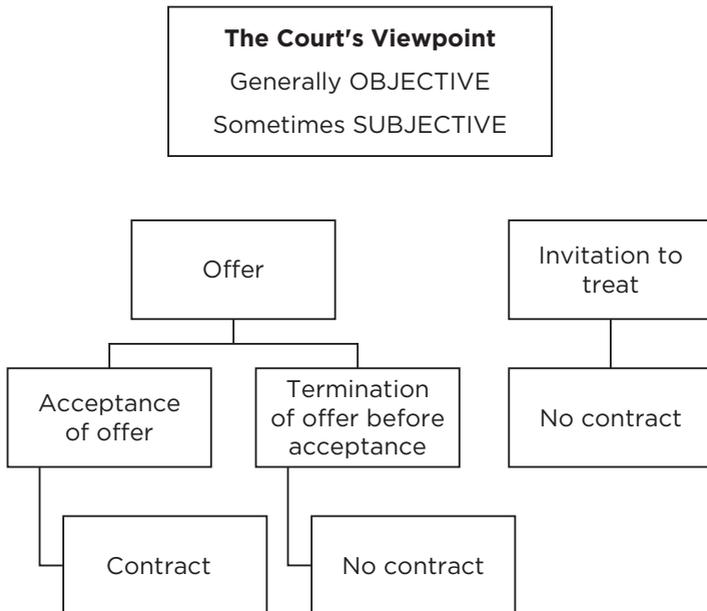


1

Offer and acceptance

■ MAKE SURE YOU KNOW

This chapter covers the core principles relating to offer and acceptance that you need to know and understand for the SQE1 assessment.



■ SQE ASSESSMENT ADVICE

For the SQE1 assessment, you will need to be able to apply the legal principles discussed in this chapter to determine whether a contract has been formed. As you work through this chapter, remember to pay particular attention in your revision to:

- The distinction between an offer and an invitation to treat.
- The difference between bilateral offers and unilateral offers, and the different rules that determine how these different types of offers are accepted.
- The various methods of communication for offers and acceptance.
- The effect of counter-offers and requests for further information on offers.
- The termination of offers.

■ WHAT DO YOU KNOW ALREADY?

Have a go at these questions before reading this chapter. If you find some difficult or cannot remember the answers, make a note to look more closely at that during your revision.

- 1) What is the difference between an offer and an invitation to treat?
[Distinguishing between an offer and an invitation to treat, page 4]
- 2) True or false? The person who makes the offer is the *offeror*, and the person to whom the offer is made is the *offeree*.
[Introduction to offer and acceptance, page 3]
- 3) What is the difference between a bilateral offer and a unilateral offer?
[Bilateral offers and unilateral offers, page 9]
- 4) In respect of which type of offer is the offeree *not* required to communicate his acceptance of the offer?
[Forms of acceptance for unilateral offers, page 16]
- 5) What is the mirror-image rule in the context of offer and acceptance?
[Acceptance, page 10]
- 6) In which of the following examples has an offer been destroyed?
 - a) John offers Wahid a ton of apples for £100. Wahid asks John whether he will take £50 a month over two months for the apples.
 - b) John offers Henriki a ton of apples for £100. Henriki offers John £90 for the ton of apples.**[Acceptance, page 10 and The termination of an offer - counter-offers, page 18]**

INTRODUCTION TO OFFER AND ACCEPTANCE

Offer and acceptance are two of the four elements required to form a legally binding contract. The other elements are consideration and the intention to create legal relations, and are considered later in this book (see **Chapter 2** and **Chapter 3**). In order to form a binding contract, the **offeror** must make an *offer*, which is *accepted* by the **offeree**.

Key term: offeror

The person who makes the offer is the offeror.

Key term: offeree

The person to whom the offer is made is the offeree.

Exam warning

Although there are usually four elements required to form a legally binding contract, be sure that when a question is asking you to focus on offer and acceptance that you focus on these elements, rather than the intention to create legal relations and consideration.

The objective test

The courts generally use an **objective test** to determine the existence of a binding agreement between the parties. This means that the courts consider how the interaction between the parties looks to a reasonable person.

Key term: the objective test

The objective test is the test used by the courts to determine whether an agreement has been formed. The courts analyse the interaction between the parties from the point of view of a reasonable person.

The subjective test

In some specified circumstances, the courts apply a subjective test instead of an objective test to determine the existence of an agreement. The subjective test is applied where the offeree knew, or ought to have known, that the offeror has made a mistake. For example, where the offeree knows that the offeror does not intend the terms of the offer to be those that the natural meaning of the words would suggest. It is important to remember this exception to the general rule because if it can be shown that the offeree knew, or ought to have known, that the

offeror is mistaken, the offeror is not bound by the terms of the contract. Note that this exception *only* applies if the mistake relates to a term of the contract (such as the price) rather than a collateral matter (such as the colour of an item). Take a look at **Practice example 1.1** to see this in action.

