Invitation to treat – price indications: price lists and catalogues

If I expose in my shop window a coat priced £50, this is not an offer to sell. It is not possible for a person to enter the shop and say: 'I accept your offer; here is the £50.' It is the would-be buyer who makes the offer when tendering the money. If by chance the coat has been wrongly priced, I shall be entitled to say: 'I am sorry; the price is £100', and refuse to sell. An invitation to treat is often merely a statement of the price and not an offer to sell.

The same principles have been applied to prices set out in price lists, catalogues, circulars, newspapers and magazines.

> *Pharmaceutical Society of Great Britain* v *Boots Cash Chemists (Southern) Ltd*, 1953 – Price indications (**48**)
>
> *Partridge* v *Crittenden*, 1968 – Magazines and circulars (**49**)

Company prospectuses/advertisements in connection with sale of securities

A prospectus/listing particulars issued by a company in order to invite the public to subscribe for its shares (or debentures, i.e. loan capital) is an invitation to treat, so that members of the investing public offer to buy the securities when they apply for them and the company, being the acceptor, will only accept the proportion of public offers which matches the shares or debentures which the company wishes to issue. If there are more offers than shares, the issue is said to be over-subscribed. Some applicants then get no shares at all or only a proportion of what they applied for. The conditions of issue also allow the company to make a binding contract by a *partial* acceptance in this way. Normally acceptance must be absolute and unconditional.

A prospectus is used where the shares are offered on say the Alternative Investment Market and listing particulars are used where the company has a full listing on the main London Stock Exchange.

Other situations

In other cases, such as automatic vending machines, the position is doubtful, and it may be that such machines are invitations to treat. However, it is more likely that the provision of the machine represents an implied offer which is accepted when a coin is put into it. However, it does seem that if a bus travels along a certain route, there is an *implied offer* on the part of its owners to carry passengers at the published fares for the various stages, and it would appear that when a passenger puts himself either on the platform or inside the bus, he makes an *implied acceptance* of the offer, agreeing to be bound by the company's conditions and to pay the appropriate fare: *per* Lord Greene *obiter* in *Wilkie* v *London Passenger Transport Board* [1947] 1 All ER 258.

Price indications

The court may find in a variety of circumstances that an alleged offer is a mere price indication.

> *Harvey* v *Facey*, 1893 – Offers and price indications (**50**)

Those in business clearly require to contract on somewhat firmer ground than is indicated by the above materials. It is therefore common in business contracts to indicate clearly by a

clause in the contractual documents that a particular document is not an offer and to omit this information when the relevant document is an offer. Nevertheless, a study of the above materials is necessary in order to understand why certain matters are contained in business contracts.

Acceptance – generally

Once the existence of an offer has been proved, the court must be satisfied that the offeree has accepted the offer, otherwise there is no contract. An agreement may nevertheless be inferred from the conduct of the parties.

The person who accepts an offer must be aware that the offer has been made. Thus if B has found A's lost dog and, not having seen an advertisement by A offering a reward for its return, returns it out of goodness of heart, B will not be able to claim the reward. He cannot be held to accept an offer of which he is unaware. However, as long as the acceptor is *aware* of the making of the offer, his motive in accepting it is immaterial (see *Carlill* v *Carbolic Smoke Ball Co* (1893)).

It should be noted that an acceptance brings the offer to an end because the offer then merges into the contract.

Brogden v *Metropolitan Railway*, 1877 – Acceptance by conduct (**51**)

Conditional assent

An acceptance must be absolute and unconditional. One form of conditional assent is an acceptance 'subject to contract'. The law has placed a special significance on these words, and they are usually construed as meaning that the parties do not intend to be bound until a formal contract is prepared.

In the past the main practical use of this phrase was in correspondence relating to sales of land and agreements for leases of land, to indicate that the correspondence between the parties was part of a process of negotiation and not in itself contractual. Under the Law of Property (Miscellaneous Provisions) Act 1989 a contract for the sale or other disposition of land must now be in writing in a document incorporating all the terms which the parties have expressly agreed and must be signed by each party. Solicitors and conveyancers are thus no longer at risk that pre-contract correspondence signed only by one party might amount to enforceable evidence of the contract itself, which was a possibility before. The practice of heading correspondence 'subject to contract' in the above context has therefore lost its former importance. However, the practice may well continue in case litigation on the 1989 Act provisions reveals an unsuspected trap as a result of its omission.

