

and to sell certain goods at a certain price. Suppose, also, that the two offers match precisely. Does this create a contract? If what the courts were concerned with was a 'meeting of the minds', the answer might well be 'yes'. In *Tinn v Hoffman* (1873), however, it was held that such an exchange does not result in a contract. The case is not conclusive on the general issue, because on the facts there were differences between the two offers. It seems likely, however, that given the general enthusiasm of the courts for looking for an 'exchange' of offer and acceptance, rather than simply general agreement, that *Tinn v Hoffman* would be followed, and that cross-offers would not be regarded as forming a contract.

2.9 Acceptance and the termination of an offer

The general rule is that an offer can be revoked at any point before it is accepted (*Payne v Cave* (1789)), though as we have seen that requires some modification in relation to unilateral contracts. In this section the focus will be entirely on bilateral contracts.

The general rule will apply despite the fact that the offeror may have promised to keep the offer open for a specified time (*Routledge v Grunt* (1828)). The reason for this is that before there is an acceptance, there is no contract, and if there is no contract, then the offeror cannot be legally bound to a promise. If the offeree has paid for the time allowance in some way (that is, has given consideration for the promise to keep the offer open), as may well be the case with the exercise of an option, then it will be upheld. In the absence of this, however, there can be no complaint if the offer is withdrawn.

2.9.1 Need for communication

Revocation of an offer must be communicated to be effective. This was implicit in the decision in *Byrne v van Tienhoven* (1880) where the withdrawal of an offer, which was sent by telegram, was held not to take effect until it was received. The *Adams v Lindsell* (1818) postal rule does not apply to revocations of offers, but there may still be difficulties as to what exactly amounts to communication, and when a revocation takes effect. The issues are much the same as those dealt with in the section on acceptance by electronic communication (see 2.8.9 above), and are not discussed again here.

It is clear, however, that communication of revocation need not come directly from the offeror. Provided that the offeree is fully aware at the time of a purported acceptance that the offeror has decided not to proceed with the contract, then the offer will be regarded as having been revoked, and no acceptance will be possible. This was the position in *Dickinson v Dodds* (1876), where the plaintiff was told by a third party that the defendant was negotiating with someone else for the sale of properties which he had

previously offered to the plaintiff. The defendant had also indicated to the plaintiff that the offer would be kept open for a specified period.

The plaintiff tried to accept the offer within the time limit. The Court of Appeal decided that acceptance was not possible, because the plaintiff knew that the defendant was no longer minded to sell the property to him 'as plainly and clearly as if [the defendant] had told him so in so many words'. The reasoning of at least some of the judges in this case was clearly influenced by the idea of their needing to be a 'meeting of the minds' in order for their to be a contract. Despite the fact that this approach to identifying agreements no longer has any support, *Dickinson v Dodds* is still regarded as good authority for the more general proposition that an offeree cannot accept an offer where he or she has learnt from a reliable source that the offer has been withdrawn, even where that source was acting without the knowledge of the offeror.

2.9.2 Effect of lapse of time

An offer may also become incapable of acceptance because of lapse of time. If the offeror has specified a time within which acceptance must be received, any acceptance received outside that time limit cannot create a contract. At best, it will be a fresh offer, which may be accepted or rejected. If no time is specified, then the offer will remain open for a reasonable time, which will be a matter of fact in each case. In *Ramsgate Victoria Hotel Co v Montefiore* (1866), it was held that a delay of five months meant that an attempt to accept an offer to buy shares was ineffective.

