LAW CASE STUDY *-Adnan Iqbal*

For a legally binding contract we need an offer and acceptance. An offer is an expression of willingness to be bound by the terms of offer once it is accepted. The offer may be made in writing, by words, by conduct or by a mixture of all three. It can be made to one person, a group of people or to the world at large as in Carlill-v-Carbolic Smoke Ball Co. the facts were that the defendants advertised that they would pay £100 to anyone who contracted influenza after having purchased and used one as directed and claimed the reward. The defendants urged, inter alia, that it was impossible to contract with the whole world. The curt held that the advertisement constituted an offer to the world at large, accepted by the plaintiff, who was entitled to the £100.
An acceptance is a 'mirror image' of the offer, with no variation of the terms of the offer. An acceptance must be communicated (Felthouse-v-Bindley) and can be in any form e.g. writing, words or conduct or a mixture of all three.
On 20th June Edward offered by telephone to sell his car to Fred for £5,000 and said he would send a messenger for Fred's reply on 27th. Here we can see that an offer has been made with clear terms. However we need to look at the mode of an acceptance, Edward had said that he would send a messenger, but is the messenger mandatory. If we look at Eliason-v-Henshaw, it was held that if the offeror prescribes a particular method of communicating acceptance and makes it clear that no other method will suffice, and then there may be no contract if the offeree uses a different method. But in Tinn-v-Hoffman it was said if the offeree was requested to reply by return of post, then any method that would arrive no later than return of post would do, more recently the Court of Appeal adopted the same approach as in Yates-v-Pulleyn. This means that as Edward has not clearly stated that no other method other than the messenger will suffice then it is not mandatory to use messenger.

It is important to distinguish between a counter-offer and a request for further information, as it is important because of the effect on the original offer. As we can see from paragraph two, on the 22nd Fred faxed Edward saying 'would like to have car, can you offer guarantee?' The status of this guarantee is that it could be a counter offer as in Hyde-v-Wrench or simply a request for more information as in Stevenson-v-McLean.
A counter offer for example may simply be that the offeree is not happy with one or more of the terms and makes changes accordingly. Since this is not an agreement to all terms of the offer, it is not an acceptance and is known as a counter offer. It is really a new offer, which is then open to acceptance or termination in some other way. The effect is to destroy the original offer. This was the case in Hyde-v-Wrench where an offer was made to sell at £1,000. The buyer refused this, but offered to pay £950. When this was not accepted by the seller, the buyer then tried to insist on buying at £1,000, but the seller had d ecided not to sell to him. It was held that he was not obliged to do so, since in making a counter-offer of £950 the buyer had at the same time refused the original offer, thereby terminating it.
A request for more information leaves the original offer open until withdrawn by the offeror. An enquiry of this kind arose in the case of Stevenson-v-McLean. The facts of this case was after following an offer to sell an iron, the buyer sent a telegram asking whether credit terms would be available, as this did not change any existing terms, but merely asked for more information on the agreed price, it did not constitute an offer but an enquiry.
From looking at the cases it is clear that the fax from Fred to Edward was not a counter offer but merely a request for more information.

From looking at paragraph three, we can see that Edward received the fax at 10am on 22nd, but he immediately sold the car to George. Although an offer can be revoked or withdrawn, by the offeror at any time, it must be communicated to the offeree before acceptance takes place. The offeror has taken the responsibility of starting the negotiation and cannot simply change mind. This is illustrated in the case of Byrne-v-Van Tienhoven, where it was held that the revocation of the offer was not effective because it was only communicated on October 20th, which was after the acceptance of the offer on October 11th. So an offer can be revoked, but the revocation must be communicated to the offeree before acceptance.
But as we can see Edward accepted another persons (George) offer and then communicated the revocation to Fred, which also was done via the messenger. Which in fact was a note, which was left in the letterbox. This

also leaves open the case that it could also be a revocation via a third party, as it actually was the messenger who revoked the offer. This was the case in Dickinson-v-Dodds. The facts of this case were that Dodds offered to sell a house to Dickinson, the offer to be left open until Friday. Dickinson decided to buy the house on the Thursday, but during that afternoon he heard from another person that Dodds had agreed to sell the house to someone else. On the Thursday evening Dickinson nevertheless delivered a letter of acceptance to Dodds. It was held that Dodds acceptance was not valid, as he knew 'as plainly and clearly as if Dodds had told him in so many words' that the offer had been revoked. The courts placed importance on the facts that there was no 'meeting of minds', as Dickinson did not attempt to accept until after the time when he knew that Dodds did not want to sell to him.

In the meantime Fred had changed his mind about wanting a guarantee and at 10:45am posted a letter to Edward accepting the offer, he then returned to find Edwards revocation note in his letterbox, Fred's letter had been lost in the post.
As we can see this is an acceptance of the offer by Fred, one point to notice is that Fred had used the post to communicate his acceptance, in Henthorn-v-Fraser, Lord Herschell said that the use of the post would be reasonable where 'it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer'. So it is important to establish whether by acceptance post is reasonable in a particular case, because the postal rule will then apply.
Seeing as the post was used to communicate the acceptance then the postal rule applies, which is that an acceptance by post is effective as soon as it is posted providing that the letter is correctly addressed.
The first example of the use of the postal rule was in Adams-v-Lindsell, where the defendants wrote offering to sell to the plaintiffs some fleeces of wool, asking for a reply 'in course of post'. The letter containing the offer was misdirected, and late in arriving. But when it did arrive the plaintiffs posed an immediate acceptance back to the defendants. However, when no reply was received by the expected time, the plaintiffs sold the wool to someone else it was held that a valid acceptance had been made when the plaintiffs posted their reply, leaving the defendants in breach of contract.

This means that a contract was made between Fred and Edward, as Fred had posted a reply accepting the offer which although was lost in the post was still a valid acceptance, and so Edward was in breach of contract by selling the car to George.

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