In addition, the form of words is well established in case law as indicating mere negotiation and there is no reason why it should not be used in pre-contractual correspondence in other fields where the parties wish to indicate that they will not be bound by statements in such correspondence unless they later appear in a formal contract.

It is worth noting that the House of Lords decided in *Walford* v *Miles* [1992] 2 WLR 174 that an agreement to continue negotiations until an agreement was reached was not enforceable as having no legal content. So if A and B agree with each other that they will continue to negotiate with each other in regard to the sale of property belonging to A until they reach a binding agreement, the agreement to negotiate will have no legal effect and B will have no

successful claim if, in the course of negotiations between himself and A, A decides to sell the property to C.

However, a negative undertaking by the vendor that he will not for a given period deal with anyone else once the purchaser has agreed to buy and is getting on with the exchange of contracts, is enforceable even if oral. Section 2 of the 1989 Act does not apply. The agreement is not for the sale or disposition of land but only a 'lock-out' agreement not to deal with another for a stated period after which, if contracts are not signed, the vendor can deal with and sell to another. If he does sell within the stated period, he is liable in damages to the would-be purchaser.

Pitt v *PHH Asset Management Ltd*, 1993 – Effect of lock-out agreement (**52**)

Counter-offer

A counter-offer is a rejection of the original offer and in some cases has the effect of cancelling it. Where the counter-offer *introduces a new term*, the original offer is cancelled, though the counter-offer may be accepted either expressly or by implication. However, a simple request for information where the offeree merely *tries to induce a new term* may not amount to an actual counter-offer.

Hyde v *Wrench*, 1840 – Effect of counter-offer (**53**)

Stevenson v *McLean*, 1880 – Request for information (**54**)

Butler Machine Tool Co v *Ex-Cell-O Corporation*, 1979 – Accepting a counter-offer (**55**)

Acceptance in the case of tenders

In the case of an invitation to submit tenders for the purchase of specific goods, as in *Spencer* v *Harding* (1870) where the defendants were selling off a business and issued a circular inviting submission of tenders to buy specific goods listed, the person or company which asks for the tender will usually be regarded as making an invitation to treat. The tender is the offer and the person who asks for it may accept it or reject it as he thinks fit. If tenders are asked for an indefinite amount of goods, e.g. 'coal as required during 2001 not exceeding 100,000 tonnes', the 'acceptance' of such a tender results in a standing offer by the supplier to supply the goods set out in the tender as and when required by the person accepting it. Each time the buyer orders a quantity, there is a contract confined to that quantity; but if the buyer does not order any of the goods set out in the tender, or a smaller number than the supplier quoted for, there is no breach of contract. Conversely, if the person submitting the tender wishes to revoke his standing offer, he may do so, except in so far as the buyer has already ordered goods under the tender. These must be supplied or the tenderer is in breach of contract.

Great Northern Railway v *Witham*, 1873 – The tender as a standing offer (**56**)

Incomplete (or inchoate) agreements

A contract will not be enforced unless the parties have expressed themselves with reasonable clarity on the matter of essential terms. A situation may therefore exist in which the parties have gone through a form of offer and acceptance but this has left some terms unclear so that

if either party wishes to avoid the contract he may claim to do so on the basis that he does not know precisely what to do in order to perform his part of it. The concept of the inchoate contract normally arises as a defence to an action for breach of contract.

In such a case it may be possible for the court to complete the contract by reference to a *trade practice* or *course of dealing* between the parties. Sometimes the agreement itself may provide a method of completion as where it contains an arbitration clause. However, if the court cannot obtain assistance from these sources, it will not usually complete the contract for the parties, and the contract, being *inchoate*, cannot be enforced. However, a covenant in a conveyance that the purchaser should be given 'the first option of purchasing . . . at a price to be agreed upon' certain adjoining land imposes an obligation on the vendor at least to offer the land to the purchaser at a price at which he is willing to sell or, in other words, give him first refusal (*Smith* v *Morgan* [1971] 2 All ER 1500).

However, it is necessary to distinguish between a term which has yet to be agreed by the parties and a term on which they have agreed but is in the event meaningless or ambiguous. In the first case, no contract exists unless the deficiency can be made good by the methods outlined above. In the second case, it may be possible to ignore the term and enforce the contract without it. However, if the term is still being negotiated the contract will be inchoate and unenforceable. In addition, the term must be *clearly* severable from the rest of the contract, i.e. it must be possible to enforce the contract without it.

