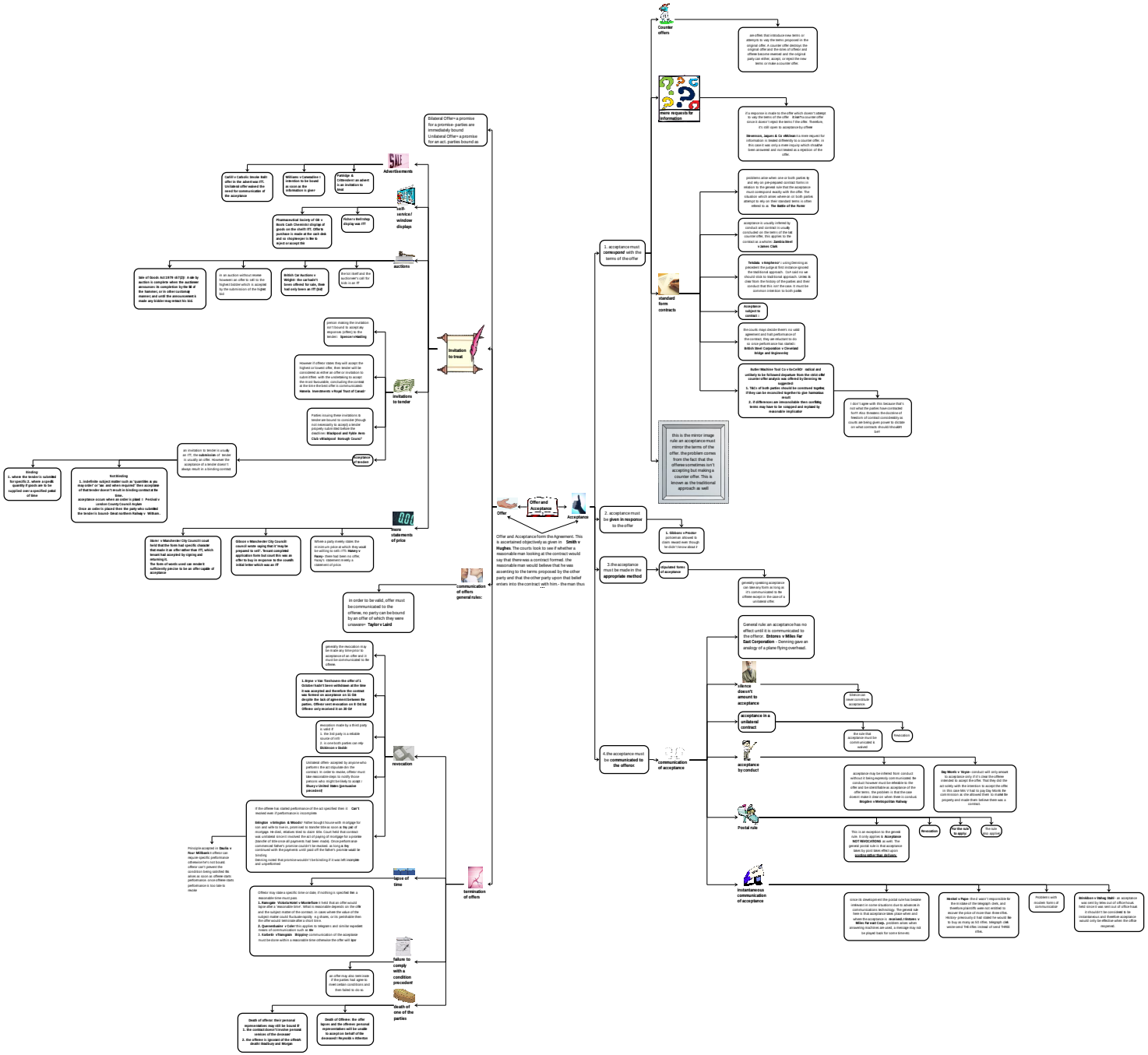
Bilateral Offer= a promise for a promise- parties are immediately bound
Unilateral Offer= a promise for an act. parties bound as
Offer and Acceptance form the Agreement. This is ascertained objectively as given in Smith v Hughes. The courts look to see if whether a reasonable man looking at the contract would say that there was a contract formed. the reasonable man would believe that he was assenting to the terms proposed by the other party and that the other party upon that belief enters into the contract with him - the man thus
Offer
Offer and Acceptance
Acceptance
Invitation to treat
Advertisements
Cartill v Catholic Insole Ball offer in the advert was ITT. Unilateral offer waived the need for communicate of the acceptance
Williams v Carwardine = intention to be bound as soon as the information is given
Partridge v Crittenden an advert is an invitation to treat
self-service/ window displays
Pharmaceutical Society of GB = display of goods on the shelf= ITT. Offer is purchaser is made at the cash desk and so shopkeeper is free to reject or accept the
Fisher v Bell=flick knife was ITT
auctions
Sale of Goods Act 1979 s57(2)- A sale by auction is complete when 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.
