

Lecture 2 – Offer

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Law Week

Monday 24 – Thursday 27 Oct 2022



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Law Week Events:



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NOTE: THIS INFORMATION IS ALSO AVAILABLE ON THE LAW & CRIMINOLOGY EMPLOYABILITY MOODLE SITE, UNDER UPCOMING EVENTS

- **Qualifying as a Solicitor: LPC & SQE Talk with The University of Law**

Monday 24 October, 1-2pm – Online event

For students intending to train as a Solicitor, our LPC and SQE workshop will outline the current and new route and help you to decide which route is best for you.

- **Routes to Qualification with BPP University**

Monday 24 October, 6-7pm – Event Space, Davison Building (in front of the library)

A presentation by BPP's Jonny Hurst, Head of Outreach and Student Recruitment

- **Legal Interview Masterclass with Reed Smith: How to ace a strengths-based interview - #1**

Tuesday 25 October, 12-12.45pm – Event Space, Davison Building (in front of the library)

In this session, tips will be given on how to identify strengths and excel at interview.

It will also outline how to approach motivational questions, like "Why Law?".

There will be an opportunity to ask the Reed Smith Graduate Recruitment team application questions.

THIS SESSION IS BEING HELD TWICE - AT 12.00-12.45PM AND 1-1.45PM

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- **A Journey to the Bar**

Tuesday 25 October, 5-6pm – Online event

Alumnae Grace Khalie, (BA History and International Relations, 2018) Pupil Barrister at Red Lion Chambers and Jala Patang from Legis Chambers will be in conversation with Michael Wells-Greco, Senior Lecturer in Law and Leela Cejnar, Lecturer in Law. Hear all about their career journeys and get some really helpful tips and advice on getting to the Bar.

- **Alumni Law Panel**

Tuesday 25 October, 6-7.30pm – Online event

A group of alumni will talk about their experiences starting with what they studied at university, who they are now working for and what they are currently doing. We will then open up to a Q & A session.

Speakers:

Chris Johnson, IP, Commercial and Sports Solicitor at PwC UK,
Michael M Jones, Partner at Gunnercooke LLP,
Molly Tatchell, Associate, Charles Russell Speechlys
Alison McGuinness, Associate Solicitor at Clyde & Co
Paula Ursu, Trainee Solicitor at HCR Hewitsons
Tony Upton, Associate Clyde & Co Clyde & Co

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- **Solicitor Series Part 1: Ace your Applications (The University of Law)**

Thursday 27 October, 5-6pm, MS Teams

Join this interactive session lead by The University of Law, which will outline everything you need to know to write a successful Vacation Scheme, Training Contract or QWE application.

Qualifying as a Solicitor: LPC & SQE Talk with The University of Law, Monday 24
October, 1-2pm on MS Teams



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Dean of Campus at
The University of
Law

Our LPC and SQE workshop
will outline the current and
new route.



Jonny Hurst
*Head of Outreach &
Student
Recruitment at BPP
University Law
School*

The presentation will go through the ways to qualify as a solicitor or barrister, including the new SQE pathway, graduate apprenticeships and the bar course/pupillage.

There will be the chance for you to ask lots of questions.

It's really informative and is a great way for those of you who are early in your legal education to gain essential knowledge about how to qualify into your chosen profession, and the sorts of things that you can get involved in during undergrad studies which will help your employability in the future.

Legal Interview Masterclass with Reed Smith: How to ace a strengths-based interview Tuesday 25 October, 12-12.45pm & 1-1.45pm Event Space, Davison Building



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Increasingly, Recruiters are moving towards strengths-based interviews.

This interview style allows employers to see the 'real' person and select them based on their natural abilities, regardless of prior work experience.

In this session, we'll give you our tips on how to identify your strengths and excel at interview.

We'll also outline how to approach motivational questions, like "Why Law?".

Finally, you'll have the opportunity to ask the Reed Smith Graduate Recruitment team your application questions.

