CONTRACT LAW

Private Law Tutor Publishing

Foreword

Thank you for buying this book. The problem that I encountered when studying law is: knowing everything. There is so much to read and so little time to do it. If you skip some material, or a case you are none the wiser. So throughout my years teaching law I have devised a system and I am going to share this with you.

You may have encountered different methods or formulas to help when advising a client in a mock scenario. One of example is the *IRAC* method or another is *Celo*. These are well documented and you can read about these. I never used them, because I had a method in my head that worked. It was not until I started teaching that I spoke about it. I call my method the "Fact Law Sandwich". Let me explain. If you are asked to advise a party as to their legal rights this is how you present it:

FACTS
GENERAL PRINCIPLE
LAW
APPLY TO FACTS

In **Fact:** simply state what you have been told, this why you can never be accused of not considering the facts. In **General principle:** you simply state what the general rule of the relevant issue is. You express it as if you are speaking to a child who has no knowledge of law. In **Law**: you state "using the authority of…..and you go on to state which statute or case helps prove your point. Lastly in **Apply to Facts**: you apply the reasoning of the case to your factual scenario. Your advice will sound and look structured and professional. The reason it is called the "Fact Law Sandwich", is because the advice contains two outer layers of facts that sandwich the principle and law in the middle.

This book is written to provide the student with a good knowledge of the most important cases on their study. It is written in a way to facilitate the Fact Law Sandwich method. I provide the general principle, the name of the case with full citation, the facts, the Ratio (the thing the lecturers say you always need to use), and application i.e. how the case should be applied. No other book provides this information at your fingertips. I hope you enjoy using it.

CONTRACT LAW

Private Law Tutor Publishing

Welcome/Introduction/Overview

This book provides you with basic information as a basis for you to form your own critical opinions on this area of law. Once you have mastered the basics, you will be inspired to question contract principles in your essays and apply them in mock client advisory scenarios. Again, for your convenience, we have published a book with examples of how to answer such questions and how to apply your knowledge as effectively as possible to help you get the best possible marks.

This aid is a fully-fledged source of basic information, which tries to give the student comprehensive understanding for this module. However, it is recommended that you compliment it with the further reading suggestions provided at the end of each topic, as well as read the cases themselves for more in-depth information. This book provides an analysis of the basic principles of modern Contract Law. The following is a summary of the Book content:

- An introduction to the Law of Contract;
- How contracts are formed;
- What goes into a contract: Its content;
- The means of obtaining remedies when there is a breach of contract;

The aim of this Book is to:

- Provide an introduction to anyone studying or interested in studying Law to the key principles and concepts that exist in the Law of Contract.
- To provide a framework to consider Contract Law within the context of examinations.
- Provide a detailed learning resource in order for legal written examination skills to be developed.
- Facilitate the development of written and critical thinking skills.
- Promote the practice of problem solving skills.
- To establish a platform for students to gain a solid understanding of the basic principles and concepts of

Contract Law, this can then be expanded upon through confident independent learning.

Through this Book, students will be able to demonstrate the ability to:

- Demonstrate an awareness of the core principles of Contract Law.
- Critically assess challenging mock factual scenarios and be able to pick out legal issues in the various areas of Contract Law.
- Apply their knowledge when writing a formal assessment.
- Present a reasoned argument and make a judgment on competing viewpoints.
- Make use of technical legalistic vocabulary in the appropriate manner.
- Be responsible for their learning process and work in an adaptable and flexible way.

Studying Contract Law

Contract is one of the seven core subjects that the Law Society and the Bar Council deem essential in a qualifying law degree. Therefore, it is vital that a student successfully pass this subject to become a lawyer. Additionally, a knowledge and understanding of contractual principles is needed in order to study other law subjects such as company, employment, international trade, commercial, or even family law. The primary method by which your understanding of the law of contract will develop is by understanding how to solve problem questions. You will also be given essay questions in your examinations. The methods by which these types of question should be approached are somewhat different.

Tackling Problems and Essay Questions

There are various ways of approaching problem questions and essay questions. We have provided students with an in-depth analysis with suggested questions and answers at the end of each chapter.

Chapter 1 - Introduction to Contract law

The General Ideology

The origins of the principle of a 'contract' can be traced back to the Middle Ages. Much of modern contract law developed in the nineteenth century alongside economics, and played a large part in the Industrial Revolution. Contract Law has an extremely broad application in practice, from consumer transactions in shops and online, to the commercial sale of goods in business and the supply of individual's services and skills. It also includes distribution of goods, franchising products, licensing, intellectual property trade and ownership, finance, security, and even employment, as contracts are essential ingredients in this type of formal relationship. A good understanding of Contract Law is fundamental for all of these many areas of law, because each of them is linked to Contract Law's basic and general principles. This can also be said for many other types of commercial transactions. Many contract disputes are often left to be resolved by law firms, but can also be settled outside of court due to, as you will learn, what the contracts themselves provide in terms of protection.

When reading the easily laid out chapters and sections in this application, you will learn that many modern business transactions are difficult to join with some well-established principles of Contract Law. This is a common thing when you reach the more advanced contract work in practice, where the impetus is mainly directed towards drafting contracts in order to avoid the application of the law. On the other side of the coin, there is equally strong impetus to test and push the boundaries of the existing laws. This is, for the most part, the case in transactions applicable to the Sale of Goods. It is noteworthy to reflect on the words on Professor Mckendrick (2008) here, who has suggested: *"My own view is that we are moving slowly in the direction of a law of contracts [not contract] as the 'general principles' decline in importance."* Despite this, there will always be general principles to guide the courts and upcoming lawyers, such as yourself, when tackling contract disputes.

Sources of the Law of Contract

As we have established above, Contract Law is a broad subject with many specific applications into different areas of law and aspects of our daily personal and professional lives. We also saw that its origins are in the Middle Ages, with principles largely influenced by judge's decisions in cases at the time. It was, and still is, mainly a common law subject. This means that its rules and principles have been expressed and established by the judiciary when they make judgments in real life cases. The main period of development of the common Law of Contract was in the nineteenth century, which, as a period of considerable commercial and industrial expansion, saw an increasing number of contract disputes brought before the courts.

An overriding principle generally followed by the courts at this time was that of freedom of contract, which states that parties of full capacity (i.e. not children or the mentally infirm) should be free to make whatever agreements they wish so long as they were not for an illegal purpose and subject only to remedies for recognised unfairness, such as misrepresentation or duress. An outcome of the principle of freedom of contract was the principle of sanctity of contract, namely that contracts freely entered into by people with full rational capacity ought to be enforced by the courts.

The Application of These Principles in Contract Law

The freedom and sanctity of contract principles was expressed by Sir George Jessel in **Printing and Numerical Registering Co v Sampson** (1875):

> *"... if there is one thing more than another that public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in contracting, and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by Courts of Justice."*

This expression simply means that any competent and reasonable person has complete choice and mastery over how they enter and conclude their contracts. However, towards the end of the nineteenth century and throughout the twentieth century, there were an increasing number of Acts of Parliament that addressed the principle of freedom of contract. This was because it was increasingly recognised during this period that pure laissez-faire (do it yourself) application of the principle of freedom of contract often led to injustice. As a result of gross inequality of bargaining power between large companies on the one hand, and either consumers or employees on the other, freedom of contract could be abused; for example, in standard form contracts (template agreements) or through the wide use of exemption clauses (a term in a contract that seeks to restrict the rights of the parties to the contract).

