

Contract law assignment

Law



General Introduction For parties to be bound by an agreement, it must first be determined if a prima facie valid and enforceable contract exists. A contract can be defined as an agreement containing promises made between two or more parties with the intention of creating certain legal rights and obligations and enforceable in a court of law [1]. For a legally binding contract to exist the following elements must be satisfied: 1. An offer must exist 2. The offer must be accepted 3. Consideration must pass between the parties 4. The parties must intend the agreement to be legally binding . The parties must have the legal capacity to enter into a contract 6. The contract cannot be for an illegal purpose. This essay will explore aspects of contract law based on two scenarios advising the correct legal position.

Case One – Known Facts Negotiations took place between two parties for the sale of a car from Boris (the seller) to Michael (the purchaser) with the intent to create legal relations. The application of contract law is required to determine the legal position and remedies involved. Case One – Issues of the Law

The matters for legal consideration involved in case one include: 1) Did negotiations give rise to an offer and acceptance? 2) Was the revocation of the counter-offer by Michael effective? 3) Did consideration pass between the parties? 4) What remedies are available to Boris for breach of contract?

Case One – Application of the Law Offer and Acceptance For an agreement to be legally enforceable there must be an offer by the offeror to be bound by certain terms. This offer can be in writing, orally or by conduct and made to an individual, group or even to the world at large.

This offer must be followed by an unqualified acceptance communicated by the offeree to the offeror. The offeror must indicate an intention or a willingness to be bound by the offer, otherwise it will be seen as an invitation to commence negotiations, or the soliciting of an offer[2]. An offer ??? an expression of willingness to contract on terms stated[3] is sometimes difficult to distinguish from an invitation to treat, as illustrated in the case *Harvey v Facey* [1983] AC 552 and *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256.

Applying these principles to our case, Michael the buyer, is the offeree and Boris, the seller, is the offeror. The offer made by Boris created the ability for Michael to form a contract upon unconditional acceptance of the terms. If the courts experience difficulties determining the legality of offer and acceptance, the objective test would be applied. If a reasonable person believed an offer had been made or that the parties had reached an agreement based on their conduct, then they will be bound, notwithstanding the possibility of there being no real ‘meeting of the minds’[4]. In applying this, a reasonable person would conclude the inspection of the car and time allowed for consideration amounts to an offer rather than an invitation to treat. Having determined an offer was made, the next step is to establish if there was an acceptance of the offer. To make sure there is a “meeting of minds” to create a contract, the acceptance of an offer must be unqualified (no questions, absolute, complete) with nothing further to be negotiated between the parties[5]. As such, it must be determined if Michael’s written response to Boris constitutes a counter-offer or a request for further information.

If it was a request for further information, as in *Stevenson, Jacques & Co v McLean* [1880] 5 QDB 346, the offer remains open and could have been accepted. However, Michael materially altered the offer terms by confirming he would pay a reduced sum. Furthermore, the language used by Michael suggests he was making a counter-proposal ??? he was advising Boris whilst he was happy with the condition of the car, \$2000 was beyond his budget but he could purchase it for \$800. As was held in *Hyde v Wrench* [1840] 3 Beav 334, a counter-offer amounts to a rejection of an offer.

In applying this case, the offer made by Boris would terminate the original offer. Therefore, Michael's response constitutes a counter-offer not an invitation to treat. Another matter for legal consideration is whether Boris accepted the counter-offer and if the method of acceptance was legally binding. An acceptance converts the promise of the offeror into an agreement[6]. The acceptance by Boris to Michael's counter-offer contained two key elements: The facts presented clearly indicate upon receipt of Michael's letter, Boris accepted the offer and promptly replied by post creating a simple, bilateral contract ??? ' a promise for a promise'. The exchange of such promises creates an enforceable contract. In contract law, the offeror can establish the method of acceptance and the acceptance must comply with the requirements in the offer before an agreement is completed. The facts provided indicate, Michael as offeror, failed to prescribe any method of acceptance. There is an assumption that if no method of acceptance is prescribed, acceptance is to take the same form as the offer[7].

Given Boris replied by the method of offer, being post, it can be concluded that Boris complied with the method of acceptance by posting the letter of acceptance. Having determined there was an offer and acceptance in place, it must be determined when acceptance of the counter-offer took place.

Contract law states if acceptance is not communicated to the offeror, there is no contract ??? unless the offeror has not required (waived) the need for communication expressly or by implication[8]. An important exception to the rule that acceptance must be communicated is the postal acceptance rule:

[9] Where the circumstances are such that it must have been within the contemplation of the parties that... the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted". The postal acceptance rule is based on the principal;- As was held in the case of *Adams v Lindsell* [1818] 106 ER 250 and *Byrne & Co. v Leon Van Tienhoven* [1880] LR 5 CPD 344 acceptance of the offer took place and subsequent contract formed, when the letter of the acceptance was posted.

In applying these cases, it is concluded Boris acceptance of the counter-offer took place upon posting. Revocation A revocation of an offer is defined as a withdrawal or termination of an offer so that it can no longer be accepted[11]. To be effective, revocation must be communicated to the offeree before the offeree has accepted the offer[12]. As in the case of *Byrne & Co. v Leon Van Tienhoven* [1880] LR 5 CPD 344 a contract was formed upon telegraph of the acceptance posted, regardless of the letter of revocation being received after this date.

Given the postal method of acceptance, the revocation of the offer had to be received by Boris prior to him posting his letter of acceptance. The facts presented state the revocation was received after posting the letter of acceptance. Therefore, the attempt to revoke the offer is ineffective. An offer may exclude the operation of the postal acceptance rule by requiring actual communication of acceptance before a contract is created by such a clause as “ Acceptance shall not deemed not to have taken place until it is received at this office” [13].