¹ LR 1 Ex Ch 105

2.10 Retraction of acceptance

As soon as an acceptance takes effect, then a contract is made, and both parties are bound. It would seem, then, that in the normal course of events, retraction, or revocation, of an acceptance will be impossible. This general rule has been modified, however, in relation to certain types of consumer contracts, where it has been deemed desirable that the consumer should have a 'cooling-off' period following the formation of the contract, during which a change of mind is permitted. Examples of this type of provision may be found in § 67 of the Consumer Credit Act 1974, ss 5 and 6 of the Timeshare Act 1992, and the Consumer Protection (Cancellation of Contracts Concluded Away From Business Premises) Regulations 1987. In these cases, a valid contract, in which offer and acceptance have been exchanged, can be set aside purely at the discretion of the consumer contractor. The possibility of withdrawal from a seemingly binding agreement also arises, however, in relation to situations where the law deems acceptance to take effect at a point in time before that at which it actually comes to the attention of the offeror. The most obvious example of this is the *Adams v Lindsell* (1818) postal rule. It may also apply,

sale's or one to bear advertising expenses.⁷⁹ Such promises have been found to exist where the agent has been appointed "sole agent," but in practice they are commonly made by other agents as well. A "sole agent" is entitled to damages if the client sells through another agent,⁸⁰ but not if he simply revokes his instructions or sells "privately," without the help of any agent at all.⁸¹ These rules apply irrespective of the unilateral or bilateral nature of the contract; so that the estate agency cases shed little, if any, light on the question of acceptance in unilateral contracts.

(e) EXTENT OF RECOVERY. Where a unilateral contract takes the shape of a promise to pay a sum of money, it is generally assumed that the promisee must either get nothing or the full sum. Perhaps some compromise is possible. Suppose the promisee has walked half-way to York before the offer is withdrawn. It is arguable that he should desist and recover his expenses, or a reasonable sum.⁸² This might be fairer to both parties than the "all or nothing" solutions which are usually canvassed.⁸³

SECTION 3. TERMINATION OF OFFER

1. Withdrawal

(1) Communication to offeree generally required

As a general rule, an offer can be withdrawn at any time before it is accepted.⁸⁴ It is not withdrawn merely by acting inconsistently with it, e.g. by disposing of the subject-matter.⁸⁵ Notice of the withdrawal must be given and must actually reach the offeree: mere posting will not suffice. In *Byrne & Co. v. Leon van Tienhoven*⁸⁶ the defendants in Cardiff on October 1 posted an offer to sell tinplates to the plaintiffs in New York. This offer reached the plaintiffs on October 11, and they immediately accepted it by a telegram which they confirmed by a letter of October 15. Meanwhile, the defendants had on October 8 posted a letter withdrawing their offer, but that letter of withdrawal did not reach the plaintiffs until October 20. It was held that there was a contract since the withdrawal had not been communicated when the offer was accepted. Thus there was a

⁷⁸ *Christopher v. Essig* [1958] W.N. 461; *John McCann & Co. v. Pow* [1974] 1 W.L.R. 1643, 1647; *Wood v. Lucy (Lady Duff-Gordon)*, 118 N.E. 214 (1917) (where such a promise was implied). It is an open question whether such a promise is sufficiently certain to have legal effect, *post*, pp. 48, 153.

⁷⁹ *Cf. Bentall, Horsley & Baldry v. Vicary* [1931] 1 K.B. 253.

⁸⁰ *Hampton & Sons Ltd. v. George* [1939] 3 All E.R. 627; *Christopher v. Essig* [1958] W.N. 461, *post*, p. 646.

⁸¹ *Post*, p. 646.

⁸² Unless the plaintiff has a "substantial or legitimate interest" in going on, this may be the law under the principles laid down in *White & Carter (Councils) Ltd. v. McGregor* [1962] A.C. 413, *post*, pp. 898-902.

⁸³ *Fuller & Perdue*, 46 Y.L.J. at p. 411.

⁸⁴ *Routledge v. Grant* (1828) 4 Bing 653; *Offord v. Davies* (1862) 12 C.B.N.S. 748; *Tuck v. Baker* [1990] 2 E.G.L.R. 195; *Dunmore v. Alexander* (1830) 8 Shaw 190. For statutory exceptions, see Companies Act 1985, s. 82(7); ULFIS (*ante*, p. 28) Art. 5(2); and see Vienna Convention (*ante*, p. 29) Art. 16(2).

