

CONTRACT LAW

First Term Unassessed Essay

1. On 2nd January 1999, Sarah reads in a local newspaper, "The Brighton Bugle", that a well known local sports enthusiast, Mick Muscle, was offering £5,000 to the first person to swim from Southsea to the Isle of Wight before 10th January, 1999. Sarah, a keen swimmer, set about her preparations. On 6th January, 1999, a retraction appeared in "The Hove Herald" stating that Mick's original offer was cancelled and, instead, the prize was now to be £500 to the first person to cycle from Brighton to Oxford before 12th January, 1999. Sarah was a regular reader of "The Brighton Bugle" and no other newspaper. She did not see the retraction in "The Hove Herald".

On 9th January, Sarah went down to the beach at Southsea to commence her swim to the Isle of Wight. A bystander, who identified himself as Rick Muscle (Mick's brother), told her that the swimming prize had been cancelled and she should "go and get her cycling gear on". Sarah disregarded this statement and proceeded with her swim.

Rick Muscle notified his brother, Mick, who promptly hired a boat and caught up with Sarah in the middle of her swim. Mick shouted at her through a megaphone, telling her of the withdrawal of the reward for the swim. Sarah was not deterred and completed her swim to the Isle of Wight. On returning to her home in Brighton, she decided to cycle to Oxford the next day to see her best friend. She reached Oxford on the evening of 11th January. She now wishes to claim both the £5,000 for being the first person to swim to the Isle of Wight and, having later learnt of the prize, the £500 for cycling to Oxford.

Advise Sarah.

The first thing to ascertain is whether the advertisement constitutes an 'offer' or an 'invitation to treat'.

An advertisement, at least in the case of bilateral contracts, is generally construed as being an 'invitation to treat'.¹ Authority for this can be found in *Partridge v Critchley*,² where the appellant had been convicted in the criminal courts of 'offering for sale' rare birds through an advertisement in a periodical. On appeal, the advertisement was held to be an 'invitation to treat', since it was necessary to protect the advertiser from liability in Contract should demand for the advertised goods exceed supply.³ As a result, the appellant's criminal conviction was quashed.

¹ McKendrick, E. 2003. *Contract Law: Text, Cases, and Materials*. Oxford University Press. P63.

² [1968] 1 WLR 1204

³ *Op.Cit.* Note 1

In contrast, advertisements may sometimes be construed as being an offer if they are of the unilateral type, where one party promises something in return for the specified act of another. The general rule in Contract Law is that acceptance must be communicated to the offeror, but in unilateral offers, performance of the specified act constitutes acceptance⁴. In *Carlill v Carbolic Smoke-Ball Co.*⁵, the defendants advertised that they would pay £100 to anyone who contracted influenza after using their smoke ball for a specified period, and that £1000 had been deposited in a bank as proof of their sincerity. Mrs Carlill bought and used the smokeball in accordance with the manufacturer's instructions but then contracted influenza, so claimed her reward. The defendants claimed that the advertisement was an 'invitation to treat' and that the chosen wording served merely as an added enticement, but in the Court of Appeal, LJ Bowen held, *was an offer made to all the world*... 'which is open to all the world, and to all the world who comes to the terms of the contract', since the wording of the advert had been specific and detailed, and using an objective test to determine whether the average reasonable person would think that the offeror was serious about carrying out his promise, it was held that Mrs Carlill was entitled to her £100.

In this case therefore, as in *Carlill*, the advertisement can be seen as a unilateral offer, or one that is open to 'all the world' to accept. Acceptance would be effective on completion of the act specified in the advertisement.

An offer can be defined as an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted by the offeree.⁶ It is clear by her preparations that Sarah is intending to accept the offer, but it is necessary to identify when exactly

⁴ Collins, H. 1997. *The Law of Contract*. London. Butterworths. P60.

⁵ [1893] 1 QB 256, CA

⁶ *Op. Cit.* Note 1. p.50

acceptance is effective, since it is a general rule that an offer may be revoked any time prior to acceptance⁷, as long as the revocation is communicated to the offeree.⁸

As the first attempted retraction of the offer appeared in a different newspaper to the original advertisement, it is doubtful whether the revocation would be effective. In unilateral offers where the offer is made to public at large, revocation will be effective providing reasonable steps are taken to revoke the offer, and it is made by the same medium used to make the offer⁹, as stated in Article 2:202(2) of the Principles of European Contract Law, and as illustrated in the case of *Strong v. Bird*¹⁰. In this case there had been a notice published offering a reward for information which would lead to the capture of a criminal. Seven months later another notice was published revoking the offer. The plaintiff *Strong* ~~was unaware of the revocation~~ the following year and notified the authorities with the intention of claiming the reward, as he had been unaware of the revocation of the offer. It was held that he was not entitled to the reward. The fact that he was not aware of the revocation was held to be irrelevant, since ~~he was unaware of the revocation~~ ~~the same~~ ~~medium through which the offer was made~~¹¹ and he ~~'s~~ ~~did not know~~ ~~the offer had been revoked~~ ~~the~~ ~~medium through which the offer was made~~¹² and he ~~'s~~ ~~did not know~~ ~~the offer had been revoked~~ ~~the~~ ~~medium through which the offer was made~~¹³

