

Project Procurement & Contract Management

**Contract Formation
in Commercial Contracting –
Offer & Acceptance**

Muhammad Ali Raza
Collector Customs (GB) /
Procurement Specialist FBR
alihanjira@gmail.com
Cell: 0345-5497368

Scope of Discussion

- Offer
- Counteroffer
- Is Invitation an Offer?
- Acceptance
- Rules of Acceptance

Muhammad Ali Raza 2

**Contract Formation
in Commercial Contracting**

Agreement: Offer & Acceptance
In Common Law Contracts:

- ✓ Offer
- ✓ Acceptance
- ✓ Exchange of Considerations
- ✓ Competent parties
- ✓ Legality of Purpose

Muhammad Ali Raza 3

**Contract Formation
in Commercial Contracting**

✓ **Offer:**

- Unequivocal
- Intentionally communicated to another party
- Presumed revocable unless specifically stated irrevocable
- Open for a reasonable period of time

**Contract Formation
in Commercial Contracting**

✓ **Requirements of an Offer:**

- Contractual Intention: **Social Invitation?**
- Agreement to make a Contract at a future date: **contract or draft?**
- Invitation to negotiate: **news Ads?**

Does Invitation to negotiate constitute a Unilateral Contract?



<https://www.youtube.com/watch?v=Ln0VSA9UJ-w>

In 1996 PepsiCo ran a promotion through which consumers who collected empty Pepsi containers could earn "Pepsi Points" that could be redeemed for hats, jackets, bikes and other such merchandise. It also said that anyone collecting 7,000,000 points could get a Harrier Jet. A teenager John Leonard collected 7,000,000 points and claimed the Jet. Pepsi refused. Leonard filed suit in Miami against Pepsi for breach of contract, fraud, deceptive and unfair trade practices, and misleading advertising.

Court Decision



In August 1999, the New York judge upheld Pepsi's case.

"No objective person could reasonably have concluded that the commercial actually offered consumers a Harrier jet," U.S. District Judge Kimba Wood said.

Muhammad Ali Raza

7

Court Decision



□ The court found that even if the advertisement had been an offer, no reasonable person could have believed that the company seriously intended to convey a jet worth roughly \$23 million for \$700,000, i.e., that it was mere **puffery**.

Muhammad Ali Raza

8

Court Decision



In law, **puffery** is a promotional statement or claim that expresses subjective rather than objective views, which no "reasonable person" would take literally. Puffery serves to "puff up" an exaggerated image of what is being described.

It does not become a unilateral contract

Muhammad Ali Raza

9

Termination of an Offer:

- Offer must be open for acceptance.
- Offer can be closed by Revocation
- Revocation – an act of offeror which effectively cancels the offer.
- Revocation can be communicated by a third Party

Termination of Offer (cont...)

✓ **Exceptions to Revocation:**

- **Options Contract:** a binding promise to keep an offer open for a stated period of time or until a specific date. Promisor is paid a price to keep the option open
- **Firm Offer:** an offer which states that it is to be irrevocable, or irrevocable for a stated period of time. Under UCC, it is for 3 months maximum

Termination of Offer (cont...)

✓ **Offer - its Rejection & Counter Offer:**

- Offer can be terminated by a Rejection
- Imposing condition on the acceptance
- Counter-Offer:
 - **Closed the original Offer**
 - **Offeror now becomes offeree**

Termination of Offer (cont...)

- **Death or Disability of Either Party:** before acceptance
- **Subsequent Illegality:** If performance illegal after the offer is made.
Semi-automatic handguns

An Invitation to treat:

- Not all statements amount to an offer
- An Invitation to treat is not an Offer
- But an invitation to others to make an offer
- An advertisement to sell is not an offer

Pharmaceutical Society of GB v Boots Cash Law - Chemists...sale of pharma goods under chemist's supervision.

Boots Cash Chemists had just instituted a new method for its customers to buy certain medicines. The company would let shoppers pick drugs off the shelves in the chemist and then pay for them at the till. Before then, all medicines were stored behind a counter and an assistant had to get what was requested. The Pharmaceutical Society of Great Britain objected and argued that under the Pharmacy and Poisons Act 1933, that was an unlawful practice. Under section 18(1), a pharmacist needed to supervise at the point where "the sale is effected" when the product was one listed on the 1933 Act's schedule of poisons. The Society argued that displays of goods were an "offer" and when a shopper selected and put the drugs into their shopping basket, that was an "acceptance". Therefore because no pharmacist had supervised the transaction at this point, Boots was in breach of the Act. Boots argued that the sale was effected only at the till.