⁸⁵ *Adams v. Lindsell* (1818) 1 B. & Ald. 681; *Stevenson, Jacques & Co. v. McLean* (1880) 5 Q.B.D. 346; contrary dicta in *Dickinson v. Dodds* (1876) 2 Ch.D. 463, 472 would no longer be followed.

⁸⁶ (1880) 5 C.P.D. 344. Under Consumer Credit Act 1974, s.69(1)(ii) and (7) posting is, exceptionally, sufficient.

contract in spite of the fact that the parties were demonstrably not in agreement, for when the plaintiffs first knew of the defendants' offer, the defendants had already ceased to intend to deal with the plaintiffs. The rule is based on convenience; for no one could rely on a postal offer if it could be withdrawn by a letter already posted but not yet received.

(2) Exceptions

The general rule that the withdrawal must be "brought to the mind of"⁸⁷ the offeree is subject to a number of exceptions. First, the requirement cannot be taken quite literally where an offer is made to a company whose mail is received, opened and sorted in different offices and then distributed to be dealt with in various departments. Is a letter withdrawing such an offer communicated when it is received, or when it is opened, or when it is actually read by the responsible officer?⁸⁸ In the interests of certainty it would probably be held that communication took place when the letter was "opened in the ordinary course of business or would have been so opened if the ordinary course was followed."⁸⁹ Secondly (as the concluding words of the passage just quoted suggest) the general rule may be displaced by the conduct of the offeree. A withdrawal which was delivered to the offeree's last known address would be effective if he had moved without notifying the offeror. Similarly, a withdrawal which had reached the offeree would be effective even though he had simply failed to read it after it had reached him: this would be the position where a withdrawal by telex or fax reached the offeror's office during business hours even though it was not actually read by the offeree or by any of his staff till the next day.⁹⁰ Of course the withdrawal would not be effective in such a case, if it had been sent to the offeree at a time when he and all responsible members of his staff were, to the offeror's knowledge, away on holiday or on other business.⁹¹ A third exception to the requirement that a withdrawal must be actually communicated relates to offers made to the public, e.g. of rewards for information leading to the arrest of the perpetrator of a crime. As it is impossible for the offeror to ensure that the notice of withdrawal comes to the attention of everyone who knew of the offer, it seems to be enough for him to take reasonable steps to bring the withdrawal to the attention of such persons, even though it does not in fact come to the attention of them all.⁹²

(3) Communication need not come from offeror

Although withdrawal must be communicated to the offeree, it need not be communicated by the offeror. It is sufficient if the offeree knows from any reliable source that the offeror no longer intends to contract with him. Thus in *Dickinson v. Dodds*⁹³ it was held that an offer to sell land could not

⁸⁷ *Henthorn v. Fraser* [1892] 2 Ch. 27, 32.

⁸⁸ *Cf. Curtice v. London, etc.*, Bank [1908] 1 K.B. 291, 300-301 (notice to countermand a cheque).

⁸⁹ *Eaglehill Ltd. v. J. Needham (Builders) Ltd.* [1973] A.C. 992, 1011, discussing notice of dishonour of a cheque; contrast *The Pendrecht* [1980] 2 Lloyd's Rep. 56, 66 (telex notice of arbitration).

⁹⁰ *Cf. The Brimnes* [1975] Q.B. 929 (notice withdrawing ship from charterparty).

⁹¹ *Cf. Brinkibon Ltd. v. Stahag Stahl und Stahlwarenhandels-gesellschaft mbH* [1983] 2 A.C. 34, 42 (communication of acceptance).

⁹² *Shuey v. U.S.*, 92 U.S. 73 (1875).