In an auction without reserve however an offer to sell to the highest bidder which is accepted by the submission of the highest bid.
British Car Auctions v Wright- the car hadn't been offered for sale, they had only been at ITT (bid)
Barry= itself and the goods displayed are the bids to an IT
person making the invitation isn't bound to accept any response (offer) by the tender. Spencer v Harding
However if offeror state they will accept the highest or lowest offer, then tender will be considered as either an offer or invitation to offer. Offeror is not bound to accept and he is not favourable, concluding the contract at the time the best offer is communicated. Harvela Investments v Royal Trust of Canada
Parties issuing these invitations to tender are bound to consider (though not necessarily to accept) a tender properly submitted before the deadline- Blackpool and Fylde Aero Club v Blackpool Borough Council
Acceptance of tender
invitations to tender
an invitation to tender is usually an ITT, the submission of tender is usually an offer. However the acceptance of a tender doesn't always result in a binding contract
Binding
1. where the tender is submitted for specific 2. where a specific quantity of goods are to be supplied over a specified period of time
Not binding
1. Indefinite subject matter such as "quantities as per previous years" 2. Where the acceptance of that tender doesn't result in binding contract in the
Note:-
acceptance occurs when an order is placed = Percival v London County Council Asylum
Once an order is placed then the party who submitted the tender is bound= Great Northern Railway v Witham.
Harvey v Manchester City Council= court held that the form had specific clauses that made it an offer other than ITT, which meant had accepted by signing and returning it.
The form of words used can render it sufficiently precise to be an offer capable of acceptance
Gibson v Manchester City Council= council wrote saying that it might be willing to sell the house. Mr Gibson's application form but court this was an offer to buy in response to the council's initial letter which was an IT
Where a party merely states the minimum price at which they would be willing to sell= Gibson v Barton
Tinsley= there had been no offer, Tinsley's statement merely a statement of price.
more statements of price
Communication of offers general rules:
In order to be valid, offer must be communicated to the offeree, no party can be bound by an offer of which they were unaware= Taylor v Laird
generally the revocation is to be valid any time prior to acceptance of an offer and is to be communicated to the offeree.
1. Byrne v Van Tienhoven-the offer of 1 October hadn't been withdrawn at the time it was accepted and therefore the contract was formed on acceptance on 11 Oct despite the lack of agreement between the parties. Offeror sent revocation on 8 Oct but Offeree only received it on 20 Oct
revocation made by a third party is valid if 1. the 3rd party is a reliable source of info 2. it is one both parties can rely Dickinson v Dodd
Unilateral offers- accepted by engineering performs the act stipulate din the contract. In order to revoke, offeror must take reasonable steps to notify those persons who might be likely to accept - Shuey v United States= Gerhardine Abendroth
revocation
If the offeree has started performance of the act specified then it can't be revoked even if performance is incomplete
Errington v Errington & Woods= Father bought house with a mortgage for son and wife to live in, promised to transfer title as soon as the last of mortgage. He died, relatives tried to claim title. Court held that contract was unilateral since it involved the act of paying off mortgage for a private transfer of title once all payments had been made. Once performance had been started the offeror cannot revoke the offer as long as they continued with the agreement until paid off the father's promise would be binding
Denning noted that promise wouldn't be binding if it was left incomplete and unperformed
Principle accepted in Stadia v Ruer Millboard= offeror can require specific performance otherwise he's not bound. Once offeree has satisfied condition being satisfied the allows as soon as offeree starts performance since offeree starts performance is too late to revoke
lapse of time
Offeror may make a specific time or date. If nothing is specified the a reasonable time must pass
1. Ramsgate Victoria Hotel v Montefiore it held that an offer would lapse after a 'reasonable time'. What is reasonable depends on the offe and the subject matter of the contract. In cases where the value of the subject matter could fluctuate rapidly, e.g shares, or to perishable then the offer would lapse relatively quickly.
2. Quenneddue v Cohn this applies to telegram and similar expedient means of communication such as tle
3. Kaltenbi v Thorngate Ringpine communication of the acceptance must be done within a reasonable time otherwise the offer will lapr
termination of offers
failure to comply with a condition precedent
an offer may also terminate if the parties had agree to meet certain conditions and then failed to do so.