This event is running twice so please attend the time that suits you best.

ReedSmith
Driving progress
through partnership

A Journey to the Bar, Tuesday 25 October, 5-6pm on MS Teams



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Grace Khalie(History & International Relations)
Pupil Barrister at Red Lion Chambers



Jala Patang (Biomedical Science)
Barrister, Legis Chambers

RHUL Alumni, Grace and
Jala will be in conversation
with Michael Wells-Greco,
Senior lecturer in Law and
Leela Cejnar, Lecturer in Law

Alumni Law Panel, Tuesday 25 October, 6-7pm, MS Teams



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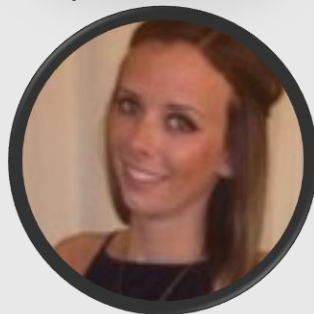
Chris Johnson (History 2015)
IP, Commercial
and Sports Solicitor at PwC UK



Michael M Jones (History 1993)
Partner, at Gunnercooke LLP



Molly Tatchell (LLB Law, 2018)
Associate, Charles Russell Speechlys



Alison McGuinness (Psychology 2009)
Associate Solicitor at Clyde & Co



Tony Upton (LLB Law, 2018)
Associate Clyde & Co



Paula Ursu (LLB Law, 2018)
Employment Solicitor at HCR Hewitsons



The application stage is the first, vital step to gaining a training contract.

Join this interactive session lead by The University of Law, which will outline everything you need to know to write a successful Vacation Scheme, Training Contract or QWE application.

The session will also explore the differences between Training Contracts and Qualifying Work Experience, as well as how to apply for trainee positions under the new SQE.

They'll also outline tips for standing out on application forms and maximise your chances of securing a role.



ID: 172 – 463 – 195

Key Features for a Binding Contract



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1. Offer

- Expression of willingness to contract on certain terms

2. Acceptance

- Needs to correspond to the offer

3. Consideration

- An act or promise given in exchange for the offer

4. Intention to Be Bound

- Objective intention to create legal relations



Bilateral vs Unilateral Contracts



Bilateral contract is a two-way exchange:

- A offers something to B;
- B promises to do something in exchange for A's promise.

Unilateral contract is a one-way exchange:

- A offers something to virtually everyone;
- B does something because of A's promise.

01

Key Terms – Offers and
Rewards

02

Offer vs Invitation to
Treat, Tendering and
Auctions

03

Termination of Offers



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1. Offers and Rewards



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“An expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed”.

—Definition of “offer”

Offer – Bilateral Contracts



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Storer v Manchester City Council [1974] 1 W.L.R. 1403 (CA)



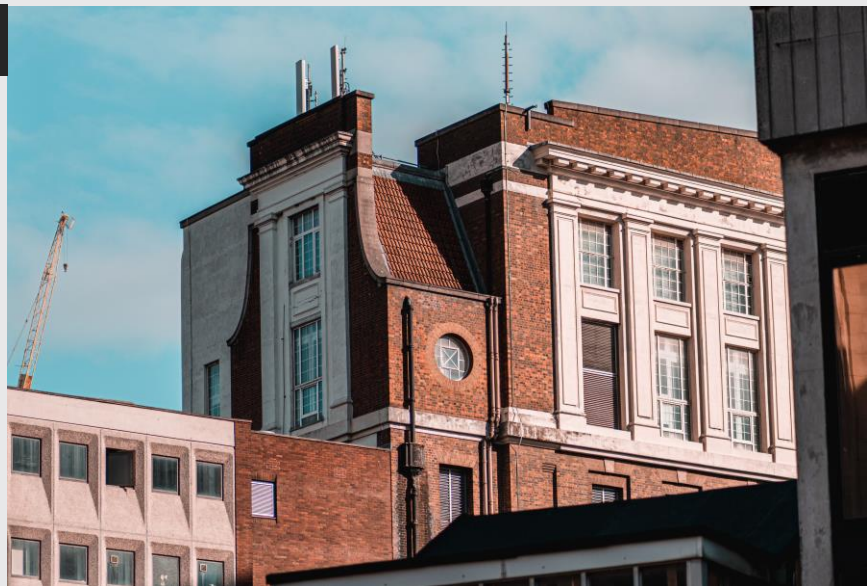
M was allowed to sell council houses to tenants. S completed the form, returned to the council but left the date blank. After the elections, the council decided not to sell.