⁹³ (1876) 2 Ch.D. 463; *cf. Cartwright v. Hoogstoel* (1911) 105 L.T. 628.

be **accepted** after the offeror had, to the offeree's knowledge decided to sell the land to a third party. The decision is based on the fact that there is in such a case no agreement between the parties. But this would be equally true if the offeree had not heard of the withdrawal at all before he accepted the offer: yet in that case there is a contract." The rule that communication of withdrawal need not come from the offeror can be a regrettable source of uncertainty. It puts on the offeree the possibly difficult task of deciding whether his source of information is reliable, and it may also make it hard for him to tell exactly when the offer was withdrawn. In *Dickinson v. Dodds*, for example, it is not clear whether this occurred when the plaintiff realised that the defendant had (a) sold the land to the third party, or (b) begun to negotiate with the third party, or (c) simply decided not to sell to the plaintiff. Certainty would be promoted if the rule were that the withdrawal must be communicated by the offeror, as well as to the offeree.

2. Rejection

An offer is terminated by **rejection**.⁹⁵ An attempt to accept an offer on new terms, not contained in the offer, may be a rejection of the offer accompanied by a **counter-offer**.⁹⁶ An offeree who makes such an attempt cannot later accept the original offer. In *Hyde v. Wrench*⁹⁷ the defendant offered to sell a farm to the plaintiff for £1,000. The plaintiff replied by making an offer to buy for £950 and when that was rejected he purported to accept the original offer to sell for £1,000. It was held that there was no contract as the plaintiff had, by making a counter-offer of £950, rejected the original offer.

A communication from the offeree **may** be construed as a counter-offer (and hence as a rejection) even though it takes the form of a question as to the offeror's willingness to vary the terms of the offer.⁹⁸ But such a communication is not **necessarily** a counter-offer: it may be a mere inquiry or request for information made without any intention of rejecting the terms of the offer. Whether the communication is a counter-offer or a request for information depends on the intention, objectively ascertained,⁹⁹ with which it was made. In *Stevenson, Jacques & Co. v. McLean* an offer was made to sell iron to the plaintiffs who asked by telegram whether they might take delivery over a period of four months. It was held that this telegram was not a counter-offer but only a request for information as it was "meant . . . only as an inquiry" and as the offeror "ought to have regarded it" in that sense.² Similarly, if an offer is made for the sale of a house at a specified price, an inquiry whether the intending vendor is prepared to reduce the price will not amount to a rejection if the inquiry is "merely exploratory."³

It seems that a rejection has no effect unless it is actually communicated to the offeror. There is no ground of convenience for holding that it should take effect when posted. The offeree will obviously not act in reliance on it

⁹⁴ *Byrne & Co. v. Leon van Tienhoven* (1880) 5 C.P.D. 344, ante, p. 40.

⁹⁵ *Tinn v. Hoffmann & Co.* (1873) 29 L.T. 271, 278.

⁹⁶ Ante, p. 18.

⁹⁷ (1840) 3 *Beav.* 334.

⁹⁸ See the treatment in *Tinn v. Hoffman* (1873) 29 L.T. 271, 278 of the plaintiffs letter of November 27

as he derives no rights or liabilities from it; and the offeror will not know that he is free from the offer until the rejection is actually communicated to him. Hence if a letter of rejection is overtaken by an acceptance sent by telex there should be a contract, provided that the offeree has made his final intention clear to the offeror. But once the rejection had reached the offeror he should not be bound by an acceptance posted after the rejection and also reaching the offeror after the rejection. To hold the offeror bound,⁴ merely because the acceptance was **posted** before the rejection had reached him, could expose him to serious hardship, particularly when he had acted on the rejection, e.g. by disposing elsewhere of the subject-matter. If the offeree has posted a rejection and then wishes, after all, to accept the offer, he should ensure that his subsequently posted acceptance actually comes to the notice of the offeror before the latter receives the rejection.