Courts' Decisions

Both the Queen 's Bench division of the High Court and the Court of Appeals sided with Boots.

They held that the display of goods was not an offer. Rather, by placing the goods into the basket, it was the customer that made the offer to buy the goods. This offer could be either accepted or rejected by the pharmacist at the cash desk. The moment of the completion of contract was at the cash desk, in the presence of the supervising pharmacist. Therefore, there was no violation of the Act.

Statement of Intention:

- A mere statement of Intention is not an offer

Statement of Price:

- A statement of Price in answer to an enquiry is not an offer...
Harvey v Facey (1893)... Telegram exchange of price enquiry... no contract
- A quotation, in response to an RFQ, if detailed, may construe an offer

The case involved negotiations over a property in Jamaica. The defendant, Mr LM Facey, had been carrying on negotiations with the Mayor and Council of Kingston to sell a piece of property to Kingston City On 7 October 1891, Facey was traveling on a train between Kingston and Porus and the appellant, Harvey, who wanted the property to be sold to him rather than to the City, sent Facey a telegram. It said, **"Will you sell us Bumper Hall Pen? Telegraph lowest cash price-answer paid"**. Facey replied on the same day: **"Lowest price for Bumper Hall Pen £900."** Harvey then replied in the following words. **"We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession."** Facey, however refused to sell at that price, at which Harvey sued.

Muhammad Ali Raza

19

Courts' Decisions

Facey won the case at Trial Court for not selling his estate. Harvey appealed to the Court of Appeal, which reversed the trial court decision. Facey appealed to the Privy Council. The Privy Council reversed the Court of Appeal' opinion, reinstating the Trial Court's decision and stated the reason for its action as under:

The Privy Council advised that no contract existed between the two parties. The first telegram was simply a request for information, so at no stage did the defendant make a definite offer that could be accepted.

Muhammad Ali Raza

20

Acceptance

- Acceptance is **unconditional** assent to all the terms of an offer
- Not all enquiries about form of contract are counter-offers by offeree
- Enquiry about price is a counter-offer
- Acceptance must not be "Subject to Contract"

Muhammad Ali Raza

21

Forms of Acceptance

- Any form of acceptance is valid:
 - Oral
 - Written
 - Inferred from other party's conduct
- **Broagden Vs Metropolitan Railway Coal (1877)**... no objection to new terms by seller
- If a mode of acceptance mandatory, then no other form of acceptance valid

Forms of Acceptance:

- Silence alone is not acceptance
- Some sort of action is required
 - e.g Purchase of a horse [Felthouse vs Bindley (1863)]
- Offeror cannot impose his offer if offeree does not specifically reject it

Acceptance Regulations:

- **Mirror Image Rule** (Common Law)
- Acceptance must merely to be to the significant terms of the offer (Civil Law)
- Definite and reasonable expression of acceptance , sent within a reasonable time (Universal Commercial Code: UCC)

Communication of acceptance:

- Offeree to properly communicate his acceptance to offeror
- Offeror should receive and understand the acceptance
- Offeree should check if his acceptance has reached offeror

Communication of acceptance:

✓ **Postal Rule of Acceptance**
(Common law):

- Acceptance will be complete & effective when the acceptance letter is posted or placed into the hands of the relevant postal authorities
- Offeror chooses post as standard and accepted method of communication

Adams v Lindsell (1818)..

Communication of acceptance:

✓ **Postal Rule of Acceptance:**

- Letter must be properly stamped
- Properly addressed
- Properly posted
- Handing a letter to a postman is not equivalent in law to posting a letter
- Telex when transmitted complies with Postal Rule

Postal Rule of Acceptance

What if a revocation and acceptance cross in the mail?

- A revocation is effective only on receipt by the offeree
- If an offeree dispatches an acceptance after the offeror has dispatched a revocation but before the revocation arrives, a contract is formed

Thankyou
Q & A
