

Beatson, in Anson's Law of contract, defines a contract as '***A legally binding agreement made between two or more persons, by which rights are acquired by one or more to acts or forbearances on the part of the other or others.***'¹ In simpler terms a contract is an agreement made between two or more parties who intend that the agreement will be legally binding. The essential elements of a contract are, offer, acceptance, intention to create legal relations, capacity, form and legality.

For a contract to be valid there must be an agreement and an offer between the two parties

In order to advise the parties one needs to distinguish whether it is an offer or an invitation to treat.

Roger who is fifteen years old, decided to treat himself for his fifteenth birthday. Roger was interested in buying a new stereo. Roger set off, searching for his new stereo where, he went past his nearest Electrical World branch and he saw a large sign displayed on the window stating that many items were on special offer. Roger was interested because he wanted to buy a stereo. The advertisement that Roger saw was advertising various top brand stereos, this attracted his attention, in particular was that various top brand stereos were at £25 each.

Roger entered the shop and wondered around where he saw a table with a sign saying 'last few sale items all £25 or less'. Roger spotted a top of the range Zony CD radio Cassette recorder, he decided that the Zony CD Cassette recorder was the item he wanted. At the counter the sales assistance, Julia scanned the item. Julia tries to sell the item to Roger by asking for £75. Roger refused to pay £75, and reply's to Julia that the radio is a sale item and that he had taken it from the table were all the sale item were. Julia reply's that the item is not a sale item and she refuses to sell the item to Roger for £25.

The sign displayed was an 'invitation to treat', were Lord Parker stated:

'It is clear according to the ordinary law of contract that the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale, the acceptance of which constitutes a contract.'²

In the above case for a contract to take place there must be an offer and an acceptance. It is clear that Electrical World was not making the offer, where customers have been invited to make offers, an invitation to treat. It is obvious that the sign Roger saw, which stated 'last few sale items all £25 or less' was an invitation to treat. It is clear in the case that Roger was making the offer by taking the item to the counter, with an intention to pay £25, so Roger made an offer as he took the item to the counter, so Roger is the offeree. And the sales assistance Julia is the offeror on behalf of Electrical World.

¹ Paul Richards, Law of Contract, p.9

² Paul Richards, Law of Contract, p.17

Julia made a counter offer³ by destroying Rogers offer. Julia destroyed the offer when she requested £75, and Roger refused to pay. This rejection was in the response of a different price, instead of the price that Roger had in mind.

Roger saw a sign on the shop window with a clear indication of a price of top brand stereos at £25 each. Roger saw an invitation to treat, but as the sign was indicating various top brands, Roger decided to enter the shop. This is indicated in the Fisher v Bell⁴ case, where a shopkeeper was convicted of offering for sale a flick knife contrary to the restrictions of offensive weapons act 1959 s 1, he had displayed the knife in his shop window. So by looking at this case the shopkeeper was offering for sale a flick knife to a customer by indicating a price, where Electrical World were also indicating a price on their shop window, so in this case and in Rogers's case the shops were inviting their customers to buy their items.

It was very clear to Roger that he saw an invitation to treat when he entered the shop, the display of the Zony radio cassette recorders were on a table with a clear sign saying 'Last few sale items – all £25 or less'. So it was clear to Roger that this was an invitation to treat for Roger to make an offer to buy and not an offer on behalf of electrical world to offer to sell the goods. In the case Fisher v Bell, the customer was invited to buy the flick knife and not to make an offer to buy the flick knife, so Roger was in the same situation as in this case.

When Roger took the item to the counter he was accepting to buy the radio, but when Julia asked for £75, Roger refused to pay and told Julia that it was a sale item, so there was no contract because Roger refused to pay when Julia made a counter offer. There only could be a contract if Roger accepted to pay £75. This is illustrated in the Partridge v Crittenden⁵ case, where the words 'special offer' was not used but nonetheless Partridge was charged with, and convicted of, unlawfully offering for sale a Bramblefinch hen contrary to protection of birds act 1954 s. 6(1). This is a case where a contract was formed by a sale taking place and in Rogers case there was no sale taking place.