Practice example 1.1

Rusty sells crabs. He has been in correspondence with Delphine previously and has offered to sell her a consignment of crabs at £10 per crab. Two weeks later, he mistakenly offers to sell her the entire consignment of crabs for £10. Delphine accepts the offer, but when Rusty realises he has made a mistake, he refuses to sell her the consignment of crabs for £10.

Can Delphine force Rusty to sell her the consignment of crabs for £10?

The answer is no if Rusty can provide the court with evidence to show that Delphine knew, or must have known, that his offer was a mistake, and that Delphine could not have reasonably concluded that the offer reflected Rusty's real intention. In scenarios like this, if the evidence shows that:

- the market practice for selling crabs is to sell them at a price per crab, and
- there is a substantial difference between the price per crab and the price per consignment, and
- there is previous correspondence from Rusty to sell at a price per crab,

the courts will rule that Delphine knew, or should have known, that Rusty was mistaken and Rusty will not be bound to sell Delphine the entire consignment of crabs for £10.

DISTINGUISHING BETWEEN AN OFFER AND AN INVITATION TO TREAT

For the SQE1 assessment, you must be able to determine whether a communication from a person is an **offer** or an **invitation to treat**. *Only* an offer can be accepted to form a legally binding contract.

Key term: offer

An offer is a communication from a person in which that person agrees to be legally bound to contract with another party (the offeree) on specified terms if the offeree accepts.

Key term: invitation to treat

An invitation to treat is a communication that a person would like to negotiate or discuss the terms on which goods may be sold, or services may be provided, that will lead to a contract at a later date.

Identifying an invitation to treat

Specific words used in communications help us to determine whether a communication is an offer or an invitation to treat. For example, the words 'may be prepared to sell' are unlikely to be viewed as an offer. This is because the phrase 'may be prepared to sell' is conditional, and does not oblige the statement-maker to sell if the other party replies 'yes'. In other words, it is not a firm commitment from the statement-maker. This conditional nature is a key element of an invitation to treat.

Table 1.1 shows specific situations that the law classifies as invitations to treat. You must be able to apply the general rules, and the exceptions to these general rules, in your SQE1 assessment.

Table 1.1: Examples of invitations to treat

Specific situation	General rule	Explanation
Advertisements	Invitation to treat	<p>The general rule is that advertisements are invitations to treat. The person who reads the advertisement should make an offer that the advertiser can accept or reject.</p> <p>The logic for this approach is that if an advertisement is treated as an offer, a person could accept it to form a legally binding contract. This would oblige the advertiser to supply the advertised goods to whoever accepted the offer, or face a claim for breach of contract. Classifying advertisements as invitations to treat reflects business common sense by allowing the supplier to decide whether to make a legally binding contract with the person who wishes to buy the goods in the advertisement. The same principle applies to wine lists and other lists of goods from which a customer can make an order.</p>

6 Offer and acceptance

Examples of invitations to treat (continued)

Specific situation	General rule	Explanation
		<p>Note the exception to the general rule that applies to certain advertisements that are unilateral offers. See Identifying an offer, page 7.</p>
Display of goods	Invitation to treat	<p>Goods on display in a shop are an invitation to treat, not an offer. The offer is made by the customer who wishes to buy them, and the shopkeeper can accept or reject this offer.</p>
Websites	Invitation to treat	<p>Generally, a website through which goods can be bought is an invitation to treat. It is the order made by the person wishing to buy through the website that is the offer.</p>
Auction sales	Invitation to treat	<p>An auctioneer's request for bids at an auction is an invitation to treat, even when it refers to lots being 'offered for sale'. The same rule applies to an advertisement that an auction is being held. A bidder's offer is accepted by the auctioneer when the auctioneer taps the hammer down. But note the exception in respect of auctions 'without reserve'. See Identifying an offer, page 7.</p>
Tenders (requests for quotes, and bids)	Invitation to treat	<p>The person making the requests for quotes (typically this is the person who organises the tender) can decide whether to accept the bids (offers) that he receives.</p> <p>But note the exception to the general rule in respect of tenders that promise to accept the most competitive bid amounts; and promise to consider bids that conform to the tender conditions. Such tenders are unilateral offers. See Identifying an offer, page 7.</p>

Exam warning

When you identify a clue in the question, for example an advertisement, and the general rule is that an advertisement is an invitation to treat, make sure that you stress-test your initial conclusion and check whether an exception to the general rule applies, which could change your answer.

Identifying an offer

Words, and the *intention* of the person who makes the communication, help the courts (and us!) to identify whether a communication is an offer or an invitation to treat. Which criteria do the courts use to identify an offer?

- The first key requirement of an offer is that the communication must be precise enough, with no further details to be agreed, so that the person to whom it is addressed can answer 'Yes' to form a binding contract.
- The second requirement is that the person making the communication must have the *intention* to be bound. The courts decide whether such intention exists through an objective analysis of the words used in the communication.