Is the council bound to sell, because their offer (form) was accepted by the tenant?



Yes. "Exchange" of contracts is not necessary to form a concluded contract where all terms are agreed in correspondence between the parties.



Offer – Bilateral Contracts



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Lefkowitz v Great Minneapolis Surplus Stores Inc.
86 NW 2d 689 (Minn, 1957)



GMSS published an advert stating: “3 brand new fur coats worth to \$100.00. First come first served. \$1 each”. Mr L was denied the fur because it was a “house rule” that only women were eligible.



Has GMSS breached their offer by preventing Mr L from buying a fur?



Yes. The offer was very detailed (limited in quantity and time). The seller’s intention was to be bound by their words.



Offer – Unilateral Contracts



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Carlill v Carbolic Smoke Ball Co. [1893] 1 QB 256 (CA)



CBS, a medical manufacturer, advertised a “smoke ball” capable of preventing users from contracting flu. Mrs C purchased it and used as directed, but contracted flu.



Is CBS liable to damages because they broke a contractually binding promise (buyers would not catch flu)?



Yes. The advert was specific enough to amount to an offer. The buyer performed as requested. The seller was bound to their promise.



Offer - Carlill



1. Was the offer time-limited?

Specific timeframe to perform it.

2. Was there intention to be bound?

£1,000 lodged at a bank.

3. Was there acceptance?

Mrs C performed as instructed.