The current position

A contract is an agreement that is binding and legally enforceable. This kind of agreement is the most frequently used kind of legal dealing and happens in nearly every case where something is sold or purchased, from selling a multi-million pound yacht to buying a lunchtime snack from your local supermarket. Some other examples of contracts include contracts for the sale of goods, sale of land, contracts of employment, contracts of hire, and contracts for the provision of services. Contracts can be made in writing, may be oral (spoken), or may be identified by someone's actions. Most contracts have two parties, but there can be more. However, not every agreement will amount to a contract that can be enforced by law. Some social arrangements between people or contracts that offend public decency (i.e. I will pay you to expose yourself in Lincoln's Inn) and public policy, or those that involve criminal acts, are all examples of contracts that a court would not be willing to consider binding, and are therefore unenforceable.

Different Ideologies of Contract Law

With the development of a free market in a globalised world based on the division of work, this capitalistic 21st century society required a flexible legal method of protecting the exchange of goods and services. Many legal practitioners decided to respond to

this pressing social need from the beginning of the 20th Century. They transformed "Contract Law" from the unwieldy and complicated system it was since the sixteenth century into an instrument of virtually unlimited usefulness and applicability. Contract, therefore, became the crucial tool of the modern businessman, allowing him to go about his business in a rational way. Rational behaviour within the setting of modern society is only possible if agreements can be respected. The contract is, however, a tool that everyone can and does use in their everyday lives. For instance, when you buy a mobile phone, you are often receiving it for seemingly nothing on the condition that you pay a specific fee for your chosen telephone service for a certain period of time. In doing this, you are both exercising your own right to freedom of contract, in that you pick which tariff you use, and the sanctity doctrine, in that you expect that service to be maintained for a certain period in exchange for the money you provide the service provider in return.

The Market Principle

This principle promotes individualism and is a place for competitive exchange of goods and services. The functions of a contract are to facilitate competition as well as exchange**.** This ensures bargains must be kept subject to fraud, mistake coercion and so on, because it places emphasis on a duty to honour the agreement and not to behave in a way that will have a negative impact on the other party's interest in the agreement. These include means such as misrepresentation and non-disclosure of information. A contract's security gets recognised in one of the doctrines of law; that is the objective (factual) approach to contract intention. It also accommodates subjective (a subject's personal perspective, rather than that taken from an independent, objective angle) mistakes and third party purchasers. In order to protect an innocent party in the marketplace, Contract Law epitomises that people's expectations measure in damages, as a realistic deterrent for the non-performance of an obligation by any of the contracting parties. The ground rules of contract, therefore, should be clear, with clearly defined penalties. This will, as a result, avoid market inconvenience. This is an underlying principle of Contract Law. It is to comply with creating a level playing field for competition,

with no one being placed at a disadvantage at the expense of another taking advantage and benefiting from that profit. English Contract Law holds that it is paramount for a person to be able to achieve his/her goals, but not at the expense of another trying to achieve his/hers.

The Individualistic Ideology of Contract Law

Judges tend to not intervene with respect to contracts. Any potential party to a contract should enter the market using their own independent reasoning, in order to determine which bargains most potentially benefit them, strike them, and stick to them. The formal names that govern this behaviour are the doctrines of:

1) Freedom of contract
2) Sanctity

This freedom permits parties to freely choose others as consensual contractual partners. They need to be free to formulate and decide upon their own terms, as arguably no single definitive framework can possibly accommodate the unique distinctions of people's characters that form what they want to see in a contract and how they want to benefit from it.

However, the development of many large corporate enterprises in both the public and private sectors has made it impossible for the weaker party to actually exercise freedoms, because of the pressure to forge an agreement with big companies. Therefore, a party could be held to the will of these more economically powerful contracting parties, as opposed to exercising their right to an equal tender on a level playing field. The sanctity of contract is also explicit in that parties should be treated as masters of their own bargains. Those entering into contracts should be able to maintain assurance that the terms of that agreement will be followed without breach, or a way in which the other party can exploit them to gain more than the original terms stated.

Consumer Welfare Principles

Consumer Welfare principles presuppose that consumer contracts must be regulated closely and commercial contracts, although competitive, must be subjected to far more regulation than market individualism. There are four main principles to consider:

1) **Principle of Constancy:** A person should not encourage another to act in a certain way or form a specific expectation and then act inconsistently with the encouragement.
2) **Proportionality:** Remedies subject to the seriousness of the breach.
3) **Principle of Bad faith:** A party citing a good legal principle in an attempt to exploit another consumer should not be allowed to exercise it. No man should be able to profit from his wrongdoing.
4) **The Principle of Exploitation:** A stronger party should be prohibited from exploiting the apparent weakness of another party's bargaining situation and parties should be taken to have a relationship that will not lead to one exploiting the other.

The Nature of Agreement: The Objective Approach to Contract

Agreement occurs when one person makes an offer that is accepted by the other person. Provided consideration and intention to create legal relations are also present, there is a contract.

"A contract is an agreement giving rise to obligations which are enforced or recognised by law. The factor that distinguishes contractual from other legal obligations is that they are based on the agreement of the contracting parties. This proposition remains generally true, even though it is subject to a number of important qualifications." (Treitel: 13th Revised Edition 2011) Chapter 1 – 1-001.

However, the law applies an objective test rather than a subjective one - if there appears to be an agreement and one person believes there to be one, the other person will not be allowed to say there is not one. There are two exceptions to this. The court will look at the subjective reality, rather than the objective appearance, of agreement if:

1) One party knows that the other party has made a mistake in the terms of agreement - **Hartog v Colin and Shields** [1939] 3 All ER 566

Hartog v Colin and Shields [1939] 3 All ER 566
Facts: The defendants, Colin and Shields, sold animal hides. Hartog was a furrier (someone who sells fur products). Colin and Shields talked about selling Hartog 30,000 skins taken from Argentinian hares at "10d per skin" (equivalent to £1,250 today). As they were writing up their final offer, Colin and Shields accidentally wrote "30,000 skins at 10d per lb". It was common knowledge in the industry that the skins of hares weigh, on average, 5oz. The final offer amounted to a third of the price originally talked about and verbally agreed to. Hartog attempted to make Shields and Colin honour this offer, which was extremely favourable for him.
Ratio: The Court held that the claimant must have realised the defendants' mistake. Since this mistake related to a term of the contract, the contract became null and void.
Application: Hartog v Colin and Shields has gradually evolved into a very important precedent (something binding on all courts to apply in practice in future cases). This is especially true in modern society, where much of our shopping is now done on the internet. This is because many online businesses accidentally misprint the prices for their products. A lot of these websites use computer servers to automatically process customer details and payments that they make at the time, thereby creating the contract. All this can happen before the actual company owners find out that there have been misprints on their websites and, as such, the automated systems are selling products far below their actual value. For example, an online computer products retailer such as Amazon™ could advertise a tablet PC, which normally costs £300, for £30 or perhaps even £3. Any company that retails on the high street or

online, can evade supplying goods of the misstated lower price if a court is able to find that the would-be purchasers must have known that the advertised price was clearly a mistake and were trying to take advantage of the situation.

