Invitation To Treat

One of the essential requirements of a contract is agreement, which is usually analysed in terms of an offer met by an unqualified acceptance. Hairy & Black who makes the original offer is the offeror; Richard who receives it is the offeree.

In this case, Hariy & Black inserts such an advertisement is making it known that they are prepared to receive offers or negotiate a contract. Item advertised on paper is considered invitations to treat. An invitation to treat is not an offer, it is merely an invitation to others to make offers. It follows that an invitation to treat cannot be accepted in such a way as to form a contract and equally the person extending the invitation is not bound to accept any offers made to them.

Public Advertisement is an example of common situations involving invitation to treat. In *Partridge* v *Crittenden* (1968), a person was charged with 'offering' a wild bird for sale contrary to Protection of Birds Act 1954, after he had placed an advert relating to the sale of such birds in a magazine. However, this should be contrasted with decisions such as that in *Carlill* v *Carbolic Smoke Ball Co* (1893), where the relevant newspaper advertisement was held to be an offer. Like Carlill's case, it is a unilateral contract and not a bilateral contract.

The invitation to tender of this case, if made in appropriate terms (such as that an accompanying deposit would be forfeited if the tender were withdrawn) can be an offer to contract which becomes a binding contract upon submission of a tender in conformity with the invitation to tender. The usual definition of an offer is a promise, capable of acceptance, to be bound on particular terms. The first consequence to note from this definition is that the promise to be accepted must not be too vague. The classic case on this point is *Scammel* v *Ouston* (1941), in which the court was unable to decide on the precise nature of the offer that was supposed to have been accepted by the plaintiff

The issue raised by this question is whether or not the parties intended to be legally bound by their agreement. The law of contract requires that, in order for a binding contract to exist, there must be such intention, together with offer, acceptance and consideration. The existence of intention is tested by using two established presumptions. First, if the agreement is commercial in nature, there is a presumption that they intended to be legally bound. (Edwards v Skyways Ltd.) This presumption can be rebutted by clear evidence of an opposite intention. (Rose & Frank v Crompton) Conversely, with social or domestic agreements, the presumption is that no intention to be legally bound attaches to the arrangement (Balfour v Balfour). Again, this presumption can be rebutted by clear contrary evidence (Merritt v Merritt). By applying the law to the facts, we see that the agreement has both commercial and domestic elements, so that the presumptions do not really provide us with an answer.

The fundamental feature of an offer is that it expresses a definite willingness to be bound by a contract on the part of the person making the offer. The offer sets out the terms upon which the offeror is willing to enter into contractual relations with the offeree. The essential thing to emphasise about an offer is that, once it is accepted by the offeree, a legally binding contract has been entered into, and failure to perform what has been promised will result in breach of contract. An offer may be made to a particular person or to a group of people or to the world at large. If the offer is restricted then only the people to whom it is addressed may accept it; but if the offer is made to the public at large, it can be accepted by anyone (*Carlill* v *CarbolicSmoke Ball Co* (1893)).

In this case the delivery of a standard form agreement by the defendant to the plaintiff was alleged to be an offer. A statement of intention is known in law as an ‘invitation to treat’. To hold otherwise would mean that every advertisers and catalogue published is obliged to sell to every person who responds, regardless of the level of supply. However, if the advertise makes it clear that he or she is prepared to be bound in certain circumstances, an advertisement may be constructed as an offer. The importance in distinguishing between offers and mere invitations to treat lies in the fact that only the former can be accepted so as to form a contract.

Acceptance must be the communicated by the offeree to the offeror. Silence cannot amount to acceptance, neither can not doing anything - a positive act is required. In Felthouse v Bindley (1862) Mr. Felthouse intended to buy a horse from his nephew and wrote to him saying 'If I hear no more the horse is mine'. The nephew did not reply, but told Mr. Bindley, the auctioneer selling the horse, to withdraw it. However, Bindley sold the horse in error. Mr. Felthouse then sued the auctioneer in the tort of conversion (a type of trespass to goods). The court held that the uncle could not succeed in his action because there was no binding contract with his nephew and so the horse did not belong to him. Actual communication of the acceptance never took place and acceptance could not be imposed on the nephew on the basis of his silence. Accordingly, as acceptance has been communicated in this question by paying the money to buy the product.

The offer for this question could not be revoked as the buyer Richard accepted the product. Unlike the case Routledge v Grant (1828), the defendant offered to lease the plaintiff's property with the plaintiff to give a final answer on the matter within six weeks. Within six weeks, he withdrew his offer, which the plaintiff then attempted to accept anyway. It was held that the defendant could withdraw his offer at any time before acceptance, regardless of the stipulated six weeks. The point of the law is that revocation of an offer must be communicated prior to acceptance.