Hillas & Co Ltd v *Arcos Ltd*, 1932 – Inchoate agreements: a course of dealing (**57**)
Foley v *Classique Coaches Ltd*, 1934 – Inchoate agreements: an arbitration clause (**58**)
Scammell v *Ouston*, 1941 – Where the agreement is inchoate (**59**)
Nicolene v *Simmonds*, 1953 – A meaningless term is ignored (**60**)

Communication of acceptance

An acceptance may be made in various ways. It may be made in writing or orally, or at an auction by the fall of the hammer, but it must in general be communicated and communication must be made by a person authorised to make it. Silence cannot amount to acceptance except sometimes where there is the prior consent of the offeree which is, for example, implied in circumstances such as those in *Carlill*'s case (see Case **46**). Thus if P says to Q: 'If I do not hear from you before noon tomorrow, I shall assume you accept my offer', he will find he is unable, at least without Q's consent to this method of making a contract, to bind Q in this way, and Q need take no action at all.

This rule of the common law goes some way towards preventing inertia selling, though protection is now given by the Unsolicited Goods and Services Acts, 1971 and 1975. The Acts provide for fines to be made on persons making demands for payment for goods which they know are unsolicited. If the demand is accompanied by threats a higher scale of fines applies. Furthermore, under s 1 of the 1971 Act, unsolicited goods may be kept by the recipient without payment *after a period of 30 days* provided the recipient gives notice to the sender asking that they be collected, or *after six months* even if no such notice has been given. It should be noted that the Acts are designed to protect the consumer and do not apply where the goods are acquired in the context of a trade or business, i.e. they do not apply to a business recipient.

Felthouse v *Bindley*, 1862 – Silence does not amount to acceptance (**61**)

Waiver of communication

There are some cases in which the offeror is deemed to have waived communication of the acceptance. This occurs in the case of *unilateral contracts* such as promises to pay money in return for some act to be carried out by the offeree. Performance of the act operates as an acceptance, and no communication is required (*Carlill* v *Carbolic Smoke Ball Co* (1893), see Case **46**). In addition, acceptance need not necessarily be communicated if the post is used (see below).

Mode of communication prescribed by offeror

The offeror may stipulate the mode of acceptance, e.g. to be by letter so that there will be written evidence of it. In such a case, however, the offeror could still waive his right to have the acceptance communicated in a given way and agree to the substituted method.

In addition, an acceptance made in a different way may be effective if there is no prejudice to the offeror, as where the method used is as quick and reliable as the method prescribed.

Thus although the method of communication may be prescribed by the offeror very clear words are required to make the court treat that method as essential.

Yates Building Co v *R J Pulleyn & Sons (York)*, 1975 – Prescribed mode of acceptance: the matter of prejudice (**62**)

Oral acceptances

If the offeror has not stipulated a method of acceptance, the offeree may choose his own method, though where acceptance is by word of mouth it is not enough that it be spoken, it must actually be heard by the offeror. In this connection an interesting development occurs with the use of the telephone, teleprinter and, presumably, fax and e-mail. Since these are methods of instantaneous communication, it is held that the contract is not complete unless the apparent communication takes place.

Entores Ltd v *Miles Far Eastern Corporation*, 1955 – Acceptance by telex and telephone (**63**)

Use of post in offer and acceptance

If the post is the proper method of communication between the parties, then acceptance is deemed complete immediately the letter of acceptance is posted, even if it is delayed or is lost or destroyed in the post so that it never reaches the offeror. Nevertheless, the letter of acceptance must be properly addressed, stamped and properly posted and the court must be satisfied that it was within the contemplation of the parties that the post might be used as a method of communicating acceptance. Thus in *Henthorn* v *Fraser* [1892] 2 Ch 27 the post was the proper method of accepting an offer, which the offeror had, in fact, handed to the offeree, because the parties lived in different towns.

The rule relating to acceptance by post is a somewhat arbitrary one seeming to favour the offeree and is in practice kept within narrow confines. For example, if the statements of the parties appear to exclude the rule then the court will not apply it. Where there is a misdirection of a letter containing an offer, then the offer is made when it actually reaches the offeree, and not when it would have reached him in the ordinary course of the post.

In contrast with the rule regarding acceptance by post, a letter of revocation is not effective until it actually reaches the offeree, whereas a letter of acceptance is effective when it is posted (see *Byrne* v *Van Tienhoven* (1880)).

