Title:

Table of Contents:
Volume 1
  Part Two - Formation of Contract
    2. The Agreement
      4. Termination of the Offer
        (b) Rejection
        (c) Lapse of time
        (e) Death
    8. Conditional Agreements
      (a) Classification
  Part Six - Joint Obligations, Third Parties and Assignment
    19. Assignment
      1. Assignment
  Part Seven - Performance and Discharge
    24. Discharge by Breach
      2. Renunciation
  Part Eight - Remedies for Breach of Contract
    26. Damages
      6. Penalty or Liquidated Damages

Content:
Volume 1

Part Two - Formation of Contract

2. The Agreement

4. Termination of the Offer

Page: 163

2-085"

Introductory. An offer may be terminated by withdrawal, rejection, lapse of time, occurrence of a condition, death and supervening incapacity. These methods of termination will be discussed in the paragraphs that follow.

Page: 165

(b) Rejection

2-090"

What amounts to rejection; counter-offers. A rejection terminates an offer, so that it can no longer be accepted. For this purpose, an attempt to accept an offer on new terms (not contained in the offer) may be a rejection accompanied by a counter-offer. Thus in Hyde v Wrench the defendant offered to sell a farm for £1,000. The offeree replied offering to buy for £950, and when that counter-offer was rejected, purported to accept the defendant's original offer to sell for £1,000. It was held that there was no contract as the offeree had, by making a counter-offer of £950, rejected, and so terminated, the original offer.
(c) Lapse of time

**Specified time.** An offer which expressly states that it will last only for a specified time cannot be accepted after that time. The most common application is to offers taking the form of options, which obviously cannot be accepted after the expiry of the period during which the option is expressed to be exercisable. On a similar principle, an offer which stipulates for acceptance "by return of post" must be accepted either in the specified way or by some other no less expeditious method.

**Reasonable time.** Where the duration of an offer is not limited by its express terms, the offer comes to an end after the lapse of a reasonable time. What is a reasonable time depends on all the circumstances: for example on the nature of the subject-matter and on the means used to communicate the offer. An offer to sell a perishable thing, or a thing subject to violent price fluctuations, would terminate after a relatively short time; and this would often also be true of an offer made by telegram or by other equally speedy means of communication such as telex or fax.

(e) Death

**Death of the offeror.** The effect of the death of the offeror has been considered in a number of cases concerning continuing guarantees. Such a guarantee (e.g. of a bank overdraft) is, in general, divisible: it is a continuing offer, accepted from time to time as the bank makes further loans to its customer. It seems that a guarantee of this kind is not determined merely by the death of the guarantor. But it is determined if the creditor 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 to charge the guarantor's estate. If the guarantee expressly provides that it can be determined only by notice given by the guarantor or his personal representatives, the death of the guarantor (even if known to the creditor) will not determine the guarantee; only express notice will have this effect. In so far as any general statement can be based on this special group, of cases, it seems that the death of the offeror determines an offer only if the offer on its true construction so provides.

**Death of the offeree.** Two cases have some bearing on the effect of the death of the offeree. In *Reynolds v Atherton*, an offer to sell shares was made in 1911 to “the 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: "The offer having been made to a living person who ceases to be a living person before the offer is accepted, there is no longer an offer at all. The offer is not intended to be made to a dead person or to his executors, and the offer ceases to be an offer capable of acceptance. "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 had happened to hold office in 1911. In *Kennedy v Thomassen*, acceptance by solicitors of the offeree in ignorance of her death was held ineffective on the grounds that their authority to act on her behalf had been revoked by her death and that they had acted under a mistake. Neither case supports the view that an offer can never be accepted after the death of the offeree. It is submitted that, where an
offer related to a contract which was not "personal," 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.

8. Conditional Agreements

(a) Classification

Introductory. An agreement is conditional if its operation depends on an event which is not certain to occur. Discussions of this topic are made difficult by the fact that in the law of contract the word "condition" bears many senses:

it is "a chameleon-like word which takes on its meaning from its surroundings." At this stage, we are concerned with only one of these meanings: but to clear the ground it is necessary to draw a number of preliminary distinctions.

[...]

Conditions precedent and subsequent. Contingent conditions may be precedent or subsequent. A condition is precedent if it provides that the contract is not to be binding until the specified event occurs. It is subsequent if it provides that a previously binding contract is to determine on the occurrence of the event: e.g. where A contracts to pay an allowance to B until B marries.

Part Six - Joint Obligations, Third Parties and Assignment

19. Assignment

1. Assignment

[...]

Statutory and equitable assignments. But an assignment which fails to comply with the statutory requirements is not necessarily invalid, for it may take effect as a perfectly good equitable assignment [...].

[Subsequently the author presents a comprehensive survey of statutory and equitable assignment-doctrine under English common law.]