In order to conclude the above mentioned, Roger didn't accept the price that Julia offered of £75, and therefore in this case there wasn't an acceptance, which means there isn't a contract. Roger hasn't entered into a contract so there's no breach of a contract. It is clear that Roger saw an invitation to treat as it was also mentioned in the case of Fisher v Bell

Pharmaceutical Society of Great Britain v Boots Cash Chemists,

³ C P Thorpe and J C L Bailey, Commercial Contracts, p.43

⁴ Fisher v Bell, 1961

⁵ Partridge v Crittenden, 1968

In order to advise the parties one needs to look in detail to see whether there was any intention to create legal relations, and if there is consideration between the parties.

Mr Callaghan planned to go on an eight-week holiday to South-East Asia. Roger is his next-door neighbour. Callaghan told Roger to feed his dozen cats and to keep his garden clean and tidy whilst Callaghan is on holiday. Roger did exactly what Callaghan said by feeding the cats twice a week, watering the plants, moving the lawn and Roger also pruned all the rose-bushes.

Callaghan was extremely pleased with the state of the garden, so Callaghan promised to pay Roger £75 for the hard work he had done. Later on, Mr Callaghan refused to pay.

Consideration is the price for which the promise of the other is bought. It must be something of value that is recognised by the courts as amounting to consideration. In *Currie v Misa*, consideration was defined as:

‘A valuable consideration in the sense of the law, may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.’⁶

Mr Callaghan promised to pay Roger £75 for the hard work he carried out in the garden. Later Callaghan refused to pay £75 to Roger. There was no intention to create legal relations. There was past consideration between Roger and Callaghan and when there is ‘past consideration is no consideration’.

Therefore Callaghan refused to pay Roger the £75, where Roger doesn’t have rights claiming for the £75 offered by Callaghan because when the consideration of Roger feeding the cats and to keep his garden clean was said before Callaghan went on holiday and the promise of paying £75 was made after the return of Callaghan from his holiday. In the case *Roscorla v Thomas*⁷ illustrates the principle as regards past consideration, where the Roscorla had negotiated the purchase of a particular horse from Thomas for £30, Roscorla was to pay for the horse at a later date. On the following day Thomas called Roscorla for payment. Roscorla paid £30 to Thomas; Thomas promised that ‘the horse was sound and free from vice’, in fact the horse proved to be particularly vicious and Roscorla sued for breach of the promise. Roscorla failed to sue for the breach of the promise because it said to be in past consideration.

It is clear from the above case that Roger claiming for the 75 will fail since Callaghan’s consideration of feeding the cats is past in relation to the promise to pay, made by Callaghan, and that past consideration is no consideration, and also there is no causal link between Roger and Callaghan. In the act of feeding the cats was not made in response to pay for the act.

In another case that illustrates the act of past consideration is in the case of *Re McArdle*⁸, where McArdle and his wife lived in a bungalow that formed part of his

⁶ Paul Richards, *Law of Contract*, p.51

⁷ *Roscorla v Thomas*, 1842

⁸ *Re McArdle*, 1951

father's estate. McArdle carried out certain repairs and decorations to the bungalow. McArdle's wife paid for the work which cost £488, after the work had been done, McArdle presented each of his three brothers and his sister with a document which stated (copy form book page 95) the document was signed by the sister and the four brothers, three years later McArdle's mother died and McArdle's wife claimed payment of £488, in the mean time McArdle's brothers and sister had changed their mind about repaying £488. The case here was made after the work had been done and McArdle's wife was unable successfully to sue for those moneys. McArdle's wife had furnished no consideration for the promise to pay the money for the alterations and improvements.

Similar to the case mention above Callaghan doesn't have to pay roger the £75 because there was past consideration, which is no consideration.

For there to be consideration between the parties, Callaghan had to make the offer of the £75 to Roger before Callaghan went on holiday, but this wasn't the case and the promise was made after Callaghan returned from holiday.

In English law this is not a promise or banding as a contract unless it is either made in a deed or supported by consideration -- page 67 treitel

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