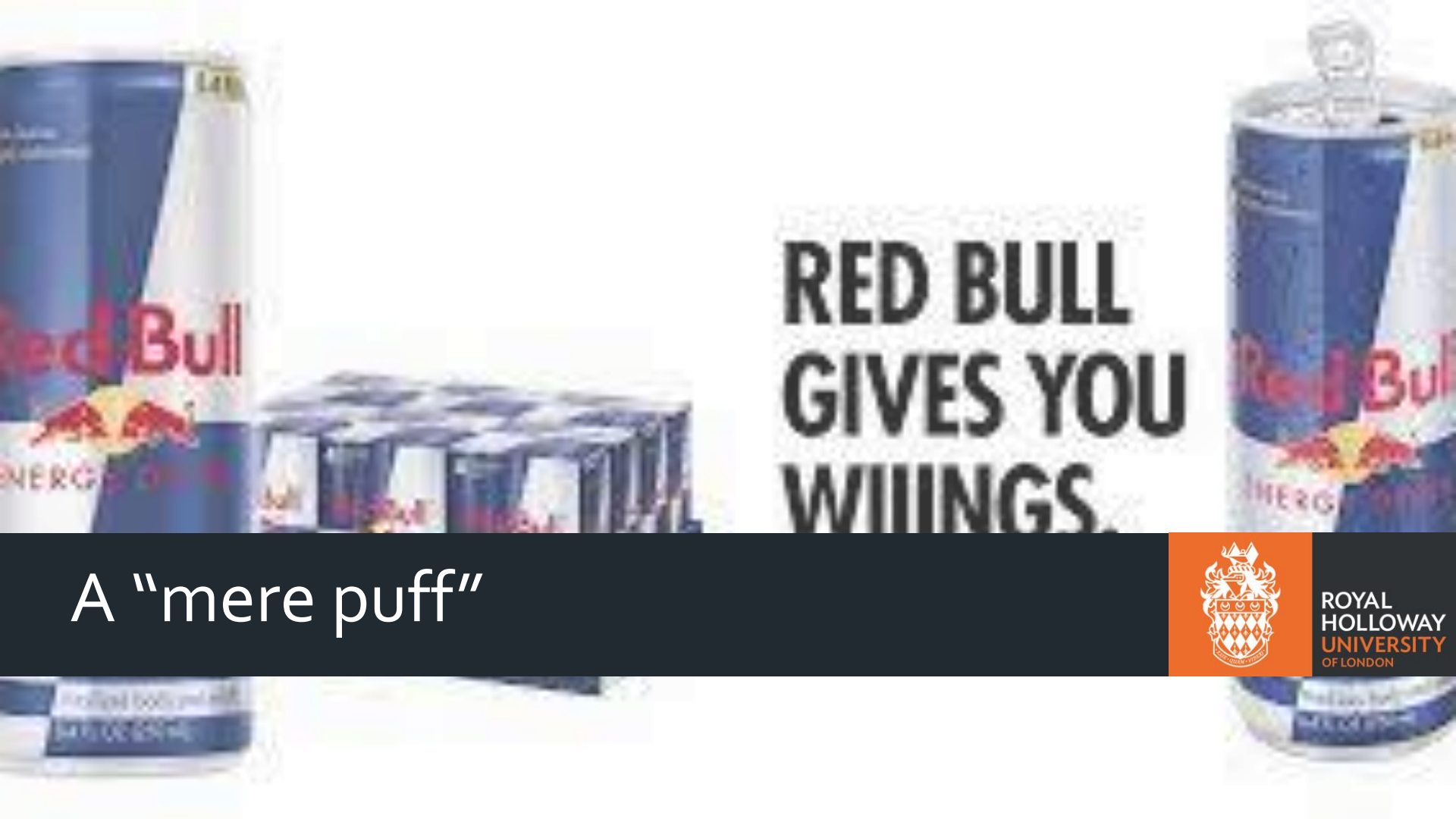
4. Was there consideration?

A use by the public of the smoke ball as a result of the advertisement was directly beneficial to CSB.

5. Was this a “mere puff”?

A reasonable person would believe in the validity of such claim.





A “mere puff”



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Offer – Reward



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R v Clarke [1927] HCA 47



In May 2 policemen were killed and a reward for information was offered. Clarke provided that information in June only to clear himself from any allegations.



Is Clarke entitled to the reward?



No. First, it was not clear that Clarke knew of the reward when he gave information. Second, he didn't rely on the reward to give information.



Other Reward Cases



1. *Williams v Carwardine* (1833) 5 C & P 566: a woman provided information for convicting a murderer to ease her conscience and because she thought she was about to die;
 2. *Gibbons v Proctor* (1891) 55 JP 616: information linked to a reward was passed from A to B, to C and then to O. At the time C passed the information to O, A was aware of the reward.
- *In both cases*, unilateral offer accepted.
 - Good: motive is irrelevant (objective analysis);
 - Problem: neither relied on the reward (unreasonable windfall?).



- Clear, definite, and explicit statement;
- Leaves nothing to negotiation;
- Defined quantity and time;
- Bilateral or unilateral (rewards are only unilateral);
- Need to be known or (and?) relied upon by the buyer/offeree.



“Offer” and “Reward”



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(questions 1 – 2)

Question 1



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What are the requirements for a valid and binding contract?

112



Offer, acceptance, certainty, practicality, and intention to create legal relations.

14 (12.5%)

Offer, acceptance, certainty, consideration, and reasonableness.

4 (3.57%)

Offer and acceptance.

4 (3.57%)

Offer, acceptance, consideration, and intention to create legal relations.

