

ANSWERS - SELF TEST - AGREEMENT AND CERTAINTY

1. Is a display on supermarket shelves an offer or an invitation to treat? (1)

Give an authority for your conclusion. (1)

A display on supermarket shelves is an invitation to treat. (1)

The authority for this proposition is the Boots Case, Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd. (1)

2. There are some special rules which apply to unilateral contracts. State four such rules (giving authority for each proposition stated). (4)

(a) A unilateral advertisement is an offer and not an invitation to treat. (1)

Authority = Carlill v Carbolic Smoke Ball Co.

(b) A unilateral offeror will be taken to have impliedly waived the requirement for communication of acceptance (unless he makes the contrary clear in his offer). The performance of the act is a sufficient acceptance. (1) Authority = Carlill v Carbolic Smoke Ball Co.

(c) A unilateral offer cannot be revoked once the offeree has started to perform the requested act. (1) Authority = Errington v Errington

(d) In the case of a unilateral offer to the world at large it is not necessary to actually communicate a revocation of an offer to every potential offeree. It is sufficient if the revocation is issued in the same channel as was used to make the offer and it is then irrelevant if individual offerees do not see it. (1) Authority = American case of Shuey v US.

3. What is the postal rule? (1) Give a case example to illustrate this rule. (1)

The postal rule states that if the post is the proper method of acceptance, acceptance is complete as soon as the letter of acceptance is properly posted. (1)

Possible authorities: (1) for any **ONE** of these.

Adams v Lindsell

Household Fire Insurance v Grant

Henthorn v Fraser

4. What is the case authority for the fact that the postal rule may be ousted by requiring actual communication? (1)

Holwell Securities Ltd v Hughes (1).

[As an alternative you could cite the judgment of Theisiger LJ in Household Fire Insurance v Grant. *Either of these will gain the point - but in relation to the second alternative you must give the judge's name as well as the Household Fire case].*

5. Explain the mirror image rule. (1)

The mirror image rule states that in order to be an acceptance in fact, any acceptance must correspond with the exact terms proposed by the offeror. (1)

What is the effect of introducing a new term or amendment of the offer terms when the offeree purports to accept? (2) Give authority for this last proposition. (1)

If the offeree purports in his "acceptance" to introduce any new terms or to make amendments to the offer terms, he is making a COUNTER-OFFER (1) which has the effect of rejecting the original offer and represents a new offer on the terms proposed which the original offeror can accept if he wishes. (1)

Authority for this last statement should be given as Hyde v Wrench. (1)

6. What is the leading case authority on battle of forms? (1)

What does this case decide? (2)

Butler Machine Tool Co. Ltd v Ex-Cell-O Corpn (England) Ltd (1)

This case decides (*you must state the majority decision*) that by using different terms the buyers made a counter-offer (last shot) (1), which was expressly accepted by the sellers when they completed and returned the acknowledgement slip stating that they accepted the buyers' order on the terms and conditions of the buyer. (1)

7. *Dickinson v Dodds* can be cited as authority for two propositions of law. What are they? (2)

(a) As an example of the firm offer rule, i.e. that although the offeror may have stated a period during which the offer is open, unless that promise is supported by consideration given in exchange, the offeror is nevertheless free to revoke his offer during that period. (1)

(b) The revocation of an offer need not be communicated to the offeree by the offeror as long as the fact of revocation has been communicated to the offeree. (1)

8. What did the CA decide in *Blackpool & Fylde Aero Club v Blackpool BC*? (1)
CA held that the invitation to tender gave rise to a binding obligation to consider conforming tenders, i.e. those tenders conforming to the conditions set out in the invitation to tender. (1) (Arguably the basis of this is a unilateral promise to this effect, followed by bilateral contract awarding the work. If the unilateral obligation is broken, i.e. a conforming tender is not considered, the remedy is in damages only).