3. Lapse of Time

An offer which is expressly stated to last for a fixed time cannot be accepted after that time; and an offer which stipulates for acceptance "by return" (of post) must normally⁵ be accepted either by a return postal communication or by some other no less expeditious method. An offer which contains no express provision limiting its duration determines after lapse of a reasonable time.⁶ What is a reasonable time depends on such circumstances as the nature of the subject-matter and the means used to communicate the offer. Thus an offer to sell a perishable thing, or one whose price is liable to sudden fluctuations, would determine after a short time. The same is true of an offer made by telegram or **telemessage**.⁷

The period that would normally constitute a reasonable time for acceptance may be extended if the conduct of the offeree within that period indicates an intention to accept and this is known to the offeror. Such conduct would often of itself amount to acceptance, but this possibility may be ruled out by the terms of the offer, which may require the acceptance to be by written notice sent to a specified address.⁷ In such a case the offeree's conduct, though it could not **amount** to an acceptance, could nevertheless prolong the time for giving a proper notice of acceptance. For the offeree's conduct to have this effect, it must be known to the offeror; for if this were not the case the offeror might reasonably suppose that the offer had not been accepted within the normal period of lapse, and act in reliance on that belief: e.g. by disposing elsewhere of the subject-matter.

4. Occurrence of Condition

An offer which expressly provides that it is to determine on the occurrence of some condition cannot be accepted after that condition has occurred; and such a provision may also be implied. Thus where a person examines goods and subsequently makes an offer to buy or hire-purchase them, it

⁴ Under the "posting rule," ante, p. 23.

⁵ Ante, p. 29.

may be an implied term of the offer that the goods should remain in substantially the same state in which they were when the offer was made. Such an offer cannot be accepted after the goods have been seriously damaged.⁹

Similarly, an offer to insure the life of a person cannot be accepted after he has suffered serious injuries by falling over a cliff." On the same principle, it is submitted that the offer which is made by bidding at an auction by implication provides that it is to lapse as soon as higher bid is made."

5. Death

One possible view is that the death of either party terminates the offer, as the parties can no longer reach agreement.¹² But there may be a contract in spite of a demonstrable lack of agreement if to hold the contrary would cause serious inconvenience.¹³ In accordance with this principle, it is submitted that the death of either party should not of itself determine the offer except in the case of such "personal" contracts as are determined by the death of either party.¹⁴

(1) Death of an offeror

The effect of the death of the offeror has been considered in a number of cases concerning continuing guarantees. In general a continuing guarantee, e.g. of a bank overdraft, is **divisible**¹⁵; it is a continuing offer by the guarantor, accepted from time to time as the banker makes loans to his customer. Each loan is a separate acceptance, turning the offer *pro tanto* into a binding contract. It seems that such a guarantee is not terminated merely by the death of the **guarantor**.¹⁶ But it is terminated if the bank knows that the guarantor is dead and that his personal representatives have no power under his will to continue the guarantee"; or if for some other reason it is inequitable for the bank to charge the guarantor's estate." If the guarantee expressly provides that it can only be terminated by notice given by the guarantor **or his personal representatives**, the death of the guarantor, even if known to the bank, will not terminate the guarantee: express notice must be given."

(2) Death of offeree

Two cases have some bearing on the effect of the death of the offeree. In **Reynolds v. Atherton**²⁰ an offer to sell shares was made in 1911 "to the

⁹ *Financings Ltd. v. Stimson* [1962] 1 W.L.R. 1184.

¹⁰ *Canning v. Farquhar* (1885) 16 Q.B.D. 722 (the offer here came in the form of a counter-offer from the insurance company: see p. 733); *Looker v. Law Union & Rock Ins. Co. Ltd.* [1928] 1 K.B. 554. Contrast p. 255, n. 54, *post*.

¹¹ *Ante*, p. 11.

¹² *Dickinson v. Dodds* (1876) 2 Ch.D. 463, 475.

¹³ *Ante*, p. 41.

¹⁴ e.g. contracts of employment or agency: *post*, p. 651. In such a case any **contract** would be determined by death even if the **offer** were not so determined; but the legal effects of saying that there was never any contract might differ from those of saying that there had been a contract which was determined.

¹⁵ *Ante*, p. 39.