90 (80.36%)



Correct responses 90 (80.36%)

Correct answer

Offer, acceptance, consideration, and intention to create legal relations.

Correct answer explanation

Some textbooks argue that one of the requirements for a contract to be binding is "certainty". Clearly, there is no contract if its terms are ambiguous (see *Raffles v Wichelhaus* (1864) 2 H & C 906 - 2 ships with the same name). It is not wrong to add certainty as an additional requirement for a contract to be valid and binding.

Question 2



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What is a unilateral contract?

121



A contract in which both parties are legally bound to perform their side of the agreement.

8 (6.61%)

A contract whereby only one party promises to perform an act if the other party performs a stipulated act, but the other party is not under an obligation to perform the stipulated act.

102 (84.3%) ✓

A contract involving only one party.

11 (9.09%)

A contract that either party can withdraw from at any time.

0 (0%)

Correct responses 102 (84.3%)

Correct answer

A contract whereby only one party promises to perform an act if the other party performs a stipulated act, but the other party is not under an obligation to perform the stipulated act.

Correct answer explanation

Rewards are good example of unilateral contracts. Rewards need to be sufficiently specific (e.g. consideration, timeframe for performance, no mere "puff") and must be known by the offeree to claim the reward. The offeree does not have to communicate that they started performing the task outlined in the offer to claim the reward.

2a. Offer vs Invitation to Treat



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“An invitation to another party to make an offer or provide further information as part of the negotiation process”.

—Definition of “invitation to treat”

Invitation to Treat – Goods in a Shop



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Pharmaceutical Society of GB v Boots [1953] 1 Q.B. 401



Under the law, medications must be sold by a pharmacist. But Boots' customers were allowed to take some medications from the shelves to the till. The pharmacist checked at the till.



Was the display of priced goods an “offer” to the whole world (like in *Carlill*)?



No. The customer should be able to change their mind. The customer offers to buy the goods at the till. The cashier (supervised by the pharmacist) decides to accept or reject the offer.



Invitation to Treat – Goods in a VIRTUAL Shop



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Invitation to Treat – Goods in a Window Shop



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Fisher v Bell [1961] 1 Q.B. 394



Under the law, offensive knives cannot be offered for sale. But a shopkeeper put a flick-knife in his window with a ticket saying "*ejector knife* - 4s".



Was the display of good an "offer" to the whole world (like in *Carlill*)?



No. The Act did not provide a definition of "offer for sale", but it distinguished an offer for sale from exposing goods in a window. As a result, exposing goods in a window is simply an invitation to treat.



Invitation to Treat – Adverts



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Partridge v Crittenden [1968] 1 W.L.R. 1204



Under the law, live wild birds cannot be offered for sale. But Mr P inserted an advert in a periodical stating: “*Quality British A.B.C.R. ... bramble finch cocks, bramble finch hens ... 25s each*” .



Was the advert an “offer” to the whole world (like in *Carlill*)?



No. The Act did not provide a definition of “offer for sale”, but it distinguished an offer for sale from adverts. As a result, adverts are simply – as a general rule – an invitation to treat (unless they have all the characteristics outlined in *Carlill*).



Invitation to Treat



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Gibson v Manchester City Council [1979] 1 W.L.R. 294 (HL)



