

Law of Contract

Past Paper Question (11/99)

Michelle is at University, studying to be a veterinary surgeon. David, a close family friend is also a veterinary surgeon. Whilst away at University, Michelle received a letter from David, saying that he was due to retire in a few weeks' time and that he wondered whether she would be interested in buying his veterinary equipment for the bargain price of 500 pounds. His letter asked for a prompt reply as a junior partner in his veterinary practice was also interested in buying the equipment, albeit at a higher price.

Upon receipt of David's letter, Michelle decided that she would like to buy, but she would need to borrow the money. In order to speed matters up, she then wrote to David expressing a firm interest, but asking if he would be prepared to accept payment by instalments. Her letter got lost in the post and was never received by David.

Not having heard from David, Michelle arranged a bank loan and then posted a second letter, enclosing a cheque for 500 pounds. This letter did arrive, but by this time, David had assumed that she was not interested in the equipment and had already sold it to his junior partner instead.

With reference to the case situation above, discuss, using decided cases to support your arguments, the contractual implications and the remedies, if any, that Michelle might be able to pursue against, David.

Answer

In discussing the situation amidst Michelle and David, it is critical to establish whether an actual contract has come into existence between the two parties. It is therefore necessary to examine, in relation to the scenario, the presence of the three chief elements of agreement—offer, acceptance and intention to create legal relations.

In law, the term offer is defined as an undertaking by the offeror that he will be bound in contract by the offer if there is a proper acceptance of it. The offer cannot be vague or indefinite; it must be precise and express a clear intent to contract. The use of the terms 'wondered' and 'whether' in describing David's 'proposal', implies vagueness and lacks clarity. In his supposed offer, David fails to be sufficiently definite in his terms suggesting that there was no clear intent to contract. What Michelle may have perceived to be an offer may have, in fact, been on the part of David, a mere invitation to treat.

An Invitation to Treat is an expression of intent to negotiate; it is not in itself an offer and cannot bind the parties into legal relations. David's letter may be regarded as an advertisement informing Michelle of his merchandise. The 'bargain price' of £500 may be perceived by the court as a mere reserve price, thereby nullifying any claim by Michelle of breach of contract. One could refer to the case of *Harvey v Facey* of 1893 where, similarly, a salesman informs the claimant, through the means of a telegram, of the price of a piece of land he intends to sell. The defendant writes: 'Lowest price for Bumper Hall Pen £900.' The claimants respond to the telegram expressing their acceptance of the salesman's statement and their desire for the title deeds to the property.

The defendant however, does not reply to this telegram and the claimants sue. It was held that there was no contract on the grounds that the salesman's telegram was not an offer, but was in the nature of an invitation to treat at a minimum price of £900. Michelle's initial letter may be deemed a mere expression of interest and request for additional information as to the method of payment she may employ. Though through the sending of the letter she attempts to negotiate terms, due to inefficiencies in the postal service, Michelle fails to adequately communicate this intent.

An acceptance is defined as the final and unequivocal expression of assent. Once the existence of an offer has been proved, the court must be satisfied that the offeree has accepted the offer; otherwise, there is no contract. David's letter, in light of the definition of an offer lacks the elements characteristic of a binding proposal. Michelle's second letter of acceptance is therefore useless in this case, as there is no offer present to merge her acceptance into an agreement.

Were an offer to have existed, Michelle could employ the terms of the postal rule in a claim that David breached the agreement which on the posting of her acceptance would exist between them. According to the Postal Rule, Michelle's acceptance would be deemed valid once the letter is posted by the offeree. The post office, on receipt of the letter acts as an agent of both parties. Even in instances when the letter fails to reach the offeror, the inefficiencies of the post office do not affect the validity of the offeree's acceptance (*Adams v Grant*). The rule relating to acceptance by post is somewhat arbitrary in nature, appearing to more favour the offeree. The rule however, may not be effective in this scenario because of the presence of Michelle's initial letter which cannot be interpreted as an acceptance.

Michelle's former letter was not received by David thereby 'lengthening' the time which passed between the period of offer and acceptance. The lapse of time between the two elements, must be reasonable in cases where a time has not been stipulated. Whether the date is reasonable is a matter of fact for the judge to decide based on the circumstances of the case presented to him.

The law does not necessarily recognise the existence of a contract simply because of the presence of mutual promises. It is also necessary to establish that both parties entered the agreement with the intention of creating legal relations so that if the agreement were broken, the offended party would be able to execute legally enforceable remedies. In line two of the scenario, David is referred to as 'a close family friend'. Agreements with relations of this manner are not normally imagined to be subject for litigation. In addition to the relationship of the parties, is the immense sense of ambiguity present throughout the scenario. The court may, on these grounds declare the agreement void with the presumption that there was no intention to create legal relations (*Gould v Gould* 1969).

After keenly examining the scenario with the application of knowledge of the different elements of agreement, it may be concluded that a contract did not exist between David and Michelle because of the deficiency of those factors essential to the formulation of an agreement. The lack of contractual implications thereby greatly inhibits the possibility of a successful pursuit against David.