

Business Law: Contract Law Report

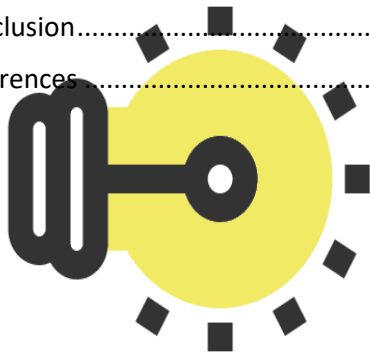


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1- Introduction

The law of contract is a specific type of the law of obligations. The law of contract is that part of the law to which the law will attach some consequences with regards to any breach by parties that are involved in the agreement. Many times people labour under the mistaken impression that contracts are written documents for them to be enforceable (Stone, 2002). However, this is a misconception that many times parties find themselves embroiled in disputes that would require them to seek legal representation (Riches & Allen, 2009).

In our case scenario we shall consider three elements of the law of contract. Of interest to us will be the issue of offer whether it constitutes an offer or an invitation to treat? Further, the issue of the champagne as a prize will be explored. Lastly, the issue of the sign board at the back of the shop will also be discussed.



2- The Formation of the Contract

An agreement needs to come into existence first. A contract can either be written or unwritten (Riches & Allen, 2009). This stems from the fact that a contract is not a statutory creation, but is a product of the common-law. As such, its requirements have been ‘fine-tuned’ through the actions of the courts via the precedent system over the years. Statutes have a lot of application as they affect various parts of the contractual journey currently. There are therefore elements of the contract that will need to be present for a contract to be validly constituted. At common law the *essentialia* of the contract could be identified as the following;

- An agreement,

- Consensus,
- Contractual intention (Acceptance),
- Consideration (Riches & Allen, 2009).

In principle and broad outline, an agreement is often preceded by an offer which must then be accepted by the other party. Should a dispute on acceptance ever reach the courts, then an objective test will be employed to determine if acceptance was present. Next we consider the first issue from our case scenario: Is the advertisement an offer?

3- The Offer – the TV advert

- Two parties are often involved, the offeror (offer creator) and the offeree (offer acceptor). Therefore the one party offering must display conduct that will induce the affected party to reason that a legal agreement is being targeted at being concluded, that is it may be express or implied (Allen & Overy, 2016). This issue was demonstrated in the following;

- ❖ Storer case: - At issue before the court was whether a valid contract had been entered into by the parties after refusal by the defendant to conclude a contract of sale for land to which a validly enforceable agreement had been previously completed by the parties at that time? The court, on appeal, held that a valid contract was duly concluded between the parties. The court's main points were as follows;
 - ✓ The objective intentions and the reasonability of apprehension of the parties' actions were paramount. The subjectivity of the parties to the agreement was excluded. Lord Denning MR, stated, "In contracts, you do not look into the actual intent in a man's mind. You look

at what he said and did. A contract is formed when there is, to all outward appearances, a contract” (p. 827). [The case was also cited in the Gibson (1979) case, where the outcome was a denied appeal by the House of Lords which held that no contract of sale came into existence even though the same or similar facts existed in both cases] (LawTeacher, 2013).

- A distinction must be made between an offer and an invitation to treat. The latter involves soliciting invitations to make offers in response to specified terms of reference often couched as offers themselves. Examples include, advertisements and displays of goods in self-service stores (Stone, 2002).

- ❖ Carlill v Carbolic Smoke Ball Company (1893) case best describes how the courts view advertisements. A medical firm had attempted to rely on its advert being an invite to treat and not an offer.
- ✓ The Court of Appeal held that the specific advert was an offer as the intention of the company to be bound was evident from the statement made by them of the deposit of 1000 pounds which stood as a guarantee for any resultant claims arising from the advert. The company’s intentions to be so bound could be inferred from that action.
- ❖ Partridge v Crittenden (1968): - An advert was placed in a magazine ‘offering’ the sale of some wild birds. The advertiser was convicted for contravening an Act of law protecting wild birds.
- ✓ On appeal, the conviction was over-turned, with the court holding that the advertiser had made an invitation to treat and not an offer as such no criminality could be imputed on him (Riches & Allen, 2009).

