

# Offer and acceptance

Technology



For a Simple contract to be valid one party must make an offer and the other accept it (see: Acceptance of offer). The offer will usually indicate the form the acceptance should take (e. g. , in writing, by post), and may indicate when the acceptance will be deemed to have occurred (e. g. , on delivery of the posted acceptance, see: Acceptance of offer by post). In seeking to prove that a contract was in existence, it will be necessary to show that there was a definite offer. Certain things look like offers, but aren't always what they seem.

Here are some examples. Invitations to treat are not offers (see: Invitation to treat). For example, putting an item on display in a shop window with a price label is not an offer, it is merely an invitation to treat. Pre-contractual negotiations, particularly in Conveyancing, may have the appearance of offers, but it will be necessary to satisfy the courts that a real offer has been made. Tenders (see: Tender) are not offers unless they are construed as a Unilateral contract.

An offer can be withdrawn (revoked) at any time up to acceptance, provided it is communicated appropriately to the offeree. There are a few of complications with this. Placing a notice of the withdrawal in the post does not constitute the withdrawal; it has to be received and understood by the offeree (see: *Byrne v van tienhoven* (1880)). If the offer forms the basis for a unilateral contract, it can be difficult to revoke. Typically the offerer must take reasonable steps to revoke the offer in the same form as it was originally made.

For example, if the offer was made in a newspaper, then it should probably be revoked the same way. Moreover, it is particularly problematic if a unilateral offer is revoked before full completion of the act that constitutes the acceptance. In *Carlill v Carbolic*, for example (see: *Carlill v carbolic smoke ball co* (1893)), Mrs Carlill was able to demonstrate that she had completed the acceptance, so Carbolic could not have escaped its obligations by revoking the offer.

However, suppose Mrs Carlill had started using the Smoke Ball, and written to Carbolic expressing her wish to claim the compensation if it failed. If Carbolic had withdrawn the offer at that time, could the agreement be enforced? There is no clear ruling on this; the decision in *Errington v Errington* seems to imply that once the acceptor's consideration is executory (that is, Mrs Carlill has begun using the Smoke Ball), then the offer cannot be revoked (see: *Errington v Errington* (1951)).

There are, however, some cases with the opposite conclusion. An offer may be self-terminating if the terms of the offer include, for example, a time limit for acceptance. If no time limit is given, an offer may be deemed by the courts to have expired after a 'reasonable time'. This will be the case even if the offerer has not explicitly revoked the offer. The death of either the offerer or offeree, prior to acceptance, probably constitutes a revocation of the offer.