

On Sunday, Andrew saw in his local paper, the Daily Bungle, that Basil was offering to sell a set of 1 penny black stamps for £850. The advertisement stated that, "Will sell to the first person to come forward with the money." On Monday, Andrew telephoned Basil and after leaving his contact details left a message on Basil's answering machine saying, "Would you accept £800 for the stamps?" On Tuesday, Andrew who was afraid that Basil might sell the stamps elsewhere posted a letter to Basil in which Andrew stated, "I agree to buy the stamps which you offered for sale in the Daily Bungle for £850." This letter was delayed in the post and was not delivered till Friday. On Wednesday, Basil returned from a business trip and played back the message on the answering machine. He then posted a letter to Andrew stating, "I agree that the stamps are yours for £800." However, this letter was delayed in the post and did not arrive until the following Saturday. On Friday, when Andrew's letter arrived, Basil sent an e-mail to Andrew saying that the stamps were his for £850. Andrew read the e-mail immediately but did not reply.

Advise the parties of their contractual liabilities.

The issues in this question relate to distinguishing between offer and invitation to treat, counter offers, inquires revocation of offers and communication of acceptance.

As a general rule advertisements are regarded as invitation to treat and not offers for sale. The judgment in *Partridge v Crittenden* further imposes this notion. The judge held that an advertisement amounted to an invitation to treat even if there was a price mentioned on the advertisement. Judging from the facts of the question a similar situation exists and therefore Basil's advertisement would only amount to an invitation to treat.

Secondly, dealing with the issue of counter offer and inquires the law laid down was in the judgment in *Harvey v Facey*. Where the plaintiff inquired the lowest price for a certain 'Bumper Hall Pen' and when the seller (i.e the defendant) conveyed the price. The plaintiff construing it as an offer accepted to purchase the said item. The defendants refused to sell on the grounds that no offer of sale was ever made. The courts held that request of information would not amount to a definite offer. Andrew's phone call to Basil stating 'Would you accept £800 for the stamps?' would seem to be or merely a request to supply further information regarding the stamps.

Alternatively, if Andrew's statement was indeed a counter offer then taking into account the judgment in *Hyde v Wrench* would apply. The facts of the case were that Mr. Wrench had offered to sell a plot of land £1000 to Mr. Hyde, he in turn offered to purchase it for £900, to which Mr. Wrench refused. Later on Mr. Hyde then accepted his earlier offer of £1000. Mr Wrench refused to sell and was taken to court on a breach of contract. It was held that as Mr Hyde had countered Mr Wrench's earlier offer, that offer was now invalid and not binding on Mr. Wrench to accept. Therefore in the above scenario if Andrew tries to accept Basil's earlier offer he might not be able to do so.

The 'postal rule' as laid down in the judgment in *Adams v Lindsell* states that any acceptance sent by post will be deemed to have been accepted the moment it is put into post. The facts of the case were that on 2 Sept. The defendant wrote to the plaintiff offering to

sell goods asking for a reply "in the course of post". On 5 Sept, the plaintiff received the letter and sent a letter of acceptance. Consequently, on 9 Sept the defendant received the plaintiff's acceptance but on 8 Sept had sold the goods to a third party. It was held that a binding contract was made when the plaintiff posted the letter of acceptance on 5 Sept, so the defendant was in breach of contract. The postal rule does not apply to letters of offers but only to those of acceptance. As construed earlier, Andrew's telephone call was only a request for information, therefore Basil's letter sent to Andrew on Wednesday was only an offer and this offer would not amount to an effective one until it reaches Basil on Saturday. Circumstance in the meantime would surpass his letter of Wednesday.

The law on instantaneous form of communication as held in *Entores v Miles Far East Corporation* states that of an offer through an instantaneous form of communication such as telephone, fax, email etc, must have been received and brought to the knowledge of the offeror. Only then will an acceptance be valid. The facts of the case were that The plaintiffs in London made an offer by Telex to the defendants in Holland. The defendant's acceptance was received on the plaintiffs' Telex machine in London. The plaintiffs sought leave to serve notice of a writ on the defendants claiming damages for breach of contract. Service out of the jurisdiction is allowed to enforce a contract made within the jurisdiction. It was held that the contract is only complete when the acceptance is received by the offeror: and the contract is made at the place where the acceptance is received. Furthermore, Lord Denning stated that "If a man shouts an offer to a man across a river but the reply is not heard because of a plane flying overhead, there is no contract. The offeree must wait and then shout back his acceptance so that the offeror can hear it." Accordingly, as soon as Andrew reads the email sent by Basil accepting Andrew's offer of £850 the contract is formed.

In accordance with the above judgments and according to the facts, Andrew and Basil have entered into a valid contract for the sale of a set of penny black stamps for £850.