Death of one of the parties
Death of offeror: their personal representatives may still be bound if 1. the offeree is ignorant of the offeror death= Bradbury and Morgan
Death of Offeree: the offer lapses and the offerees personal representative will be unable to accept on behalf of the deceased= Reynolds v Atherton
1. acceptance must correspond with the terms of the offer
2. acceptance must be given in response to the offer
1. Stilk=on v Myrick= policeman allowed to claim reward even though he didn't know about it
3.the acceptance must be made in the appropriate method
standard form contracts
this is the mirror image rule: an acceptance must mirror the terms of the offer. the problem comes from the fact that the offeree sometimes isn't accepting but making a counter offer. This is known as the traditional approach as well
4.the acceptance must be communicated to the offeror
Communication of acceptance
Counter offers
are offers that introduce new terms or attempt to vary the terms proposed in the original offer. A counter offer destroys the original offer as it is treated as rejecting the offeree become invested and the original party can either, accept, or reject the new terms or make a counter offer.
mere requests for information
If a response is made to the offer which doesn't attempt to vary the terms of the offer - it isn't a counter offer since it doesn't reject the terms f the offer. Therefore, it's still open to acceptance by offeree
Stevenson, Jaques & Co =Mclean is a mere request for information is treated differently to a counter offer. in this case it was only a mere inquiry which should've been answered and not treated as a rejection of the offer.
problems arise when one or both parties try and rely on pre-prepared standard terms in relation to the general rule that the acceptance must be unqualified. There is a lot of confusion which arises where one or both parties attempt to rely on their standard terms is often referred to as The Battle of the Forms
acceptance is usually inferred by conduct and contract is usually concluded on the term of the last counter offer, this applies to the contract as a whole= Jamilla Hirst v James Clark
Tekdata v Anglovaara= using Denning as precedent the judge at first instance ignored the traditional approach, "Let said so we should stick to traditional approach. Unless is clear from the history of the parties and their conduct that this isn't the case. It must be common intentions to both parties
Acceptance must be unilateral !
the courts may decide there's no valid agreement and halt performance of the contract, they are reluctant to do so. Trollope and Colls v North West Metropolitan Hospital Board= British Steel Corporation v Cleveland Bridge and Engineering
Butler Machine Tool Co v Ex-Cell-O= judicial and unlikely to be followed departure from the strict offer counter-offer analysis was offered by Denning re suggested
1. T&Cs of both parties should be construed together, if they can be reconciled together to give harmonious result
2. If differences are irreconcilable then conflicting terms may have to be consigned and replaced by reasonable implication
I don't agree with this because that's not what the parties have contracted for!! Also threatens the doctrine of freedom of contract considerably as courts are being given power to dictate on what contracts should/shouldn't form
Acceptance is effective
Entores v Miles Far East Corporation - Denning gave an analogy of a plane flying overhead.
silence doesn't amount to acceptance
acceptance in a unilateral contract
acceptance by conduct
Postal rule
Instantaneous communication of acceptance
Household Fire and Carriage Accident Insurance Co v Grant= Grant applied for shares in the company, he posted his application but before the letter was received the company went into liquidation. Grant argued that he had become a shareholder when he posted the letter. Court held that the letter was lost in the post and therefore Grant was not a shareholder.
Holwell Securities v Hughes= Hughes had an option to purchase property from Holwell Securities. He posted a letter exercising the option but it was lost in the post. Court held that the option was not exercised as the letter was lost in the post.
Brogden v Metropolitan Railway Co= Brogden had been supplying coal to the railway company for many years. The railway company sent a draft agreement to Brogden. Brogden filled in the agreement and returned it to the railway company. However, the railway company did not sign the agreement. Instead, they continued to order coal from Brogden. Court held that a contract had been formed when Brogden returned the agreement to the railway company.
Byrne v Van Tienhoven= Byrne posted a letter to Van Tienhoven on 1 October offering to sell tin. Van Tienhoven received the letter on 8 October and posted a letter withdrawing the offer on 8 October. Byrne received the withdrawal letter on 11 October and posted a letter accepting the offer on 11 October. Court held that a contract had been formed when Byrne posted the letter of acceptance on 11 October.
Adams v Lindsell= Adams posted a letter offering to sell wool to Lindsell. Lindsell received the letter and posted a letter of acceptance. However, Adams had already sold the wool to another buyer. Court held that a contract had been formed when Lindsell posted the letter of acceptance.
Entores v Miles Far East Corporation= Entores posted a letter offering to sell goods to Miles Far East Corporation. Miles Far East Corporation received the letter and posted a letter of acceptance. However, Entores had already sold the goods to another buyer. Court held that a contract had been formed when Miles Far East Corporation received the letter of acceptance.
Brinkibon v Stahag Stahl= an acceptance was sent by telex out of office hours. held since it was sent out of office hours
It shouldn't be considered is to instantaneous and therefore acceptance would only be effective when the office reopened.
Problems with modern forms of communication
Henkel v Pape= Brief wasn't responsible for the mistake of the telegraph clerk, and therefore plaintiffs were not entitled to recover the price of more than three rifles. Hickey previously of had stated he would be to buy as many as 6 rifles. Telegraph clerk wrote send THE rifles instead of send THREE rifles.
Principle of communication via post
Re London and Northern Bank= Mr Ogilvie was a director of the London and Northern Bank. He resigned his directorship and posted a letter to the bank's secretary. However, the letter was lost in the post and never received by the bank. Court held that Mr Ogilvie was not liable for the bank's debts as he had not effectively resigned his directorship.