2) The second exception is as seen in the cases of **Scriven Bros v Hindley** [1913] 3 KB 564

Scriven Bros v Hindley [1913] 3 KB 564
Facts: Scriven Bros. lodged a bid at an auction hosted by Hindley and Co., where bales of hemp and tow were offered for auction. Their catalogue made the suggestion that one of the bundles of farm produce contained bales of hemp and tow. In reality, however, the bundle for auction only contained tow.
Ratio: Lawrence J held that the auctioneer was unable to accept the highest (winning) bid because the bid was placed under misapprehension and mistake.
Application: Two parties cannot create a legal binding contract when the terms of the offer and acceptance do not match.

General Principle: You cannot escape a contractual agreement by saying you did not intend to form a contract.

Storer v Manchester City Council [1974] UKHL 6
Facts: Mr. Storer made an application to purchase the council house he was living in. The Manchester City Council sent him an agreement of sale. The Agreement for Sale had been completed and signed. However, the date on which the tenancy was to end and the beginning of the mortgage repayment period had not been filled. On 20th March, when Mr. Storer signed and returned the agreement, a new political party came into power and the local council's policies changed. They decided to stop selling the properties unless the contracts had already been exchanged. Mr. Storer wanted to get a remedy to enforce what he believed to be an already binding contract. Manchester City Council argued that the clerk did not intend to offer the council house for sale when he sent the agreement of sale.
Ratio: The court held that agreement of sale was a firm offer which Mr. Storer had accepted. Lord Denning stated, *"In contracts, you do not look into the actual intent of a man's mind.*

You look at what he said and did."
Application: As Lord Denning says, "A contact exists when there is, to all outward appearances, a contract." Saying you did not intend to create a contract is not a valid defence if all evidence provided demonstrates a willingness to be bound.

The Nature of Agreement: The Subjective Approach

As we have seen, Courts will set aside what a specific party was thinking at the time (their subjective intentions). Instead, the court places greater emphasis on what a rationally thinking individual would think under the very same conditions and situations. They look at the intentions on a more neutral factual basis (objective intent). Courts do not stray into the zone of what is in a person's mind (such a thing is virtually impossible to prove). Instead, they look at arrangements from the perspective of a reasonable man. The subjective '*meeting of minds*' is not needed for an arrangement or an agreement to become binding at law. The bigger picture is looked at– the whole situation. Courts examine the rationality behind the big picture, and whether or not the parties could be held to have possessed such an intention. If the various stages of this contractual test are not met, then the court will move to assume that the party having their intentions examined did not willingly intend to be bound by a binding legal contract. What we can see is that, in reality, there are somewhat difficult blurred lines crossing over someone's objective and subjective intentions.

Consider the case of:

Leonard v. Pepsi Co. Inc. 88 F. Supp 2d 1 (S.D.N.Y. 1999)
Facts: Pepsi Co. released a commercial advertisement. This televised advert, showed a jet being offered in exchange for seven million of their '*Pepsi points*™.' Mr Leonard gathered the requisite number of points. He then sent a his seven million Pepsi points to stake his claim for the jet, valuing each '*Pepsi Point*™' at $1 each. Pepsi Co. refused to honour Mr Leonard's offer, and he brought action against Pepsi.
Ratio: The court held that the advertisement on TV was not an offer that Mr. Leonard could accept. The advertisement was a 'sales puff' that was an obviously not meant to be binding.

Application: If the court had fallen on the side of the complainant by looking at his perspective through the subjective approach, it could be remotely (but, ultimately, not convincingly) conceived that Pepsi Co. had given off the impression in their advertising campaign that they were genuinely offering a military fighter jet, which they had in their possession, in exchange for seven million of their '*Pepsi Points* ™'.

The Elements of a Contract

In order for a contract to come into existence, one of the parties (namely the **offeror**) has to make an **offer that is explicitly clear with certainty at the end** and the other party (the **offeree**) has to respond in providing a statement that is just as clear, and with the certainty that they are willingly accepting the offer.

This can be broken down into three essential elements:

Agreement	**Intention to create legal relations**	**Consideration**
To include **offer** and **acceptance**	The intention to contract and the necessary **capacity** (capability)	Something being given by each party

If one of these elements missing = NO contract

Correct Form of the Contract

It does not usually have to be in **writing**. It can be **oral**, by **inference** or **conduct**, or by a **combination** of these things. Some kinds of contract/agreement must be made and/or evidenced in writing:

1. ***Contracts under seal*** (also known as 'specialities'): Most formal contracts; all other contracts are called 'simple' contracts, whether in writing or not.

2. ***Contracts which must be in writing***: Bills of exchange and promissory notes (The Bills of Exchange Act 1882),

hire-purchase agreements (The Consumer Credit Act 1974), the sale of land (The Law of Property (MP) Act 1989).

3. ***Contracts which must be evidenced in writing***: Contracts of guarantee (Statute of Frauds 1677).

Chapter 2 - The Offer

In this section, you will be introduced to the basics of a contract and offers.

One way to describe an offer is that it is a proposal issued by one party towards another party. This proposition is based on terms that are either set in stone and cannot be changed, or ones that are capable of becoming set in stone only when the other party accepts them.

Opening Negotiations or Statements About Price

General Principle: Not everything said in the course of negotiations can amount to a firm offer.

Harvey v **Facey** [1893] AC 552
Facts: Harvey (complainant) sent Facey (defendant) a telegram. It said, *"Will you sell us Bumper Hall Pen? Telegraph lowest cash price"*. Facey replied that same day, *"Lowest price for Bumper Hall Pen £900.*" Harvey responded, "*We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deeds in order that we may get early possession."* This was an attempt to try and accept this price.
Ratio: The Privy Council held that there had been no offer. Facey's statement was one that just concerned the price. As a result, it was something that could not be accepted.
Application: This case distinguished between what an offer is and what an invitation to treat is. The key principle that can be applied from this case was stated by Lord Diplock (then in the Privy Court): *"Intentions that are communicated have to coincide"*.

General Principle: Because merchants have limited supply, the advertisement for their goods is considered an invitation to treat.

Grainger v Gough [1896] AC 325, HL
Facts: The Agents were London agents (complainants) for a wine merchant based in France (defendants). They circulated catalogues and took orders, which they then forwarded to the defendants, who maintained the right to refuse any of them. The case's issue was based on whether or not the defendants were liable to pay tax on legal contracts provided by their agents based in England.
Ratio: The House of Lords held the advertisement to ultimately be an invitation to treat. As such, it was not an offer. It was just a means of expressing a willingness to listen to offers as the beginning of further negotiations.
Application: Lord Herschell said in this case that it would be incorrect to regard these kinds of advertisements as offers because: *"the merchant might find himself involved in any number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out,"* because the merchant only keeps a finite supply.

