# CLAW 1001 Notes

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Formation of Contract: Offer

10. Definition

- **Carill v Carbolic Smoke Ball Co.**
  - A definite undertaking made with the intention that it shall become binding as soon as it is accepted.
  - A clear statement of the terms upon which an offeror is prepared to be bound.
  - Proposal indicating that an acceptance is invited and will conclude the agreement.
  - Test for an offer – look for the following:
    - Definitive, positive and specific language (eg. ‘guarantee’, ‘will be’)
    - Signatures (does not have to be written/signed)
    - Gives terms – full description, photo
    - Personal (Ps are named, phone no)
    - Not extraordinary or unbelievable (puffery) but appears reasonable
  - Factors that may not lead to conclusive offer:
    - Putting money aside (not as easy to prove deposit)
    - Colloquial language
    - Don’t have name/address

- **Brambles Holdings Ltd v Bathurst City Council**
  - Obiter remarks:
    - Offer must take form of proposal for consideration which gives offeree the opportunity to accept/reject.
    - Therefore, a communication which uses “language of command” and “peremptorily requests” the other party to adopt a particular course of action may not be regarded as an offer.

- **General Definition:**
  - An expression of willingness to enter into a contract on certain terms
  - Only if indicated that acceptance is invited, not requested

- **Rules related to Offers:**
  i. Offer must be distinguished from Puffery
  ii. Offer must be distinguished from an ITT
  iii. Offer must be communicated
  iv. Offer can be revoked at any time before acceptance

11. Offer must be distinguished from ‘Puffery’

- **Leonard v PepsiCo Inc**
  - Puffery – statements which, though made to induce, are not reasonably believable. They are therefore not legal offers.
  - Statements so far-fetched, no RP would believe
  - Used to draw attention to a product

12. Offer must be distinguished from an ‘Invitation to Treat’

- What may appear as an offer may contain no definite declaration.
- ITT - an invitation to others to make an offer or enter into negotiations
- Person responding to ITT will be treated as making the offer
- Examples:
1. Advertisements
   - **Grainger v Gough; Partridge v Crittendon Inc**
     - Facts: Wine merchant’s distribution of a price list did not amount to an offer to supply an unlimited quantity of the wine.
     - Facts: under legislation one cannot offer to sell a hen however seller was not liable as a classified ad is an ITT, not an offer.
   - Generally, advertisements are considered to be ITT. Especially when goods for sale listed in catalogue / magazine / newspaper / web buttons.
   - Contains no definite declaration – will not be honoured on acceptance
   - Applies mainly to retail / online retail / food
     - Eg. unknown stock levels make a legally binding agreement impossible.
     - Eg. classified ad would not bind seller to accept 1st reply
   - Web buttons: “buy”, “I accept”, “I agree”, “special offer” are all ITT
   - **Carlill v Carbolic Smoke Ball Co.**
     - Was held to be an offer, not an ITT, because:
       - Definitive language
       - Because defendant was the manufacturer
       - Retailers are less able to supply

2. Goods on display in shop
   - **Fisher v Bell**
     - Facts: Flick knife on display in shop classified as ITT.
     - Generally, goods on display in a shop are an ITT
     - Thus, the shop need not accept customer’s offer to buy.
     - Shop owner can refuse to sell
     - Shop owner can name new price → new price becomes new offer / counter-offer

3. Goods on display in self-service shop
   - **Pharmaceutical Society of Great Britain v Boots Cash Chemist**
     - Generally, goods on display in a self-service shop are an ITT
     - Offer is made by customer in presenting goods at counter (and acceptance, if any, occurs at the counter). Sale (contract) is concluded at the counter.
     - Reasoning: customers entitled to return/substitute goods chosen from shelves.

4. Automatic vending machines
   - **Thornton v Shoe Lane Parking Ltd**
     - A vending machine/car park auto ticket is not an ITT, but an offer because there is no-one there to accept/reject the offer from the customer.
     - Customer is committed beyond recall and was committed at the very moment when he put his money into the machine.
     - The offer is accepted once the customer pays. If machine doesn’t deliver, the seller is in breach of K.

13. Offer must be Communicated
   - **R v Clarke**
     - Facts: plaintiff failed in an action to claim a reward offered for info leading to the conviction of a murderer.
     - Unless an offer is communicated to the offeree, there can be no acceptance.
Performance of an act without knowledge of offer does not constitute acceptance.

14. Termination of an Offer

- An offer can be terminated by various means:
  1. Revocation
  2. Lapse of time
  3. Non-occurrence of necessary condition
  4. Death
- If offer is effectively terminated, this prevents acceptance and agreement → no K.

1. Revocation
  - *Dickinson v Dodds*
    - Facts: If Dickinson *had not* found out from his agent that the property had been sold, his acceptance would have been valid.
    - An offer can be revoked any time before acceptance by the offeree.
    - Offeror’s right to revoke is *absolute*, even if a promise is made to keep offer open for specified time.
    - Communication necessary for revocation can be made:
      i. Directly by offeror; or
      ii. Per some other ‘reliable source’
    - Exceptions:
      • If the promisee has paid (or provided consideration) to keep offer open. This effectively sets up a second K. An offeror is not able to withdraw offer.
      • If the offer is made via a deed: a formal contract – signed, sealed, delivered and witnessed. An offer in a deed cannot be withdrawn.

  - *Mobil v Welcome*
    - An offer made in exchange for the doing of an act becomes irrevocable once the act has been partly performed. (Performance must be in reliance on the offer so that revocation would cause a detriment on the promisee’s part.)

Revocation and ‘Offers to the World’
  - *Shuey, Executor v United States*
    - Facts: Reward advertised by US Govt for info re. apprehension of assassin.
    - Revocation still possible, but it must be through same channels as offer.
    - A reasonable time for equivalent indirect circulation is needed
  - “Prove us wrong” cases eg. Carbolic Smoke Ball
  - “Reward” cases

2. Lapse of Time
  - *Farmers Mercantile Union and Chaff Mills Ltd v Coade; Manchester Diocesan Council v Commercial & General Investments Ltd*

Time can terminate an offer in 2 ways:

a. Express time limit
  - Offer terminates unless accepted within timeframe
  - If offeree ‘accepts’ outside timeframe, no acceptance
  - Fresh offer to deal (on same terms)