The case of *Storer v Manchester City Council* [1974] 1 WLR 1403 is a good example of an offer. Manchester City Council sent Storer an agreement for sale and asked him to sign the agreement and return it to the council if he accepted the offer to buy. The court held that this language was certain, and showed a clear intention to be bound if the offeree signed the agreement and returned it, so it was an offer. **Table 1.2** provides further examples of offers.

Table 1.2: Examples of offers

Specific situation	General rule	Explanation
Unilateral advertisements	Offer	Unilateral advertisements are an exception to the general rule that advertisements are invitations to treat. An example of a unilateral advertisement is where an offeror makes a promise in exchange for the offeree performing an act, for example, a promise of a reward for the person who finds a lost cat. The offeree is not obliged to perform the act, but if the offeree performs the act and finds the lost cat, he will have accepted the offer and will be entitled to the reward that was offered. Another example of a unilateral advertisement

Examples of offers (continued)

Specific situation	General rule	Explanation
		would be The Best Insurance Company advertising free holiday insurance to a person who books a holiday with a company in its network. Such an advertisement would be a unilateral offer of free holiday insurance that can be accepted by any person who performs the specified act (in this case, booking the holiday with a network company of The Best Insurance Company).
Auctions 'without reserve'	Offer	Auctions 'without reserve' are categorised as unilateral offers. In other words, they are a promise to sell the goods being auctioned to the highest bidder in the auction.
Tenders to accept the most competitive bid, and to consider tenders that conform to the bid conditions	Offer	Tenders to accept the most competitive bid are treated as unilateral offers that are accepted by the party who submits the most competitive bid to form a legally binding contract. In addition, a tender that promises to consider bids that conform to the tender conditions is a unilateral offer that is accepted by any person who submits a bid that confirms to the tender conditions to form a legally binding contract.
Automatic vending machines	Offer	Goods displayed or offered by vending machines are offers. A person who puts money in the vending machine, or pays by card, accepts the offer being made to form a legally binding contract.

Attempt **Practice example 1.2** to test your ability to distinguish between offers and invitations to treat.

Practice example 1.2

Marco bumps into Maria at a coffee shop. Marco mentions that he may be selling his laptop. Maria tells Marco that she would like to buy it.

Has Marco made an offer to sell his laptop to Maria?

The answer is no. Marco's communication is an invitation to treat.

The key clues are:

- the use of the word 'may'
- the absence of any certainty in Marco's communication
- the lack of evidence to indicate that Marco has an intention to sell to Maria. (Marco does not include any details about the laptop, such as the model, age or price, and he does not use any direct words, such as 'Would you like to buy my laptop for £300?')

Maria cannot respond yes to Marco's communication and so Marco's communication cannot be an offer.

Revision tip

When analysing scenarios such as the one in **Practice example 1.2**, try putting yourself in the shoes of Marco. If you were to tell someone that you may be selling your dog, would you expect someone who responded with the words *yes I will buy it* to have formed a legally binding contract that obliges you to sell your dog to them? The answer is no.

Bilateral offers and unilateral offers

It is critical that you are able to identify the difference between **bilateral offers** and **unilateral offers**. In a bilateral offer scenario, an offer (or promise) is exchanged for an offer (or promise). For example, Olga promises to pay £10 for a book in exchange for Bogdan agreeing to sell Olga the book for £10. By contrast, in a unilateral offer scenario, Bogdan may offer to sell the book to the first person who brings him £10. Olga is not obliged to bring Bogdan £10, but if she chooses to bring Bogdan £10 and is the first person to do so, Bogdan will be bound to sell the book to Olga. Make sure you understand these important terms.

Key term: bilateral offer

A bilateral offer is an offer or promise in exchange for an offer or promise.

Key term: unilateral offer

A unilateral offer is an offer in exchange for a specified act, made either to a specific person, or to a wider group of persons, including to the public.

Now put your knowledge to the test and attempt **Practice example 1.3**.

Practice example 1.3

A medical company advertises a medical product. The advertisement states that the company will pay £100 to anyone who catches flu after using their product in a specified way for a specified period of time. Veronika sees the advertisement and buys the medical product. She uses the medical product in the prescribed way for the prescribed time, but catches flu.

Has Veronika formed a legally binding contract with the medical company?

The answer is yes. This scenario is based on the facts of *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256 CA. The Court of Appeal held that the claimant was entitled to the £100 on the grounds that the advertisement was a unilateral offer that the claimant had accepted by the act of buying the medical product and using it in the prescribed way to form a legally binding contract.

An offer must be communicated to be effective

In order to be effective, an offer must be communicated to the offeree (a person cannot accept an offer if he does not know about it). So a person who finds a lost cat and returns it to its owner will only be able to claim any reward offered for the lost cat *if* the person knew about the offer when he returned the lost cat.

ACCEPTANCE

Once you have identified an offer, you must be able to determine whether there has been an **acceptance** of the offer. The '**mirror-image rule**' is a helpful principle to apply to work out whether an offer has been accepted. If the response from the offeree is not the mirror image of the offer, for example, because the offeree has introduced a new term, then it is not a valid acceptance.

