



UNIVERSITETET
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English Law of Contract: Introduction to course; Element of agreement; Offer

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Introduction (1)

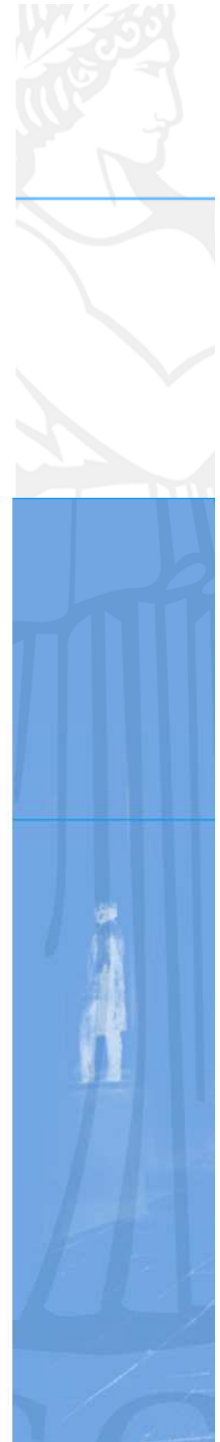
- Overview of the course
 - Lectures, Guest lecture, mock exam
- Syllabus and extensive secondary material:
 - Importance of reading the *central* cases
 - Importance of doing practice exam questions
- Origins and ideological biases of modern contract law:
 - Links to Industrial Revolution:
 - Emphasis at that time on promoting individualism and freedom to contract
 - Initial importance of “will theory”. Court’s primary business was not to ensure fairness of bargain but to figure out the extent of agreement.
 - Absence of good faith doctrine.





Introduction (2)

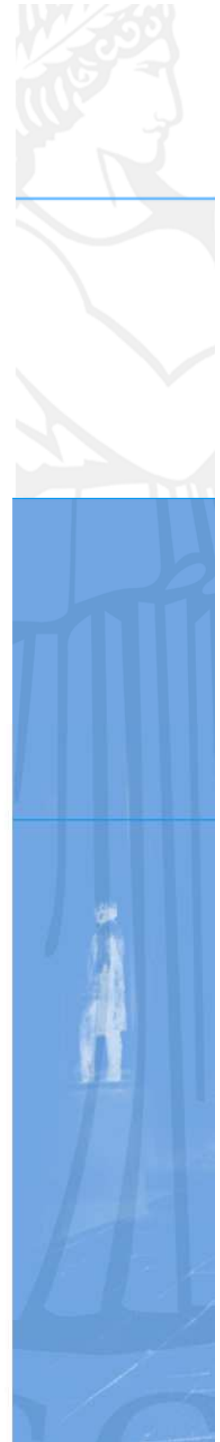
- Importance of offer and acceptance:
 - Basic judicial tool for finding agreement
- Less emphasis by courts today on promoting freedom of choice and freedom of contract; more emphasis on promoting fairness, justice, equity in contract.
 - Growing acceptance of doctrines related, in essence, to “good faith”.
- Increasing intervention of Parliament to regulate contracts
- Growing influence of EU law, in particular re consumer transactions





Introduction (3)

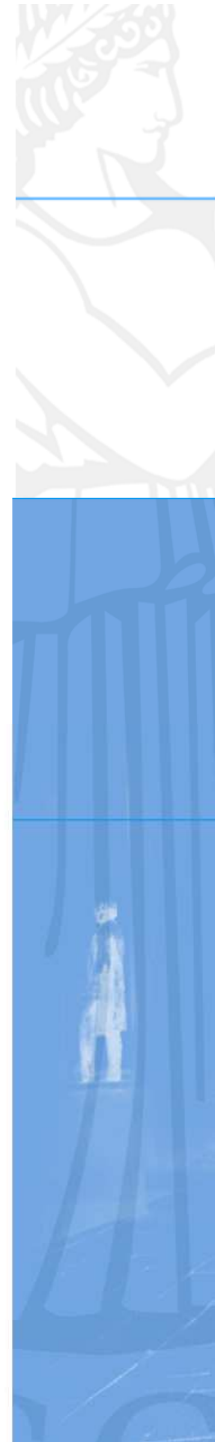
- Objective test of agreement:
 - Whose state of mind shall be the point of departure for this assessment?
 - Preferred approach: take perspective of reasonable observer placed in position of person (typically promisee) to whom statement (typically promise) is directed. Potential for hardship for promisor, e.g. *Centrovincial Estates plc v. Merchant Investors Assurance Company Ltd.* (1983). Subjective state of mind of promisee may be important in “snapping up” situations when promisee knows that promisor is making mistake.
 - Compare : situation when one is trying to determine content (i.e. terms) of contract: one takes account of both parties’ respective states of mind (objectively assessed). (See further Poole, pp. 34-40).





