

Tender-invitation to treat-contract law

[Law](#), [Contract Law](#)



Contract Law Presented by Kerra Bazzey Contract Law Formation of a Contract Terms of a Contract Discharge of a Contract Remedies for Breach of a Contract Formation of a Valid and Enforceable Contract Offer Acceptance Consideration Intention to Create Legal Relations Privity of Contract Capacity to Contract Must not be illegal or contrary to public policy Formation of a Contract A contract is an agreement which creates legal rights and obligations between the parties to it. It is formed when the parties reach agreement on the essential features of the bargain.

Offer – a statement made by a party which manifests an intention to be bound on precise terms. The person who makes an offer is known as the offeror or the promisor. The person to whom the promise is made is the offeree or the promisee. Bilateral contracts - most common form of contract – here there is an exchange of promises. Unilateral contracts - commonly known as an ‘if’ contract - here the promise is one-sided as the offeror alone makes a promise. Elements of an Offer (i) An offer can be made to an individual, a group of persons or to the public at large.

An offer to the public at large can only be made where the contract is a unilateral one. (ii) An offer should not be vague. Where on the face of it an offer appears to be vague, but the parties have had prior dealings or are operating in a particular trade, then the courts will imply certain terms and conditions to conclude that a statement that initially appeared vague is in fact sufficiently certain. (iii) A response in request to clarification on price or a request for more information is not an offer. Elements of an Offer Consider the following exchange: - H: “Will you sell us your farm called Bumper Hall Pen? Fax me the lowest price”? F: “Lowest price for Bumper Hall Pen is \$1,

200, 000. 00". -H: " We agree to buy Bumper Hall Pen for \$1, 200, 000. 00 asked by you". - F never replied to this. H argued there was a valid contract. -The court held that F's statement was not an offer. - It was merely a response to a request for information which showed the lowest price that F would have been prepared to charge in the event that he chose to sell the Bumper Hall Pen. - H's lastcommunicationcould therefore not be regarded as an acceptance. Elements of an Offer (iv) If a person declares that he intends to do something, that statement of intention is not an offer.

If someone acts based on what was declared, and the person who made the declaration does not carry out the act he stated he would, but the person who acted based on what was said suffers a loss, the person who suffered the loss cannot bring an action against the person who made the declaration. This is because there was never any offer so there was nothing to be accepted. Consider the following case: - An auctioneer advertised in the newspaper that he would be holding a sale of office furniture. - A broker commissioned to buy office furniture travelled from far to attend the sale but all the furniture was withdrawn. The broker sued the auctioneer for his loss of time and expenses. - Can he recover for his loss of time and expenses? - No. - The court would hold that an intention to do something does not constitute an offer geared towards create a binding contract. Invitations to Treat Invitation to Treat An offer must be distinguished from an invitation to treat. An invitation to treat is an invitation to someone else to make an offer. It is not an offer because there is no intention to be legally bound. It is an invitation to negotiate. There are 4 categories of invitations to treat - advertisements in a newspaper display of goods on a shelf - auction sales -

invitations to tender Invitation to Treat Advertisements As a general rule, an advertisement in a newspaper is not an offer. It is an attempt to induce offers. This general rule is displaced where the advertiser by his word or conduct shows a clear intention to be bound, as is often the case in the unilateral contract. Display of Goods on a Shelf A store owner who displays goods on a shelf with the price attached does not make an offer. He is merely inviting the public to make an offer to buy the goods at the price stated. Auction Sale

The general rule is that in an auction sale, when the auctioneer invites bids, this is not an offer but an invitation to treat. When the bidder responds with a bid, he is in fact making an offer and the auctioneer is then free to accept or reject this. Invitation to Treat Invitation to Tender Generally a request to tender will be considered as an invitation to treat. Any tender document which is submitted in response to this request is an offer and the invitee of the tender is then free to accept whichever offer he chooses. Termination of an Offer (i) Revocation or withdrawal of an offer by the offeror (ii) Counter offer (iii)

Lapse of time (iv) Death (v) Non-fulfilment of a condition precedent Termination of an Offer (i) Revocation - A revocation is a withdrawal of an offer. An offer can be revoked at any time before it is accepted because there is no binding contract before acceptance. An offer cannot be revoked after it has been accepted. A revocation must be communicated to the offeree to be effective. If it is not, and the offeree accepts, there will be a contract. Termination of an Offer Consider the following: By letter dated 1st October, A offered to sell goods to B. - B received the offer on 11th October

and immediately accepted by fax. Prior to that, on 8th October A wrote a letter revoking the offer. He mailed this and B received it on 20th October. - Is there a contract? - Yes. The court would hold that the revocation came too late and was not effective until it had reached B. A contract was made when B faxed his acceptance. Termination of an Offer The revocation does not have to be communicated to the offeree by the offeror himself. It is enough if the offeree learns of the revocation from a source which he believes to be reliable. A mere request for additional information does not destroy an offer. Consider the following example:

A offered to sell B goods at \$100, 000 per ton and stated that the offer would remain open until Monday. - Early on Monday B telephoned A and asked him to indicate whether he would accept '\$100, 000 per ton for delivery over two months or if not, the longest limit he would give. In other words, he was asking whether he could buy the goods on credit. Termination of an Offer - A did not respond. - On Monday afternoon B contacted A to accept the offer and found out that A had sold the goods to a third party. - Was there is breach of contract? - Yes. - The enquiry was not a counter offer but a request for further information.

A's offer had not been terminated. Termination of an Offer Counter Offer Lapse of Time Where an offer is stated to be open for a specified time only, once that time expires and the other party has not responded, then the offer automatically ends. If no time is stipulated, the offer may lapse after a reasonable time. Death Where the offeror dies before the offer is accepted by the offeree, the offer is terminated. If the offer is accepted before the

offeror dies, it may be enforceable against the estate if it is not of a personal nature. Elements of a Valid Acceptance

A contract can only exist when there is consensus ad idem, that is, a meeting of the minds. This is where the acceptance merges with the offer. An offeror can prescribe that the acceptance must occur in a particular manner, eg by post or hand delivered or by telephone. An acceptance to an offer is only effective if it is communicated to and received by the offeror. If something impacts upon the ability of the offeror to receive word of the acceptance, for example, because of interference on the phone line or because the offeree is unable to speak clearly, then there is no contract.

Elements of a Valid Acceptance Silence does not amount to acceptance. Consider the following example. B placed a house with an auctioneer to find a buyer. Subsequently A began to negotiate directly with B for the purchase of the house. The only outstanding matter was the question of the price. A stated “ if I do not hear from you I shall assume that the house is mine at \$X. ” When B heard this he told the auctioneer not to sell the house. In error, the auctioneer sold it to another person. A sued in conversion (a tort alleging wrongful disposal of property).

Although B’s actions suggested that he was in effect accepting B’s offer, the court held that there was no contract because he never communicated this acceptance to A. His silence did not amount to acceptance. There was therefore no contract. Elements of a Valid Acceptance An acceptance of an offer must be absolute and unqualified. If it does not accept all the terms of the contract as originally set out, it will be a rejection of the offer. Where the

offeree introduces a new term which the offeror never mentioned he introduces a counter offer.

A counter offer effectively puts an end to the original offer and it cannot be accepted later. Example – A offers to sell a house to B for \$1, 800, 000. 00. B asks A whether he will accept \$1, 500, 000. This request by B is a counter offer which has effectively brought the original offer to an end. There is therefore nothing open for B to accept and A is free to sell to a 3rd party.

Acceptance When a counter offer is accepted then its terms and not the terms of the original offer become the terms of the contract. Example B and M agreed to enter into a formal contract after a series of negotiations.

M sent the terms of the contract to B for signature. B signed the agreement but amended it by inserting the name of an arbitrator who would be used to settle any disputes. The contract was never formally executed but each party acted in accordance with the agreed terms. When a dispute arose under the contract, B sought to argue that there was no binding contract. The court held that the insertion of the name of the arbitrator was in fact a counter offer. Once M took delivery of goods in accordance with the terms of the contract, its conduct amounted to an acceptance of the counter offer.

Acceptance Subject to Contract' means that the parties do not intend to bind themselves until a formal document has been drafted and signed. The effect

is no rights or legal obligations are imposed on either party. **Acceptance The Postal Rule** A distinction is drawn between an acceptance through instantaneous means and one in a contract by post. The post office rule constitutes the post office as an agent of the offeror. It states that when an acceptance is placed under the lawful control of the post office, it is effective

even without actual physical delivery to the offeror. The postal rule applies to acceptance only and not to offers.

Acceptance Consider the following example: A posted an offer to B on 2nd September. That letter contained a clause which stated that A expected a response by the post. The letter was incorrectly addressed and reached B on the 5th September. B sent off a letter at once agreeing to all the terms contained in the offer. On the 8th September, A not having heard from B, sold the item to a third party. Was there a breach of contract? Yes, because a contract had been completed on the 5th September when B posted the letter of acceptance. The post office was the agent of A, the offeror and had received the acceptance on his behalf.