Key term: acceptance

An acceptance is the complete agreement to the terms of the offer.

Key term: mirror-image rule

The mirror-image rule means that an acceptance must be exactly the same as the offer to which it relates.

Note that acceptance can be made through words or by conduct (what the offeree does). Conduct is a key issue because it means that where a person who receives an offer does not communicate a response in writing or orally but nonetheless starts to perform his obligations in accordance with the terms of the offer, this performance will amount to acceptance of the offer by conduct. Now try to answer **Practice example 1.4**.

Practice example 1.4

Ali sends a draft contract to Benazir. Benazir fills in the name of the arbitrator who will resolve any disputes that arise, marks the draft as *approved* and sends it back to Ali. Ali receives the draft and puts it in a file. Both Ali and Benazir start to perform their respective obligations under the terms of the draft contract.

Has a contract been concluded between Ali and Benazir?

The answer is yes. This example is based on the scenario in *Brogden v Metropolitan Railway Co. (1876–1877) LR2 App CA 666 HL*. The House of Lords held that Party B (Benazir in our scenario) made a counter-offer to Party A (Ali in our scenario) by filling in the name of the arbitrator and sending him the contract. The fact that Party A started to perform his obligations after receiving the contract was held to mean that Party A had accepted Party B's offer by conduct to form a legally binding contract.

Counter-offers and requests for flexibility in payment terms

An attempt by the offeree to introduce new terms when responding to an offer is a **counter-offer**. A counter-offer terminates an offer so that the offeree can no longer accept it. But the new counter-offer can be accepted by the person to whom it is addressed to form a binding contract. See also **The termination of an offer, page 16**.

Key term: counter-offer

A counter-offer is a response to an offer that introduces new terms to what is offered. A counter-offer is not an acceptance, and destroys the original offer, which can no longer be accepted by the person who makes the counter-offer.

Now put your knowledge to the test and attempt **Practice example 1.5**.

Practice example 1.5

Maria offers a car for sale to Pavol for £1,000. In response, Pavol says to Maria, 'The car is not worth £1,000, but I will give you £800 for it'. The next day, Pavol changes his mind and tells Maria that he accepts her offer and will buy the car for £1,000.

Has a legally binding contract been formed between Maria and Pavol?

The answer is no. Pavol's response to Maria that he would give her £800 for the car is a counter-offer that destroyed Maria's offer so that it is no longer open for Pavol to accept.

It is important to distinguish between a counter-offer, and a **request for flexibility in payment terms**. An example of a request for flexibility in payment terms is where the offeree asks whether he could pay for the goods or services offered over a period of time or in instalments. Such communications are not counter-offers, so they do not terminate the offer. SQE1 assessment questions may test a candidate's ability to distinguish between the effects of counter-offers and requests for flexibility in payment terms.

Key term: request for flexibility in payment terms

A request for flexibility of payment terms is a response to an offer that enquires whether the amount required for the offered goods can be paid in instalments or later than set out in the offer, and leaves the original offer open for acceptance.

Now put your knowledge to the test and attempt **Practice example 1.6**.

Practice example 1.6

John offers to sell gold to Gregor for £1,000 an ounce. Gregor asks John if he will accept payment in instalments over 2 months. John tells Gregor that he will accept payments in instalments over 2 months. Gregor tells John that he accepts his offer.

Has a legally binding contract been formed between John and Gregor?

The answer is yes. Gregor's question to John about paying in instalments was a request for information about flexibility in payment terms that left John's offer open for Gregor to accept, which he did.

The 'battle of the forms'

When parties send each other their own standard terms of business with the aim of persuading the other party to use the first party's standard terms, this is often called the battle of the forms.

The general rule in respect of the battle of the forms is that 'the last shot' prevails. This means that the last set of terms of business sent by one party to the other party before the other party starts to perform his obligations will apply to the contract.

The offeree's acceptance must be in respect of the offer

If the offeree performs an act that would normally qualify as an acceptance of the offer, the act will only constitute acceptance of the offer if the offeree knows about the offer. Provided the offeree knows about the offer, their motive in performing the act that constitutes acceptance is irrelevant. For example, where an offer is made to give a £100 reward to any person who provides specified information about a crime, a person who provides such information about the crime will be entitled to the reward, *provided he knows about it*, even if his motive in providing the information is not to receive the reward, but something different, like clearing his conscience.

Forms of acceptance for bilateral offers

In this section, we look at the impact of the offeror's requirements as to how acceptance should be communicated. The legal position in respect of bilateral offers is different from the position for unilateral offers (see **Forms of acceptance for unilateral offers, page 16**).

The general rule is that an acceptance of a bilateral offer *must* be communicated to the offeror to create a legally binding contract (the **receipt rule**).

Key term: receipt rule

The rule that an offeror must actually *receive* an acceptance for the acceptance to be valid.