The better view is that, in English law, an acceptance cannot be recalled once it has been posted even though it has not reached the offeror. Thus, if X posted a letter accepting Y's offer to sell goods, X could not withdraw the acceptance by telephoning Y and asking him to ignore the letter of acceptance when it arrived, and Y could hold X bound by the contract if he wished to do so. This is obvious, the rules being what they are, since otherwise Y would be bound when the letter was posted, and X would be reserving the right to withdraw his acceptance during the transit of the letter even though Y was still bound.

There is some controversy as to whether agreement can result from *identical cross-offers*. For example, suppose X by letter offers to sell his bicycle to Y for £50, and Y, by means of a second letter, which crosses X's letter in the post, offers to buy X's bicycle for £50. Can there be a contract? The matter was discussed by an English court in *Tinn* v *Hoffman* (1873) 29 LT 271, and the court's conclusion was that no contract could arise, though this is regarded as too strict a view of the position. The matter is still undecided by the judges and it is possible to hold the view that today a contract would come into being where it appears that the parties have intended to create a legally binding agreement on the same basis.

Household Fire Insurance Co v *Grant*, 1879 – Effect of posting an acceptance (**64**)

Holwell Securities Ltd v *Hughes*, 1974 – The postal rule of acceptance excluded (**65**)

Adams v *Lindsell*, 1818 – A misdirected offer (**66**)

The post rule and e-mail

Legal opinion is divided on the effect of an acceptance by e-mail and clearly the best approach is for those making offers by website or e-mail to stipulate methods of acceptance and when they will be regarded as having concluded a contract. However, where there is no such indication, the better view would seem to be that the post rule does not apply to e-mail acceptances. After all an offeree can always ascertain whether the e-mail has been successfully delivered. Most e-mail software allows for request of delivery receipts and it would seem reasonable to expect this to be used.

Termination of offer

We shall now consider the ways in which an offer may be terminated.

Revocation – generally

The general rule is that *an offer may be revoked at any time before* it is accepted (*Payne* v *Cave* (1789) 3 Term Rep 148). Once an offer has been accepted, it cannot be withdrawn merely because the offeror made a mistake, provided the offeree was not aware of that mistake. Thus in *Centrovincial Estates* v *Merchant Investors Assurance*, *The Times*, 8 March 1983 it was held by the Court of Appeal that a landlord who offered to grant a tenancy at a stated rent of £65,000, which the tenant accepted, could not withdraw the offer merely because he made a

mistake in the offer and had intended to ask for a rent of £126,000. If the offeree knows that the offeror is mistaken the contract may be void for unilateral mistake (see Chapter 12).

Sometimes there is what is known as an option attached to the offer, and time is given to the offeree in which to make the decision whether to accept the offer or not. If the offeror agrees to give seven days, then the offeree may accept the offer at any time within seven days, or he need not accept at all. However, the offeror need not keep the offer open for seven days but can revoke it unless the offeree has given some consideration for the option, or the option is made by deed, though even in such a situation the offeror can still revoke the offer but will in that event be liable to the offeree in damages for breach of the option.

Revocation, to be effective, must be communicated to the offeree before he has accepted the offer. The word 'communication' merely implies that the revocation must have come to the knowledge of the offeree.

Presumably the offeree cannot ignore facts suggesting an attempt to communicate a revocation. If A offers B a car and before B accepts A posts a letter of revocation which B receives but, recognising A's handwriting, does not open until he has written and posted a letter of acceptance, it would seem unfair to regard A as bound in contract and he would probably not be. In addition, it appears from statements made in the House of Lords in *Eaglehill Ltd* v *J Needham (Builders) Ltd* [1972] 3 All ER 895, where their Lordships were discussing notice of dishonour of a bill of exchange, that an offer would be revoked when the letter of revocation 'was opened in the ordinary course of business or would have been so opened if the ordinary course of business was followed'.

Communication may be made directly by the offeror or may reach the offeree through some other reliable source. Suppose X offers to sell a car to Y and gives Y a few days to think the matter over without actually giving him a valid option. If, before Y has accepted, X sells the car to Z and Y hears from P that X has in fact sold the car, it will be of no use for Y to purport to accept and try to enforce the contract against X, provided P is a reliable source.