¹⁶ *Bradbury v. Morgan* (1862) 1 H. & C. 249; *Harris v. Fawcett* (1873) L.R. 8 Ch.App 866

directors of" a company. An attempt to accept the offer was made in 1919 by the survivors of the persons who were directors in 1911 and by the personal representatives of those who had since died. The purported acceptance was held to be ineffective; and Warrington L.J. said obiter that an offer "made to a living person who ceases to be a living person before the offer is accepted . . . is no longer an offer at all." The actual ground for the decision, however, was that the offer had, on its true construction, been made to the directors of the company for the time being, and not to those who happened to hold office in 1911. In **Kennedy v. Thomassen**²¹ an offer to buy annuities was accepted by the solicitors of the annuitant after she had, without the solicitors' knowledge, died. This acceptance was held to be ineffective on the grounds that the solicitors' authority was terminated by their client's death and that the acceptance was made under a **mistake**.²² Neither case supports the view that an offer can never be accepted after the offeree's death. It is submitted that, where an offer related to a contract which was not "personal,"²³ it might, on its true construction, be held to have been made to the offeree or to his executors, and that such an offer could be accepted after the death of the original offeree.

6. Supervening Incapacity

(1) Mental patients

If an offeror became a mental patient he would not be bound by an acceptance made after this fact had become known to the offeree, or after the patient's property had been made subject to the control of the court. But the other party would be bound; and an offer made to a person who later became a mental patient could be accepted so as to bind the other party. These rules can readily be deduced from the law as to contracts with mental patients.²⁴

(2) Corporations

(a) **COMPANIES INCORPORATED UNDER THE COMPANIES ACT 1985.** Such a company may lose its capacity to do an act by altering its memorandum of association.²⁵ If the company nevertheless entered into transactions after depriving itself of the capacity to do so, those transactions were formerly **ultra vires** and void.²⁶ Now the general **rule**²⁷ is that acts done by the company can no longer be called into question on the ground that the company lacked capacity to do them by reason of anything in its **memorandum**²⁸; and that, in favour of a person dealing with the company is good faith, the power of the board of directors to bind the company, or to authorise others to do so, is deemed to be free of any limitation under

²¹ [1929] 1 Ch. 426.

²² *Cf. post*, p. 249.

²³ *Supra*, at n. 14.

the company's constitution.²⁹ But a member of the company may bring proceedings to restrain the doing of acts beyond the company's capacity, or beyond the powers of the directors, except where such acts are done in fulfilment of legal obligations arising from previous acts of the company.³⁰ The effect of these provisions must be considered on offers made to and by the company.

(i) **Company as offeree.** A company may receive an offer to enter into a contract and then alter its memorandum and so deprive itself of the capacity to enter into that contract. If it nevertheless accepts the offer, the acceptance is effective in favour of a person who deals with the company in good faith; but before the company has accepted the offer, it can be restrained from doing so in proceedings brought by one of its members.

(ii) **Company as offeror.** A company may make an offer to enter into a contract and then alter its memorandum and so deprive itself of the capacity to enter into that contract. An acceptance of that offer is nevertheless effective in favour of a person dealing with the company in good faith; but it is not entirely clear whether in this situation a member of the company could take proceedings to prevent the conclusion of the contract.³¹

Such proceedings only lie to restrain "the doing of an act"³¹ by the company and since the relevant act on the company's part (i.e. the making of the offer) would already have been done when the company still had capacity to do it, there seems to be nothing for the member to restrain, unless holding the offer open could be described as a continuing act.

Of course, the company itself could normally withdraw the offer and would be likely to do so in pursuance of the policy which had led it to change its memorandum. But this possibility would not be open to the company where it had bound itself not to withdraw the offer, i.e. where it had granted a legally enforceable option³²; and in such a case it is clear that a member could not take proceedings to prevent the conclusion of the contract since such proceedings cannot be taken "in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company"³³: i.e. in the case put, from the grant of the option.

(b) **OTHER CORPORATIONS.** Companies may also be incorporated by Royal Charter or by special legislation. Charter corporations have the legal capacity of a natural person so that an alteration of the charter would not affect the validity of an offer or acceptance made by the corporation.³⁴ The legal capacity of corporations incorporated by special statute is governed by the statute, and acts not within that capacity are *ultra vires* and void. An alteration of the statute could therefore prevent the company from accepting an offer made to it, and from being bound by the acceptance of an offer made by it, where the offer was made before the alteration came into effect. In practice, the problem is likely to be dealt with in the statute which changes the capacity of the corporation.

