Arguments for ‘invitation to treat and an offer

Health & Medicine, Healthcare

The English Law on the formation of contracts generally requires there to be an offer and a matching acceptance. The offer must set out and refer to the object for sale and all the important terms of the contract. The acceptance must indicate agreement to all the terms of contract. If it does not do so, the acceptance will be regarded as a counter-offer which is capable of rejecting the original offer, thereby making it incapable of acceptance later (Hyde v Wrench (1840) CC 49 ER 132).

There are two offers, the one made by Susan through theadvertisementon the 1st of March and that of Alice in response to the initial offer on the 27th of March that amounted to a counter-offer. There is also the issue of the application of the postal rule and its limitations in the case of Tahir, the issue of instantaneous communications and when the revocation of an offer becomes effective in the case of Emma and its rules.

In Tahir’s case, the letter and enclosed Cheque he sent on the 27th of March would have been the most preferable choice of acceptance because the general postal rule would have applied easily which allows the effectiveness of a posted acceptance to start right from when it was posted, so as to enhance the effectiveness of businesses, if they can start working farther on the assumption that there is a binding contract between both parties as in Adams v Lindsell (1818).

But, the fact that Susan defined the terms of the contract by stating the modes of acceptance and payment that was acceptable, which does not include a letter or a cheque makes the postal rule ineffective on Tahir’s letter, as it is unacceptable. Although, sending a letter as a form of

acceptance was reasonable; there is no binding contract between Susan and Tahir because of the definition of terms and conditions of the offer. Alice’s letter on the 27th of March is a counter-offer which is capable of rejecting the original offer.

If Alice had not altered the terms of the offer, which resulted in an offer of her own, The letter would have been an acceptance, and the usual rule when a letter of acceptance is sent in reply to an offer is that the acceptance takes effect on posting, ensuring there is a binding contract. However, this postal rule has no application here, since; the case of Holwell securities v Hughes (1974) makes it clear that the rule can be avoided by a specific request in the terms of the offer according to LAWTON L. J “ Now in this case, the “ notice in writing” was to be one “ to the intending vendor.”

It was to be an intimation to him that the grantee had exercised the option: he was the one who was to be fixed with the information contained in the writing. He never was, because the letter carrying the information went astray. The plaintiffs were unable to do what the agreement said they were to do, namely, fix the defendant with knowledge that they had decided to buy his property. If this construction of the option clause is correct, there is no room for the application of any rule of law relating to the acceptance of offers by posting letters since the option agreement stipulated what had to be done to exercise the option.

On this ground alone I would dismiss the appeal”. Considering, the email Alice sent on the 28th of March, which would have been the most suitable form of acceptance as at that time, although it was sent on Friday, it was out of office hours and so Susan is unable to read it, therefore the acceptance

was not communicated as the instantaneous communications rules requires as in Entores v Miles East Corp. It is generally agreed that the instantaneous communications will cover the email, and so the time ofcommunication, rather than the time of sending, is the relevant time.

Applying this rule to Alice’s email, the email has no effect because as at the time it was communicated the offer was no longer capable of acceptance. Alice has no binding contract with Susan because her letter was a counter-offer and the email was communicated when the offer was already withdrawn. The case law on revocation of offers establishes that offers can be withdrawn at any time prior to acceptance (Payne v Cave (1789)), provided that the withdrawal is communicated to the offeree.

The latter point is reinforced by the decision in Byrne v Van Tienhoven (1880), which concerns the revocation of an offer by telegram. Applying this to the dealings of Emma and Susan, If Susan received Emma’s email before the revocation was published in the papers, the revocation will be ineffective, and there will be a binding contract. This assumes, however, that the advert is deemed to be communicated to Emma as soon as it was published and available to read on the 29th of March, because the information in the advert is sufficient notification to Emma that Susan has withdrawn the offer.

Although, Emma may want to argue that the offer was open until the 31st of March, therefore they have a binding contract. This is not so, using the case of Routledge v Grant (1828), in which it was held that a promise of this kind will not generally be binding. The reason is that the promise will generally not have provided any consideration for the promise.

If Susan had been given any amount ofmoneyor valuable in return for keeping the offer open until the 31st of march, then consideration would have been provided, and she would be bounded to her promise but in the absence of such she is free to withdraw the offer anytime. Therefore, Emma’s email has no effect because, she bears theresponsibilityof reading the revocation in the paper as Susan has taken the most reasonable form of communicating the revocation in this case. In conclusion, there is no binding contract between Susan and the other parties.