

## CHAPTER 4: THE NATURE OF THE AGREEMENT: OFFER AND ACCEPTANCE

### QUESTION 1

Consider whether a valid contract has been formed in the following circumstances.

- a) Iraj sees the following advertisement in his local newspaper: 'For Sale: Rose Bushes only £12.99 for five. Hurry—limited supplies. Send cheque to Beautiful Gardens Ltd., PO box 123'. Iraj sends a cheque but is told the bushes are sold out.
- b) Dave writes to Peter, 'You mentioned that you would like to buy my red sports car. You can have it for £5,000. If you want it let me know by the end of the week.' The following day Dave sells his car to Jane. Peter learns of the sale and immediately tells Dave he accepts his offer.
- c) Mary sent out a circular to all interested businesses in her area offering for sale her fleet of company cars for which tenders were invited. Jane's tender turned out to be the highest but Mary has refused to sell her the cars.
- d) Strait and Co, a manufacturer of vitamin pills, states in an advertisement that the regular use of its 'Vito' pills will increase a user's energy levels in two weeks. Slouch takes 'Vito' pills every day for two weeks but notices no improvement in his energy.
- e) Penelope writes to Quentin offering to buy his car for £2,000 and says that if she has not heard from him within a week she will assume that he has accepted. A week elapses and Penelope has heard nothing from Quentin.
- f) On Monday Teresa sends an e-mail to Ursula offering to sell her diamond necklace at a knock down price of £10,000 for a quick sale. Ursula sends a letter back the same day accepting the offer. On Tuesday, before Ursula's letter arrives, Teresa agrees to sell the necklace to another person.
- g) James offers to sell his laptop to David for £750. David offers to pay £500. James refuses to accept £500. David agrees to pay £750.
- h) Paul sees a lawn mower in a shop window with a price tag of £100. He says that he will buy the lawn mower but the shop assistant says that the price tag should read £200 and refuses to sell it to him for £100.
- i) Lin books a train to Exeter using Simplerrail's internet service. Although she put in her credit card details when she booked the train, she has had no confirmation of her booking.

Answer:

- a) Advertisements of this type are invitations to treat, *Partridge v Crittenden* (1965). Iraj makes the offer. There has been no acceptance and therefore there is no contract.
- b) Revocation of an offer can be communicated by the offeror or a reliable third party, *Dickinson v Dobbs* (1876). Once an offer has been revoked it cannot be accepted, *Routledge v Grant* (1828). There is no contract.
- c) A tender is an offer. In certain circumstances the statement requesting tenders is additionally construed as an offer to consider any tenders submitted. In this situation each tender submitted must be considered, although not necessarily accepted. *Blackpool & Fylde*

*Aero Flying Club Ltd v Blackpool Borough Council* (1990). There is an offer but no acceptance. There is no contract.

- d) An offer must be distinguished between a mere puff or boast. *Carlill v Carbolic Smoke Ball* (1893). The advertisement is likely to be construed as a mere puff and therefore no contract. If it was decided the content was clear and not too vague there may be an argument that it is a unilateral contract.
- e) A positive act is required. Silence does not indicate acceptance: *Felthouse v Bindley* (1863). There is no contract.
- f) Postal rules state that a letter of acceptance correctly addressed and stamped is effective when it is put in the post box, *Adams v Lindsell* (1818). Provided the postal rules have not been excluded there is a contract between Teresa and Ursula.
- g) James' offer of £750 is refused by David who makes a counter offer of £500. David cannot now accept the offer of £750: *Hyde v Wrench* (1840). There is no contract.
- h) Goods in a shop window are an invitation to treat, *Fisher v Bell* (1961). There is no contract.
- i) Lin has made an offer but there has been no acceptance and therefore no contract has been made.

## QUESTION 2

Fully explain the difference between 'an offer' and 'an invitation to treat'. In contract law, is an advertisement in a newspaper treated as 'an offer' or 'an invitation to treat'?

### Answer:

- An offer is a proposal made the Offeror with a promise to be bound by that proposal if the Offeree accepts the terms. The terms of the offer must be clear. *Gurthing v Lynn* (1831). In certain circumstances if an offer is incomplete relevant details may be inferred from other sources or previous dealings, *Hillas v Arcas* (1932).
- To be binding an offer must be communicated to the offeree.
- An invitation to treat is not an offer that is capable of being accepted by the other party. It is a pre-offer whereby one party is asking another party if they would like to make an offer which the first party may accept or refuse. The party making the first statement envisages further negotiations before a contract is formed, *Gibson v Manchester City Council* (1979).
- Goods displayed in shops are generally invitations to treat, *Fisher v Bell* (1961).
- An application inviting tenders, catalogues and prospectuses are usually invitation to treat.
- Generally advertisements placed in newspapers, magazines or posted on websites are invitations to treat even if they are headed 'offer for sale', *Partridge v Crittenden* (1965).
- However there have been occasions where the court has decided that an advertisement is a unilateral offer, *Carlill v Carbolic Smoke Ball* (1893). The advertisement was a promise by one party in return for an act by the other.

