LAW101 · CONTRACT LAW · LECTURE 4

Offer and acceptance

Unit 1: making a contract

Agreement is judged objectively

- Not what you meant inside your head
- What a reasonable person, watching what you said and did, would understand
- *Smith v Hughes* (1871)
- Why: nobody can see into anyone else's mind, and deals must be safe to rely on

Offer or invitation to treat?

- Offer: the terms on which you are willing to be bound, as soon as the other side accepts
- Test: has this person finished negotiating?
- Invitation to treat: an invitation to make an offer
- An opening move, not a promise to deal with anyone

Invitations to treat: the usual examples

- Goods on display: *Pharmaceutical Society v Boots* (1953): the customer offers at the till
- Shop windows: *Fisher v Bell* (1961)
- Advertisements: *Partridge v Crittenden* (1968): the seller has only so many birds
- Auctions: each bid is an offer, the fall of the hammer accepts

Unilateral offers: *Carlill v Carbolic Smoke Ball Co* (1893)

- An advert promised £100 to anyone who used the smoke ball as directed and still caught influenza
- £1,000 deposited with the bank to show it was serious
- Held: an offer to the whole world
- Accepted by doing what it asked; no need to say so first
- Not a mere sales puff
- Exam: work through it, never stop at "adverts are invitations to treat"

Acceptance must mirror the offer

- Mirror image rule: yes, on exactly those terms
- Counter-offer: a new offer, and it kills the original
- *Hyde v Wrench* (1840): £950 offered for a farm at £1,000, then too late to accept £1,000
- Request for information is not a counter-offer: *Stevenson v McLean* (1880)
- Battle of the forms, the last shot: *Butler Machine Tool v Ex-Cell-O* (1979)

Communicating acceptance

- The offeror must be told
- Silence is not acceptance: *Felthouse v Bindley* (1862)
- Instant methods: effective when received, *Entores v Miles Far East* (1955)
- Postal rule: complete when posted, *Adams v Lindsell* (1818), even if lost, *Household Fire Insurance v Grant* (1879)
- Excluded when the offer asks to receive it: *Holwell Securities v Hughes* (1974)
- Email: unsettled

How an offer ends

- Revocation, effective only when communicated: *Byrne v Van Tienhoven* (1880)
- It may come through a reliable third person: *Dickinson v Dodds* (1876)
- Rejection, including a counter-offer
- Lapse: at the time given, or after a reasonable time
- Death of a party, in some cases

Is there a contract? Four questions

1
Offer, or only an invitation to treat?

2
An acceptance that mirrors it?

3
Communicated, and when?

4
Was the offer still open?

- Apply the objective test throughout
- Next week: consideration. Read chapter 4