Introduction (4)

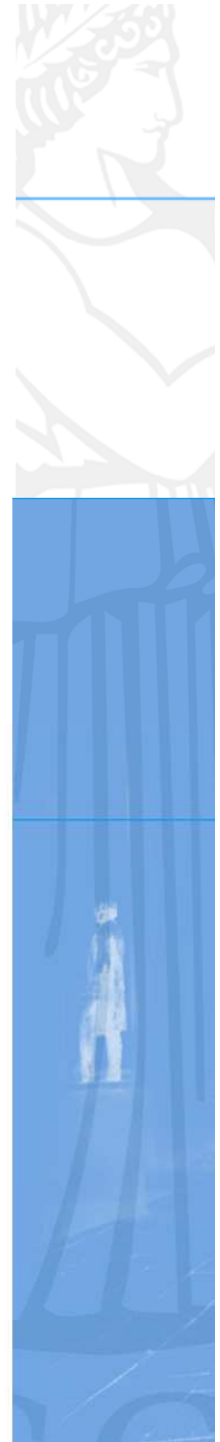
- Analysis of offer and acceptance (and consideration) differs somewhat according to type of contract. The main distinction is between:
 - Bilateral (synallagmatic): promise for promise
 - Unilateral – promise for act.
 - See further Poole, pp. 46, 79-85.
- Note limited judicial awareness of somewhat artificial nature of classifying transaction using formalistic schema of offer and acceptance.
 - See further Poole, pp. 40-41.





Offer (1)

- What is an offer?
 - An expression by one party of willingness to contract on certain terms and which is capable of immediate transformation into a contract by another party's acceptance.
- Form of offer?
 - Orally, in writing or by conduct
- To whom can offer be made?
 - To individual person, particular group of persons, or to world at large
 - See e.g. *Carlill v. Carbolic Smoke Ball Co.* (1893) – offer made to world at large





Offer (2)

- Offer to be distinguished from:
 - (a) invitation to treat:
 - See e.g. *Gibson v. Manchester City Council* (1979) – HL engages in detailed analysis of statements made.
 - Other examples of invitation to treat:
 - Advertisements in catalogues, circulars (see e.g. *Partridge v. Crittenden* (1968); *Grainger v. Gough* (1896): cf *Carlill v. Carbolic Smoke Ball Co.*
 - Shop displays (see e.g. *Fisher v. Bell* (1961); *Pharmaceutical Society of Great Britain v. Boots* (1953))
 - Auctions (e.g. *Payne v. Cave* (1789); Sale of Goods Act 1979 s. 57(2): “A sale by auction is complete where the auctioneer announces its completion by the fall of the hammer, or in other customary manner, and until the announcement is made any bidder may retract his bid”); *Harris v. Nickerson* (1873); c.f. *Warlow v. Harrison* (1859).
 - Tenders (see *Spencer v. Harding* (1870); c.f. *Harvela Investments Ltd. V. Royal Trust Co. of Canada Ltd.* (1985); *Blackpool and Fylde Aero Club Ltd. V. Blackpoole Borough Council* (1990)).





Offer (3)

- Offer to be distinguished from (cont.):
 - (a) invitation to treat (cont.):
 - Tickets and timetables: unclear case law; cp. *Denton v. GN Railway* (1856); *Wilkie v. London Passenger Transport Board* (1947) per Lord Greene; *Thornton v. Shoe Lane Parking Ltd.* (1971).
 - Status of websites? See Poole, pp. 49-50.
 - (b) request for information or mere supply of information
 - See e.g. *Harvey v. Facey* (1893); *Gibson v. Manchester City Council* (1979).



Offer (4)

- Communication of offer
 - An offer must be communicated to offeree (in the sense that the offeree must have knowledge of offer) before it can have legal effect. This follows too from the criteria for valid acceptance and consideration (see subsequent lectures).
- When is (and can) offer (be) terminated?
 - Basic premise: contract not formed if offer not in existence at time of acceptance. An offer lapses and therefore cannot be accepted if there has been:
 - i. rejection by offeree
 - ii. revocation (withdrawal) by offeror
 - iii. Lapse of time
 - iv. Failure of condition precedent; or (possibly)
 - v. death





Offer (5)

- When is (and can) offer (be) terminated (cont.)?
 - Rejection by offeree:
 - May be express or by making counter-offer. See e.g. *Hyde v. Wrench* (1840). Cp. Counter-offer with request for information: see *Stevenson v. McLean* (1880)
 - Revocation (withdrawal) by offeree:
 - General rule: offer can be revoked at any time before acceptance (but note special rule for unilateral contracts below). See *Payne v. Cave* (1789).
 - Promise to keep offer open?
 - Such promise is not binding unless valuable consideration provided for that promise: *Routledge v. Grant* (1828)



Offer (6)

- When is (and can) offer (be) terminated (cont.)?
 - Revocation by offeror (cont.)
 - Communication of revocation?
 - Revocation only effective if communicated to (“received by”) offeree: see e.g. *Byrne v. van Tienhoven* (1880)
 - Revocation does not have to be communicated by offeror: can come from other reliable source: *Dickinson v. Dodds* (1876)
 - Revocation and unilateral contracts?
 - Offer probably cannot be revoked after offeree has begun performance of act that indicates acceptance. Compare *Luxor (Eastbourne) Ltd. v. Cooper* (1941) with *Errington v. Errington* (1952), *Daulia Ltd v. Four Millbank Nominees Ltd* (1978) and *Soulsbury v. Soulsbury* (2007)





Offer (7)

- When is (and can) offer (be) terminated (cont.)?
 - Lapse of time
 - Offer lapses after such time as expressly stipulated in offer or, if no stipulation, after reasonable time: see e.g. *Ramsgate Victoria Hotel v. Montefiore* (1866)
 - Failure of condition precedent
 - Offer may be conditional on occurrence or non-occurrence of events. This may be expressly stated or implied in offer: see e.g. *Financings Ltd. v. Stimson* (1962)
 - Death
 - Offer may terminate on death of proposed party. Offer cannot be accepted by offeree after he has notice of death of offeror. Offer cannot usually be accepted after death of offeree.

