

Chapter 3-12 Notes (Assessed in Mid-Semester Test)

The offer

An offer is a proposal by one party to enter into a legally binding contract with another. An offer may only exist if the terms are clear and the person making the offer must intend that it can be converted into a binding obligation by acceptance.

- Mere puffs = exaggerated statements and assertions about products or services that no reasonable person would take seriously

Carlill v Carbolic Smoke Ball Co [1893]

Facts: Carbolic Smoke Ball Co. (CSB) manufactured a medical preparation and advertised that anyone who uses it will be cured of influenza and if not then they would be paid 100 pounds, for which they deposited 1000 pounds in a bank. Carlill bought it but was not treated.

Decision: The court decided that the advertisement was an offer and that an offer can be made to the world at large. Also, if the offeror did not intend the offer to be taken seriously, why would he advertise that he had put 100 pounds in the bank.

Leonard v PepsiCo (1999)

Facts: Pepsi ran an advertising campaign in which consumers were encouraged to collect "Pepsi Points" from specially marked packages of Pepsi. In the television commercial, a young boy is seen flying a Harrier jet fighter to school, and the words "HARRIER FIGHTER 7,000,000 PEPSI POINTS". After seeing this commercial, Leonard (and his syndicate) decided to purchase a jet fighter by "buying" the 7,000,000 points. When PepsiCo rejected his order and returned his cheque Leonard sought specific performance of the unilateral contract that he alleged had been performed when he performed his obligations.

Decision: The court decided that the advertisement was not "clear, definite and explicit" enough to constitute an offer. Because of the comical nature of the commercial, a reasonable person could not conclude that PepsiCo was offering a Harrier Jet to anyone who collected 7,000,000 points. It was a mere puff.

Lapse of an offer

An offer will lapse if:

- a) if not accepted within the time stated;
- b) it not accepted within a reasonable time, where no time for acceptance has been stated;
- c) if a counter-offer is made

Hyde v Wrench (1840) 3 Beav 334; 49 ER 132

Decision: Wrench offered to sell his property to Hyde and Hyde made a counter offer. Wrench did not accept it and Hyde agreed to accept the earlier offer.

Decision: Once a counter offer has been made by the offeree, the original offer is rejected and cannot be accepted again.

- a request for information is not a counter-offer

Stevenson Jaques & Co v McLean

Facts: McLean offered to sell iron to Stevenson for “40 shillings net cash”. Stevenson responded by asking whether McLean would accept 40 shillings “for delivery over two months or if not the longest limit you would give”. When Jacques purported to accept the offer, he then discovered that McLean sold it to another buyer.

Decision: McLean was liable for breach of contract. The response from Stevenson was merely seeking to clarify the terms of the offer, not impose new or different terms.

An offer will lapse:

d) on the death of either party before acceptance

e) by loss of contractual capacity by either party, for example by insanity.

Persons to whom an offer may be made - The person or persons for whom it was intended are the only ones who can accept it.

Communication of offer - The offer must be communicated, that is brought to the notice of the person whom it is made.

Revocation of offer

An offer is revoked when the offeror formally withdraws the offer. On revocation the offer comes to an end and cannot subsequently be accepted. The offeror can give notice of the revocation of the offer at any time before acceptance.

For the revocation of an offer to be effective, it must be communicated to the offer before the time of acceptance and by a reasonable reliable source.

Byrne & Co v Van Tienhoven & Co (1880)

Facts: An offer was sent from London to New York by post. Due to postal delay there were differences in acceptance and revocation of the offer.

Decision: An offer cannot be revoked until it is received by the offeree. In this case acceptance was cabled before the offer was revoked.

Options

A promise to keep an offer open for a period of time is not enforceable unless the offer provides consideration.

Goldsborough Mort & Co Ltd v Quinn (1910)

Facts: Quinn paid a sum of five shillings to Goldsborough Mort the rights to purchase the whole freehold lands within a week at a price of £1.10s per acre. Before the time expired for acceptance of the offer, Quinn purported to withdraw the offer. Despite this, Goldsborough Mort accepted the offer and when Quinn refused to transfer the land, the company sued for specific performance.

Decision: An offer cannot be withdrawn as a consideration of five shillings had been given for the promise to keep offer open for one week and the offer could not be withdrawn. An option given for value is non revocable. Since this contract was a sale of land, court ordered specific performance of the contract.

Invitation to treat

An invitation to treat is an indication that a person is prepared to negotiate.

Harvey v Facey [1893] AC 552

Facts: Facey owned a property that Harvey wanted to buy. Telegraphic transaction was made and Harvey sued Facey and lost. Harvey only supplied information about the lowest price and did not make an offer.

Decision: Supplying information on request is not making an offer and the information supplier is not bound by it.

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1952]

Facts: Pharmaceutical Society of Great Britain (PSGB) thought that Boot Cash Chemists (BCC) had breached the contract by displaying drugs. The question was when the offer was made.

Decision: A person does not breach the law if he/her makes an invitation to treat. Displaying things is not making an offer.

Auction Sales

In the case of a typical auction sale, the auctioneer's call for bids is an invitation to treat. Where a bid is made, it is an offer from the bidder to buy at the price offered.

Harris v Nickerson [1872-1873]

Facts: An auction that had been advertised to be conducted on a particular day was cancelled. Nickerson, who had travelled a considerable distance to attend the auction, sued for damages and breach of contract.

Decision: Advertising an auction was not an offer, but a statement of present information.

Online Auctions and Sales