

CHAPTER 4 – CONTRACT FORMATION

Price v Easton (1833) 4 B & Ad 433 (p. 96)

Contract; formation; privity; parties.

Facts:

A builder owed money to Price but did not have the money to pay what he owed. Easton agreed with the builder that if the builder did some work for Easton, Easton would pay Price the money that the builder owed to Price. The builder did the work, but Easton failed to pay Price. There was no point in Price suing the builder for what the builder owed him because the builder still had no money. The builder had no reason to enforce the contract against Easton, because Easton had not promised to pay any money to the builder. Price therefore brought an action against Easton to enforce the promise that Easton had made to the builder that Easton would pay Price.

Issue:

Was Price entitled to enforce Easton's promise to the builder that Easton would pay Price?

Decision: Price was not entitled to enforce the promise.

Reason:

Price was not a party to the agreement between Easton and the builder and, under the **doctrine of privity of contract**, Price did not acquire legally enforceable rights under that contract.

Coulls v Bagot's Executor & Trustee Co Ltd (1967) 119 CLR 460 (p. 96)

Contract; formation; privity; rights of third parties.

Facts:

In a contract entered into between Mr Coulls and the O'Neil Construction Company, Mr Coulls gave O'Neil the right to dig up and remove stone from his property. In exchange, O'Neil promised to pay royalties for the stone. The contract authorised O'Neil to pay the royalties to Mr Coulls's wife. Some time later, Mr Coulls died. This contract for quarrying stone did not involve services of a personal nature and accordingly it was not terminated by his death. The contract remained enforceable against his estate. This meant that O'Neil could continue to quarry the stone and the royalties would continue to be payable. The executor of Mr Coulls's estate wanted to know if Mrs Coulls had a contractual right to receive these royalties.

Issue:

Did Mrs Coulls herself have a legally enforceable right to the payment of the royalties?

Decision:

O'Neil owed no contractual obligations to Mrs Coulls because she was not herself a party to the contract.

Reason:

Although Mrs Coulls was present and had put her signature on the contract when it was made, the majority of the court held that she had **not signed it as a party to the agreement**. In particular, she had **not provided any consideration** to make the agreement contractually binding between herself and O'Neill. Because she was not a party to the contract, she had **no contractual right to sue on or enforce the terms of the contract**. The royalties should therefore be paid to Mr Coulls's estate, to be distributed to his beneficiaries.

Placer Development Ltd v Cth (1969) 121 CLR 353 (p. 81)

Contract; formation; offer; illusion of promise.

Facts:

The Commonwealth government said that it would pay a subsidy to companies that imported timber products into Australia. The subsidy was to be 'of an amount or at a rate to be determined by the Commonwealth from time to time'. The government made some initial payments to importers, but then stopped. Placer, who had imported timber, wanted to enforce payment of the subsidy.

Issue:

Was what the government said about paying a subsidy to importers a legally enforceable promise?

Decision:

In a majority decision, the court held that what the government had said was not a legally enforceable promise. What was said may have appeared to be a promise, but on proper analysis it was **not actually a promise at all**.

Reason:

Taylor and Owen JJ said (at [7]): "A promise to pay an **unspecified amount of money is not enforceable** where it expressly appears that the amount to be paid is to rest in the **discretion of the promisor** and the deficiency is not remedied by a provision that the promisor will, in his discretion, fix the amount for payment. Promises of this character are treated not as **vague and uncertain** promises - for their meaning is only too clear - but as **illusory promises**."

Partridge v Crittenden [1968] 2 All ER 421 (p. 84)

Contract; formation; offer; advertisement not an offer.

Facts:

Partridge put an advertisement in a magazine saying: 'Bramblefinch cocks and hens, 25/- each.' He was prosecuted by the RSPCA for the statutory offence of unlawfully 'offering' wild birds for sale.

Issue:

Was the advertisement an 'offer' in the legal sense, capable of 'acceptance' by any interested person (in which case an offence would have been committed) or was the advertisement merely an 'invitation to treat' which did not amount to an 'offer' within the meaning of the relevant statute?

Decision:

The court decided that, in the circumstances of this case, the advertisement did not amount to an offer in the full legal sense, capable of acceptance to create a binding contract. It was only an invitation to enter into negotiations with interested buyers who might themselves offer to buy the advertised birds.

Reason:

Lord Parker CJ said (at 424): "I think that when one is dealing with advertisements and circulars, unless they indeed come from manufacturers, there is business sense in their being construed as invitations to treat and not offers for sale."

Note: Compare Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 where, in different circumstances, an advertisement was held to constitute an offer capable of acceptance.

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256 (p. 63, 85)

Contract; formation: consideration; offer and acceptance.

Facts:

During an influenza epidemic in England in 1891 the Carbolic Smoke Ball Company produced patented 'smoke balls' made from certain chemicals. The company marketed these smoke balls as an effective means of preventing influenza. In particular, the company published an advertisement in a newspaper, offering to pay a reward of £100 to

anyone who purchased the smoke balls, used them according to the instructions provided, but who nevertheless caught influenza. To demonstrate the seriousness of their offer, the company deposited £1000 in a bank account from which to pay the rewards. Elizabeth Carlill saw the advertisement. She bought and used a smoke ball as directed. When she nevertheless caught influenza she claimed the £100 reward promised by the company. The company refused to pay her, denying that an enforceable contract with Carlill had been created in these circumstances.

The seriousness of the Smoke Ball Company's intention to be bound was evidenced by a deposit of money into a bank account for the purpose of paying a promised reward.

Issue 1 (intention to be legally bound):

Could it be inferred from the circumstances that the promise to pay the advertised reward was intended to be legally binding?

Decision: There were sufficient circumstances to infer that the promise was intended to be contractually binding.

Reason: The advertisement was unlike other advertisements. The fact that it stated that £1000 had been deposited in a bank by the company **expressly for the purposes of making the promised payments** demonstrated that the promise was intended to be legally binding.

Issue 2 (offers made to world at large):

Could an offer made to everyone in the world at large be validly accepted by a specific individual who knew of the offer?

Decision: An offer made to 'the world at large' is capable of acceptance by **any member of the public who learns of it**.

Reason: In the circumstances, the **advertisement amounted to an offer that was capable of acceptance**. Although offers are usually made to specified persons, or to members of a specified groups of persons, there is no reason why they should not be addressed to anyone in the whole world if that is what the offeror intends.

The valid acceptance of such an offer by any person will create an **enforceable contract** with the company.

Issue 3 (acceptance by conduct):

Since Carlill had never communicated directly with the company before catching influenza, how had she accepted the company's offer of the reward?

Decision: Carlill had accepted the company's offer by **doing the acts of buying and using** the smoke ball.

Reason: The Carbolic Smoke Ball Company had, in their advertisement, made a **promise to pay a £100 reward** to any person who caught influenza after buying and using the smoke ball in the **manner directed**.

Carlill had performed the required acts after reading the advertisement and in response to that promise.

Her acts were therefore **sufficient acceptance to bring about an enforceable agreement** with the company.

Issue 4 (performance as act of consideration):

Had Carlill provided consideration in exchange for the company's promise, sufficient to create a legally binding agreement?

Decision: The **act of buying and using** the smoke ball provided the **necessary consideration** to make the promise to pay the reward **enforceable**.

Reason: An **act performed in expectation of a known promise** may constitute the **consideration** given in exchange for that promise, even though the act is necessarily performed before the said promise becomes legally binding.

In this case, the company promised to pay a reward in exchange for the act of buying and using the smoke ball, provided the user then caught influenza.