Had Michael stipulated this and the fact that Michael contacted Boris prior to receiving his letter of acceptance by post to revoke the offer, Michael would have been in a possession to legally enforce the revocation of offer.

Consideration In every simple contract, consideration must be present for it to be valid. Consideration can be defined as the price, detriment or forbearance given as value for a promise[14]. Given the exchange in question provides mutual promises and is executory in nature (i. e.

Boris sells a car to Michael for a sum of money), a contract is evident. Case One – Conclusion In applying contract law, it is determined an offer was made by Boris, which was rejected by a counter-offer by Michael. Boris accepted this counter-offer by the appropriate method giving rise to a contract as consideration is present between the two parties. Case One – Remedies Michael’s attempt to revoke the offer is an anticipatory breach. Anticipatory breach is a breach of contract where one party states ??? or implies ??? or threatens a breach of contract[15].

With anticipatory breach, Boris has two options available ??? repudiate the contract and sue for breach of contract or affirm the contract and sue for breach of contract at the time performance was due to occur. If Boris elects to repudiate the contract and sue for breach, the general principle is that an injured party should be put in a position they would have been had the breach never occurred[16]. For Boris to be successful, he must clearly demonstrate causation and the loss suffered is usual and a reasonably direct consequence of the breach of contract.

On the facts presented, Boris rejecting offers made on the car by other parties constitutes both causation and loss suffered directly entitling him to expectation losses. If Boris elects to affirm the contract, he provides Michael time to complete the contract, or take advantage of any circumstances that he could decline, and then sue for breach. As was in the case of *Foran v Wight* [1989]168 CLR 385, by electing to wait until performance is due, the risk is that Michael may have an excuse for not performing rescinding the remedy available to Boris.

Case Two – Known Facts

The known facts of the case are summarised as two parties had a written contract for the purchase of a clock. After the contract was discharged due to performance, there is a dispute regarding meaning of the contract and the legal recourse available.

Case Two – Issues of the Law

When a contract is disputed, it is necessary to interpret the terms of a contract. During negotiations, not all statements made by the parties will be regarded as terms of contract. To determine the appropriate legal remedies available, it is necessary to distinguish between contractual terms, representation, a collateral contract or a sales puff.

Case Two – Application of the Law Collateral Contract versus Contractual Term To determine if Benjamin’s statement regarding the age of the clock is a non-contractual representation or a contractual term is dependent upon (1) the intention of the parties, and (2) how important the statement is to the contract. For a statement of fact to form the basis of a collateral contract it must be determined Benjamin’s statement was intended to be relied upon, he guaranteed its truthfulness and Arthur relied on this as the basis for entering the contract.

As was in the case of *De Lassalle v Guildford* [1910] 2 KB 215, it was held an oral collateral contract existed based on a verbal assurance being the consideration for the party to enter into the contract. In applying this case and the pre-requisite of a collateral contract, the statement is considered to be a collateral contract. For a collateral contract to be valid and enforceable, it must be established the statement relied on is promissory in nature, consistent with the main contract and not supported by past consideration.

As was in the case of *JJ Savage and Sons Pty Ltd v Blakney* [1970] 44 AJR 123, a statement must be promissory, not representational for it to be actionable in a court of law. In applying this case, whilst the statement induced Arthur to enter into a contract, it is considered an expression of opinion or representational. Regardless of the collateral contract being consistent with the main contract and no past consideration, a collateral contract could not be enforced on this basis. Condition versus Warranty Given the statement in question is a contractual term, it is necessary to ascertain the nature of the term to determine the legal remedies available to Arthur.

A condition is an essential term of the contract whilst a warranty is a less important term[17]. To distinguish between a condition and a warranty, a key consideration is the significance of the statement in question. Given the written contract is said to contain implied terms, the courts would apply an objective test. This considers the case as a whole and the importance of the broken stipulation as an inducement to enter into a contract. As was in the case of *Associated Newspapers Ltd v Bancks* [1951] 83 CLR 322, a contract would not have been entered into without adequate assurances regarding substantial performance of the contract.

Furthermore, as was in the case of *Poussard v Spiers & Bond* [1876] 1 QB 410, failure to perform the contract entitled the Spiers & Bond to terminate the contract. The case of *Bettini v Gye* [1876] 1 QB 183, resulted in Gye being unable to repudiate the agreement but could claim compensation for any loss incurred as the apparent breach of contract was subsidiary to the main purpose of the contract. Case Two – Conclusion In applying contract law, it is determined Benjamin’s statement regarding the age of the clock is a condition of the contract, not a warranty.

It is argued that Arthur would not have entered into the contract for the purchase of a 28 year old clock at the price of \$2000 as a clock of that age is worth considerably less. Furthermore, the statement by Benjamin regarding the age of the clock provided Arthur with adequate assurance and inducement to enter into the contract. Case Two – Remedies Available The breach of contract enables Arthur to rescind the contract and/or seek damages. By rescinding the contract, Arthur can insist upon refund of monies paid and he returns the clock.

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By seeking damages, Arthur can seek compensation for the difference in the value of a clock of the age of 285 versus 28 years old. The general rule is that, where the expectation or reliance losses can be quantified, the plaintiff would receive this much[18].

General Conclusion This essay has explored aspects of contract law. Case one specifically covered offer and acceptance, consideration and remedies available for anticipatory breach. Case two covered collateral contracts versus terms of contracts with particular emphasis on conditions of contracts and the remedies available for breach of contract.

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