- From what has been discussed thus far, it may be determined that the TV advertisement, in general, may not be construed in law as an offer, but an invitation to treat by any respondents according to case law.
- Though, according to Storer, it may seem like a binding offer was being created for acceptance by the TV shop, according to Carlill and Partridge, an advert will, in general, be treated as an invite to treat and not as an offer. This is because the “offer” is being made to the ‘whole world’ with whom it may be impossible to contract (Carlill). The qualification may, however, be the wording of the agreement that determines the line between the advert being an offer or an invitation.
- The advert may have the effect of creating what is termed a “unilateral contract” which is the acceptance of the offer by the actions of the offeree, who in the case of adverts may be the persons who respond to the advert such as Homer in our case (Allen & Overy, 2016).
- The promise of a reward may also intend to create an offer, in an advert situation, to which contractual liability may be imputed. The qualification, however, will be the terms as expressed in such an offer, to be fulfilled before the reward can be claimed (Carlill). Next we will consider the champagne issue.

4- Acceptance of the offer – The case of Champagne

- Acceptance is when the offeree expresses their intentions to be bound as according to the terms of the offer. Any partial acceptance or qualification by the offeree to any of the terms may be

deemed a counter-offer thus voiding acceptance and resulting in no creation of an agreement (Hyde v Wrench [1840]) (Riches & Allen, 2009).

- Generally, acceptance will have no effect unless it is communicated to the offeror. This principle has been translated in the following cases;

- ❖ Henthorn v Fraser [1892] 2 Ch 27: - This case involved the sale of property, the communication of which was mainly through postal services between the parties. The withdrawal and acceptance of the terms of the agreement did not timeously reach the intended recipients and so their intentions were unknown to each other.
- ✓ The court enforced the postal rule in Adam vs Lindsell [(1818) 1 B & Ald 681] which accepted the reasonability of acceptance via post as a showing of acceptance of an offer even though the communication may have not reached the intended party.
- ❖ Powell v Lee (1908): - The plaintiff in the case had applied and been chosen for a headmaster position, but the appointment of which was still to be confirmed.
- ✓ The court held that a contract had not come into existence as the communication had not been through the expected and official channels. As such the school managers had not intended to contract with the plaintiff (LawTeacher, 2013).

- The exception to this general rule may be in cases of a unilateral contract such as is the situation in Carlill. In this instance, the offeror, makes an undertaking in return for doing something (or abstaining from doing anything) by the offeree. A legal obligation arises upon action by the offeree which the offeror may be compelled to fulfil.

- In our scenario, Mr. Homer responded to the advert by taking a unilateral decision to be the first one in line on the day the TV shop would open. He, however, fell asleep and to fulfil the act to complete acceptance, he needed to be the first person to enter the shop. His action can be compared with that of Mrs. Carlill who responded to the advert and which the courts have interpreted to be a unilateral action and the fulfilment of which created a process to accept the offer.

5- The Condition – The case of champagne

- The second issue regards the case of champagne is the condition that accompanies the offer. For the reward to manifest, the offeree must fulfil the condition set for accepting the reward. In the Carlill case, Mrs. Carlill had satisfied all conditions set for the reward by giving consideration in the form of using the carbolic ball. In that instance the contract became effective and enforceable. In,

✓ Bredemann v. Vaughan Manufacturing Company (1963), the court stated and held that an offer was a promise vested in a reciprocal performance with the qualification that consideration for it not be expected. The court relied on Professor Williston's reasoning that to distinguish a conditional gift from a contractual offer, the benefit factor was a good indicator. If the happening of the event would benefit the offeror then indication could be it was meant as a contractual consideration. On the other hand, mere manifestation of the event could just have been a facilitating course for the offeree to receive the gift (Legacy, A.C., Via Sapientiae).

