

## Week 2: Offer and Acceptance

### **Unilateral contract**

#### Carlill v Carbolic Smoke ball

- Company deposited 1000 pounds with its bankers – “showing our sincerity in the matter”.
- C saw the advertisement, bought a smoke ball and used it as directed (contracted unfluenza nevertheless).
- Requested company to pay her 100 – it refused – C sued company for breach of contract.
- Issue 1: whether the advertisement was an offer or a “mere puff” which no reasonable person would regard as a binding contractual promise.
- Held: advertisement was more than a “mere puff”. Serious offer to the whole world that could be accepted by anyone coming forward and satisfying the conditions.
- Court relied on the statement “1000 pounds is deposited with the Alliance Bank showing our sincerity in the matter”.

### **Invitation to treat**

#### Gibson v Manchester City Council

- MCC adopted policy that allowed its housing tenants to purchase their flats.
- Gibson was sent a letter – “may be prepared to sell” outlining other terms and conditions.
- G completed an application form but before contract was signed, C’s policy changed.
- Held: HoL decided that there was no enforceable agreement. The letter was an invitation to treat, not an offer.
- Statement providing information but does so without indicating that the person intended to make an offer is not an offer.

#### Pharmaceutical Society

- Placing of the goods on the shelf was an invitation to treat.
- Customer made the “offer” by taking it to the cashier who “accepted” the offer under the watchful gaze of a registered pharmacist.

### **Statements supplying information**

#### Harvey v Facey

- H sent telegram enquiring.
- F replied, giving required information.
- H replied “we agree to buy...”
- F refused to sell, H sued for breach of contract.
- H argued: F’s telegraphed reply was an offer to contract and that an agreement to contract was made when H sent his second telegram “agreeing to buy”.
- Held: No contract existed. (H’s “acceptance” was in fact an offer to buy at the price stated, the second telegram was simply a precise answer to a precise question)

### **Specific example: auction sales (who makes the offer and who accepts)**

Auctioneer’s call for bids is an invitation to treat – where bid is made, it is an offer from the bidder to buy at the price offered. (Auctioneer may accept or reject the offer)

#### Harris v Nickerson

- D advertised the auction of certain goods at a stated time and place.
- P travelled to auction only to find that items that he was interested in had been withdrawn.
- Claimed compensation for breach of contract – arguing that advertisement constituted an offer + his travelling to the auction, an acceptance by conduct.
- Held: advertisement was not an offer (merely a declaration of intention or an invitation to treat).

## **Revocation of offer (revocation has to be communicated)**

Byrne v Van Tienhoven

- VT wrote offering to sell 1000 boxes of tinplates to Byrne (1 October).
- Byrne received offer (11 October) and accepted it by telegram on the same day & by letter on (15 October).
- VT posted letter withdrawing the offer (8 October)
- Letter reached Byrne (20 October)
- Withdrawal of offer was ineffective: offer could be revoked at any time before its acceptance but a revocation of the offer was not effective until it had been communicated to the offeree.
- Contract binding both parties had been entered into on 11 October – when Byrne accepted by telegram.

## **Option: a promise, supported by consideration, to keep an offer open for a period of time**

Goldsborough Mort v Quinn

- D offered to P that P would have the right to purchase certain property within one week at a stated price. (i.e, P promised to keep the offer open for D for 1 week)
- P paid D 5 shillings in consideration for this option.
- Before the week agreed for P to accept the offer to purchase the property, D repudiated the offer.
- P accepted the offer within the week and brought a suit for specific performance of the agreement.
- Held: (1) the option having been given for value was not revocable. (2) the acceptance of the offer by the company constituted a binding contract which was enforceable by specific performance.