The requirement for communication of acceptance underpins the rule that silence cannot amount to acceptance. So if an offeror tells an offeree that he will assume that his offer has been accepted if he does not hear from him, this has no legal effect. In other words, if the offeree does not respond to such a communication from the offeror, it will *not* form a legally binding contract.

There are two main issues to consider as regards the form of acceptance:

- If the offeror has specified or implied that acceptance must be in a specific form, for example, *in person*, then the acceptance must be communicated as specified.
- If the offeror has not made it very clear that acceptance must only be made in a specified form, then the offeree can use another form for acceptance, provided it is no slower. For example, if the offeror has required acceptance to be made by a telephone, acceptance by a personal visit would be a sufficient alternative, provided it was not significantly slower.

The postal acceptance rule (considered below) is an important exception to the rule that an acceptance of a bilateral contract must be communicated to be effective.

The postal acceptance rule

If the interaction between the offeror and the offeree makes it clear that the post might be used by the offeree to communicate acceptance, the postal acceptance rule will apply. The postal acceptance rule provides that the offeree's acceptance is effective to form a legally binding contract *as soon as the acceptance is posted*. So even if the offeror never receives the acceptance, he is still bound by the contract that was formed when the acceptance was posted.

For such a powerful rule to apply, certain requirements need to be satisfied, including the requirement that the letter of acceptance be properly addressed, and posted through a post office or a Royal Mail postbox. The postal acceptance rule does not apply to letters that are handed to the postperson or sent through a courier company. The parties are free to exclude the postal acceptance rule, for example, by the offeror stating that an acceptance must not be sent by post, and by specifying an alternative means of communication.

When the postal acceptance rule does not apply, the position on communication of acceptance is as set out in **Table 1.3** below.

Table 1.3: Communicating acceptance outside the postal acceptance rule

Means of communication	General position
Instantaneous media, including the telephone, fax and telex.	The general position is that the receipt rule applies, which means that the offeror must receive an acceptance for it to be communicated.

Communicating acceptance outside the postal acceptance rule (continued)

Means of communication	General position
	As a general rule, the offeree is responsible for ensuring that the offeror has received the acceptance. In respect of acceptances by telephone, the offeror and the offeree are treated as if they were interacting face to face. So if the offeror does not hear or understand the acceptance, it will not have been communicated. In respect of fax, if the offeror is aware that the acceptance is being sent but does not receive it or it is unreadable when it is received, the offeror must ask the offeree to re-send the acceptance.
Instantaneous media sent during office hours	If the acceptance is communicated to a business during office hours, acceptance is held to be communicated at the time when the acceptance is actually received by the fax.
Instantaneous media sent outside office hours	If the acceptance is sent outside 'ordinary business hours', it will be deemed to be received at the start of the following working day.
Acceptance by email	The general position is that the receipt rule applies.
Acceptance through a website	Unless the parties are businesses and agree otherwise, the order and acknowledgement of receipt of order will be deemed to be received when the parties to whom they are addressed are able to access them.

Revision tip

Ensure you understand the two main rules in respect of the acceptance of bilateral offers.

- Firstly, communications of acceptance are deemed received by the offeror when they are actually received. But note how the rule is varied when acceptances are sent out of office hours.
- Secondly, the postal acceptance rule provides that the acceptance is effective to create a legally binding contract when it is properly posted.

Practice example 1.7 explores the difference between receipt rule and the postal acceptance rule.

Practice example 1.7

BigBank sends an offer of a loan to Oneyema by post. BigBank tells Oneyema that if she wishes to accept the loan, the bank must receive her acceptance in writing by 5 PM on Friday. Oneyema decides to send her response in a letter to BigBank that she posts in a Royal Mail postbox before 5 PM on Friday

Has Oneyema's response formed a legally binding contract with BigBank?

No, Oneyema has not formed a legally binding contract with BigBank. The words in the offer state that the bank must receive her acceptance in writing by 5 PM. This displaces the postal acceptance rule. This means that BigBank must actually receive Oneyema's acceptance by 5 PM on Friday for it to form a legally binding contract.

Forms of acceptance for unilateral offers

The rules for the acceptance of unilateral offers are different from the rules of acceptance of bilateral offers. The key difference is that the offeree *accepts* a unilateral offer *by conduct* and this acceptance does not need to be communicated to the offeror in order to form a legally binding contract.

Exam warning

Make sure that you clearly identify whether a question on acceptance relates to a bilateral offer or a unilateral offer because the rules for acceptance of bilateral and unilateral offers are different. In addition, make sure that you identify whether it aims to test your knowledge of the receipt rule or the postal acceptance rule, and remember the limitations to the postal acceptance rule in respect of letters that are not properly addressed/not properly posted, or where the offeror has specified that they require actual notice of acceptance.

THE TERMINATION OF AN OFFER

The last topic that we consider in this chapter is the termination of an offer.

Once an offer has been terminated, it cannot be accepted. An offeror may wish to terminate an offer because of a change in circumstances. Or an

offeree may wish to ask questions about the offer without terminating the offer, for example, by making a counter-offer (see **Counter-offers, page 18**).

