

## **Contract Law [I] Formative Essay**

### **Adam Sinfield Group B2**

In order to advise Brian, Charles and Diana the main issues that arise in this problem need to be identified. In order for a contract to exist there must be some form of offer and acceptance, in that order. Firstly, Alan claims that an offer was never really made, and if so it was revoked before acceptance, so did an offer exist? Alan also claims that no one accepted the offer, but Brian, Charles and Diana refuse this, so did acceptance occur? If the answer to both these questions is no, then no contract existed and nothing can be done, however if the answer is yes, then an enforceable contract is in place. If yes, then further problems arise. Who is entitled to the reward? As each walker took different actions and had different motives.

An offer is often defined as “An expression of willingness to contract on certain terms made with the intention that a binding contract will exist once the offer is accepted”<sup>1</sup> however adverts are usually classified as invitations to treat, rather than as an offer which are not legally binding (see *Partridge v Crittenden*<sup>2</sup>), however a problem occurs when an offer is unilateral, that is an offer made from the offeror to anyone, for example that of a reward for a missing pet. The offeror is obliged to pay the reward, but anyone who sees the advert is not obliged to go and look. Some unilateral offers are enforceable, for example in *Carlhill v Carbollic Smokeball Co*<sup>3</sup>, Carbollic Smokeball Co placed an advert offering £100 to anyone who used there product and then went on to develop the flu. Mrs Carlhill did use the product, and then developed the flu but the company claimed they had no intention to pay. She sued and won as the court deemed the advert to be a unilateral offer, not an invitation to treat and the fact that the company had placed £1000 in a bank to cover any claims showed there was the intention to pay. This case is very important to this problem as it has very similar facts; therefore I can say that an offer was made to ‘the world at large’. The next argument that Alan could use is that the advert was merely a promotion and not intended to be taken seriously, which is common place in advertising today. But, if the advert was merely an advertising ploy then why did Alan actually go and print the T-

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<sup>1</sup> Richards P., *Law of Contract* (5<sup>th</sup> ed 2002, Longman)

<sup>2</sup> [1968] 2 ALL ER 421

<sup>3</sup> [1893] 1 QB 256

Shirts? Following that of Carlhill this shows that he did actually intend the promise to form the basis for any legal relations, and so the offer does exist.

The next problem is was the offer actually accepted, as Alan claims that no one accepted the offer before he withdrew it, which he is entitled to do at anytime. An acceptance is defined as “a final unqualified expression of assent to all the terms of an offer”<sup>4</sup>. Again, a problem arises as the advert mentioned no way of actually accepting the offer and no official communication of the acceptance was made to Alan before he withdrew the offer. But again, this is a unilateral offer and so it is a little more complex with no direct communication between two parties takes place. Therefore, the acceptance may not need to be directly communicated, providing that two main criteria have been met. First, that the offeror explains or implies a certain way of accepting the offer, and second that the offeree does some act which can be constituted as acceptance and that agrees with the way stated or implied by the offeror. This was used in the Carlhill case and it was decided that the advert covered the first point, and the usage of the smokeballs in the directed way covered point two. In the facts of this problem, the advert again covers the first point, as it states that a T-Shirt with the company’s logo on must be worn, and the second point is covered by the fact that all three walkers collected a T-Shirt, and started the walk to London from Cardiff, as directed by the advert. It may also be relevant to note that the reason for accepting the offer is not relevant (see *Williams v Cowardine*<sup>5</sup>) so the fact that Diana didn’t know about the reward until half way through the walk, and was only on the walk because she couldn’t afford the train fair has no relevance.

Another defence that would be used by Alan is the fact that the offer was revoked, so how relevant is this? As mentioned previously, an offer can be revoked at anytime prior to any acceptance, but again with this being unilateral, problems arise. The answer to whether the acceptance still stands can be found in *Errington v Errington & Woods*<sup>6</sup>. In this case, it was decided that acting on a promise is significant to acceptance and that the case is based on the point of view that once an offeree has started to perform, then revocation is not possible. Also, more straightforward is the

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<sup>4</sup> Treitel G.H., *The Law of Contract* (1<sup>st</sup> ed 1999, Sweet and Maxwell)

<sup>5</sup> [1833] 5 Car & P 566

<sup>6</sup> [1952] 1 KB 290 (CA)

fact that the T-Shirts were collected from Alan's factory itself, and so someone in his business must have known that some people had taken the T-Shirts and thus accepted the offer, thus revocation did not occur before anyone accepted.

Therefore, I believe that a legally binding contract was in existence between the three walkers (Charles, Diana and Brian) and Lucofizz (Alan). However, as to who is eligible to claim is a different matter which depends on the actions taken by the claimants themselves. As a unilateral offer, none of the claimants were obliged to actually carry out the task, so there can be no obligations between Alan and the walkers. But, there is an obligation on Alan to pay anyone who completes the task set out, but the task must be carried out in accordance to the points set out by Alan in the advert placed. Thus, advice for any further action to be taken must be looked at on an individual basis, considering the individual actions.

Brian, who new about the offer from the start and accepted as described above took out on the walk in order to earn the £250, and was the only walker who on the way didn't hear about the revocation of the offer. But, as described above the revocation is not relevant anyway. Despite completing the journey and wearing the T-Shirt, he didn't do it in the allotted time of seven days but still wanted to claim the full amount of £250. As the description of acceptance shows, the contract is binding only if the action described is carried out in full in accordance to all the points set out in the offer. Therefore, I would advise Brian not to take any further action as he did not satisfy the terms and conditions so cannot justify a claim. Under normal circumstances he might be able to get something from Lucofizz, but as the company is in financial troubles this is extremely unlikely to succeed.

Charles knew about the offer from the beginning and again created a legally binding contract as described above. On hearing about the revocation he pulled out half way to London and hopes to claim 50% of the reward as he did 50% of the walk, a sum of £125. However, part completion of this contract is not enforceable as he did not complete the conditions set out in the advert. Similar to Brian, in ordinary circumstances he might be able to negotiate a sum from Lucofizz for part completion, but with the financial troubles he is unlikely to receive anything, so I would recommend no further action. If he completed the walk in the allotted time, instead of

pulling out, then he would be entitled to the reward, but by pulling out he forfeited the contract, leaving him with nothing.

As to Diana, she fulfilled her obligations to the contract by wearing the T-Shirt and walking to London in seven days. Even though she didn't know about the offer from the start and despite having ulterior motives I would recommend that she pursues her claim by taking further actions. If Diana had not been told about the offer by Charles after the revocation and had completed the task anyway, she would have no claim and would not be entitled to the reward. I would recommend to Diana to pursue her claim as she is likely to receive an out of court settlement as Lucofizz would be keen to avoid any expensive litigation.