

BUSINESS LAW GUIDEBOOK

SECOND EDITION

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CHAPTER 2: MAKING THE CONTRACT: OFFER AND ACCEPTANCE

TEST YOUR KNOWLEDGE

1. Are all agreements legally binding?

ANSWER

Not all agreements are binding. Only agreements that are enforceable at law are binding. For an agreement to be enforceable at law, certain essential elements must be present. These elements are:

- an offer by one party and its acceptance by the other
- the intention of the parties to create legal relations
- consideration
- legal capacity of the parties
- a genuine consent by the parties
- legality of the objects of the agreement.

There is a presumption that parties to social or domestic agreements do not intend to be legally binding: *Balfour v Balfour* [1919] 2KB 571. There is also a presumption that parties to business or commercial agreements do intend to be legally binding: *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256.

2. Distinguish between an offer and an invitation to treat.

ANSWER

An offer is a proposal by one party to enter into a legally binding contract with another. An invitation to treat is not an offer but is an offer to consider offers. To put it in another way, it is essentially an initial approach to others to invite them to make an offer which may or may not be accepted: *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 QB 401.

3. Does the acceptance have to be communicated?

ANSWER

An acceptance is not effective until it is communicated, that is, when it is brought to the notice of the person to whom it is made. If an offer is not communicated there can be no acceptance and therefore no contract.

4. If John makes an offer to Tom and Tom decides to accept it, is there a contract?

ANSWER

There is here a contract between John and Tom only if the elements of an enforceable agreement are present. These are offer and acceptance, an intention to create legal relations, consideration, genuine consent, legal capacity and legality of object.

5. What is an offer to the whole world?

ANSWER

An offer may be made to the whole world where a person who is aware of the offer may accept it by complying with the terms of the offer. Such an offer is usually made by way of an advertisement which can be read by many people: *Carlill v Carbolic Smoke Ball Co* [1893] 1QB 256.

6. Distinguish between a counter-offer and a request for information.

ANSWER

A counter-offer occurs when the offeree puts an alternative proposition to the offeror and operates to destroy an offer. A request for information, such as asking whether an offeror may be prepared to modify the offer, is not an acceptance or a rejection, and has a neutral effect on the offer.

7. Decide whether the following statements are true or false:

- (a) A counter-offer occurs when an offeree indicates a willingness to deal on terms slightly different from those of the original offer. **(true)**
- (b) Like the offer itself, any revocation does not have to be communicated to the offeree. **(false)**
- (c) Notice of the revocation must be brought to the knowledge of the offeree by the offeror. **(false)**
- (d) An offer may be described as a proposal the acceptance of which establishes an agreement, and may be revoked at any time prior to its acceptance. **(true)**
- (e) Where communication between parties is instantaneous, agreement is only concluded when the offeror receives the acceptance. **(true)**

8. In the following question, indicate which statement is the correct one.

An acceptance made through the post is effective:

- (a) if it is read by the offeror
- (b) if it arrives at the offeror's postal address
- (c) if it is put in a post box belonging to Australia Post **(correct)**.

9. In the following question, indicate which statement is the correct one.

An acceptance when given:

- (a) can be revoked within three days
- (b) cannot be revoked at all
- (c) cannot be revoked except with the consent of the offeror **(correct)**.

10. Can we say that 'subject to contract' in an agreement is sufficiently certain? Discuss.

ANSWER

'Subject to contract' in an agreement is not sufficiently certain. Acceptance must be unqualified. Conditional acceptance is not adequate. There will be no binding agreement between the parties until a formal document has been drafted and signed: *Masters v Cameron* (1954) 91 CLR 353.

11. What rule applies as to acceptance of an offer where the communication between the parties is instantaneous?

ANSWER

In such a situation, agreement occurs only when the acceptance is actually received by the offeror.

12. When can an offer be terminated?

ANSWER

An offer can be terminated by, for example: revocation, rejection; lapse of time; failure of a condition; death of a party; and supervening incapacity.

13. Explain the meaning of 'tender'.

ANSWER

In law, an advertisement that calls for tenders is not usually regarded as an offer, but is an invitation to treat. The person who submits the tender is the one who makes the offer. The person inviting the tender is then free to accept or reject the offer.

14. Explain when the postal rule applies.

ANSWER

The postal rule applies when acceptance by mail is contemplated by the parties and acceptance actually occurs by mail.

15. Is it possible to revoke an acceptance?

ANSWER

It is possible to revoke an acceptance. An acceptance can be revoked as long as the revocation (which is effectively a rejection of the offer) comes to the offeror's attention before he or she learns of the acceptance.

PROBLEM QUESTION

Before you attempt the following problem, make sure you read the 'Guidelines for answering problems' and be acquainted with the IPAC method of writing answers to problem questions.

PROBLEM

Ken places an advertisement in the newspaper. It reads: 'Lost. 1 blue cattle dog, answers to the name of Evelyn. Reward \$200. Telephone 91448503'. Lyn sees the dog in the street and, by reading the dog-tag on its collar, determines that it belongs to Ken. She returns the dog and Ken thanks her. The next day she reads the Telegraph and sees the advertisement. Advise whether she can claim the reward.

ANSWER

This answer refers to the issue of the acceptance of an offer. **(Issue)**

Acceptance is the act of agreeing to or assenting to an offer. An acceptance can be done in a number of ways. Acceptance must be communicated either by words or by conduct.

In our case, an offer leading to a unilateral contract can be accepted by performing the nominated act: finding the dog and returning it. There is no need to communicate acceptance: *Carlill v Carbolic Smoke Ball Co.* However, acceptance must be in response to the offer: *R v Clarke*. **(Principle)**

From the facts, Lyn did return the dog to Ken. However, she was unaware of the offer when she returned the dog, and thus failed to respond to the offer of the reward at the time she returned the dog. **(Application)**

Lyn does not have an action to claim the reward from Ken, since there is no contract. **(Conclusion)**