Routledge v *Grant*, 1828 – Revocation where there is an option (**67**)
Byrne v *Van Tienhoven*, 1880 – Communication of revocation (**68**)
Dickinson v *Dodds*, 1876 – Communication of revocation by third parties (**69**)

Revocation – unilateral contracts

Where the offer consists of a promise in return for an act, as where a reward is offered for the return of lost property, the offer, although made to the whole world, can be revoked as any other offer can. It is thought to be enough that the same publicity be given to the revocation as was given to the offer, even though the revocation may not be seen by all the persons who saw the offer.

A more difficult problem arises when an offer which requires a certain act to be carried out is revoked after some person has begun to perform the act but before he has completed it. If, for example, X offers £1,000 to anyone who can successfully swim the Channel, and Y, deciding he will try to obtain the money, starts his swim from Dover, can X revoke his offer from a helicopter when Y is half-way across the Channel? One view is that he cannot on the grounds that an offer of the kind made by X is two offers in one, namely (i) to pay £1,000 to a successful swimmer and (ii) something in the nature of an option to hold the offer open for a reasonable time once performance has been embarked upon, so that the person trying to complete the task has a reasonable time in which to do so.

Other lawyers reach the same conclusion by distinguishing between the acceptance of the offer and the consideration necessary to support it. As regards the latter, the completion of the act involved is necessary before the offeror can be required to pay any money because until the act is completed the necessary consideration has not been supplied. However, acceptance may be assumed as soon as the offeree has made a beginning on the performance of the contract and proof of the fact that he has made a beginning makes revocation impossible. The problem could have arisen in *Carlill*'s case if the company had tried to revoke its offer after Mrs Carlill had started to perform the contract by using the smoke ball.

The matter also came before the Court of Appeal in *Errington* v *Errington* [1952] 1 All ER 149. In that case a father bought a house for his son and daughter-in-law to live in. He paid the deposit but the son and daughter-in-law made the mortgage payments after the father gave the building society book to the daughter-in-law, saying, 'Don't part with this book. The house will be your property when the mortgage is paid.' The son left his wife who continued to live in the house. It was held by the Court of Appeal that neither the father nor the claimant, his widow, to whom the house was left by will, could eject the daughter-in-law from the property. As Lord Denning said: 'The father's promise was a unilateral contract – a promise of the house in return for their act of paying the instalments. It could not be revoked by him once the couple entered on the performance of the act . . .' The court went on to decide that the son and daughter-in-law would be fully entitled to the house once they had made all the mortgage repayments.

Lapse of time

If a time for acceptance has been stipulated, then the offer lapses when the time has expired. If no time has been stipulated, then the acceptance must be within a reasonable time. What is reasonable is a *matter of fact* for the judge to decide on the circumstances of the case.

Ramsgate Victoria Hotel Co v *Montefiore*, 1866 – Offer and lapse of time (**70**)

Conditional offers

An offer may terminate on the happening of a given event if it is made subject to a condition that it will do so, e.g. that the offer is to terminate if the goods offered for sale are damaged before acceptance. Such a condition may be made expressly in the contract as where, e.g., a seller offers to sell goods by tender from time to time subject to a condition that the seller can himself obtain adequate supplies. It may also be implied from the circumstances.

Financings Ltd v *Stimson*, 1962 – Conditional offers (**71**)

Effect of death of a party

The effect of death would appear to vary according to the type of contract in question, whether the death is that of the offeror or the offeree, and whether death takes place before or after acceptance.

Death of offeror before acceptance

It would seem that if the contract envisaged by the offer is not one involving the personality of the offeror, the death of the offeror may not, until notified to the offeree, prevent acceptance.

However, there is a contrary point of view based on an *obiter dictum* in the judgment of Mellish, LJ in *Dickinson* v *Dodds* (1876) where he said, 'it is admitted law that, if a man who makes an offer dies, the offer cannot be accepted after he is dead . . .'. However, the decision in *Bradbury* v *Morgan* (1862) (see below) suggests that the offer can be accepted until the offeree is told of the offeror's death. The matter is therefore unresolved pending a further decision. If the contract envisaged by the offer does involve a personal relationship, such as an offer to act as agent, then the death of the offeror certainly prevents acceptance.