A second attempt was made to revoke the offer, which clearly indicates that ~~the offer was~~ ~~not~~ ~~revoked~~ ~~as in~~ ~~Strong~~, by Mick arriving at the beach and informing Sarah that the swimming competition had been called off. The general rule is that revocation need not be communicated by the offeree, but may be made by a reliable third party, as in the case of *Wong v. Beaumont*¹⁴. In

⁷ *Ibid.* p127

⁸ *Byrne & Co v Van Tienhoven & Co* (1879) 5 CPD 344

⁹ *Op.Cit.* Note 1. p.130

¹⁰ (1875) 92 US 73.

¹¹ *Op.Cit.* Note 1. p. 130

¹² *Op.Cit.* Note 9. Judgement of Strong J

¹³ *Ibid.*

¹⁴ (1876) 2 Ch D 463

this case the defendant, Mr Dodds, wrote to the plaintiff, Mr Dickinson, agreeing to sell him his house, and added that the offer would be held over for two days. The following day, the plaintiff's estate agent informed him that the defendant had offered to sell the house to another purchaser. That same day the defendant concluded the sale of his house with a Mr Alan. The plaintiff communicated his acceptance of the original offer to the defendant the following day, but Mr. Dodds refused this offer as he had already sold the house to Mr. Alan. It was held that there was no contract between Mr. Dickinson and Mr. Dodds, since Mr. Dodds had revoked his offer, and that revocation had been communicated to Mr. Dickinson via a reliable third party, the agent, prior to Mr. Dickinson's acceptance of the offer.

As Mick had identified himself as Rick's brother, it would be safe to assume that he is a reliable third party, and if Sarah had not commenced her swim prior to Rick informing her that the swimming prize had been cancelled, acceptance had not begun, which would therefore enable the offeror, Mick, to withdraw his offer. Sarah may however have a claim to the prize if she had already started her swim, in which case the last attempt to revoke the offer by megaphone would also be ineffective, as the general rule in unilateral contracts arising from ~~Swainson v Swainson~~¹⁵ is that once the offeree has commenced performance, the offeror may not revoke, and the contract is concluded when performance of the act is complete.¹⁶

In ~~Swainson v Swainson~~¹⁵ a father financed the purchase of a house by mortgage, and allowed his daughter and son-in-law to live in it, promising that the house would become theirs when they had paid off the mortgage. The father died before the mortgage repayments were complete, and left the house in

¹⁵ [1952] 1 KB 290

¹⁶ *Op. Cit.* Note 1.P 124

his will to his widow. The widow brought an action for possession of the house, but it was held that once the couple commenced and continued making the repayments, the offer could not be revoked, so the widow was not entitled to such an order, and acceptance was complete on completion of the mortgage repayments.

In respect of Sarah's claim for the bike ride prize, an acceptance which is wholly motivated by factors other than the existence of the offer has no effect.¹⁷ As the act of riding to Oxford was performed in ignorance of the offer, as she was going to Oxford anyway, she cannot make a claim. This has been illustrated in the Australian case of *R v Clarke*¹⁸, where a reward was offered for the conviction of the person or persons responsible for the murders of two police officers. The petitioner, after being arrested and charged with the murders, then gave information which led to the conviction of those responsible. He attempted to claim the advertised reward, but it was held that, as he had provided the information in order to clear himself of the charge of murder, and not on or in reliance upon the offer of a reward¹⁹, he was not entitled to the reward.

Where, however, the existence of the offer plays some part, however small, in inducing a person to do the required act, there is a valid acceptance of the offer. So if Sarah was aware of the offer of the prize for cycling to Oxford prior to the visit to her friend, she may have a claim. Authority for this can be found in the case of *Williams v Carwardine*²⁰ where the defendant offered a reward for information leading to the conviction of a murderer. The plaintiff knew of this offer and gave

¹⁷ *Ibid.* p.126

¹⁸ (1927) 40 CLR 227

¹⁹ *Op.Cit.* Note 1. p127

²⁰ (1833) 5 C & P 566

information that it was her husband after he had beaten her, believing she had not long to live and to ease her conscience. It was held that the plaintiff was entitled to the reward as she knew about it and her motive in giving the information was irrelevant.

In conclusion, it is doubtful whether Sarah would have any claim for the swimming prize, since it appears there had been an effective revocation of the offer by Mick's brother at the beach. She would also not be entitled to the prize for cycling to Oxford, as she had not known of the offer until after her return from Oxford to Brighton.