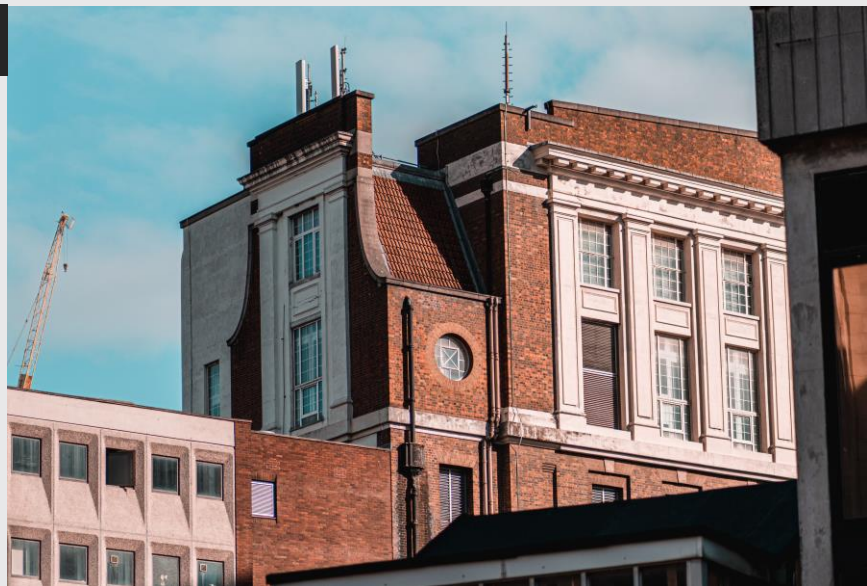
M was allowed to sell council houses to tenants. G completed the form, returned to the council but left the price blank. After the elections, the council decided not to sell.



Is the council bound to sell, because their offer (form) was accepted by the tenant?



No. Reversing the lower decisions, the HL held that there was no binding offer because the negotiations between the parties never reached fruition.





2b. Offers in Tendering Procedures



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Tender for Goods – NO Offer



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Spencer v Harding (1869-70) L.R. 5 C.P. 561



H invited tenders for the sale at a discount in one lot of the content of a warehouse. S was the highest bidder. The sale was not finalised.



Is a specific tender for the sale of goods an offer?



Not in this case. The tender was specific, but there was no clear promise to sell to the highest bidder. Hence, not an offer.



Tender for Goods – YES Offer



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Great Northern Railway Company v Witham (1873-74) L.R. 9 C.P. 16



W undertook to supply GNR Co. for 12 months “*with such quantities as they think fit*” and in accordance to their T&Cs. The tender was accepted. After fulfilling some orders, W stopped supplying goods to GNR Co.



Is a specific tender for the sale of goods an offer?



Yes in this case. The tender was specific, AND there was a clear promise to provide goods to the buyer. Hence, it was an offer.



Tender for Goods – Implied Obligation



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Blackpool and Fylde Aero Club v Blackpool BC
[1990] 1 W.L.R. 1195



BBC had invited BFAC and others to submit tenders for a pleasure flight concession from Blackpool airport. BFAC was dismissed as late because the letterbox was not checked.



Has BBC breached the obligation to consider the tender?



Yes. They are liable for damages for not considering the tender received according to the instructions (but NO OFFER).



- Tender = invitation to take part in a competitive bid to enter into a contract – NOT an offer;
- Tender = OFFER in itself if sufficiently detailed as to goods, prices and timeline to allow the other party to simply say “yes”;
- Implied obligation: the person asking for tenders is obliged to consider the tenders received according to the procedure.



Tendering



2c. Offers in Auctions



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Auction



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Harris v Nickerson (1873) L.R. 8 Q.B. 286



N advertised a sale of office furniture, to be held in Bury. H travelled from London to Bury. The lots were withdrawn on the day of the auction.



Was the advertising of the sale an offer to hold the auction?



No. The advert is a declaration of intent to hold a sale. If this does not take place, the bidder is not entitled to compensation for damages.



Auction without Reserve



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Barry v Davies [2002] 1 W.L.R. 1962 (CA)



D put on auction without reserve two engine analysers worth £28,000. B bid £400 for both. H (auction house) withdrew the goods from the auction.



Does an auction without reserve creates an obligation to sell to the highest bidder?



Yes. The highest bidder at an auction without reserve could not be rejected simply because the bid was too low.



- Auctioneers simply invite bidders to make offers, they do not have an implied obligation to hold the auction;
- The auctioneer accepts the bid the moment in which the hammer falls;
- Implied obligation: auctions should occur in the way they had been advertised (e.g. without reserve).



