

OFFER

Distinguish from invitations to treat.

An offer:

- must be **communicated** – Taylor v Laird (1856)
- have terms that are **certain** – Guthing v Lynn (1831).

Withdrawal of an offer:

- Offeror must communicate withdrawal.
- Communication of a withdrawal can be via a reliable third party – Dickinson v Dodds (1876).

Termination of an offer:

- Acceptance
- Rejection
- Revocation
- Death
- Counteroffer
- Lapse of time
- Failure of conditions.

ACCEPTANCE

- It must be **unconditional**.
- It must be **communicated** to the offeror – Felthouse v Brindley (1863).
- The offeree must be **aware** of the existence of the offer – Inland Revenue Commissioners v Fry (2001).
- Communication of acceptance must be by an **authorised person** – Powell v Lee (1908).
- Acceptance can be in any form unless it is a requirement that it must be in a specific form:

INSTANT COMMUNICATION: acceptance is valid **once received** – Entores v Miles Far East Corp (1955)

POSTAL RULE: acceptance takes effect when acceptance is **posted** – Adams v Lindsell (1818)

CONSIDERATION

Both parties must provide consideration if they wish to sue on the contract, otherwise it is considered a gift. Consideration is the promise to give or do something for the other.

Rules of consideration:

- Consideration must be **sufficient** but not adequate – Thomas v Thomas (1942).
- Consideration must move from the promisee (the person to whom the promise is made).
- Existing contractual duty does not constitute consideration – Williams v Roffey Bros (1990).
- Part payment of a debt is not consideration – D&C Builders v Rees (1965) (*note exceptions).
- Past consideration is no consideration – Re McArdle (1951).

INTENTION TO CREATE LEGAL RELATIONS

Social and domestic arrangements: There is a presumption that an intention to create legal relations **does not** exist, but can be rebutted if there is money involved – Balfour v Balfour and Merritt v Merritt.

Commercial and business arrangements: There is a presumption that intention to create legal relations **does exist** – Edwards v Skyways Ltd (1969).

PRIVITY OF CONTRACT

The basic rule is that a **contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it** – Tweddle v Atkinson (1861), BBC v Harper Collins (2010).

This rule can lead to unfairness, so some exceptions have been developed:

- Contracts (Rights of Third Parties) Act 1999 enables third parties to enforce rights under a contract in s1(1)(a) and s1(1)(b)
- Married Women's Property Act 1982
- Road Traffic Act 1988
- Law of Property Act 1925
- There are also common law exceptions:
 - collateral contracts – Shanklin Pier v Detel Products Ltd (1951)
 - agency – Scruttons Ltd v Midland Silicones (1962)
 - trusts – Les Affreteurs Reunis v Leopold Walford (1919).