²⁹ *Ibid.* s.35A(1).

³⁰ *Ibid.* ss.35(2), 35A(4).

³¹ *Ibid.*

³² *Ibid.*

SECTION 4. SPECIAL CASES

In some situations already discussed, the analysis of agreement into offer and acceptance gives rise to considerable difficulty,³⁵ and in others, to be discussed in this section, such analysis is impossible or highly artificial.³⁶ For this reason, it has been suggested that the analysis is "out of date"³⁷ and that "you should look at the correspondence as a whole and at the conduct of the parties and see therefrom whether the parties have come to an agreement."³⁸ The objection to this view, however, is that it provides too little guidance for the courts (or for the legal advisers of the parties) in determining whether agreement has been reached. For this reason, the situations to be discussed below are best regarded as exceptions³⁹ to a general requirement offer and acceptance. This approach is supported by cases in which it has been held that there is no contract precisely because there was no offer and acceptance⁴⁰; and by those in which the terms of a contract have been held to depend on the analysis of the negotiation into offer, counter-offer and acceptance.⁴¹

1. Multipartite Agreements

In *The Satanita*⁴² the plaintiff and the defendant entered their yachts for a regatta. Each signed a letter, addressed to the secretary of the club which organised the regatta, undertaking to obey certain rules during the race. It was held that there was a contract between all the competitors on the terms of the undertaking, though it is not clear whether the contract was made when the competitors entered their yachts or when they actually began to race. In either event, it is difficult to analyse the transaction into offer and acceptance. If the contract was made when the yachts were entered, one would have to say that the entry of the first competitor was an offer and that the entry of the next was an acceptance of that offer and (simultaneously) an offer to yet later competitors; but this view is artificial and unworkable even in theory unless each competitor knew of the existence of previous ones. It would also lead to the conclusion that entries which were put in the post together were cross-offers and thus not binding on each other.⁴³ If the contract was made when the race began, then it seems that

³⁵ See ante, pp. 10, 16-17, 19-20.

³⁶ *Gibson v. Manchester C. C.* [1978] 1 W.L.R. 520, 523, reversed [1979] 1 W.L.R. 294; cf. *The Euymedon* [1975] A.C. 154, 167; Pollock, *Principles of Contract* (13th ed.), p. 5.

³⁷ *Butler Machine Tool Co. Ltd. v. Ex-Cell-O Corp. (England) Ltd.* [1979] 1 W.L.R. 401, 404; cf. *Port Sudan Cotton Co. v. Govindaswamy Chettiar & Sons* [1977] 2 Lloyd's Rep. 5, 10; *Interfoto Picture Library Ltd. v. Stiletto Visual Programmes Ltd.* [1989] Ch. 433, 443.

³⁸ *Gibson v. Manchester C.C.* [1978] 1 W.L.R. 520, 523, reversed [1979] 1 W.L.R. 294.

³⁹ *Gibson v. Manchester C.C.* [1979] 1 W.L.R. 294, 297; *The Good Helmsman* [1981] 1 Lloyd's Rep. 377, 409.

⁴⁰ *The Kapetan Markos NL* (No. 2) [1987] 2 Lloyd's Rep. 323, 331 ("What was the mechanism for offer and acceptance?"); cf. *The Good Helmsman* [1981] 1 Lloyd's Rep. 377, 409; *The Aramis* [1989] 1 Lloyd's Rep. 213, Treitel [1989] L.M.C.L.Q. 162. The "offer and acceptance" analysis was also regarded as decisive in many of the arbitration cases discussed at pp. 10, 31, ante, though it was viewed with scepticism in *The Multibank Holsatia* [1988] 2 Lloyd's Rep. 486, 491 and in *The Maritime Winner* [1989] 2 Lloyd's Rep. 506, 515.