Rules in Auctions



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(questions 3 – 4)

Question 3



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Which one of the following usually amounts to an offer?

92



Goods sold through a machine

29 (31.52%) ✓

Advertisements.

22 (23.91%)

Displays of goods.

6 (6.52%)

An invitation to submit a tender

35 (38.04%)

Correct responses 29 (31.52%)

Correct answer

Goods sold through a machine

Correct answer explanation

Where goods are sold through a machine, the general rule is that the machine is making an offer. In all other cases, the person who has knowledge of the offer or tender, or who sees the goods on display, is charged with making an offer if they want to proceed with the purchase. The person who makes the advert, displays the goods or solicits a tender is under no obligation to accept the offer made by the third party.



3. Termination of Offer



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Methods for Terminating an Offer



1. Revocation

- Free unless consideration given to keep offer open

2. Rejection

- Replacing an offer with another offer

3. Lapse of Time

- Period in which the offeror intends to be bound by their words

4. Death or Other Events

- Conditional offers and frustrating events



Free Revocation



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Routledge v Grant (1828) 3 C & P 267



G offered R a lease, giving him 6 weeks to accept. R “accepted” with a different starting date. G withdrew the offer within the 6 weeks, then R accepted the original offer.



Can G revoke the offer when he promised to keep it open?



Yes. Revocation can occur before the end of the period of time in which the offer should have remained open.



Notice of Revocation



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Dickinson v Dodds (1876) 2 Ch. D. 463 (CA)



Dodds offered to sell a property at a fixed price to Dickinson. The offer was valid until Friday. On Thursday afternoon (before accepting), Dickinson was informed that Dodds sold the house to a TP.



Is the revocation effective even if no notice was given by Dodds to Dickinson?



Yes. There is no need for revocation to be communicated by the offeror themselves.



- A unilateral offer is accepted only upon full performance (*Carlill*);
- Very occasionally, courts have recognised the offeror's implied obligation to keep the offer open when the offeree starts performing (*Errington*);
- Other times, especially in commercial transactions (B2B), such obligation was not found (*Luxor*);
- In any case, NO ACCEPTANCE upon commencement of performance (≠ Chitty).



Revocation of Unilateral Offers



“The true view of a unilateral contract must in general be that the offeror is entitled to require full performance of the condition which he has imposed and short of that he is not bound...”.

—*Daulia Ltd v Four Millbank Nominees Ltd*
[1978] Ch. 231 (CA), 239A – Geoff LJ *obiter*



“... there must be an **implied obligation** on the part of the offeror not to prevent the condition becoming satisfied”.

—*Daulia Ltd v Four Millbank Nominees Ltd*
[1978] Ch. 231 (CA), 239B – Geoff LJ *obiter*

Frustration



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Financings Ltd v Stimson [1962] 1 W.L.R. 1184



S bought an Austin from Y on a HP agmt. He returned the car before F Ltd signed the HP agmt, forfeiting the deposit. The car was stolen and damaged. F Ltd signed the HP agmt.



Is acceptance effective? Was the offer frustrated by an occurring event?



Yes to the second question. Acceptance was not effective and the offer had come to an end *before* a fully effective contract was binding on the parties.



- Not-yet-accepted offers are not binding and can be revoked (unless consideration given to keep the offer open);
- Offers cannot be revoked once they have been accepted;
- Revocation must be communicated, lapse of time operates automatically;
- In case of death or other exceptional events, an offer is terminated if the contract would be frustrated.



Termination



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(question 5)

Summary



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1. **Offers and Rewards**: meaning of these terms, and conditions upon which people are entitled to unilateral rewards.
2. **Special Rules**: difference between offer and invitation to treat, and special rules applicable in sales through tendering processes or by auction.
3. **Revocation**: instances and conditions for revoking bilateral and unilateral offers.