

Offer and invitation to treat

An **invitation to treat**, on the other hand, is merely an invitation for customers to submit an offer. While it indicates a willingness to deal, it is distinguishable from an offer in that it lacks an intention to be bound.

Contract lawyers distinguish this from a binding offer, which can be accepted to form a contract (subject to other conditions being met). The distinction between an offer and invitation to treat is best understood through the categories that the courts create. Invitations to treat include the display of goods; the advertisement of a price or an auction; and an invitation for tenders (or competitive bids). There may however be statutory or complementary obligations, so consumer protection laws prohibit misleading advertising and at auctions without reserve there is always a duty to sell to the highest *bona fide* bidder

An invitation to treat is essentially when another party is given the opportunity to make an offer. There is no intent to be legally bound immediately and there is no contract. Rather, it is the idea of potentially entering into a contract if the invitation to treat is successful.

INVITATIONS TO TREAT

An offer must be distinguished from a mere invitation to treat.

- An invitation to treat is a first step in negotiations which may or may not lead to a firm offer by one of the parties.
- It usually takes the form of an invitation to make an offer.
- An offer is an undertaking to be contractually bound by the terms of that offer in the event of an unconditional acceptance being made by the offeree.
- In contrast, an invitation to treat cannot be accepted to form a binding contract

An invitation to treat is not an offer.

- An invitation to treat is a first step in negotiations.
- An offeror must show an intention to be legally bound: words such as 'may be prepared to sell' do not show this.
- An invitation to treat cannot be accepted to form a binding contract.
- Advertisements are generally invitations to treat, unless they relate to unilateral contracts. So are displays of goods for sale.
- Invitations to tender are generally invitations to treat, unless they commit to accept the highest or lowest bid (in which case they are, in fact, unilateral offers).
- In most auctions, the bid is the offer, which is accepted by the fall of the auctioneer's hammer. In an auction sale without reserve, the auctioneer can be sued if they refuse to sell to the highest bidder.

Offer and invitation to treat

It will be convenient to distinguish between an offer and an invitation to treat on the basis of two factors:

1. Nature of the statement; and
2. Intention of the party who is making the statement.

Offer and invitation to treat

Followings are not offer. They are treated as invitation to treat;

1. To-let;
2. Auction sale;
3. Tenders;
4. Display of the goods;
5. Advertisement;
6. Time table and boarding on the bus or train;

Offer and invitation to treat

- **To-let board:** is not offer for various reasons, it is not the intention of the party who is hanging or publishing a To let board to obtain the consent from the other party, rather it is made merely to invite the prospective customers or tenants and to invite the interested parties to come for negotiation.
- **Auction sale:** It is well established principle regarding auction sale that the offer is made by bidder, i.e, the bid itself is an offer which is to be accepted by the fall hammer of the actioneer on his table.

- The general rule in relation to auction sales is that the auctioneer's request for bids is an invitation to treat (**Payne v Cave (1789) 3 Durn & E 148**).
- The bidder makes an offer which the auctioneer is then free to accept or reject.
- Acceptance of the bidder's offer will be indicated by the fall of the auctioneer's hammer.
- This is consistent with the rules of revocation of an offer ie the bidder may revoke their offer at any time before the hammer falls.
- It is also reflected in s 57 of the Sale of Goods Act 1979 which states:

“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

Tenders

A request for tenders is used where a party (usually a company or public body)

wishes to purchase a major item or service.

- The requestor invites tenders (i.e. offers) from those interested in supplying the

goods or the services required.

- This action of inviting parties to tender is, as a general rule, deemed an invitation to

treat (**Spencer v Harding (1870) LR 5 CP 561**) ie an invitation to interested parties to

make offers to be considered.

- The requestor can accept or reject any tender, even if it is the most competitive.

DISPLAY OF GOODS FOR SALE

- The general rule is that price-marked goods displayed in a shop window are not an offer for sale but an invitation to treat (**Fisher v Bell [1961] 1 QB 394**).
- This is regardless of whether the shop actually expressly designates that the goods are an offer; a shop's 'special offer' usually amounts to no more than an invitation to treat.
- Again, there are a number of good reasons for this, in particular that a trader would be obliged to sell the goods to anyone who accepted the offer (the act of acceptance might be taking items off the shelves or presenting them at the cash desk for payment) before any judgment could be made in relation to the particular customer concerned.
- This would be particularly problematic with certain goods – for example, those that can only be sold to customers of a certain age.
- The same general principle applies equally to goods displayed on the shelves of a self-service store.
- In **Pharmaceutical Society of GB v Boots Cash Chemists [1953] 1 QB 401** the display of goods on the shelves was held to be an invitation to treat.

The general rule regarding advertisements is that they are regarded as statements inviting further negotiations or invitations to **treat (Partridge v Crittenden [1968] 1 WLR 1204)**.

- This has been held the case in relation to adverts in periodicals, advertisements by an auctioneer that certain goods would be sold at a specified location on a specific date, and adverts listing specific goods at a specific price.

- There are good reasons for this, including that the advertiser may have limited supplies of the goods in question.

- If the advert was an offer (rather than invitation to treat) it could be accepted by a larger number of people than the advertiser was able to supply, which would result in the advertiser breaching one or more contracts.

EXCEPTIONS TO THE GENERAL RULE

It should be noted that the general rule concerning advertisements does not apply where the advertisement amounts to a unilateral offer.

Carlill v Carbolic Smoke Ball Co

(1893) 1 QB 256

The defendants, the proprietors of a medical preparation called 'The Carbolic Smoke Ball', issued an advertisement in which they offered to pay £100 to any person who used one of their smoke balls in a specified manner for a specified period but who nevertheless still contracted influenza. The defendants also proclaimed that they had deposited £1,000 in a named bank 'shewing our sincerity in the matter'. The plaintiff, on the faith of the advertisement, bought one of the balls and used it in the manner and for the period prescribed. Nevertheless, she contracted influenza.

HELD: the facts established a contract under which the defendants were bound to pay the plaintiff £100 in relation to the event which had happened, and so the plaintiff was entitled to recover that sum. The advertisement in this case was held to be a unilateral offer because there was a clear prescribed act (using the smoke balls in a specified manner for a specified period but nevertheless contracting influenza) performance of which constituted acceptance. Further, the defendant's intention to be bound was clearly demonstrated by their deposit of the £1,000 and the certainty of the language used in the advertisement.

*** Similar reasoning would be applicable to an advertisement offering a reward for the return of lost property where there is clearly a conditional promise which will be turned into a binding contract when the property is returned to the rightful owner.

Time table and boarding on the bus or train