

Lesson Two

Offer

2.1 What is an Offer?

An offer is a definite undertaking, or an expression of willingness by one person to another to enter into a contract or agreement with him. It is made with the intention that it shall become binding on the person making it as soon as it is accepted by the other person to whom it is addressed. Generally, an offer may be made to an individual, to a group of people or to the whole world, e.g. advertisements. It may be made by word or by conduct.

For example, A offers his car to B for N10,000. If B says he accepts, A must sell the car to him. And if A fails to sell it later, B can sue for breach of contract and recover damages. An offer can take any of three forms:

1. An offer of an act for a promise, for example when A offers goods or services which when accepted binds the offeree to reward him.
2. The offer of a promise for an act. A common example here is in reward cases e.g if A promised to pay N20 to whoever finds his lost watch, and B finds it, A is under an obligation to pay.

These two kinds of offer are generally referred to as unilateral contracts. That is to say that the outstanding obligation is on one side only.

3. The offer of a promise for a promise. The commonest example here is in marriage cases. I.e. will you marry me? Yes, I will marry you. Here the contract consists of mutual promises from the two parties and the outstanding obligation is on both parties.

Note that offer may be easily confused with other seemingly related terminology. Thus offer should be distinguished from mere expression or willingness to come to negotiating table, which does not amount to an offer and therefore cannot be accepted. It is thus necessary for us to consider the difference between an offer and an invitation to treat.

2.2 Offer and Invitation to Treat

Offer may easily be confused with invitation to treat. While a definite offer is capable of becoming binding on acceptance and thereby creating a contract, an invitation to treat is merely a preliminary initiative for negotiation, which may lead to offer and acceptance thereby creating a contract (this is just a possibility, the contract may or may not be created). Thus issues like catalogues, circulars, price lists, prospectuses, advertisement for auctions sales, display of goods in a shop window or shelves with their price tags, et cetera are merely initiatives for negotiation in other words known as invitation to treat. In this regard we can have a look at the following cases:-

Pharmaceutical Society of Great Britain V. Boots Cash Chemists Ltd. (1953)

In this case, there was an act of Parliament, the Pharmacy and Poison Act 1933 which provided that certain medicine must be sold in the presence of a qualified pharmacist. The defendant carried on their retail sale of drugs by a self-service system whereby a customer obtained a basket, selected from the shelves the articles he required and having placed them in the basket brought them to the cash desk at the exit where a registered pharmacist supervised purchase of all drugs. An action was instituted against the defendant for violating the Act, for effecting sale without the supervision of the pharmacist. The crucial question for determination by the court was whether the sale took place at the point where the customer put the selected article in the basket or whether it took place at the cash desk. The answer to this depends on whether the display of drugs with price tags was an offer by the defendants to sell which the customer accepted by picking the article or it was an invitation to the customer to make an offer for purchase which was to be accepted at the cash desk, in which case there would have been no breach of the statute since there was a pharmacist near the cash desk. It was held that the display was a mere invitation to treat and the contract of sale took place at the cash desk where the registered pharmacist supervised the sale and that the defendants were not in breach of the statute.

A shopkeeper who had displayed in his shop window a flick-knife with the words: "Ejector knife" was prosecuted under the restriction of offensive weapons Act 1959 for offering for sale a flick knife. It was held that the shopkeeper committed no offence, as display of the knife is not in itself an offer for sale.

In another case the plaintiff picked a bottle "tonic" in a self-service grocery store owned by the defendant. Whilst placing it in the basket, it exploded and severely injured her. She instituted an action for breach of an implied warranty of merchantability under contract of sale of goods. The action was dismissed on the ground that there was neither a sale nor an agreement to sell at the time the bottle exploded.

2.3 Specific and General Offer

Offer may be specific or general. By its nature there is no limit to the number of people to whom an offer can be made. It can be made to a single individual, to a group of people or to the world at large. However, a contract is said to come into existence only between the offeror and the person or persons accepting it.

In one case the company advertised what they believed to be a perfect cure for the common cold. They advertised in a newspaper that if anybody used their medicine according to their instructions and still caught the epidemic influenza or cold he will be paid N1000. They also mentioned that they have deposited N1000 with their bankers to show their sincerity. The plaintiff used the medicine as directed and unfortunately caught cold. She sued the company to recover the N1000. The defendant argued inter alia that there was no offer capable of being accepted since it was not addressed to any person or group of persons. It was held that an offer can be made to the whole world and anybody who comes out and performed the condition has accepted that offer thereby constituting a valid contract.