- Mr. Homer also reacted to the 'offer' by showing through going to the TV shop to wait for the shop to open. He would have been the first person through the door had he not fallen asleep. His intention must have been objective and any subjective consideration has not been recognised by the courts, (Smith v. Hughes, 1870). As such it could not be imputed upon him that he had intended to win the case of champagne.
- Further, the TV shop's promise of a reward for the first customer could be considered a gift for consideration. Thus even if Mr. Homer had gone in first, the consequence of that would simply have been him receiving a free case of champagne to enjoy. Lastly, we consider offer withdrawal.



- In principle, it is widely held that any person making an offer can withdraw or terminate such an offer any time before it is accepted by the offeree. Issues often arise when the offeror misrepresents themselves and hopes to rely on some of exclusionary rule to avoid liability on the offer resulting in a breach (Riches & Allen, 2009).
- Exclusionary clauses are recognised under the English legal system, however, are regulated at various levels. They are defined as terms that seek to limit or exclude a party's liability when a breach of contract occurs. Such clauses must be constructed in specific ways and must not be taken as unenforceable according to statute. The applicable statutes are the Unfair Contract Terms Act 1977 (UCTA) and the Consumer Rights Act of 2015 (CRA).
- With the promulgation of the CRA into law recently, the UCTA is no longer applicable to 'business-to-consumer' relationships as before, but is still applicable to 'business-to-business'

interactions. In our scenario therefore, the UCTA will not apply and will thus not be engaged on further (LawTeacher, 2013).

- At common law exclusionary clauses could be enforced even for lack of fairness. A case in point would be in *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827, where the court held, on appeal, that a security company's liability could be excluded based on the wording of the contract with Photo Production.
- Further, in *Curtis v Chemical Cleaning and Dyeing Co* [1951] 1 KB 805, the court held that a party was excluded from relying on an exclusion clause in instances where there had been misrepresentation in terms that induced the affected party to attempt to be bound by the contract terms (LawTeacher, 2013).
- Section 62 of the CRA, still validates exclusion clauses with the qualification that the term should be construed as fair.
- In our case scenario, the law will be applied as follows.
 - First of all the issue of the unilateral withdrawal of the offer by the shop manager cannot be taken as effective because at law it is held that the same manner through which the offer came to be known, should also be the same mode of notification of the withdrawal or termination of the offer (Riches & Allen, 2009). The offer was made to the whole world and as such the withdrawal should have been given sufficient notice such as the original offer. This was not the case with the TV shop.
 - Secondly, the signage at the back of the shop cannot reasonably be taken as a valid form of notice to would-be buyers of the shop's products. It is inconspicuous by being at the back of the shop and thus the intention of the shop may be to defraud potential customers of the shop into coming to the shop this according to the words of the manager who admits

their adverts are always a ruse to attract customers and nothing more. The lack of proper notice was supported in *Chapelton v Barry Urban District Council* [1940] 1 KB 532.

- Thirdly, an important consideration, however, is how the shop is not compelled at law to sell any of its products on the displayed prices as this has been taken as an invitation to treat and as such a binding agreement will only be created once there has been an exchange of money for the particular goods chosen. Further, because no offer existed from the beginning, there can be no talk of negotiations ever having taken place or a firm offer for a reward presented because it was through an advert (Riches & Allen, 2009).
- Fourthly, Mr. Homer may bring action due to this misrepresentation either through tort or lay criminal charges against the TV shop. The former may not be availed to him, however, as the shop may escape tortious liability because for lack of a definite offer through the advert (Riches & Allen, 2009).
- Mr. Homer may bring a criminal action under the Consumer Protection from Unfair Trading Regulations 2008. He may rely on Schedule 1(iii) of Regulations 5 to 7 of the regulations which deal with 'bait advertising', an unfair business practice that the TV shop seems to be engaged in.

7- Conclusion

We have witnessed how the law of contract can be complex with all the case law and legal principles involved and some of which were not covered due to the specificity of the issues to be covered. One thing evident from this is how the law is able to cater to all of the various and different issues concerned and how case law has been able to develop the common law over the years and continues to do so to date.

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