## QUESTION 3

'Acceptance must be communicated to the offeror by the offeree'. Discuss what this phrase means and consider any exceptions to the rule.

**Answer:**

- An acceptance is the unconditional assent to all the terms of the contract, communicated by the Offeree, to all the terms of the offer, made with the intention of accepting.
- Acceptance may be made orally, in writing, indicated by the conduct of the offeree or the fall of a hammer in an auction. The courts will only infer acceptance through conduct if it appears reasonable to conclude that the actions of the offeree showed an intention to accept the offer, *Reveille Independent LLC v Anotech International (UK) Ltd* (2016).
- To be binding acceptance must agree with the terms of the offer, agree with the method of acceptance if stipulated and be communicated.
- Acceptance must be communicated to the offeror or his authorized agent. It is not effective if it is an ordinary third party that informs the offeror that the offeree is accepting the offer made, *Powell v Lee* (1908). Silence cannot amount to acceptance - *Felthouse v Bindley* (1862).
- The general rule is that acceptance must be received *by the offeror Entores v Miles Far East Corp* (1955). However there are two exceptions, unilateral contracts and the postal rule.
- Unilateral contracts do not generally require prior notification of acceptance *Carlill v Carbolic Smoke Ball Co.* (1893), *Bowerman v Association of British Travel Agents Ltd* (1995).
- The postal rule states that a letter of acceptance is effective from the time it is posted and not when it arrives (provided it has been properly posted etc.) *Adams v Lindsell* (1818). Even if the letter never arrives it is still valid acceptance provided it is not the fault of the sender because the letter was not addressed correctly or adequately stamped, *Household Fire and Carriage Accident Insurance Company Ltd v Grant* (1879).

#### QUESTION 4

Andrea decides to sell her car and puts a notice on the back windscreen of the car. The notice reads, 'This car is for sale, excellent condition, low mileage, bargain at £2,000. Please phone Brighton 678123 or call in at 8 Hove Street.'

On Monday morning Bob telephones Andrea and offers to buy the car for £1,500. Andrea refuses to accept his offer. Later that day Bob changes his mind about the car and telephones Andrea. She is out so he leaves a message on her answerphone saying, 'I agree to give you the full asking price of £2,000 for your car and will be round to collect it tomorrow'.

On Tuesday morning, Carl sees Andrea's car and writes a letter of acceptance to Andrea enclosing a cheque for £2,000. He immediately puts the letter in the post box. On Tuesday afternoon Debs calls at 8 Hove Street but Andrea is out, so she puts a note through the letterbox stating, 'I have had a good look at your car—it is just what I want—I enclose a cheque for the full asking price of £2,000'.

Explain to Bob, Carl, and Debs if they have a valid contract to purchase Andrea's car, giving full reasons with case illustrations.

**Answer:**

- Essential ingredients in a valid contract – includes agreement: offer and acceptance.
- Display notice at the back of Andrea's car: It is necessary to distinguish an offer from an invitation to treat. An invitation to treat is a pre-offer where one party is asking someone else to make him an offer. *Fisher v Bell* (1961); *Pharmaceutical Society of BG v Boots Cash Chemist* (1953). In this case, the display of the notice in the window by is an invitation to treat.
- An offer is a proposal setting out certain terms made by the Offeror with a promise to be bound by that proposal if the Offeree accepts the terms. To be binding an offer must be certain in its terms and communicated to the offeree. In this case, Bob has made an offer to Andrea of £1,500. Andrea has rejected the offer. Once an offer has been rejected it ceases to exist and cannot be accepted. *Hyde v Wrench* (1840); *Pickfords Ltd v Celestican* (2003). The telephone message left by Bob is a new offer that has not been accepted by Andrea.
- As the advertisement is an invitation to treat, Carl's letter is an offer. The postal rules, *Adams v Lindsell* (1818) only apply to acceptance. The offer has not been accepted by Andrea.
- As the advertisement is an invitation to treat, Deb's note is an offer. It makes no difference that she has enclosed a cheque. There is no contract until the offer is accepted by Andrea.