Objective Sense of Promise

Denny v Hancock (1870)

- The dispute here is about the size of the land being sold – the purchaser was provided a plan by the seller and they inspect the land – they believed they were buying the land up to the iron fence with the giant 3 trees
- However, the boundary was shown with some stumps that were hidden by shrubs – they enter in a contract of sale – the purchaser realizes the land is smaller than they believed – they refused to pay and complete the contract
- The buyer relied on the plan – the plan was giving the buyer the impression that it was selling the bigger piece of land not the smaller piece of land
- Any reasonable person would believe that they were buying the bigger piece of land
- Specific Performance Refused

Tamplin v James (1878)

- On an objective test – the agreement reflected the seller's intentions – contract was completed on the seller's terms – the court ordered specific performance
- In this case there was no attempt to mislead in the size of the land – the plans were accurate
- The reasonable person would assume the size of the land was as it would be in the plan

Smith v Hughes (1871)

- There is also a 3rd stage in which the party needs to demonstrate that the other party was agreeing to their terms

Intention to Create Legal Relations

- Statement is made in which there is no intention to create legal relations – statement made not intended to be taken seriously – "Mere puff"

Domestic agreements are not considered contracts as there is no intention to create legal relations

Balfour v Balfour (1919)

- A husband who worked in Sri Lanka would send money back to England for his wife – he stops paying her – the wife seeks to enforce the agreement
- **Justice Etkin** said the agreement was outside the realm of contract – it's a presumption that no is intended
- **Jones v Padavatton (1969)** – concerns a mother and daughter
- Based on the facts that the house was given without intending into enter into legal relations – agreement was very vague – that suggested no contract was intended

Law presumes that when parties enter into a commercial relationship there is a contract

Kleinwort Benson LTD v Malaysia Mining (1923)

- A comfort letter is used by companies that talk about the financial position of one of the parties
- Comfort letter was not a contract – there was no promise in the way the comfort letter was drafted

Winn v Bull (1877)

- The parties were discussing a lease – the subject was made with an intention to create a contract
- They were at the stage before a contract – the agreement they entered was expressly stated that it would be a contract – unless that contract was concluded there was no contract

Concorde Enterprises LTD v Anthony Motors (1981)

- Two commercial parties entering into a written agreement
- Prior to a formal agreement being drawn up and executed – any agreement before that is not intended to have legal agreement

Rose and Frank v JR Crompton (1923)

- This was distribution agreement between a paper manufacturer in Britain and paper retailer in USA – the clause stated that the parties have not entered into a formal or legal agreement
- Judge said there was no binding contract – due to the clause – you need to look at the wording used – the intention of the parties expressed here was that they don't intend to be legally bound

There is no intention to create contract in social agreements

Lens v Devonshire Club (1914)

- He won the competition – golf club refused to give him the prize – no one in the competition would expect any legal relations were to be formed – it was a social situation and there is a presumption that there is no contract

Offer

Hartog v Colins & Shield

- There has been an offer and acceptance of the skins at a lower price yet there is no agreement – this was because the price was written incorrectly, and this was just considered a mistake and therefore no contract

The Two Approaches to Interpreting Offer

Boulder Consolidated Ltd v Tangaere (1980)

- In 1976 the vendor outlined that they could give back the installments paid plus interest or take another 3rd lot – in that letter there was a plan which included stage 8 of the development
- **Justice McMillen** used the traditional approach – he said there was no offer to sell lot 138 – there was confusion over the lots that were available – more than that essential terms were not settled
- **Justice Cook** – rather he went back to look at their conduct of dealings – he said it was unreasonable to construct a contract out of that

Offer for Advertised Goods – Bilateral

- Presumptions of an offer – advertising of bilateral contract – for example I am advertising to sell my car – advertising goods for sale is an invitation to treat

Partridge and Crittenden (1968)

- The appellant advertised in a magazine – quality ABCR bevel hens 25 shillings each
- The reasoning for this can be found **in Grainger & Son v Goth (1896)** – Lord said that if you advertise goods for sale a trader maybe liable to supply more in stock since anyone can accept the advertisement and that was not practically a good idea

Lefkowitz v Great Minneapolis Surplus Store (1957)

- Advertised a coat for $100 saying first come first serve – saying 100 in stock
- This was an advertisement so was is it an offer – here it was said the advertisement was an offer which could be accepted – its limited to one person

Offer for Advertised Goods – Unilateral

- Advertisements in unilateral contracts are to be considered offers – such as rewards

Carlill v Carbolic Smoke Ball (1893)

- Issued an ad promising they would pay 100 pounds to anyone who had caught influenza having used a smoke bomb
- It wasn't a general statement and was targeted at certain people – they deposited 100 pounds in an account which showed their sincerity – showed they had a serious intention
- Carlill accepted the offer as instructed and it did not work, and she caught influenza

