

Case About Invitation To Treat

One of the essential requirements of a contract is agreement, which is usually analyzed in terms of an offer met by an unqualified acceptance. In this case, Hairy & Black who makes the original offer is the offeror; Richard who receives it is the offeree. Hairy & Black inserts such an advertisement is making it known that they are prepared to receive offers or negotiate a contract. Item advertised on paper is considered invitations to treat. Public Advertisement is an example of common situations involving invitation to treat. In *Partridge v Crittenden* (1968), a person was charged with 'offering' a wild bird for sale contrary to Protection of Birds Act 1954, after he had placed an advert relating to the sale of such birds in a magazine. However, this should be contrasted with decisions such as that in *Carlill v Carbolic Smoke Ball Co* (1893), where the relevant newspaper advertisement was held to be an offer. Like Carlill's case, it is a unilateral contract and not a bilateral contract.

An invitation to treat is not an offer. It is merely an invitation to others to make offers. It follows that an invitation to treat cannot be accepted in such a way as to form a contract and equally the person extending the invitation is not bound to accept any offers made to them. The usual definition of an offer is a promise, capable of acceptance, to be bound on particular terms. The first consequence to note from this definition is that the promise to be accepted must not be too vague. The classic case on this point is *Scammell v Ouston* (1941), in which the court was unable to decide on the precise nature of the offer that was supposed to have been accepted by the plaintiff

The issue raised by this question is whether or not the parties intended to be legally bound by their agreement. The law of contract requires that, in order for a binding contract to exist, there must be such intention, together with offer, acceptance and consideration. The existence of intention is tested by using two established presumptions. First, if the agreement is commercial in nature, there is a presumption that they intended to be legally bound. (*Edwards v Skyways Ltd.*) This presumption can be rebutted by clear evidence of an opposite intention. (*Rose & Frank v Crompton*) Conversely, with social or

domestic agreements, the presumption is that no intention to be legally bound attaches to the arrangement (*Balfour v Balfour*). Again, this presumption can be rebutted by clear contrary evidence (*Merritt v Merritt*). By applying the law to the facts, we see that the agreement has both commercial and domestic elements, so that the presumptions do not really provide us with an answer.

The fundamental feature of an offer is that it expresses a definite willingness to be bound by a contract on the part of the person making the offer. The offer sets out the terms upon which the offeror is willing to enter into contractual relations with the offeree. The essential thing to emphasise about an offer is that, once it is accepted by the offeree, a legally binding contract has been entered into, and failure to perform what has been promised will result in breach of contract. An offer may be made to a particular person or to a group of people or to the world at large. If the offer is restricted then only the people to whom it is addressed may accept it; but if the offer is made to the public at large, it can be accepted by anyone (*Carlill v CarbolicSmoke Ball Co* (1893)).

In this case the delivery of a standard form agreement by the defendant to the plaintiff was alleged to be an offer. A statement of intention is known in law as 'invitation to treat'. To hold otherwise would mean that every advertisers and catalogue published is obliged to sell to every person who responds, regardless of the level of supply. However, if the advertise makes it clear that he or she is prepared to be bound in certain circumstances, an advertisement may be constructed as an offer. The importance in distinguishing between offers and mere invitations to treat lies in the fact that only the former can be accepted so as to form a contract.

Acceptance must be the communicated by the offeree to the offeror. Silence cannot amount to acceptance, neither can not doing anything - a positive act is required. In *Felthouse v Bindley* (1862), Mr. Felthouse intended to buy a horse from his nephew and wrote to him saying 'If I hear no more the horse is mine'. The nephew did not reply, but told Mr. Bindley, the auctioneer selling the horse, to withdraw it. However, Bindley sold the horse in error. Mr. Felthouse then sued the auctioneer in the tort of conversion (a type

of trespass to goods). The court held that the uncle could not succeed in his action because there was no binding contract with his nephew and so the horse did not belong to him. Actual communication of the acceptance never took place and acceptance could not be imposed on the nephew on the basis of his silence. Accordingly, as acceptance has been communicated in this question by paying the money to buy the product.

The offer for this question could not be revoked as the buyer Richard accepted the product by receiving the receipt. Unlike the case *Routledge v Grant (1828)*, the defendant offered to lease the plaintiff's property with the plaintiff to give a final answer on the matter within six weeks. Within six weeks, he withdrew his offer, which the plaintiff then attempted to accept anyway. It was held that the defendant could withdraw his offer at any time before acceptance, regardless of the stipulated six weeks. The point of the law is that revocation of an offer must be communicated prior to acceptance.

Conclusion

Generally, advertisements will be treated as an I.T.T and not obligations to enter into a binding agreement. (*Partridge V Crittenden [1968] 1 W.L.R 1204*) These advertisements are usually for goods that are for sale and can appear in many places including Newspapers, Catalogues, Periodicals and Magazines, etc. However there are certain situations where an advertisement can be an offer and not just an I.T.T. (*Carlill V Carbolic Smoke Company LTD [1893] 2 Q.B 49*) the courts have shown that for an advertisement to be seen as an offer then it has to be very specific and detailed.

In this case there were other implications, for example no deposit was placed in a bank account as a show of good faith, this highlighted the validity of the offer. So the more specific an advertisement the more likely it is to be seen as an offer. The Black & White Company is required to return the payment back to Richard together with the amount that he has made the doctor consultation.