

The first issue to consider in order to establish whether or not there is a contract between Hettie and Barbara is to define a contract. Also, it will be useful to explain the concept of offer and acceptance, which will lead to the conclusion of whether there is a contract between the two parties, Barbara and Hettie for the sale of the grand piano.

The standard definition of contract by English lawyers is that a contract is an agreement which is legally enforceable or legally recognized as creating a duty. However, one widely used definition is that in the American Restatement of Contracts:

A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognises as a duty.¹

In other words, a contract is essentially a two-sided bargain which can only be concluded by the action of both parties.

An offer is a clear and unambiguous statement of the terms upon which the offeror is willing to contract, should the person or persons to whom the offer is addressed decide to accept. An offer may be made expressly, but it may equally be implied from the offeror's language, or it may be inferred from his conduct. An offer can be terminated before the offeree validly accepts the offer, as long as it is communicated to the offeree.

An acceptance is an unqualified assent to the terms of the offer, which must be inferred from the conduct of the parties or from the strict observance of the express terms and must be communicated to the offeror.

Based on the explanation of the concept of contract, the first question is, is Hettie's communication to Barbara about the sale of her 'grand piano' an offer or an invitation to treat?

Hettie's proposal is clearly, not an invitation to treat, as she's not inviting interested parties to make an offer to her, which she may accept or reject. Hettie's clear and unambiguous statement is that she is offering her grand piano for £2,500 and an acceptance of her offer must be made by Friday and 'instructed' Barbara to communicate her acceptance by dropping a note through her front door by hand as she did not trust the postal services. This statement made by Hettie suggests that she intends to be bound by an acceptance of her terms without further negotiation, which makes Hettie's notification to Barbara about the sale of her grand piano an offer, the first requirement for a contract to suffice.

¹ Atiyah, P.S, An Introduction to the law of Contract (2000) Oxford: Clarendon Press.

The next question to consider is, is Barbara's letter on Tuesday a firm acceptance of Hettie's offer or was it a counter offer or a mere inquiry?

In my opinion, I believe Barbara's letter includes a mere inquiry and a counter-offer. It is a mere inquiry as she is just requesting information asking whether she can pay by five instalments of £500 over a one year period and expecting an answer or reply for her guidance from Hettie. This point is demonstrated well in the case of *Stevenson, Jacques and Co v McLean*² where the defendants wrote to the plaintiffs offering to sell them some iron, represented by a number of delivery warrants, at 40s net cash, and stating that he would hold the offer open until the following Monday. At 9.42 am on Monday morning the plaintiffs telegraphed the defendant:

'Please wire whether you could accept forty for delivery over two months, or if not, longest limit you could give.'

The defendant did not answer this telegram but sold the warrants, and at 1.25 pm telegraphed the plaintiffs to inform them. Meanwhile, the plaintiffs had found a buyer for the iron and at 1.34 pm (before the defendant's telegram had reached them), they sent a telegram accepting his offer. The plaintiffs sued for breach of contract. Lush J held:

'.....The form of the telegram is one of inquiry. It is not 'I offer forty for the delivery over two months', which would have likened the case to *Hyde v Wrench*.....

Here there is no counter proposal. The words are, 'Please wire whether you would accept forty for delivery over two months, or, if not, the longest limit you would give.' There is nothing specific by way of offer or rejection, but a mere inquiry, which should have been answered and not treated as a rejection of the offer.'

Barbara's letter on Tuesday also included a counter-offer, which 'kills off' the original offer due to the introduction of new terms, in this case, her 'assuming' that the adjustable stool and piano music will be included. This counter-offer killed off Hettie's original offer and makes it incapable of subsequent acceptance by Barbara. The rule of counter offer can be seen in operation in the case of *Hyde v Wrench*³ where an offer to sell an estate for £1,000 was met by a counter-offer to buy for £950. The counter-offer was rejected, and the buyer then wrote to say that he was prepared to pay £1,000 after all. But the seller now refused to sell to the offeree, even at this price, and the offeree sued. Although the offer to sell had not been withdrawn, it was held that there was no contract, as the counter-offer had amounted to a rejection of the original offer.