9. If the offeror has prescribed a particular method of acceptance and has not made that method mandatory, when will acceptance by a different method suffice? (2)
Give an authority for this principle. (1)

It will suffice if

(a) The purpose in prescribing the method was to benefit the offeree and the offeree can therefore waive a stipulation for his own benefit. (1)

(b) If the purpose in prescribing the method was to benefit the offeror or offeree, then any method that is no less disadvantageous to the intended beneficiary will suffice.

(1) For example, if the purpose is to benefit the offeror by seeking to ensure a quick reply, then any method just as quick or quicker will suffice.

Authority you should cite is Manchester Diocesan Council for Education v Commercial & General Investments Ltd. (1). Alternatively you may cite Tinn v Hoffman & Co. [No points for Yates v Pulleyn since it is not a general authority on this principle. It is too specific re offeree's position].

10. Cite three cases that discuss the effect of telex communications and briefly explain the significance of each decision. (3)

One point for ANY of the following cases. Maximum of 3.

Entores Ltd v Miles Far East Corp. - held that a message sent by telex was communicated at the place where it was received (and contract made at the place of receipt), so that the actual communication rule applied to such communications.

The Brimnes (Tenax Steamship Co. Ltd v The Brimnes) - telex messages sent to a business within office hours were actually communicated when received by the recipient's machine. They did not need to be actually read in order to be communicated.

Brinkibon Ltd v Stahag Stahl GmbH - confirmed the decision in Entores and indicated that this general rule will not cover instances such as non-instantaneous telex messages. In these situations the position would have to be resolved "by

reference to the intentions of the parties, by sound business practice and in some cases by a judgment where the risks should lie" (Lord Wilberforce).

Mondial Shipping & Chartering BV v Astarte Shipping Ltd - expressly applying comment of Lord Wilberforce in Brinkibon - telex message sent to a business outside "ordinary business hours"- communicator could not have expected the recipient to have received the message (sent late Friday evening - communicated on Monday morning).

11. What is the significance of the decision in *Errington v Errington*? (2)

It is Court of Appeal (1) authority for the fact that revocation of a unilateral offer is not possible once the offeree has entered on performance of the act. (1)

12. How is it possible to distinguish *Errington* and the decision of the House of Lords in *Luxor v Cooper*? (2)

By stating that Luxor is House of Lords authority for the principle that a unilateral offeror will be free to revoke his offer despite the fact that the offeree has entered on performance of the act **where the offer contemplates that the offeror is to be free to revoke at any time until complete performance of the act.** (1) In Errington the terms of the offer were different and did not imply that the offeror should be free to revoke at any time before ALL the instalments had been paid. (1)

13. Which of the following statements is correct? (1)

Shuey v US decides that

- (a) It is not necessary to communicate a revocation of a unilateral offer;
- (b) It is not necessary to communicate revocation in the case of unilateral offers to the whole world;
- (c) It is sufficient, in the case of a unilateral offer to the whole world where the offerees are unascertained, to communicate the revocation via the same channel as used for the offer;
- (d) It is sufficient to communicate the revocation of a unilateral offer via the same channel as used for the offer.

Only (c) is fully correct since this rule only applies to revocations of unilateral offers made to unascertained offerees (e.g. offers to the whole world). (1)

14. Where an essential term in an agreement is vague, in what circumstances are the courts likely to supply details of the terms? (2)

(a) Where there is clear evidence of commercial recognition of what the term should be (as in Hillas v Arcos)

AND

(b) If the agreement has already been acted upon (executed). (2).

[You must get BOTH factors for the points. No points for only one of these].

15. In what circumstances do agreements to negotiate constitute an enforceable contract? (3)

A lock OUT agreement (i.e. not to negotiate with any other person) which covers a fixed period of time (1) and which is supported by good consideration (1) is enforceable.

However, lock IN agreements (only to negotiate with a particular person) are always unenforceable, as are lock out agreements for “reasonable period”. (1)

Points scored [maximum of 35] =