General Principle: An agreement can only exist when a clear offer is made that is then mirrored by a clear statement of acceptance.

Gibson v **Manchester City Council** [1979] 1WLR 294
Facts: This was a case concerning the sale of a council house. Manchester City Council wrote to tenants of some of their council houses. They invited them to apply to purchase their homes. The complainant in this case, Gibson, returned the form that the Council sent out. A price was then agreed between Gibson and the Council. Whilst this was happening, a new political party was elected into power. The new council of Manchester City refused to proceed with the sale of the house to Gibson. **Ratio: The House of Lords held that no legally binding contract existed. Gibson had made an offer that Manchester City Council had still not accepted. Statements in the communications such as *"may be prepared to sell"* and *"please complete the enclosed application form"* all appeared to be elements of an invitation to treat.**

General Principle: If, during negotiations for a sale, the vendor (person selling) gives a price they will sell at, that statement could be an offer that could then be accepted.

Bigg v Boyd Gibbins [1971] 2 All ER 183
This case concerned the sale of a property. In the course of negotiations, there was a letter from the seller (complainant) that said, *"…Your offer of £20,000 is a little optimistic. For a quick sale, I would accept £26,000."* The defendant replied, "*I accept your offer*." The last letter that the seller sent stated: "*My wife and I are pleased that you are purchasing the property*."
Ratio: The court held that there was a contract. An intention to be bound was essential and this was evident by what was said by the complainant in last two letters.
Application: Intention to create legal relations can dictate whether a statement is an offer or an answer to a question.

Invitation to treat

General Principle: Goods displayed on the shelf do not amount to an offer to sell, but are instead an invitation to treat.

Pharmaceutical Society of G.B. v **Boots Cash Chemist** [1953] 1 QB 401
Facts: Boots decided to change the layout of their shop from one that used counter services to one that used self-service. A pharmacist was at the tills, but was not at the shelves where the items were. Action was brought against Boots for breaching the legislation, as Section 18 of the Poisons Act 1933 states that is an offense to sell specific items unless the sale took place under the '*supervision of a registered pharmacist*'. The courts needed to decide at which point the offer actually occurred. Was it when the customer took the goods from the shelf and put them in the basket, or was it when the goods were taken to the cash desk?
Ratio: The Court of Appeal held that a contract came to be when the goods were presented at the till. Displaying the goods on the various shelves in their shops was just an invitation to treat. The sale was in fact legal.
Application: The court also commented on the fact that if taking

items from the shelves was indeed an offer, the customer would be held to accept the offer and, as a result, would not have been able to change their mind. Displaying the goods on the various shelves in their shops was just an invitation to treat.

General Principle: Goods displayed in the a shop window are invitations to treat and not regarded as an offer to sell.

Fisher v **Bell** [1961] 1 QB 394
Facts: Mr. Bell, a shop owner, put a flick pocketknife in the front window of his shop. The Offensive Weapons Act 1959 prohibited the "offer for sale" of these flick knives.
Ratio: The prosecution against Mr Bell failed. This, the court held, was because putting goods on display in the window of shop only amounts to an invitation to treat and not an offer.
Application: An offer is made by a customer who wishes to buy the item. The shopkeeper has discretion to accept or reject this offer.

General Principle: Advertisements in periodicals are typically invitations to treat.

Partridge v **Crittenden** [1968] 2 All ER 421
Facts: The defendant, Crittenden, posted an advertisement in a magazine. It stated that he was willing to sell "Bramblefinch cocks and hens at 25 shillings each". Crittenden was prosecuted under the Protection of Birds Act 1954 for 'offering' wild birds "for sale".
Ratio: The court held the posted advertisement to be an invitation to treat rather than an offer. It was just an expression of Crittenden's desire to receive offers from potential buyers as the starting point for further negotiation.
Application: Lord Parker CJ stated in this case as obiter: *"I think that when one is dealing with advertisements and circulars, then, unless they come from the manufacturers, there is business sense in* [advertisements] *being construed as invitations to treat and not offers for sale."*

Bilateral Agreements v Unilateral Offers

Bilateral:

A bilateral contract comes into existence when someone like Adam promises to do something for Josh, if Josh promises to do something for a certain amount of money or something of quantifiable value to Adam in return. Basically, the concept of a promise in exchange for another promise is what will make these kinds of contracts enforceable at law.

Further Example: Both parties assume an obligation to each other, e.g. "I will buy your car in return for giving you £500" = "Sold".

Unilateral Offer:

Unilateral contracts arise where A promises to do something in return for an ACT to be performed by B. They can be best seen, then, as 'If you do this' types of contract. This is a type of contract where commencing performance is the requisite acceptance

Example: I will pay you £10 if you were to take some notes for me at a law lecture I could not attend on a certain day this week.

Example: If, during my contract law lecture, I say "I will pay £10,000 to the first student to swim the length of the river Thames by the end of the day," I have just created a unilateral contract that can potentially be accepted by any one of the recipients. If an hour later, a student comes to my office drenched, claiming to have been the first to swim a length of the Thames and claiming the evidence has been put on YouTube, I am bound.

General Principle: In unilateral contracts, the performance of a requested action amounts acceptance and binds the offeror to give a reward.

Carlill v **Carbolic Smoke Ball Co**. [1892] 1 QB 256
Facts: At the time of an influenza epidemic, the defendants advertised the sale of a device called a 'smoke ball'. They posted

the advert in the newspapers, which stated that they would pay £100 to anybody who 'caught influenza, a cold, or any other kind of disease that came from catching a cold' after they used the 'smoke ball' three times a day for fourteen days, in accordance with the instructions they provided with each ball. Carbolic Smoke Ball Company also mentioned in the advertisement that they had put aside £1000 in a bank account to be able to pay such fees. Mrs. Carlill bought a smoke ball and followed all of the instructions, but caught influenza and, as such, went on to claim £100 from the company. The company responded by saying that the advert was nothing but a 'sales puff,' or a piece of sales talk (e.g. Red Bull gives you wings), and thus there was no offer; furthermore, they argued it would be unreasonable and impossible to contract to the entire world at large.

Ratio: The Court of Appeal held that the offer was actually a unilateral one; one with the intention to create relations to anyone who met the conditions of the offer to claim £100. The court also rationalised that because it was a unilateral offer, there was no need for communication of acceptance. The court finally addressed the point that an offer to the world at large could be made if it was capable of acceptance, so long as the conditions stated were fulfilled. Mrs. Carlill was, therefore, able to claim £100.

Application: Carbolic Smoke Ball Co. claimed that their advertisement was too vague to be treated as a definite offer. However, if an advertisement is precise and detailed to the point where completing the stated conditions would fulfil a contract, then it is an enforceable unilateral contract and not merely a "sales puff."

Auctions

The calling out for bids by an auctioneer amounts to an invitation to treat. Anyone who makes a bid is making offer. The auctioneer has the discretion to accept or reject these offers.