Part Seven - Performance and Discharge

24. Discharge by Breach

2. Renunciation

Anticipatory breach. If, before the time arrives at which a party is bound to perform a contract, he expresses an intention to break it, or acts in such a way as to lead a reasonable person to the conclusion that he does not intend to fulfil his part, this constitutes an "anticipatory breach" of the contract and entitles the other party to take one of two courses.
He may "accept" the renunciation, treat it as discharging him from further performance, and sue for damages forthwith, or he may wait till the time for performance arrives and then sue. On the other hand, where the anticipatory breach lacks a continuing form, the fact that the innocent party initially continued to press for performance does not normally preclude him from later electing to terminate the contract provided that the party in breach has persisted in his stance up to the moment of termination.¹⁴²

[...]

Part Eight - Remedies for Breach of Contract

26. Damages

6. Penalty or Liquidated Damages

Damages fixed by the Parties. Where the Parties to a contract agree that, in the event of a breach, the contract-breaker shall pay to the other a specified sum of money, the sum fixed may be classified by the Courts either as a penalty (which is irrecoverable) or as liquidated damages (which are recoverable).⁵⁸³

[Subsequently set out in detail.]

³⁵² Tinn v Hoffmann & Co (1873) 29 L.T. 271, 278.
³⁵³ Above, para.2-030; for an exception see Vienna Convention on Contracts for the International Sale of Goods (above, para.2-061), Art.19(2).
³⁵⁵ For the legal nature of an enforceable option, see below, para.3-170, n.870.
³⁵⁶ cf. above, paras 2-063, 2-065.
³⁵⁷ Ramsgate Victoria Hotel Co v Montefiore (1866) L.R. 1 Ex. 109; see also Reynolds v Atherton (1922) 127 L.T. 189; Chem Co Leasing SpA v Rediffusion [1987] 1 F.T.L.R. 201. Semble, the offeror could waive the delay. See also Vienna Convention on Contracts for the International Sale of Goods (above, para.2-061), Art.21(1).
³⁵⁸ Quenerduaine v Cole (1883) 32 W.R. 185.
³⁵⁹ Bradbury v Morgan (1862) 1 H. & C. 249; Harriss v Fawcett (1873) L.R. 8 Ch.App. 866, 869; Couthart v Clementson (1879) 5 Q.B.D. 42, 46.
³⁶⁰ Couthart v Clementson, above.;
³⁶¹ Harriss v Fawcett (1873) L.R. 8 Ch.App. 866.
³⁶² Re Silvester [1895] 1 Ch. 573.
³⁶⁴ [1929] 1 Ch. 426.
³⁶⁵ Vol.II, para.31-160.
³⁶⁶ "Personal" is here used in the same sense as in the law relating to termination of a contract by the death of a party: see n.372, above (Below, para.23-036. Even in such cases the legal effects of saying that the offer was determined, so that there was never any contract, would be likely to differ from those of saying that there had been a contract which had been determined: e.g. the Law Reform (Frustrated Contracts) Act 1943 could apply to the latter, but not to the former, situation.)
³⁶⁷ Skips A/S Nordheim v Petrofina SA (The Varenna) [1984] Q.B. 599. 618.
³⁶⁸ Conditions precedent are also sometimes called "suspensive," and conditions subsequent "resolutive," conditions: see Treitel, Remedies for Breach of Contract, (1988) 262-263. In Ignazio Messina & Co v Polskie Linie Oceaniczne [1995] 2 Lloyd's Rep. 566, 580 a condition there under discussion was said to be "a true condition subsequent or suspensive condition." "Subsequent" here seems to be a misprint for "precedent".
³⁶⁹ cf. Brown v Knowsley B.C. [1986] I.R.L.R. 102 (appointment to "last only as long as sufficient funds were provided" from specified sources); (semble) Gylenhammar & Partners International v Sour Brodogradnjevna Industria [1986] 2 Lloyd's Rep. 403 (contract to "become null and void" it certain consents were not obtained) and Jameson v CEGB [2000] 1 A.C. 455 at 477 (settlement of tort claim immediately binding but subject to implied resolutive condition that it was to
become void if the agreed amount was not paid). The distinction between conditions precedent and subsequent was criticized by Holmes (The Common Law (1881), 371); for discussion of this criticism, see Treitel, Remedies for Breach of Contract (1988), 263-264. English authority recognizes that the distinction is by no means always clear cut: see below at n.582.


140 See above. para. 24-013.

141 Not all anticipatory breaches are of a continuing nature: see, for example, Howard v Pickford Tool Co Ltd [1951] 1 K.B. 417.


583 A valid agreed damages clause is probably not subject to the Unfair Contract Terms Act 1977 (above, paras 14-059 et seq.); see Treitel op. cit. (10th ed.), pp. 227, 933. cf. however, the Unfair Terms in Consumer Contracts Regulations 1999 (above, paras 15-004 et seq.), (below, para. 26-133).

Referring Principles:

- III.2 - Assignment of claim
- IV.2.4 - Lapse of an offer
- IV.6.10 - Conditions
- VI.4 - Promise to pay in case of non-performance
- VI.5 - Anticipatory breach