For your SQE1 assessment, you must be able to determine whether an offer has been terminated. In the sections below we consider the different ways offers can be terminated.

The offeror can revoke the offer

An offeror is free to revoke an offer before it is accepted. However, if the offeror has agreed with the offeree to keep an offer open for a specific time, the offeror is bound to do so.

Revocation must be communicated

As regards bilateral offers, the revocation must be communicated to the offeree to be effective. It makes no difference whether it is the offeror or a third party who communicates the revocation to the offeree. The postal acceptance rule does not apply to the revocation of offers. Different rules apply to the revocation of unilateral offers (see below).

The revocation of unilateral offers

Different rules apply to the revocation of unilateral offers. This is because there can be a lack of proximity between the offeror of a unilateral offer and the offeree. For example, where the offer is made in a newspaper, the offeror may not know who has accepted his offer until such person makes himself known to him.

As a general rule, an offeror who makes a unilateral offer cannot revoke it once the offeree has started to perform the act specified in the offer. The offeror must let the offeree finish performing the specified act.

Communicating the revocation of unilateral offers

In contrast to the position in respect of bilateral offers, the offeror can effectively revoke a unilateral offer without such revocation actually being communicated to the offeree. All that is required is that the offeror must use the same means to revoke the offer as he used to make the offer in the first place. For example, if Leroy offers his laptop through a unilateral advertisement in *The Evening Standard*, and then decides to revoke his offer, he would need to advertise his revocation in the same publication, or in one that had the same readership. If Leroy were to try and revoke his offer by publication of an announcement in *Hello*

Magazine, which has different readership from *The Evening Standard*, the revocation would not be effective.

Counter-offers

As we have noted above, a counter-offer does not amount to an acceptance and it terminates an offer. Now put your knowledge to the test and attempt **Practice example 1.8**.

Practice example 1.8

Anne offered to sell land for £1,000. Paul offered £950 in response. When Anne refused to accept Paul's £950, Paul said that he accepted Anne's offer to buy the land for £1,000.

Was Anne bound by Paul's acceptance of her offer to sell the land for £1,000?

The answer is no. This scenario is based on the facts of *Hyde v Wrench* 49 ER 132. The court held that the offeree's offer of £950 was a counter-offer that destroyed the offeror's original offer. So there was no offer to be accepted by the offeree when he tried to accept the original offer to sell for £1,000.

The termination of an offer through lapse of time

An offer may be stated to be open for a specific period of time so that it will terminate on a set date. In other cases where no time frame is mentioned, if the offeree takes longer than reasonable to respond to the offer, the courts may hold that there was no offer open to accept because it had expired. There is no absolute rule as to what will constitute a reasonable time frame, it depends upon the subject matter of the contract.

The termination of an offer by the offeror making a new offer

Let us imagine that Nelson wants to sell his camera. First, he offers the camera to Bronwen for £100. But later the same day, Nelson finds out that his camera is worth £200. When Nelson sees Bronwen later that day, he tells her that his camera is worth more than £100 and he offers Bronwen his camera for £200. Nelson's second offer will terminate his first offer.

■ KEY POINT CHECKLIST

This chapter has covered the following key knowledge points. You can use these to structure your revision around, making sure to recall the key details for each point, as covered in this chapter.

- As a general rule, the courts adopt an objective approach to determine whether a contract has been formed.
- A bilateral offer is an offer or promise in exchange for an offer or promise.
- A unilateral offer is an offer in exchange for a specified act.
- An invitation to treat is a communication that a person might like to negotiate or discuss the terms of a contract.
- Acceptance of a bilateral offer must be communicated to be effective, except where the postal acceptance rule applies.
- The postal acceptance rule provides that acceptance is effective from the moment the letter is properly posted.
- Acceptance of a unilateral offer does not need to be communicated; the performance of the specified act is acceptance even if the offeree is not aware of this.
- A bilateral offer can be terminated through communication to the offeree, a counter-offer, lapse of time and the making of a new offer.
- A unilateral offer can be terminated by using the same method of communication that was used for the original offer.

■ KEY TERMS AND CONCEPTS

- offeror (**page 3**)
- offeree (**page 3**)
- the objective test (**page 3**)
- offer (**page 4**)
- invitation to treat (**page 5**)
- bilateral offer (**page 9**)
- unilateral offer (**page 9**)
- acceptance (**page 10**)
- mirror-image rule (**page 10**)
- counter-offer (**page 11**)
- request for flexibility in payment terms (**page 12**)
- receipt rule (**page 13**)

■ SQE1-STYLE QUESTIONS

QUESTION 1

A goat escapes from the zoo. The zookeeper offers a reward of £100 in the local paper to the first person to return the goat to the zoo. A man does not see the notice, but finds the goat on his morning walk and takes the goat to the zoo. The zookeeper tells the man that he is the first person to return the goat to the zoo and the zookeeper thanks the man with a chocolate bar. Later that day, the man's colleague tells him about the notice for a reward in the newspaper.

