if not, after a reasonable time

Termination of offer by death or incapacity

-normally an offer will be terminated at the death of the offeror or the supervening incap of the offeror

Counter offer

-a counter off simultaneously **terminates the offer** and **makes a new one**

Hyde v Wrench

-W offers to sell H house for 1000; H counter-offers

-H later tries to accept original offer; W refuses; tried to order specific performance

-counter offer terminated the original offer

-a counter offer or rejection puts an end to an offer, and unless something in the circumstances suggests otherwise, that original offer ceases to exist and is not capable of being accepted

Shaw v Jones

-J offers to buy S's house; agent communicates refusal

-verbal counter offer is made and rejected

-tried to accept original offer 3 days later but J refused; tried to order specific performance

-no contract was made; counter offer put an end to original contract

-a counter offer may appear to be an acceptance, for example, it may use words like **accept** or **agree**. However, it is not acceptance if it does not reflect the offer absolutely and without qualification

-when a new term is purported to be included in the acceptance, there is no concluded contract

Cross v Davidson

-proposed sale of a boat between the two parties, but no agreement on the price; defendant was holding out for 1400

-plaintiff telegraphed to say offer accepted and they would deposit the money

-defendant refused to honour contract and plaintiff sued

-new terms, e.g. delivery, were stated in letter, terminating original offer

-rule that a counter offer terminates an offer applies even if has been agreed that the offer will be held open for period of time and the CO was made during that time

BUT:

-it may be agreed that the offer remains open despite Cos;

FINALLY

-an offer which has been terminated by a CO may be reinstated by the **offerer**, either expressly or by conduct

Livingstone v Evans

-defendant, via agent, sent offer to sell land for 1800

-plaintiff replied, 'give lowest cash offer, will send 1600'; agent replied stating they couldn't reduce the price

-plaintiff wrote back to accept the original offer, which the defendant did not honour

-“Cannot reduce price” was found as a **renewal** of the original offer; so entitled to specific performance

Distinguish between a CO and a request for info

-where a response to an offer is a request for more info, and not a CO, then the offer remains open to be accepted

Stevenson Jacques v McLean

-possible sale of warrants for iron

-plaintiff wired by telegraph, ASKING if they would accept 40s (offered price) for delivery within 2 months, or the longest time limit

-def did not answer, and on the same day received an offer and sold to other party; the sending a telegram to inform the plaintiff

-before the arrival of this telegram, the plaintiff's sent another telegram to accept the offer; defendant refused to honour; plaintiff bought an action

-judge found there was **not a CO**, just an inquiry

-plaintiff's did not receive notice of revocation BEFORE they sent their letter of acceptance;

-ACTION SUCCEEDED

Acceptance

Acceptance:

1. cannot be found from silence alone