In another case the plaintiff had some hairs on her face and chest and wanted to have them removed. She saw an advertisement in the papers, which guaranteed the safe removal of the hair. The plaintiff submitted herself to the treatment but in fact the hairs continued to grow. She sued and recovered damages despite the fact that no money had been deposited as in the previous case.

2.4 Advertisement and Tender

Generally speaking advertisements and tenders are merely an invitation to treat for offers from interested parties and are not themselves offers.

In an advertisement of an electric comb it was stated thus: “What is your trouble? Is it grey hair? In ten days time not a grey hair will be left”. The plaintiff bought the comb and used it according to instruction but the grey hairs continued to grow and in fact the comb only succeeded in squashing his hair. It was held that it was an advertisement or invitation to treat but since the plaintiff used the comb according to instruction, there is an offer which was duly accepted and therefore there was a contract and the plaintiff is entitled to recover damages.

2.5 Knowledge of an Offer

It is necessary that offer should be communicated to the offeree because only the person who knows of the existence of the offer or one to whom the offer was addressed can accept that offer. And the offer becomes effective only when it reaches the offeree. This rule in most cases works in reward cases; thus if somebody offers to pay certain amount to anybody who find his lost property and somebody happens to find the property before seeing the offer and handed it in, then he cannot claim the reward. It is held that there can be no assent to an offer by one who is unaware that it has been made.

The position would however be different in a situation where the offeree is aware of the offer but was motivated by a different consideration than the desire to earn the reward. It was held that the motive was immaterial provided there was knowledge of the reward offered. In this case a reward of N2m was promised for information leading to the conviction of a murderer. The plaintiff knew about the reward but gave the information to ease her conscience when she was injured in a street accident believing that she had not long to live. It was held that she was entitled to claim the reward.

Note that, for the offeree to be able to recover the reward, he must give the information required directly to the offeror and not indirectly through a third party.

2.6 Certainty of Expression

An offer capable of acceptance and resulting in a legally binding contract must be certain in all material particulars. If the terms are uncertain or indefinite, the contract cannot be upheld.

The plaintiff brought an action against the defendant for specific performance of a contract for the sale of land. The plaintiff was a member of parliament and a minister. There was a circular sent by the ministry of housing addressed to all members of

parliament asking them that those who are interested in buying Government Houses in hire purchase should contact the Ministry.

The plaintiff deposited a certain amount of money with a bank as part of the purchase price of the house. In fact the house was never transferred to him. The plaintiff sued claiming that there was a concluded contract because he had accepted the proposal in the circular, which was an offer for the sale of the house. The defendant contended that there was no contract because (i) the circular was not an offer and (ii) the material terms of the transaction had been left unascertained. It was held that the circular was not an offer but invitation to treat and therefore there was no contract.

2.7 Cross Offers

Two identical cross offers do not amount to a contract. In effect it is difficult to say that the offer has been communicated and accepted; the reason being that neither party knew of the other's offer as such it cannot be said to have been communicated and accepted.

In a case the defendants wrote to the plaintiff offering to sell him 800 tons of iron at a certain price per ton together with a further quantity at the same price. The same day the plaintiff wrote to the defendants offering tons of iron at the same price together with a further quantity at a lower price. The letters crossed in the post. It was held that there was no contract.

2.8 Termination of Offer

An offer may be terminated in the following ways:

1. By revocation before acceptance.
2. By non-acceptance within the stipulated time for acceptance.
3. By death of either the offeror or offeree.
4. By rejection.
5. By conditional acceptance or counter offer.

2.8.1 Revocation before acceptance

An offer may be revoked by the offeror at anytime before it is accepted. Withdrawal or revocation of an offer must be communicated to the offeree before acceptance. The revocation may be made directly by the offeror himself, or indirectly. The important point to note is that revocation is of no effect until it is actually brought to the notice of the offeree.

2.8.2 Non-acceptance within the stipulated time for acceptance

An offer must be accepted within reasonable time if no time limit has been stated. What is reasonable time will depend on the circumstances of each case. Some offers must be accepted immediately. Where an offer is made by telegram, the mode of offer indicates that the acceptance should be quick also, and in this case a reply by letter may be too late.

2.8.3 By death of either the offeror or offeree

Death of offeror or offeree before acceptance terminates the offer, death after acceptance has no effect on the majority of contracts. Where an offeree dies after acceptance the contract will be valid.

2.8.4 By rejection

Rejection of offer may take two forms:

- Where the offeree communicates his rejection to the offeror.
- Where the offeree makes a counter offer.

2.8.5 By conditional acceptance or counter offer

Conditional acceptance and counter offer ter