Offer for Display of Goods

- Display of goods in a shop – they are an invitation to treat
- Advertisement of goods on websites – they are treated the same as goods on display

Pharmaceutical Society of Great Britain v Boots Cash Chemists LTD (1953)

- A shop is a place for bargaining – if you allow goods on display to amount to an offer – the customer by picking up the goods accepts – that would be a problem if the stock runs out – especially if the item is a display item (phones or perfume) – 3rd argument is that the customer would be bound as soon as they pick up the item and so is not an offer

Chapelton v Barry UDC (1940)

- Concerned the display of deck chair – the act of picking up the deck chair was accepting the chair
- Limitation clause for personal injury which was written on the back of the hire of the deck chair – the court could not say that the contract was completed after the ticket had been handed over since that would mean the limitation clause did not apply

Offer for Tenders/Bids

- Tenders/Bids – invite tenders – putting out tenders for people to do a particular task
- But there is a secondary contract known as a process contract where you must at least consider all conforming tenders
- You must consider the bids in the manner you advertised

Spencer v Harding (1870)

- The plaintiff sent the highest bid on the tender – the defendant refused to sell to them
- The circular was not an offer – when I invite tenders, I only make an invitation to treat – because you can accept or reject individual bids that come in

Flyde Aero Club v Blackpool BC (1990)

- Concerned a local authority who wished to run an airport in Blackpool – the council stated that when they requested tenders' various conditions
- However, there was another contract – when the council advertised for the submission, they made an offer to consider all conforming tenders – called a process contract – you need to consider all conforming bids and if you do not do so you are breaching the contract

Markholm Construction Co LTD v Wellington City Council (1985)

- There was a unilateral process contract – council were bound to consider all conforming tenders – they were bound to take the same process they said in their advertisement

Offer for Auctions

- Request for a bid is an invitation to treat
- After the auctioneer has indicated to you – you have accepted the offer made by the auctioneer – unless you are below the reserve price
- If there is no reserve price – the auctioneer must accept the highest bid

Harris and Nickerson (1873)

- A request for bids is an invitation to treat – the bids are offers and acceptance of a bid is under Fair Trading Act 1986 so when the auctioneer indicates

Communication of Offer

- Person cannot accept an offer if they are unaware of it

R v Clarke (1927)

- They couldn't claim the reward because they were unaware of the offer and didn't rely upon it

Gibbons v Procter (1891)

- When the information was given, they were not aware of the reward – at the time of acceptance they knew about the reward so they could receive it

Termination of Offer

- When an offer is made prior to acceptance of that offer it can be withdrawn at any time
- There is an express revocation of the offer would mean the offer is terminated
- In order for the revocation to be effective it must be communicated to the offeree

Postal Rule for Termination of Offer

- Revocation of offer must be communicated before the letter of acceptance has been sent
- 1st of May A makes an offer to B – on the 3rd of May A sends a letter revocation of the offer – on the 4th of May B accepts the offer this is done before the letter arrives – 5th of May the letter arrives – A is bound because the revocation of the offer arrived after the acceptance

Byrne & Co v Van Tienhoven (1880)

- Defendants wrote a letter offering to sell 1000 tin plates on 1st October – took 10 days to arrive on the 11th October
- The plaintiff sent a letter on the 15th accepting the offer
- On the 8th the defendant had sent a letter revocating the offer but didn't arrive till the 20th
- It was held that revocation was invalid as it was communicated after the acceptance

Termination from 3rd Party

- You hear from another party that the offer is being withdrawn – is that sufficiently communicated

Dickenson v Dodds (1876)

- The defendant offers to sell a property to the plaintiff offer open till 9am of the following Friday – on Thursday the plaintiff heard that the property was sold to another party
- The plaintiff then tries to buy the property – the offer had been withdrawn and they couldn't accept it – it was said that they knew the offer had be withdrawn and therefore could not accept it

Keeping the Offer Open

- There are two situations when offer is open till this time – but the offeror can withdraw the offer any time before that time
- But if you combine that offer with a promise to keep it open if you give consideration – option contract – in return for that you give something to keep it open

Ways in which Offer is No Longer Valid

- The offeree could reject the offer

The offeree makes a counteroffer

Hyde v Wrench (1840)

- This was about a sale of farm for 1000 pounds – there was a counteroffer at a lower price – this destroyed the original offer

Cross v Davidson (1898)

- The sale of steamboat – the plaintiff accepted the offer but added a phrase "delivery next week" – it wasn't since they had added a condition and that was new offer and that killed off the original offer

A condition under which the offer made cannot be met

Dysart Timber LTD v Nielson (2009)

- During the period they were waiting for the appeal – Nielson made an offer to settle – SC granted the appeal – the plaintiff tried to accept the offer thinking they would lose in the SC
- Is the change of circumstances fundamental that the offer should lapse?
- Elias and Blanchard said the granting of leave was not fundamental – that the person making offer must have known that the leave could have gone either way