What the Law Says: S.57(2) of the **Sale of Goods Act 1979** reinforces the case law rule that a potential buyer makes an offer through bidding, which the auctioneer then accepts at the drop of his hammer. Therefore, anyone looking to buy can withdraw

his/her bid right up until the moment that the hammer comes down. Additionally, any item can be withdrawn from sale even after bidding has begun. There are specific rules for auction, however, which mean that the item cannot be sold legally at an auction to anybody other than the person who lodges the highest bid.

General Principle: If there is an auction without reserve, the auctioneer must sell to the highest bidder.

Barry v Davies (2000) Times 31/8/00, CA
Facts: This case concerned an auction of some machines. The auction was advertised as being "without reserve". Two machines, worth £14,000 each, were placed up for auction. Barry bid £200 on each machine. Davies rejected the chance to accept the bid because it was so low. In response, he took the machines down from the auction.
Ratio: Barry sued. He was awarded £27,600 (The worth of the machines minus the bid). The ruling stood despite an appeal by Davies. Despite the fact that there was no contract between the vendor and the person purchasing the machines, a collateral contract was held to exist between the auctioneer and the highest bidder.
Application: When there is an auction that sells an item or items with 'no reserve price' (that is no minimum fee for a buyer to pay for an offer to be accepted), there is an offer to sell only to the highest bidder. This can only be accepted by the lodging of the highest bid.

General Principle: Items can be withdrawn before the auction takes place.

Harris v **Nickerson** (1873) LR 8 QB 286
Facts: Nickerson (the defendant) posted a newspaper advert for an auction. The plaintiff took the time to travel, at their expense, to where the auction was being held in order to put in a bid on some office furniture. The listing of the office furniture was unexpectedly withdrawn. The Plaintiff sued for loss of time and expense. The plaintiff argued that the advertisement amounted to a contract between themselves and the defendant.

Ratio: The court held the advertisement of a sale did not mean that there was a contract to mandate that any specific items, such as the office furniture, would actually be put up for sale.
Application: The important principle that can be applied from this case is that something which advertises that items will be put up for auction does not create nor extend an offer to anybody that the items will really be put up for sale. As a result, the advertiser is actually able to withdraw the items from the auction at any time before the auction is set to begin.

Tenders

General Principle: An invitation to tender is usually classed as an invitation to treat.

Spencer v Harding (1870) LR 5 CP 561
Facts: Harding (defendant) distributed advertisements that said he was putting some stock up for trade. It also said that he was willing to accept tenders. The defendants decided not to sell the stock to the highest bidder, which was Spencer. Spencer sued, saying that Harding was compelled to accept the highest offer.
Ratio: The court held that the submission of a tender was an offer, and not acceptance of a contract.
Application: A person has no obligation to accept the highest tender.

General principle: Referential bidding discouraged by the courts.

Harvela Investments Ltd v **Royal Trust Co of Canada** [1986] AC 207
Facts: Two parties were invited to bid secretly for a block of shares, on the understanding that the shares would be sold to whoever bid highest. Harvela's (complainant) bid $2 175 000, while the other party (Royal Trust of Canada: defendant) bid "$2 100 000, or $10 000 more than any other cash bid, whichever is higher".
Ratio: The House of Lords said the referential bid was ineffective and that Harvela's cash bid should have been accepted.

Application: If someone who makes a tender says that they will accept the highest offer to buy goods or the lowest for someone to provide certain items, or their services, the tender can be seen as something that is either an offer or an invitation to place offer. Placing a tender that references someone else's' bid will invalidate the tender.

General Principle: A collateral warranty arises if a bid is properly submitted within time and not considered.

Blackpool and Flyde Aeroclub Ltd v **Blackpool Borough Council** [1990] 1WLR 1195
Facts: The Blackpool Aeroclub (claimants) and an additional six potential suitors were invited to submit tenders for the ability to fly leisure flights from Blackpool Airport. The claimant lodged a tender correctly. However, this tender was not considered because there was an admin processing error. The defendant (Blackpool Borough Council) argued that the claimant had simply submitted an offer that had just not been accepted.
Ratio: The Court of Appeal said there was an implied collateral warranty. Blackpool Council had chosen the parties that they wanted to invite to make tenders. What this implied is that anyone who was invited and who also followed the pre-determined procedure would be allowed to have his tender properly considered.
Application: In Lord Bingham's leading judgement, it was stated that: *"A tendering procedure of this kind is, in many respects, heavily weighted in favour of the person inviting. He can invite tenders from as many or as few parties as he chooses. He need not tell any of them who else, or how many others, he has invited."*
Parties that make invitations to tender are bound to consider a tender that is submitted before a pre-determined deadline.

Counter-offers

General Principle: A counter-offer nullifies the original offer.

Hyde v **Wrench** (1840) 3 Beav 334
Facts: Wrench (the defendant) wrote to Hyde (the claimant). Wrench made an offer to sell Hyde his farm for £1000. The

claimant responded promptly. He issued an offer for £950. The defendant took time to consider this. He turned down Hyde's offer. Wrench went on to sell the farm to another third party. Hyde tried to accept the first offered price of £1000 whilst bringing action against Wrench for breaching the contract when Wrench sold the farm to the third party.

Ratio: The Court held that a contract did not exist.

Application: In submitting his own offer, Wrench rejected the offer made by Hyde. The original offer had been completely destroyed and it was not something that was open for Hyde to accept.

Request for Information

General Principle: A request for information is not a counter-offer.

Stevenson Jacques v **McLean** (1879 – 80) LR 5 QBD 346

Facts: The defendant, McLean, sent a telegraph to the complainant, Stevenson. In it he offered to sell 3,800 tons of iron "at 40 shillings a ton…up until Monday". On Monday morning the complainant wired over a telegraph to McLean: *"please wire whether you would accept forty for delivery over two months or if not longest limit you would give"*. McLean did not respond and at 1:34pm the complainant sent another telegram, accepting the original offer. McLean sold the iron off to a third party in that time, later proceeding to advise Stevenson by telegram. Stevenson brought action on the grounds that McLean was in breach of their agreement. His main argument was that the Monday morning telegram amounted to a counter-offer.

Ratio: The court held Stevenson had not made a counter-offer. Instead, he had just made an inquiry and could not amount to the rejection of the offer.

Application: Is it possible to phrase counteroffers as questions to see if the offeror is willing to accept the new term(s) without nullifying the original offer.

Chapter 3 Acceptance/Revocation

General Principle: Silence cannot be used as a means to accept an offer.

Felthouse v Bindley (1863) 142 ER 1037, Exch Ch
Facts: Felthouse (the claimant) talked about buying a horse from his nephew. Felthouse wrote to his nephew Bindley stating *"If I hear no more from you, I shall consider the horse to be mine at* £30." The nephew did not reply, no money was paid, and the horse remained in the nephew's custody.
The nephew took action to contact an auctioneer in order to withdraw the horse from an auction. The auctioneer forgot these instructions and the horse was sold to a different person. In order for the uncle to make a claim against the auctioneer, he had to demonstrate that a contract was in place between him and his nephew Bindley.
Ratio: The Court of Common Pleas held that no contract existed; Felthouse's letter provided an open offer and it had not been accepted.
Application: Silence does not amount to acceptance of an offer.

