Asif Tufal

FORMATION OF A CONTRACT

OFFER AND ACCEPTANCE

Has the offeror made an offer?

or, an invitation to treat? ie,

1. Auctioneer's call for bids: *Payne v Cave*

2. Display of goods:
Fisher v Bell
PSGB v Boots

3. Advertisement:
Partridge v Crittenden
(**except** unilateral adverts: *Carlill v Carbolic Smokeball*)

4. Mere statement of price:
Harvey v Facey
Gibson v Manchester CC

5. Tender

No contract

Yes. Binding contract as soon as it is accepted by the offeree.

Has there been an unqualified acceptance?

But note the approach in:
Brogden v Metropolitan Railway
Gibson v MCC
Percy Trentham v Archital Luxfer

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Yes

No, if …

1. Counter-offer:
Hyde v Wrench

2. Conditional acceptance

But may actually be a mere request for more information: *Stevenson v McLean*, or a "battle of the forms" issue: *Butler Machine Tool v Excell-O-Corp*

1. Acceptance must be communicated:
Entores v Miles Far East Corp

2. By an authorised person: *Powell v Lee*

3. Silence does not amount to communication:
Felthouse v Bindley

4. Instantaneous communication effective when and where received:
Entores v Miles Far East Corp
The Brimnes
Brinkibon v Stahag Stahl

Exceptions to the communication rule

a) Unilateral contracts
b) Expressly/impliedly waived
c) Postal Rule:
Adams v Lindsell
Household Fire Ins v Grant

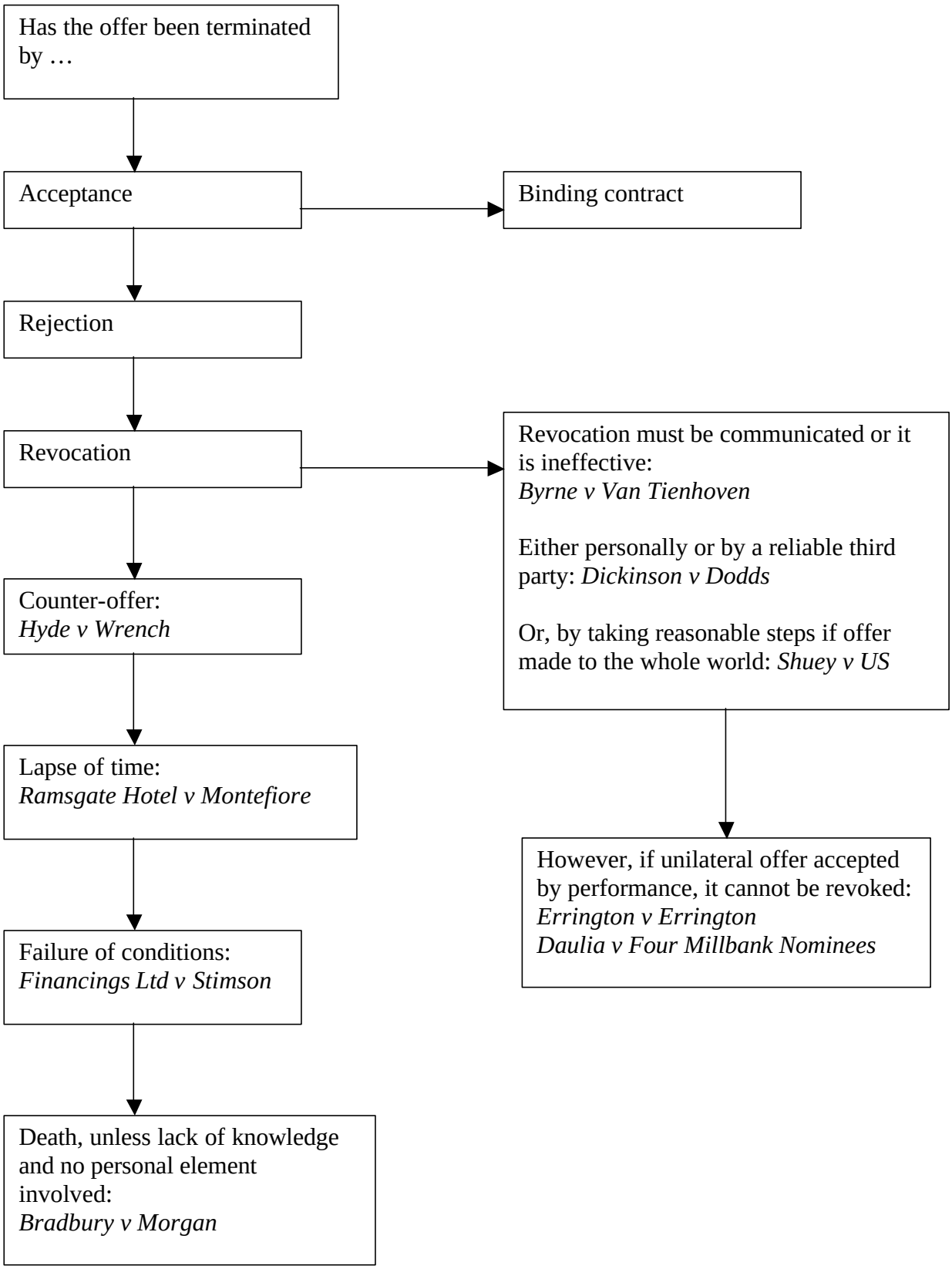
Exceptions to the Postal Rule:
i) Letter not properly posted
ii) Letter not properly addressed
iii) Postal rule excluded:
Holwell Securities v Hughes
iv) "manifest inconvenience or absurdity"

Can a posted acceptance be revoked by quicker means?

Scotland – possibly
Commonwealth – no:
Wenkheim v Arndt
AZ Bazaars v Ministry of Agriculture

Must a prescribed method of acceptance be adhered to? See:
Holwell Securities v Hughes
Tinn v Hoffman
Yates Building v Pulleyn

Must there be knowledge of the offer?
a) Acceptance for reasons other than the offer is ineffective: *R v Clarke*
b) If offer plays some part then valid acceptance:
Williams v Carwardine

What if there was a "cross-offer"?
No contract according to
Tinn v Hoffman

TERMINATION OF THE OFFER