Conclusion

Over the years it has been established that generally advertisements will be treated as an I.T.T and not obligations to enter into a binding agreement. (Partridge V Crittenden [1968] 1 W.L.R 1204) These advertisements are usually for goods that are for sale and can appear in many places including Newspapers, Catalogues, Periodicals and Magazines, etc. However there are certain situations where an advertisement can be an offer and not just an I.T.T. (Carlill V Carbolic Smoke Company LTD [1893] 2 Q.B 49) the courts have shown that for an advertisement to be seen as an offer then it has to be very specific and detailed. In this case there were other implications, for example no deposit was placed in a bank account as a show of good faith, this highlighted the validity of the offer. So the

more specific an advertisement the more likely it is to be seen as an offer. The Black & White Company is required to return the payment back to Richard together with the amount that he has make the doctor consultation.

Answer to Question 2

A will is a legal document through which a person bequeaths his absolute properties, both immovable and movable to others. In this case, John who executes the will is called the testator, and has the major and sound mind to make the decision. John' sister and his brother-in-law are the beneficiaries for this case. Under the Wills Act, they are called the legatees who can be relations or even strangers. A will comes into effect after the death of the testator, but can be changed by the testator if required.

Obviously, John has the concern for the succession of his property after he dies. If he dies without a Will, or dies "intestate" as the law calls it, the property of the decedent is distributed according to a formula fixed by law. In other words, if you don't make a Will, you don't have any say about how your property will be distributed. Such proceedings could cost a lot of money and could create legal problems that might have been avoided by making a Will. By making a will, the settlement of John's estate should proceed more quickly. John's relations will not have to spend time in having the court appoint an administrator. This will save estate money as well.

The testator, John, can revoke a will at any time. Even if the testator mentions in his will that it is irrevocable, the law does not recognize any will as irrevocable. The law permits change of the will as per the discretion of the testator at any time as Will is a document, which can be revoked at any time by the testator, since there is no consideration for the will. A free mind and personal wishes are essential for the validity of a will. A will executed under force, fear, fraud, and duress, undue influence, solicitation of others or against his wishes is not valid.

Conclusion

In this case, the agreement from John to migrate to Australia is a social agreement which is unenforceable. There is no consideration from John's sister even selling off her house in England as she and her husband got the money back. As dispute arose between them, John can legally change his mind without violating the law provided that John had changed the will under witnessed according to the strict legal requirements. A will can be changed at any time prior to your death. Again, you must be mentally competent to do so. You must also follow the provisions of the Wills Act. If you try to change your existing will by writing on

it, the changes will likely not Ask your lawyer to send you a reminder to have your will reviewed every three to five years.

Answer to Question 3

This is a question involving technicalities in contract law, consideration, human rights and property law. It is axiomatic to recognize the fact that Peter has a legal obligation not to follow Mary deliberately (and she would almost be sure of invoking such a defence), but her request for him not to stay in the same city is could be viewed as way above that obligation and thus if Peter does go to the extent of moving away from the city, he could very well have given to her a practical benefit sufficient enough to effect consideration. This however, would only be recognized by the courts as consideration if his acts fulfill the requirement of economic value. The case has since been subjected to publicity since the incursion of the Human Rights movement and the resultant policy concerns.

In this question, it establishes relationship between the two parties, Peter and Mary. It is a promise or a set of promises. It is defined as "every promise or set of promises forming consideration for each other". In this case, it is a social agreement. A social agreement does not create any legal obligation between them. Hence it is not enforceable in a court of law. Thus, this case is an illegal contract from the very beginning.

Compensation is assessed on the basis that the applicant must be put back in the position Peter would have been in if the discrimination had not been committed. The cases we could quote are Williams v. Roffrey Bros, Hartley v. Ponsonby, Thomas v. Thomas, White v. Bluett etc.

For the relevance of property law in the arbitrary exclusion rule, read on the case of CIN Properties Ltd v. Rawlins, where a group of youths accused of misbehavior were prevented from entering upon a large part of their home centre via a court order for injunction.

If an agreement is illegal, neither party can sue the other for breach of contract nor recover for any performance rendered. If the parties are found in equal fault, the court will leave them where it found them, providing a remedy to neither. As Lord Mansfield

wrote in a 1775 decision, "No Court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act."

If one of the parties to an illegal agreement is ignorant of the facts making the agreement illegal, and the agreement appears to be an ordinary agreement, the courts may permit the ignorant party to sue the other for damages.

Illegality of any part of an agreement is ordinarily held to make the entire agreement void and unenforceable. However, it may be possible through terms severing the legal and illegal portions to secure partial recovery. If a contract provided for delivery of legal and illegal goods, and they were priced separately, the seller may be able to collect for the legal goods. The court may view the situation as if there were two contracts. The illegal contract would be void but the legal contract would not be void.

Conclusion

As it is an illegal contract from the very beginning that the entire agreement is void and unenforceable, and Peter is innocent as well. It is not reasonable from Peter to sue Mary for the damage