The offeror can ask for a specific method of acceptance

General Principle: If the offerer requests acceptance through a specific mode, then acceptance can only take place through this mode of communication.

Tinn v Hoffman (1873) 29 LT 271, Exch.Ch
Facts: The claimant wrote to defendant to make an inquiry as to how much it would cost to buy 800 tons of iron. The defendant replied, saying that it would cost £3 per ton and requesting the claimant respond "by return".
Ratio: The court held that, as the offer was not actually accepted by return of post, no contract existed.
Application: Honeyman J, on the other hand, stated obiter that a telegram, communication verbally or any other kind of communication that was at least as fast as a letter written by return of post would have sufficed**.** With this in mind, if an offerer asks for acceptance by post and the offeree sends acceptance through

text message, a contract could be held to exist.

General Principle: The method of acceptance arranged for a tender was not mandatory and if an offeror wants it to be mandatory, this needs to be made explicit.

Manchester Diocesan Council v Commercial General Investments [1969] 3 All ER 1593
Facts: The claimants (the Diocesan Council) owned a property that they wanted to sell by tender. The tender form included an additional statement that the tenderer whose application was successful would be notified by letter. It was to be sent through the post to the address that was written in the tender form. The defendant sent in a tender that the council then accepted. In September, they notified the defendant's representative of this acceptance. The secretary of state gave permission for the sale to go ahead in November. During January, the claimant wrote to the defendant in order to provide confirmation of the agreement. The question that arose was when a contract had been formed.
Ratio: The court held that a contract was formed in September. This is because the way in which acceptance could be carried out, as written in the tender form, was not limited as the only way of doing so. As such, the postal rule (see relevant section) would not apply. However, any other means by which the claimant's acceptance was communicated would be satisfactory.

Acceptance can be by conduct

General Principle: A contract can be formed in absence of a written agreement if both parties' actions are in accordance with the agreement.

Brogden v Metropolitan Railway Co. (1877) 2 Book Cas 666
Facts: For several years, Brogden (complainant) had supplied the railway company (the defendant) with coal in the absence of a written agreement. The parties decided to enter a written contract. A draft contract was prepared and then sent to the complainant. The complainant amended it and marked it as approved before returning it to the railway company. Their agent put the draft in his

desk. Business continued between the complainant and the defendant. The two parties maintained the trade arrangements under this new document until December 1973, at which point Brogden refused to continue to supply coal on that basis. He stated that, since the railway company had never actually made an alternate draft, which they intended to be a counter offer, there could be no legal contract. **Ratio: The House of Lords held a contract did materialise through what the parties' actions that they carried out. The offer was the company ordering coal and the acceptance was Brogden was supplying it.**
Application: Actions between the parties can amount to a mutuality of obligations being fulfilled, even in the absence of a written contract.

The Battle of the Forms

General Principle: When accepting a contract, the agreeing party accepts the terms and conditions of the offerer. This is also known as the 'last shot' rule.

Butler Machine Tool Co. Ltd v Ex Cell O Corporation ltd [1979] WLR 401
Facts: The sellers responded to the buyers, who were interested in purchasing a machine, by sending them a quote as to how much it would cost to supply it to them. The quote was given on the conditions that the sellers gave. These, it was written, were to be followed above any other terms and conditions that the buyers put in for their order. These clauses contained a price variation clause. The buyers made an order, but letter they sent contained a number of contradictory conditions. In particular, they did not put in a price variation clause. At the bottom of the order was a tear offer confirmation slip that had been put in on the intention of the buyer's terms. The sellers completed this tear off confirmation slip and sent it back. The sellers then asserted that they would now be allowed to make variations to the contract price.
Ratio: The Court of Appeal rejected this claim. Their reasoning for rejecting the claim was that the sellers had willingly and expressly accepted the buyer's terms on the tear off slip. They had accepted the buyers *"last shot".* Lord Denning stated: *"In some cases, it is decided by who gets there first. If the offeror intends to sell at a named price on the terms*

and conditions stated and the buyer orders the goods intending to accept the offer, if the difference is so material that it would affect the price, the buyer ought not to be allowed to take advantage of the difference unless he brings it to the attention of the seller".
Application: When a party communicates acceptance to an offer, he impliedly accepts the terms and conditions of the offerer.

The Postal Rule

General Principle: As soon as acceptance is posted through the mail, a contract is formed. This is known as the 'postal rule'.

Adams v **Lindsell** (1818) 1 B & Ald 681
Facts: Lindsell wrote to Adams, hoping to sell Adams some wool. He requested a reply be sent "in course of post". The letter containing the offer was sent out on the 2nd September. It did not arrive, however, until the 5th of September. On the 5th, Adams posted back a letter containing his acceptance. When the letter actually arrived to Lindsell, quite a long period of time had passed. Lindsell had since assumed that the offer had been turned down and he sold the wool to a third party. Adams brought a claim for breach of contract.
Ratio: The court said Adams was to be awarded damages. The court ruled that Adams accepted when he posted his letter.
Application: Postal rule dictates that a contract takes place as soon as the letter is posted, regardless of whether that letter reaches the offerer in time. The offerer, if he allows acceptance through the post, is held responsible for contracts he may have formed but may not be aware exist.

General Principle: If acceptance is communicated through a letter that then becomes lost in the post, a contract will still be seen to have formed at the moment it is mailed.

Household Fire Insurance v **Grant** (1879) 4 ExD 216
Facts: Grant took an interest in potentially buying shares in the plaintiff's company. The company was content with the application, and sent Grant a letter in the post stating this, but it got lost in the postal system. The company liquidated soon afterwards.

The liquidator, acting for the company, brought action against Grant in relation to any outstanding balance on the shares. Grant disputed the fact that he had to pay. He said he did not have to because he had not received a reply to his offer to buy the shares.
Ratio: The court held that a contract came into existence the moment the letter of allotment of shares (the acceptance) was posted.
Application: The "postal rule" still applies if the letter which communicates acceptance is lost in the post. Similarly to Adams v Lindsell, a contract is formed as soon as the letter is mailed, the fate of the letter has no effect on the validity of the contract.

The Postal Rule and Instantaneous Communication i.e. Email

The rapid expansion of means of electronic communication has brought up challenging and, as of yet, not fully addressed questions concerning the how the postal rule applies when people communicate using e-mail and any other messaging forum or medium on the whole internet, like Facebook™ and Twitter ™. On one side of the coin, there are those who argue that an e-mail exchange is more or less simultaneous and instantaneous and because of this the postal rule should not apply. What this does not take account of however is that e-mails are occasionally rejected by server service providers such as Google™ or a private server for a company. Even if it does arrive, the recipient of the message might not actually read the message straight away. Many academic commentators have, on that basis, leaned towards the view that e-mail ought to be treated as a kind of mail to which the postal rule should normally apply. This would, of course, be subject to when there is expressly agreed upon exclusion of the rule by the parties' themselves,

It is imperative to remember that the postal rule, should it even be able to be applied, applies to acceptances alone. It does not apply to an offer that has been communicated by post that is being revoked. It is a common misconception that an offer can be revoked by letter at the time it was put into the post box because of the applicability of the postal rule.