## **Lapse of an offer**

(If a counter-offer is made)

Hyde v Wrench

- W offered to sell land to H.
- H rejected the offer.
- W then offered to sell at another price.
- H responded by offering to purchase at another price.
- W refused to sell at this price. (D)
- H (P) said he would accept the earlier offer.
- W refused to sell → H brought an action for specific performance.
- Held: there was no agreement – the earlier agreement was terminated by H's counter-offer. (could not subsequently be revived)

(Request for information)

Stevenson Jacques v McLean

- ML offered to sell iron to S at a stated price.
- S responded by asking whether ML would accept payment “for delivery over 2 months or if not the longest limit you would give”.
- ML (without answering) sold to another buyer.
- When got no response, S purported to “accept” the offer but discovered ML had sold.
- S sued for breach of contract arguing it came into effect when it accepted the offer.
- Court decided that McLean was liable for breach of contract – the response from Stevenson was merely seeking clarification (about the terms of the offer), not impose new or different terms.

(If one party dies/incapacitated before acceptance)

Carter v Hyde

- C leased H's hotel for 5 year period.
- Offered to assign the lease back to him and for \$1, granted him an option for 3 months.
- Before option had expired, H died.
- High Court decided that H's estate could exercise the option – made an order for specific performance.

## Acceptance

(Communication by conduct of the parties)

Empirnall Holdings v Machon Paull Partners

- E (property developer) hired architects (MP) to act as project manager.
- MP forwarded contract for signature and a progress payment claim to Empirnall.
- E paid on the claim and asked MP to submit progress claims.
- However E did not sign the contract because its director "does not sign contracts".
- Later when MP sent another progress claim, it forwarded a contract for signature. (again, contract was not signed)
- 2 weeks later, MP wrote "we are proceeding on the understanding that the conditions of the contract are accepted by you and works are being conducted in accordance with those terms and conditions)
- Dispute arose, E denied the written contract had ever been accepted.
- Issue: whether a reasonable bystander would regard the E's conduct as signalling that it had accepted that the work was to be done according to the printed contract.
- Court: not so much a case of acceptance by conduct – but one where E had taken the benefit of the work done so that an objective bystander would say that it had accepted the offer.

(Acceptance cannot be inferred from silence/inaction of the offeree)

Felthouse v Bindley

- F offered to buy a particular horse from his nephew – stated in a written offer that "if I hear no more about him, I consider the horse mine.."
- N did not reply but instructed the auctioneer (Bindley) not to sell the horse.
- B forgot to withdraw the horse from sale and sold it to another buyer.
- F sued B in tort of conversion.
- Held: F could not impose on his nephew a duty to respond if he did not wish to sell on those terms.

(No acceptance if the offeree is unaware of the offer)

R v Clarke

- Proclamation offered reward for information that would lead to the arrest and conviction of the person who had murdered 2 policemen.
- Clarke and an associate were arrested and charged with the murder.
- C gave evidence that led to the conviction of 2 men for the murder.
- C released from custody and claimed reward (evidence that C volunteered the information in order to clear himself)
- Held: C did not act in reliance upon the offer, there was no acceptance of the offer → no contract.

(Acceptance must be unconditional – qualified or conditional acceptance would amount to a counter-offer)  
Masters v Cameron (“subject to”)

- M signed agreement to purchase C’s rural property.
- Agreement contained term involving solicitors.
- M also paid agent when he signed the agreement.
- When M refused to proceed with the purchase, both parties claimed the deposit moneys.
- High Court: no binding agreement had been made. On evidence, court said that the parties had not intended that a legally binding agreement would exist until or unless a formal contract acceptable to M’s solicitors had been signed. (therefore money had to be returned to M)

### **Postal Acceptance Rule**

#### **(General rule – acceptance must be communicated)**

Postal acceptance rule is excluded where the offeror requires actual communication of the acceptance.

Henthorn v Fraser

- ‘where acceptance by post is contemplated by the parties, acceptance is complete as soon as a properly addressed letter of acceptance is properly posted’

### **Electronic/instantaneous communication**

Common law: general rule that contract is concluded at the time when, and the place where, the acceptance is received.

- Section 8 Electronic Transactions Act 1999: ‘A transaction is not invalid because it took place wholly or partly by means of one or more electronic communications’.
- Section 14 ETA: An electronic communication is taken to have been dispatched by the sender when the electronic communication leaves an information system under the control of the sender.
- Section 14A ETA: An electronic communication is taken to have been received by the addressee when it becomes capable of being retrieved by the addressee at an electronic address designated by the addressee.