Which one of the following statements most accurately describes the legal position of the parties?

- A. The zookeeper is not obliged to pay the man the £100 reward because the man did not claim the reward when he returned the goat to the zoo.
- B. The zookeeper is obliged to pay the man the £100 reward because the man accepted the zookeeper's offer by exactly performing the specified actions.
- C. The man can only claim the reward of £100 if he was aware of the advertisement when he brought the goat to the zoo.
- D. By accepting the chocolate bar, the man accepted alternative performance by the zookeeper of the reward and is estopped from claiming the £100.
- E. The man's act of returning the goat amounts to acceptance of a unilateral offer so it is irrelevant whether or not he knew of the advertisement when he performed the act.

QUESTION 2

A supplier is negotiating the sale of apples with a customer. The supplier writes an email to the customer on Friday morning to offer the customer 10 tons of apples for £2,000. The supplier says that she will start delivering apples as soon as the customer accepts the offer. The customer telephones the supplier to confirm that she accepts her offer. The telephone line is bad and the supplier cannot hear what the customer says and asks the customer to repeat her message. The customer repeats her message and then the telephone cuts out. The supplier did not hear the message the first time or the second time.

Which of the following statements best describes the legal position in the case?

- A. The customer's acceptance has created a binding contract so the supplier must start delivering apples to the customer in accordance with the terms of their agreement.
- B. The supplier is responsible for calling the customer back and checking what she said.
- C. It is the customer's responsibility to ensure that the supplier hears her acceptance.
- D. Given that the customer has tried two times to tell the supplier that she accepts her offer, the supplier will be in breach of contract if she does not deliver the apples to the customer as soon as possible.
- E. It was the supplier's fault that she did not hear the customer's acceptance of her offer so she must take the consequences of this.

QUESTION 3

A man sends a letter by Royal Mail to a colleague in which he offers to sell her his bicycle for £500 provided he hears back from her in two days. The colleague writes back saying that she will buy the bicycle for £400 and she posts her letter by Royal Mail within two days.

Which one of the following statements is the most accurate reflection of the legal position?

- A. Provided the colleague put the correct address on the letter, the contract is formed when she posts it with Royal Mail.
- B. The colleague's letter amounts to a counter-offer that destroys the man's offer.
- C. The colleague's letter is a unilateral offer that the man can accept by conduct.
- D. Pursuant to the postal acceptance rule a contract between the colleague and the man is formed at the moment that the colleague posts the letter back to the man.
- E. The colleague's communication was an enquiry as to flexibility in payment terms so the man's offer remains open for the colleague to accept.

QUESTION 4

A lawyer is walking through the town centre when she meets her friend, a shopkeeper. The shopkeeper tells the lawyer that she rents her shop from an insurance company and that she is worried because the insurance company recently demanded 50% more rent each year. In a panic, the shopkeeper sent a letter by post to the insurance company offering to pay 45% more per year, but after checking her finances, the shopkeeper has discovered that she cannot afford to pay 45% more per year.

Which of the following most accurately describes the legal position?

- A. The lawyer (on behalf of the shopkeeper) should immediately telephone the insurance company to tell them that the shopkeeper has revoked her offer to pay a 45% increase. This will prevent the insurance company from accepting the shopkeeper's offer to form a binding contract.
- B. The shopkeeper should revoke her offer to the insurance company immediately by sending a letter by courier to the insurance company to ensure that it does not accept the shopkeeper's offer of a 45% increase to form a binding contract.
- C. The shopkeeper was bound by her offer to the insurance company from the moment she posted her letter.
- D. The shopkeeper should revoke her offer to the insurance company by post because the postal acceptance rule provides that a message in a letter is effective from the moment it is posted in a Royal Mail postbox, regardless of whether or not the addressee receives it.
- E. The shopkeeper should send a letter to the insurance company to investigate whether the insurance company would be prepared to accept a smaller increase in annual rent.

QUESTION 5

On Monday, a man advertises his computer for sale in a trade magazine with the following words 'LENOVO IdeaPad Flex 5 13.3' for £200. I will sell to the first person who brings £200 to my office at 1 Oxford Street by 1 PM this Friday'. On Tuesday, the man changes his mind and decides to revoke his advertisement. The man cannot find the telephone number for the magazine so he places a notice in a national newspaper and the notice is published on Wednesday morning.

To which one of the following persons is the man obliged to sell his computer?

- A. On Friday, a woman, having seen the advert on Monday, brings £200 to the man's office at 11:00 AM.
- B. On Friday, a student, having seen the advert on Monday, arrives at the man's office at 10:15 AM and offers him £190 for the computer.
- C. On Friday, a programmer, having seen the advert on Monday, arrives at the man's office at 1:05 PM and asks whether he will accept £200 for the computer payable in four monthly instalments of £50.
- D. On Friday, an accountant, having seen the advert on Monday, arrives at the man's office at 11:30 AM with £200.
- E. The man is not obliged to sell the computer to any person.