Death of offeree before acceptance

Once the offeree is dead, there is no offer which can be accepted. His executors cannot, therefore, accept the offer in his stead. The offer being made to a living person can only be accepted by that person and assumes his continued existence. The rule would seem to apply *whether the proposed contract involves a personal relationship or not.*

Death of parties after acceptance

Death after acceptance has normally no effect unless the contract is for personal services, when the liability under the contract ceases. Thus, if X sells his car to Y and before the car is delivered X dies, it would be possible for Y to sue X's personal representatives for breach of contract if they were to refuse to deliver the car. But if X agrees to play the piano at a concert and dies two days before the performance, one could hardly expect his personal representatives to play the piano in his stead.

Bradbury* v *Morgan, 1862 – Where the offeror dies before acceptance (**72**)
Re Cheshire Banking Co, 1886 – Where the offeree dies before acceptance (**73**)

Offer and acceptance not identifiable

Sometimes the usual processes of offer and acceptance are not easily identifiable and yet a contract is deemed to exist (*The New Zealand Shipping Co Ltd* v *AM Satterthwaite & Co Ltd* (1974) – see Chapter 15). There are also situations of collateral contract. These derive from another main contract, and for purposes of illustration reference should be made to the case law and comment as indicated below.

Rayfield* v *Hands, 1958 – The concept of the collateral contract (**74**)

Trading electronically

Electronic trading or electronic commerce (e-commerce) is trading carried on by electronic means. In its simplest form it involves an exchange of e-mails instead of letters, and the law to be applied is presumably that applied to instantaneous communications like telex (see *Entores* v *Miles Far East Corporation* (1955)), but there are more complex forms in which a contract can be concluded by communication between two or more computers without any immediate human intervention. The means by which e-commerce is conducted is the Internet.

Open e-commerce

This occurs where the parties have contracted through the means of an Internet website on which a supplier is, say, offering goods for sale.

Whilst the legal rules relating to this form of trading are largely a matter of informed surmise and largely untested in the courts, the following matters should be borne in mind.

If demand exceeds supply. The seller will wish to avoid actions for breach of contract by reason of his inability to meet orders from customers responding to the seller's website. In these circumstances every website should make clear that the seller is not making an offer to supply the goods but inviting offers from potential customers (i.e. an invitation to treat). If this is done, the website should be regarded in law as a mere shop window.

Customer's orders. Since we are dealing with instantaneous communication, customer's orders must be received by the seller. This may not happen, given the occasional vagaries of e-mail, which may lead to the loss of or the scrambling of the order. The website should carry a cut-off date for receipt of orders. If the acceptance is via a website, the position is likely to be clearer, since the seller and the customer can immediately identify whether or not communication has broken down.

Whose terms apply? Sellers will normally be using standard terms for each customer and to ensure that the seller's terms apply the potential customer should be asked to scroll through the terms to indicate his agreement to them. This should be done before the contract is made.

Conflict of laws. In terms of international trading, the seller should state the law which applies to the contract, e.g. English law. Sometimes, however, the law of the customer's state may override the adoption of foreign law for international agreements and a careful check should be made and legal advice taken before embarking on international sales. If there is uncertainty as to foreign law or the seller does not wish to become involved, orders from a particular country or countries which might raise applicable problems of law should be declined.

A problem that has faced those wishing to engage in e-commerce is that the law has not recognised the validity of electronic signatures so that there was, e.g., no way in which a deed could be made by electronic means. However, the Electronic Communications Act 2000 makes provision for this by changing all those laws which require an actual signature so that an electronic signature is now acceptable. Digital signatures can now be used.

A significant impact of the 2000 Act is for property lawyers who are now able to use electronic conveyancing and in this context it is worth noting that the Law of Property (Miscellaneous Provisions) Act 1989 already contains provisions allowing the use of electronic signatures in land deals – a forward looking piece of legislation. The 1989 Act is considered in Chapter 11.

Contract formation and call centres

A caller to a call centre may well enter into a contract for the call centre's client's goods or services. The client needs to look at the way in which contract law governs the formation of such a contract. The position is as follows:

- the caller will normally be the offeree and the call centre operator the offeror;
- if the call centre operator does not receive the message of acceptance through no fault of his own though the caller thinks he has, there is not likely to be a contract (*Entores Ltd* v *Miles Far East Corporation* (1955));

- if, however, it is the call operator's fault that he did not receive the acceptance, e.g. because he did not hear it and failed to ask that it be repeated, he may be estopped or precluded from denying that he did receive it and a contract will come into being;
- it is always necessary to attend to the matter of consideration and intention to create legal relations, though these matters should not normally provide a problem in the call-centre context.