As such, the main applicable principle in the postal rule is that acceptance by post comes into effect when it is posted as opposed to when it is delivered.

When an offeror establishes a website that has a reply form included on it, a near instantaneous means of communication is achieved. This is because the offeree can immediately learn as to whether his acceptance has been received or not. There are a lot of theories that advocate that the postal rule should not apply in these situations (and a quite sustainable view that a web page, like a shop window, normally amounts to an invitation to treat as opposed to an offer). However, because the internet facilitates such an expanding means through which people can communicate, there are strong policy reasons that exist to make sure that the rules for accepting offers electronically are consistently the same, regardless of which kind of software is in operation. We have addressed this issue in a full answer in our **Question and Answer Section**.

Communication of Acceptance

General Rule: The postal rule cannot be relied on in cases where acceptance mandates actual notification or communication.

Holwell Securities v **Hughes** [1974] 1 WLR 155
Facts: Holwell Securities (the claimants) were allowed by the defendant to have an option *"exercisable by notice in writing to* [Hughes, the defendant] *at any time within six months from the date hereof*." On 14th April 1972, Holwell Securities gave notice to Hughes in writing as a means of invoking the option. However, the letter never arrived. The claimants, Holwell Securities, applied for specific performance of the option they agreed with the defendants. They argued that it was complete on 14th April, which is when the letter confirming acceptance was posted.
Ratio: The courts held that Holwell securities had not legitimately exercised their option. Application: If acceptance requires actual notice, the notice becomes a term of acceptance. Applying postal rule in these cases results in absurdity as it would violate terms of the offer. As such, postal rule can be set aside.

When is acceptance communicated?

General Principle: An acceptance via instantaneous communication is not bound by the postal rule; acceptance must be communicated for it to create a binding contract.

Entores v **Miles Far East Company** [1955] 2 QB 327
Facts: The claimant was a London based company. They offered to buy, through use of telex, goods from the defendant's agent. The agents were located in Amsterdam. Their offer was accepted by the defendant's agents, again through use of a telex. As there was a dispute between the parties, the location where the contract had been concluded became very important.
Ratio: The court held that since the acceptance was received in England, when the acceptance was sent via telex and read in England. Lord Denning reasoned that acceptance could not create a binding contract until it notified the offerer.
Application: The onus (responsibility or burden to actually prove something) is on the person accepting to shout back, "I accept your offer" repeatedly until he is heard. Denning utilises many examples to demonstrate this rule. If two men are separated by a river and one attempts to notify the other of his acceptance of an offer (but he is drowned out by the sound of a passing plane), it is his responsibility to voice his acceptance again to create a contract. Because of Entores, no acceptance (outside of the post) can be valid unless it actually notifies the offerer.

Revocation of offer

General Principle: An offer can be withdrawn at any time before it has been accepted. Anything said or done to accept the offer after it has been withdrawn has absolutely no effect whatsoever.

Routledge v Grant (1828) 130 ER 920, Best CJ
Facts: Grant (defendant) made an offer to rent Routledge's (complainant's) building. A definitive answer had to be provided to Routledge within the space of six weeks. After three weeks had passed, Grant retracted his offer. However, just within the six-week period, Routledge decided to accept it. **Ratio: The court**

held that, in this case, the acceptance had come too late. He reasoned that, if one of the parties had six weeks to accept an offer, the other had six weeks to put an end to it. One party cannot be bound without the other.
Application: Withdrawal usually needs to be communicated to the offeree. This does not become effective until this kind of communication to withdraw is received. The special rule for postal acceptances (below) is not something that applies to withdrawals.

General Principle: Revocation of an offer must be communicated and is effective upon its receipt.

Byrne & Co v **Leon Van Tienhoven & Co** (1880) LR 5 CPD 344
Facts: Byrne posted a letter on 1st October, with an offer to sell Van Tienhoven a certain amount of tinplate. Byrne then posted another letter on 8th October intended to be a statement to withdraw the offer. The first letter reached Tienhoven on 11th October and Tienhoven accepted the offer immediately through use of a telegram. They followed this up with a confirmatory letter four days later. The second letter sent by Byrne as a withdrawal arrived on 20th October, by which time the offer had been accepted.
Ratio: The court ruled that a Bryne's revocation was not valid until it was received by Van Tienhoven, thus a contract had formed when Van Tienhoven telegrammed his acceptance.
Application: These kinds of promises cannot be enforced unless they are supported by some kind of consideration (something of value like money) in return (see relevant section on consideration).

General Principle: The revocation of an offer does not have to be communicated by one party to another directly; it can be done through a reliable third party.

Dickinson v **Dodds** (1876) LR 2 Ch D 463
Facts: Dodds extended an offer to sell his house to Dickinson. He left the offer open until Friday. On Thursday, Dickinson made a decision to buy the house. He then heard from someone else that Dodds had entered into a contract with a third party for sale. On Friday, Dickinson accepted the offer. He then looked to enforce the agreement.

Ratio: The Court of Appeal held that the information that was provided by a neutral and trustworthy third party about the house being sold was seen to amount to sufficient notice of the withdrawal of the offer for sale. Therefore, his acceptance was not effective.
Application: Revocation of an offer does not need to be communicated directly. It is acceptable that the offeror was aware of the revocation of the offer before there was acceptance.

General Principle: If it can be demonstrated that revocation was sent and could have been reasonably read, then that revocation is valid.

Tenax Steamship Co v Owners of the Motor Vessel Brimnes (The Brimnes) [1975] QB 929
Facts: Tenax Steamship hired a ship named The Brimnes, under the condition that the payment be prompt and paid in advance. When the payments arrived late, the owners withdrew their offer as they were entitled to under the agreement. They issued this withdrawal via telex, and no one in the office read the telex although the revocation was sent during business hours. The issue arose as to whether revocation had taken place when the telex arrived with the revocation or when it was picked up and read.
Ratio: The Court of Appeal held the withdrawal took place when it was received in the charterer's office, not at the point it was read.
Application: If a litigant could prove that his revocation of offer could have been reasonably read, then the offer is officially revoked when it is delivered.

General Principle: A unilateral offer can be revoked by publishing the revocation in the same method by which the offer was issued. All of the offerees do not need to read the revocation for it to be valid.

