

ELEMENTS OF CONTRACT – OFFER AND ACCEPTANCE.

QUESTION:

Bob owns a stamp shop in Muncaster High Street. On Monday he places an item in the advertisement column of the Muncaster Evening Gazette. 'Utopian Penny Red Stamp, one for only, £750 or nearest offer'.

Late that day, Alan, a stamp collector, telephones Bob and says 'The Utopian Red for sale, I'll take it for £700'. And Bob replies, 'I cannot accept less than £725 but I will not sell it to anyone else before Saturday. Let me have a reply by Friday if you want it'. 'That is kind of you. Remind me to buy you a drink when I see you'.

On Wednesday Alan telephones Bob and leaves a message on his answering machine stating 'I accept your offer'. Unfortunately Bob's infant son later presses a button on the machine which erases the message before Bob listen to it. Later that day Bob sells the stamp to Cerdic for £750.

On Thursday Alan meets Cerdic's aged mother who tells him that she has seen Cerdic's 9 year old son who told her that his father was very excited at having acquired a Utopian Penny Red from High Street Dealer.

Alan rushes home and posts a letter to Bob confirming the message which he had left on the answering machine. On the same day Bob writes to Alan withdrawing his offer.

On Friday morning Alan receives Bob's letter and at lunchtime Bob receives Alan's letter.

Advice Alan.

SUGGESTED ANSWER:

In determining if it is reasonable to infer the existence of an agreement between Alan, Bob & Cerdic the language of offer and acceptance must be employed. The surrounding circumstances must be examined to ascertain if there is a firm offer followed by a final and unqualified acceptance of that offer.

Here in advising Alan it must be determined first whether the advertisement placed in the Muncaster Evening Gazette would amount to a **offer** or an **invitation to treat**. This distinction is important because an offer if it is accepted amounts to a binding agreement unlike an invitation to treat cannot be accepted so as to form a binding contract. Generally a unilateral transaction as in the question, amounts to an offer and the acceptance are by way of conduct *ie a promise for an conduct*. However the above advertisement even though it is a unilateral transaction it is a situation of a *promise for a promise* and furthermore Bob has made a statement that "Utopian Penny Red Stamp" one for £750 or nearest offer.. By looking into the language of the advertisement which £750 or nearest offer, one could safely conclude that the advertisement by Bob would be an **invitation to treat**.

An invitation to treat is a preliminary stage of an agreement, where one party seeks to ascertain if the other is willing to enter into a legally binding contract; **Fisher v Bell**.

When later that day Alan a stamp collector telephoned Bob and said that he would take it for £700. This would amount to an offer. An offer is a final and unqualified assent to all the terms of the offer as per **Carlill v Carbolic Smoke Ball**. As on the facts Alan's statement was certain and shows his willingness to be bound immediately. Subsequent when Bob replied by saying that he would not accept anything less than £725. Even though the reply by Bob couched like an acceptance but it is not. This would amount to a counter offer, because he has introduced new terms to the original offer. If such occurs, then the reply by Bob to Alan may not amount to an acceptance. But this would be termed as a counter offer.

The effect of a counter offer would expressly or impliedly rejects the original offer and fails as an acceptance as per **Hyde v Wrench**. Further to this Bob have agreed to keep the offer open till Saturday by not selling to anyone else. Following the principle **Routledge v Grant** an option to keep the offer open is only valid if it is supported with consideration and this is satisfied on the facts when Alan requested Bob to remind him to buy him a drink, following *Currie v Misa* that some benefit moving to the promisor.

On Wednesday Alan telephone Bob and leave a message this would amount to an acceptance provided if Alan's replied to the offer in an unqualified assent and it is communicated. On the facts given even though Alan's reply was an unqualified assent but it has not been communicated. The meaning of communication here would be actual communication and not deem communication as in postal rule. Since the message of an acceptance was erased by Bob's infant son there isn't any communication. As such Bob is still not bound by his offer. As stated in **Payne v Cave**, and offer can be revoke anytime before the acceptance.

So it has to be determine next whether there is a revocation on the part of Bob by way of third party . As stated in the case of *Byrne v Van Tienhoven* the effectiveness of the third party revocation depend on the reliability of the party who is transferring the message, on the facts Alan came to know about the revocation through Cerdic's **aged mother** who came to know from Cerdic's **9 year old son** that the father have acquired the stamp from the High Street Dealer. Since this is question of fact and it is up to the courts to verify the effectiveness of the third revocation i.e. whether Alan can rely on third party revocation.

If this is possible than Alan's act of posting the letter to Bob would have no effect because the revocation has taken place earlier.

On the other hand if the third party revocation is not reasonable in circumstances then when Alan post a letter to Bob confirming the message there would be an acceptance by applying the postal rule i.e. the effectiveness of the acceptance is

when the letter is posted and not when it was received. Since the revocation by Bob in writing required actual communication which is by Friday but the acceptance of Alan has taken place earlier as such one could safely conclude there is an agreement between Alan and Bob if the third party revocation is not reasonable.