There is a lapse of time – where no time for acceptance is given there will a reasonable time applied

Death of offeror or offeree

Revocation of Unilateral Offers

GNR v Witham (1873)

- There is a restriction on the offeror to revoke the offer once performance has started

Errington v Errington (1951)

- A father bought a house for 750 pounds – borrowed 500 pounds from the bank – the daughter and husband lived in the house – as long they paid the mortgage installment the house would be theirs after it was all paid
- Could not be revoked by him once the couple entered on the performance – it would only unbind him if they were not able to complete the terms
- It is enough to accept the contract even if they were performing but had not yet completed it yet

Daulia v Four Mill Bank (1978)

- There is an implied obligation that you can't stop other parties from accepting

Shuey v US (1878)

- Justice Strong said the offer can be revoked in the manner it was made

Acceptance

- Does a reasonable person believe that the offeror believed the offer was accepted?
- Acceptance of offer must be – be given in response to offer – correspond with offer – be made with the prescribed method of acceptance – be communicated to the offeror
- Motive of accepting the offer – motive for acceptance does not matter
- **Mirror image rule** – an acceptance must be unconditional and must – if the response seems to vary the terms of the offer it is not acceptance but rather counteroffer

Inquiry vs Counteroffer

- Line between a counteroffer and an inquiry is a fine one

Stevenson v McLean (1879)

- This involved telegraphic communication about the sale of iron
- McLean asked whether the plaintiff would accept pay of the 40 pounds over 2-months
- It was held this was an inquiry not a counteroffer as she was only asking if the terms could be changed

Powterza v Daley (1985)

- Negotiations about a property – where the parties had a common real estate agent
- One of the issues was the size of deposit that purchaser had to pay – what they wanted was whether the vendor would accept a smaller deposit
- On the facts it was just an inquiry and the original contract still stands

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

- The plaintiff offered to supply a machine at a price – the offer had a price escalation clause depending on the date of the delivery
- The buyer placed an order on their standard terms which omitted the price escalation clause – the buyers standard terms concerned a tear off strip at the bottom that was to be signed by the sellers
- An employee of the seller signed the standard terms – and returned the tear off strip
- Outcome was that the seller could not rely on the price escalation clause – the buyer had made a counteroffer and the seller had accepted it – it's clear that you are accepting the offer when you sign a tear off strip and return it

Acceptance Through Other Than Prescribed Method

Manchester Diocesan Council v Commercial Investments (1970)

- That where there is a prescribed method, but the offer is accepted another way that is just as valid – there is still acceptance
- The general rule is that the acceptance in order to be effective must be communicated to the offeror – only exception is the postal rule

Acceptance without Communication

Felthouse v Bindley (1862)

- Where the plaintiff offered to buy the nephew's horse by the letter – in which he stated that "if I hear nothing about the horse, I will consider the horse mine"

- It was said offer had not been accepted – the uncle had no right to impose on the nephew that he is buying the horse – this is because of uncertainty
- It forces someone to go to the trouble of rejecting the offer

Acceptance of Unilateral Contracts

Carlill v Carbolic Smoke Ball Co. (1893)

- Performing the task is seen as acceptance
- She just used the smoke ball she did not need to communicate her acceptance to the defendant

Acceptance through Conduct

Brogden v Metropolitan Railways (1877)

- Concerned an agreement for the supply of coal – seller proposed to change the agreement – the question was whether the buyer accepted the alteration
- They actively showed by their conduct that they had accepted – the offeror knew of this conduct
- In that for a 2-year they accepted delivery of the coal under the altered agreement

Postal Rule for Acceptance

Adams v Lindsell (1818)

- Where the postal rule applies the acceptance is complete when the letter is put in the postbox – in other words the letter does not have to be received by the offeror
- It must be contemplated that acceptance can be done by post – an offer made by post would be reasonably be expected to be accepted by post

Henthorn v Fraser (1892)

- They were handed a document and take it with them – they go to their hometown – the next day they post the acceptance – that letter of acceptance did not reach the offeror until the following day
- The offeror revoked by letter the offer – the revocation reached the offeree after the acceptance had been posted
- The contract was accepted was binding when the acceptance of the contract as this was before the revocation had arrived
- One party lived far away it was reasonable they were accepting by post

Household Fire Co. v Grant (1879)

- The postal rule applies even when the letter never ever arrives – you just need to prove that you sent the letter

Holwell Securities LTD v Hughes (1974)

- You bypass the postal rule – by saying that the acceptance must be received to be valid

LJ Korbetis v Transgrain Shipping (2005)

- Postal rule shouldn't apply when it causes a lot of inconvenience – if its wrongly addressed – common sense dictates – it is unfair to the intended recipient that he should be bound what he is unlikely to receive by the fault of the sender