■ ANSWERS TO QUESTIONS

Answers to 'What do you know already?' questions at the start of the chapter

- 1) An offer can be accepted to form a legally binding contract. No further negotiation is required. By contrast, an invitation to treat is an expression of willingness on the part of one person to enter into negotiations, which it is hoped will lead to the conclusion of a contract at a later date.
- 2) True.
- 3) A bilateral offer is an offer by one person in exchange for an offer or promise by another person. By contrast, a unilateral offer is a promise by one person in exchange for an act by another person.
- 4) A unilateral offer.
- 5) The mirror-image rule requires that an acceptance of an offer must be unconditional and it must correspond to the exact terms of the offer.
- 6) The correct answer was (b). Henriki's offer to John is a counter-offer. A counter-offer destroys an offer. The authority for this rule is *Hyde v Wrench*.

Answers to end-of-chapter SQE1-style questions

Question 1:

The correct answer was C. It is a key requirement of an acceptance that the person purporting to accept the offer is aware of the offer. This means that Option E is incorrect. Option A is incorrect because if the party who performs the unilateral act is aware of the offer, he will be entitled to claim the reward, even if he does not claim it immediately. Option B is also incorrect because the person who purports to accept an offer must be aware of it. Option D is incorrect because the man is not aware of the offer so is not entitled to the reward of £100. If the man had been aware of the offer, he would still be able to claim the reward of £100, despite having been given a chocolate bar.

Question 2:

The correct answer was C. This is because in this bilateral offer scenario, an offeree (the customer) must communicate acceptance for it to be effective. Since the offeree's (the customer's) communication is by telephone, it is the offeree's responsibility to ensure that the offeror (the supplier) hears the acceptance. This means that Option A is incorrect. A binding contract has not been formed because the customer has not communicated acceptance to the supplier. Option B is also incorrect because it is the offeree's responsibility to communicate acceptance. Option D is incorrect because no contract has been formed. Option E is incorrect as there is nothing in the fact pattern to indicate that it is the supplier's fault that the line is bad, and in any event, it is the offeree's (the customer's) responsibility to communicate acceptance, and she has not done this.

Question 3:

The correct answer was B. This is because the colleague's response to the man clearly shows that she wishes to buy the bicycle for £400, rather than for the £500 in the offer. This is a counter-offer, which destroys the original offer so that it can no longer be accepted. This lack of symmetry between the offer and the purported acceptance means that there is no agreement between the offeror (the man) and the offeree (the colleague) so there can be no binding contract. This also means that Options A and D are incorrect. Option C is incorrect because the colleague's counter-offer is a bilateral offer, not a unilateral offer. Option E is incorrect because the colleague's communication is an offer to buy the bicycle at a different price from the one originally offered (a counter-offer), rather than an enquiry as to whether payment of the £500 could be paid in instalments, which would be an example of an enquiry as to flexibility in payment terms.

Question 4:

The correct answer was A. This is because the shopkeeper's communication to the insurance company was an offer, and an offer can be revoked before it is accepted. A communication of revocation to the offeree is effective regardless of whether it is made by the offeror or by a third party. The third party in this case is the lawyer. Watch out for the postal acceptance rule because it only applies to acceptances, and it is clear that the shopkeeper's offer to the insurance company to pay a 45% increase is an offer. Option B is incorrect because the shopkeeper's revocation will only be effective when it is received by the insurance company. Since delivery by courier is not immediate, it presents the risk that the insurance company can still accept the shopkeeper's offer before the courier delivers the revocation. Option C is incorrect because an offer can be revoked before it is accepted. Option D is incorrect because the postal acceptance rule only applies to acceptances, and not to revocations. Option E is incorrect because the shopkeeper wishes to withdraw her offer before the insurance company accepts it.

Question 5:

The correct answer was A. This is because the man made a unilateral offer and the woman accepted through her conduct. Although the man tried to revoke his unilateral offer, he did not do so effectively because the revocation of a unilateral offer needs to be given the same 'notoriety' as its advertisement. On the basis that the man's initial advertisement was in a trade magazine, and his attempt at revocation was published in a national newspaper, it is clear that his revocation was not given the same notoriety as the initial advertisement. The readership of the magazine and the national newspaper will not be the same. This means that Option E is incorrect. Option B is not correct because the student makes a counter-offer to the man that destroys the man's offer so that a contract is not formed. Option C is not correct because the programmer arrives after the deadline to accept the offer and he has not brought £200, so the programmer has not performed the act required to accept the unilateral offer. Option D is incorrect because the accountant is not the first person to arrive at the man's office within the specified time frame. The first person arrived at 11 AM and accepted the offer. So there was no offer open to accept when the accountant arrived at 11:30 AM.

■ KEY CASES, RULES, STATUTES AND INSTRUMENTS

The SQE1 Assessment Specification does not require you to know any case names, or statutory materials, for this topic.