Shuey v **US** (1875) 92 US 73 (persuasive judgement only, not binding)
Facts: US authorities placed an advertisement in various newspapers displaying a certain amount of money that would be paid as a reward in exchange for information leading to the arrest

of a number of criminals. Later, the President of USA released a proclamation that cancelled the reward, and once again this was publicized in the newspapers. After this advert had been published, Shuey (who had seen the original advertisement but did not see that the ransom had been revoked) identified one of the wanted men and claimed the reward. **Ratio: The Supreme Court held that, as the offer had been made through a general advert to the world at large, as opposed to him personally, he ought to have realised that it could be withdrawn in the same way.**
Application: Where there is an offer that can be accepted through a person's conduct, it is not clear what rules deal with the withdrawal. This is especially so with rewards and "challenges" (i.e I will pay £1000 to the first person here that cycles from London to Liverpool).

General Principle: When someone has begun to carry out the terms of a unilateral offer and keeps on doing so, the unilateral offer cannot be retracted.

Errington v **Errington and Woods** [1952] 1 KB 290
Facts: Mr Errington purchased a house for both his son and daughter-in-law (Ms. Woods) to live in. He paid £250 in cash and borrowed the remaining £500 from a building society. The house was registered in the name of the father. However, he said that as long as they paid the regular instalments on the mortgage, he would transfer the house to them as soon as it had been repaid. Fifteen years after the father died, his estate brought action to seek possession of the house.
Ratio: The Court of Appeal held that a unilateral contract existed. Woods and Errington were not obliged to keep paying out money, but if they did so because the father was obliged to transfer the house to them in accordance with his promise, that was acceptable.
Application: Denning LJ said obiter that: "a unilateral contract cannot be revoked once the potential acceptor has started to perform their obligations under the contract arrangements."

Revocation of a Unilateral Offer

General Principle: An offer for a unilateral contract cannot be withdrawn if performance has been started or completed by the offeree.

Daulia v Four Millbank Nominees [1978] 2 All ER 557, CA

Facts: Daulia (complainant) wanted to buy a series of different properties from Millbank Nominees (defendant). Inquiries were made and draft contracts were prepared. Millbank agreed that if Daulia co-produced the draft contract and a bankers' draft by a specific time, they would enter into a full contract with her. Daulia obtained the bankers' draft and submitted it to Millbank Nominee's offices before the deadline. However, Millbank ultimately refused to proceed with the deal.
Ratio: Brightman J rejected Daulia's claim for damages, as the collateral contract did not fall into line with S40 of the Law of Property Act 1925. However, Goff LJ said obiter that *"while the offeror of a unilateral contract is entitled to require full performance of his condition and short of that is not bound, there must be an implied obligation on his part not to prevent the condition becoming satisfied, and that obligation arises as soon as the offeree starts to perform."*
Application: Until the offeree starts to perform, the offeror can revoke the entire offer. However, once the offeree has started to carry out the obligations of the agreement, it becomes too late for the offeror to go back on his offer.

General Principle: The terms of a contract may allow an offerer to revoke his promise even after it has been partially accepted by performance.

Luxor v Cooper [1941] 1 All ER 33, HL

Cooper made an agreement with an estate agent, Luxor, that £10,000 would be paid to them if Luxor was able to find a buyer that would pay £175,000 the land. The agreement between Luxor and Cooper was a standard agreement that could be expected from any seller and estate agent: that Cooper would pay the commission

once the house was sold and Cooper would not pay if a buyer was not found. Luxor found a buyer but Cooper actually sold the land (two cinemas) to someone else. Luxor pursued Cooper for the fee stating that they had fulfilled the contract.
Ratio: The House of Lords held in favour of Cooper on the grounds that there was no reason to assume a responsibility by not revoking their offer. Lord Wright said obiter: *"it is well recognized that there may be cases where obviously some term must be implied if the intention of the parties is not to be defeated, some term of which it can be predicated that 'it goes without saying'…some term not expressed but necessary to give to the transaction such business efficacy as the parties must have intended*."
Application: It is more likely that the courts would agree with an argument for an implied term (see relevant section) if that term were reasonable. They will not imply terms into a contract just because it would be reasonable to do so. This is an important principle to remember when applying it to practical scenarios. A party that has carelessly made a very unfavourable contract will argue that some kind of implied term, which, if it were to exist, would make the contract fair. That, it must be understood, is not a good enough reason to imply a term.

Lapse of time

General Principle: Offers will expire at the end of the time stated for the lapse (if it's actually said) or after a reasonable time passes.

Ramsgate Victoria Hotel v **Montefiore** (1866) LR 1 Exch 109
Facts: In June, the defendant made an offer to buy shares in the plaintiff's company. However, he did not hear back from them. Later, the plaintiffs decided to divide the shares of the company between people who had an interest in it in November, and claimed to accept the defendant's offer. At that point, however, the defendant did not want to through with the deal.
Ratio: The court said that, although the offer had not been formally withdrawn, it would expire after "a reasonable period of time". Given the ever-changing nature of the subject matter, the time interval had gone beyond what was reasonable.

Application: Ramsgate applies to many cases which deal with lapse of offers. The nature of the goods is critical in applying this case. Stock shares fluctuate in price within seconds, and so it would be incredibly unreasonable to assume that an offer for shares of a volatile stock would remain valid for days or weeks. If the goods were say furniture, the offer could remain open longer than what would be expected for electronic goods.

Death of the offeree

General Principle: Where an offer relies on the continuing existence of the offeror, the offer will terminate when the offeror dies. The offer will be unaffected by the death of the offeror in other cases and can be accepted and will bind the estate.

Reynolds v **Atherton** (1921) 125 LT 690
Facts: In 1911, an offer to sell shares was made to "the directors" of a company. In 1919, an attempt was made by the survivors of the directors in 1911, and by the people representing the person who had died.
Ratio: The supposed acceptance was held to be ineffective. Warrington L.J. said: "The offer having been made to a living person who ceases to be a living person before the offer is accepted, there is no longer an offer at all. The offer is not intended to be made to a dead person or to his executors, and the offer ceases to be an offer capable of acceptance."
Application: If an offeree dies, the offer lapses and living representatives are unable to accept.

Death of the offeror

General Principle: If the offeror dies and the offeree does not know about it, acceptance can still occur.

Bradbury v **Morgan** (1862) 1 H & C 249
Facts: JM Leigh asked Bradbury to provide credit to his brother. JM Leigh later died, and Bradbury, who did not know of his death, kept giving credit to JM Leigh's brother. The executors of JM Leigh's estate (Morgan) claimed they did not have to pay because

these debts were not sustained during JM Leigh's lifetime. They claimed that these contracts were created while JM Leigh had died.
Ratio: Morgan was held liable for the goods purchased on credit.
Application: A guarantee (i.e being given an overdraft from your bank) is, generally speaking, divisible. The offer is continuous. It is accepted from time to time as the bank makes more loans to its customer. It appears that a guarantee of this kind cannot be established solely by the death of the guarantor. The offer continued to be an active commercial offer and, as such, the guarantee stood.

Endnote

Hopefully you enjoyed and found the sample to be of value. Purchase of the whole book is available on our website as well. In the case of Private Law Tutor Publishing, our goal is to give students (of all levels) with straightforward, understandable, and complete legal education resources that are free of commercial biases. In order to offer resources for law students across the world, a group of barristers who also teach law has formed Private Law Tutor, which is produced and published by a group of barristers who are also law tutors.