This write up is going to define the terms contract, offer and an invitation to treat. In the same token the main purpose of this essay is to explain and differentiate between an offer and invitation to treat. Mann and Roberts (2005) define an offer as “a definite undertaking or proposal made by one person to another indicating the willingness to enter into a contract." The person making the offer or proposal is the offeror and the offeree is the person to whom it is made. Contract is the binding agreement that the courts will enforce. Smith and keenan's (2006) define contract as “a promise or as a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty.” An invitation to treat is an indication that a person is willing to enter into negotiations, but not that he is yet willing to be bound by the terms mentioned Kuchhal and Kuchhal (2013).

It is important to make a distinction between an offer and an invitation to treat. An invitation to treat is not an offer. It is an invitation to negotiate or an invitation to make an offer. Christie (2011) an offer should not be made by a person who is not fully prepared to take the legal consequences of its being accepted. An offer should not be made by a person who is not fully prepared to take the legal consequences of its being accepted. For example, I should not offer to sell you my car for US$100 unless I am fully prepared to go through with the deal, because if you accept my offer, I will either have to go through with the contract which will have been created or take the legal consequences. A response to an invitation to treat, however, cannot result in a binding contract. It is quite safe for me to ask you how much you would give me for my car. You might name a price (thereby making an offer) but I would have no obligation to agree to the deal. A court decides whether or not one of the parties has made an offer by looking objectively at what it thinks that both of the parties intended. All the circumstances of the case will be considered in reaching this decision. Advertisements can amount either to offers or to invitations to treat. If an advertisement is an offer then a person who accepts the offer makes a contract with the person who advertised. If an

advertisement is only an invitation to treat then it cannot be accepted in such a way that a contract is thereby formed.

In addition, although an offer is usually addressed to a specific individual or to a group of individuals, there is no reason why it should not be addressed to an indeterminate group or even to the public at large. In other words a contract can equally be formed when an offer is made to the world at large and is accepted by someone who performs the conditions of the offer. In Carlill v Carbolic Smoke Ball Co Ltd (1893), the defendants were the manufacturers of medication known as a carbolic smoke ball, which was claimed to be capable of preventing influenza, as well as a variety of other ailments. By way of an advertising stunt the defendants offered to pay £100 to any person who used the smoke ball according to the instructions and nevertheless caught influenza. In order to 'show their sincerity', the defendants also stated that they had deposited £1,000 with their bankers to meet any possible claims. The plaintiff used one of the smoke balls according to the directions, but still caught influenza. She then claimed payment of the £100, which the company refused to pay. They argued that their advertisement could not give rise to a contract, since it was impossible to make a contract with the whole world. The court rejected the argument and held that the advertisement did constitute an offer to the world at large, which became a contract when it was accepted by Carlill using the smoke ball in the prescribed manner and getting influenza. She was therefore entitled to the £100.

Furthermore, an offer, capable of being converted into an agreement by acceptance, must consist of a definite promise to be bound provided that certain specified terms are accepted. The offeror must have completed his share in the formation of a contract by formally declaring his readiness to undertake an obligation upon certain conditions, leaving the offeree the option of acceptance or refusal. He must not merely have been feeling his way towards an agreement, not merely initiating negotiations from which an agreement might or might not in time result. An invitation to treat is an indication that a person is willing to enter into negotiations, but not that he is yet willing to be bound by the terms mentioned. Smith (2004) argues that negotiations that may indicate a willingness to make an offer is not in itself an offer. For instance, if Brown writes to Young, "will you buy my automobile for $3000?" and Young replies "yes" there is no contract. Brown has not made an offer to sell her automobile to Young for $300. The offeror must demonstrate an intent to enter into a contract, not merely a willingness to enter into negotiation.

The distinction between an offer and an invitation to treat is that the former may be accepted, turning it into a contract whilst an invitation to treat may not. Invitations to treat are merely steps in the negotiation of a contract. A common instance of agreement arrived at by offer and acceptance occurs where tenders are called for and one is accepted, In contrast, an invitation to treat may not result in a contract as shown in Crawley v R (1909) in which the court held that where a tradesman advertises goods at a certain price he does not make an offer which any member of the public is entitled to accept, he invites the public to do business with him and to make an offer which he can then accept or refuse. A display of goods in a shop, in a window or on shelves even with price tags attached is an invitation to treat and not an offer. The shopkeeper does not undertake to sell the goods. They are on display merely to invite customers to come in and offer to buy at the price shown. In Pharmaceutical Society of Great Britain v Boots Cash Chemists (1953), Boots refurbished a shop into a self-service system which at the time was novel. By s.18 Pharmacy and Poisons Act 1933, the sale of certain drugs and poisons should not occur except 'under the supervision of a registered pharmacist'. The point at which the contract was formed was therefore critical, either when the customer removed goods from the shelves or when they were presented to the cash desk for payment. The court held that the contract was formed when goods were presented at the cash desk where a pharmacist was present, not when taken from the shelf. Mere display of goods on the shelf was an invitation to treat and Lord Parker agreed with this in Fisher (supra) when he stated, 'it is clear that, according to the ordinary law of contract, the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale, the acceptance of which constitutes a contract.' In contrast with an offer, Bowen L.J in Carlill (supra) concluded, 'it is not like cases in which you offer to negotiate, or you issue advertisements that you have got a stock of books to sell, or houses to let, in which case there is no offer to be bound by any contract. Such advertisements are offers to negotiate offers to receive, offers …'

Furthermore, an offer differs from an invitation to treat in that the latter may come in the form of advertisements. Mann and Roberts (2005) posted that, advertisements are usually considered invitations to treat on the grounds that they may lead to further bargaining, potential buyers might want to negotiate over the price. For example merchants desire to sell their merchandise and thus are interested in informing potential customers about the goods, the terms of sale, and price. But if they make widespread promises to sell to each person in the mailing list, the number of acceptances and resulting contracts might conceivably exceed their

ability to perform. Consequently, a merchant might refrain from making offers by merely announcing that he has goods for sale, describing the goods, and quoting prices. He is simply inviting his customers and, in the case of published advertisements, the public, to make offers to him to buy his goods. His advertisements are not offers because they do not contain a promise and they leave unexpressed many terms that would be necessary to the making of contract. Accordingly his customers' responses are not acceptances because no offer to sell has been made.

An offer also differs from an invitation to treat in that the latter may come in the form of tenders. When a large organisation, such as a company, hospital or government ministry, needs to find a supplier of goods or services, it will often advertise for tenders. Organisations wishing to secure the business then reply to the advertisement, detailing the price at which they are willing to supply the goods or services and the advertiser chooses whichever the most favourable quotation is. The court in Spencer v Harding (1870) held that as a general rule, a request for tenders is regarded as an invitation to treat, so there is no obligation to accept any of the tenders put forward.

In conclusion, the essay proves that there is a different between an offer and invitation since the main object of an offer is to enter into a contract whilst the main objective of invitation to treat is to negotiate the term on which the contract be made.

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