So based on the classic illustration of the rule of counter-offer above, Barbara's letter cannot be deemed as an acceptance of Hettie's offer due to the counter-proposal introduced. If Barbara's letter was a mere inquiry only, then, as Lush LJ

² (1880) 5 QB 346.

³ (1840) 3 Beav 334.

held in the case of *Stevenson, Jacques and Co. v McLean*, the mere inquiry should have been answered and not treated as a rejection of the offer. However, this is not the case, as Barbara also introduced a counter-offer which 'kills off' Hettie's initial offer. Also, if the scenario was that Hettie simply fails to reply to the additional remarks raised by Barbara and proceeds with the performance of the contract it may be possible to hold that the counter-offer has in turn been accepted by conduct, but this is not the case, as Hettie puts Barbara's letter to one side and went shopping in town, met Philip and offered the piano to him, which he immediately accepted and made arrangements for the collection of the piano.

My final question is, can Hettie's offer of the piano to Philip be construed as a revocation of her offer to Barbara, after receiving her letter, and if so, was it a legally valid revocation?

I am of opinion that Hettie's offer to Philip can be construed as a revocation of her offer to Barbara, as I stated above that an offer can be terminated or revoked anytime before it is validly accepted, however, it must be communicated to the offeree, but it is not essential that the information should be provided by the offeror personally, or even by anyone acting for him/her, 'provided that the offeree is aware of facts which should have made it clear to a reasonable man that the offer was no longer open.'⁴

The classic authority of this rule is the case of *Dickinson v Dodds*⁵ where the defendant offered to sell a house to the claimant for £800, the offer to be left open until Friday. On Thursday, the defendant sold the house to third party and the claimant was informed of this by another third party, his agent. Nevertheless, the claimant sent the defendant a letter of acceptance on Friday. It was held that no contract had been concluded between the parties because the offer had been withdrawn before it was accepted.

Mellish LJ : '.....When once the person to whom the offer was made knows that the property has been sold to someone else, it is too late for him to accept the offer.'⁶

This case indicates that Hettie need not communicate her revocation personally nor even, attempt to, so long as objectively clear information reaches the offeree. This clear information reached Barbara on Thursday when Joyce, a former pupil of Hettie's informed Barbara of Hettie's plan to sell the piano to Philip, which at that instant, makes the revocation of Hettie's offer effective and incapable of acceptance by Barbara.

⁴ Atiyah, P.S, An Introduction to the Law of Contract (2000) Oxford : Clarendon Press. (p47)

⁵ (1876) 2 Ch D 463.

⁶ Oughton, D and Davis, M, Sourcebook on Contract law (2000) London: Cavendish. (p41)

If Hettie's revocation was based on Barbara's inquiry about paying in instalments, then she can be sued for a breach of contract, assuming Hettie's insufficient knowledge of the law makes her misconstrue Barbara's inquiry as a counter-offer instead of a mere inquiry which should have been answered. On the other hand, if Hettie's revocation is based on Barbara's assumption that the music stool and piano music will be included, then her revocation is valid, as stated earlier in the case of *Hyde v Wrench* that the introduction of a counter-offer amounts to a rejection of the original offer.

In effect, the revocation by Hettie makes it incapable for a binding contract to exist between herself and Barbara.

James LJ: '...It is to my mind quite clear that before there was any attempt at acceptance by the plaintiff, he was perfectly well aware that Dodds had changed his mind and that he had, in fact, agreed to sell the property to Allan. It is impossible therefore, to say there was ever that existence of the same mind between the two parties which is essential in point of law to the making of an agreement.'⁷

So Barbara's quick acceptance of Hettie's original offer (in the stipulated mode of acceptance instructed by Hettie) does not bring about a binding contract between the two parties, as Barbara is perfectly well aware that Hettie is planning to sell her piano to Philip, and cannot as a point of law endeavour to bind Hettie in a contract, as there has to be an existence of the same mind between them to make it legally binding agreement.

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⁷ James LJ's judgement in *Dickinson and Dodds*

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