

Offer and acceptance case



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First of all, it is essential to specify whether the message conveyed is an invitation to treat or an offer.

According to Marson (2011) an offer ought to be a clarification of the terms that the other party must follow. In this case, Jock offers to sell 100 turkeys in exchange for £800 in cash and to give the acceptance written to his delivery man Willie. In the message, the price, the quantity of turkeys and the method of acceptance were specified; thus it is an offer. The acceptance delivered must cover all the terms established by the offeror and therefore be unconditional (ibid). Also, Jock demonstrated an intention to bargain where he sent his delivery man Willie to submit the offers to Angus, Bruce and Colin and return their acceptance back to him. Consequently, when two parties agree to exchange promises a contract is made, where the promises are the offer from one party and the acceptance of another party by means of having intention to create legal relations (ibid).

A valid contract must consist of an agreement (offer and acceptance), consideration, intention to create legal relations and certainty of terms (Marson , 2011). However, this essay will only consider the offer and acceptance factor due to limited information given. To assess whether a valid contract was made between Jock and his buyers, the actual reply from Angus, Bruce and Colin must be considered first. Therefore, Angus, Bruce and Colin must give unconditional acceptance to Jock's offer.

To begin with, it is essential to determine whether Jock and the 3 buyers had settled and reached for an agreement. In Angus's situation, he replied with an acceptance of the offer made. However, the offer from Jock clearly stated

to pay in cash not in cheque. Therefore Angus had made a counter offer instead of accepting Jocks current offer.

Consequently, Jocks original offer is terminated due to the modification of the offers condition. According to Marson (2011), when the offeree amends the components of the offer to suit him/herself, the offer is rejected and a counter offer has been made. This is demonstrated in the case of Hyde v Wrench (1840) where it outlines that a counter offer ends the original offer (ibid). In Hyde v Wrench (1840) case, the counter offer was to obtain a reduced price which is similar to many counter offers.

However, Angus's counter offer is due to a different payment method. It would depend on the court to decide if it is an acceptance of the offer or a counter offer. As there are no cases that are similar to Angus's counter offer. If the court decides to count Angus's response as an acceptance then there will be a valid contract between him and Jock and the contract will be enforced. However, it is thought that because Angus had altered one of the components of the offer which is to exchange in cash, and amended the offer to suit him by submitting in cheque, the original offer is cancelled and there is no binding contract between him and Jock. In Bruce's situation, he decided to consider the offer from jock without giving any messages to Willie.

However, later at the same day he had sent a fax to Jock accepting the offer and stating to have the 100 turkeys delivered within 7 days. First of all, Bruce had made a counter offer when stating delivery period as he added an extra condition to the offer with regards to delivery. This is demonstrated in Tim v Hoffman (1873) where it outlines that acceptance must be to the exact

terms of the offer (Tufal, n. d). The preferred act was to ask for information regarding delivery as it will not count as a counter offer and the offer would still be open (Marson , 2011).

This is demonstrated in *Stevenson v McLean* (1880) where it outlines that a request for information does not imply as a counter offer (Tufal, n. d).

Secondly, Jock had specified in the offer to give the acceptance to Willie. The acceptance that Bruce made was conditional and this will terminate the offer.

Therefore, acquiring an unconditional acceptance is important to have a valid contract with Jock. Furthermore, Jock had received the offer by fax which is counted as instantaneous form of communication. Bruce delivered his response or counter offer at the same day where Jock was expecting Willie to return with any acceptance from the buyers. Therefore Bruce had used instantaneous communication in the correct matter (Marson , 2011: 137).

This is demonstrated in *Entores v Miles Far East Corporation* (1955) where it outlines that acceptance in instantaneous communication is effective when received by the offeror (Tufal, n. d) . In the case of *Tinn v. Hoffman & Co.*

(1873), it outlines that an equally effective form of communication will be acceptable if it is not disadvantageous to the offeror and it is quick (ibid).

Therefore using fax to deliver acceptance is not an issue as Bruce wanted to deliver his acceptance to jock as fast as possible. The case in *Ramsgate v Montefiore* (1866) proves that the acceptance made to an offer after a reasonable amount of time cannot be made into a contract (ibid). It is

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thought that Bruce delivered his acceptance by fax to notify Jock about the bargain. More importantly, Bruce will also need to hand in a message to Willie so he can enter into a legally binding contract to complete the specified term given in the offer. It is thought that Bruce did not fulfill the components of the offer; hence there is no legally binding contract between him and Jock.

This is due to a not handing a message to Willie and to his addition of a new term where he could of asked for information to keep the offer open. In Colin's situation, he decided to accept the offer made. However, he uses the postal rule to send his acceptance instead of giving it to the delivery man Willie. There are exceptions to the postal rule. First is if the letter is handed to a postman who is only responsible for delivering letters.

Second is when it is incorrectly addressed and posted. Third which is the applicable exception is when the offeror expects to see the acceptance then the contract will not be formed until the offeror receives it (Kilbey, 2012). In this case the person specified in the offer which is Willie. The case demonstrated in *Holwell securities v Hughes* (1974) where it outlines that when the offeror requires "notice in writing" or to actually receive the acceptance, the postal rule would be excluded.

Normally, the postal rule would apply if Jock asked for reply in terms of post (Tufal, n. d). This would be similar to the case in *Adams v Lindsell* (1818) where it outlines that a contract is formed as soon as the letter is put in the post-box (ibid). However, the original offer insisted on receiving the acceptance from Colin.

Therefore, the postal rule cannot be used as the contract can't be valid or established when posted but when received. This is similar to *Eliason v Henshaw* (1819), where “ Defendants sent an offer to the plaintiffs to buy flour, and they prescribed that acceptance should be made via the plaintiff's delivery wagon. However, since the wagoneer was not heading back towards the defendant neck of the woods, plaintiffs chose to send their acceptance via mail. Defendants received the acceptance long after they had expected to receive it via wagon, and consequently they had bought all the flour they wanted from another source. When the plaintiff tried to deliver the flour the defendants had requested, defendant's refused delivery” therefore, plaintiffs sued for breach of contract (Snyder, 1993).

In this case stated, the method of acceptance has changed as the defendant stated to be delivered by wagon, while the offer clearly stated to have the acceptance transported by wagon. Also, it stated that there was a lapse of time in receiving acceptance; therefore it terminates the offer (ibid).

Likewise, Bruce had used a different method of acceptance. More importantly, it is thought that the reason Jock sent Willie to deliver the offers and collect the acceptance was to avoid lapse of time. If Jock's offer excluded receiving the offer or not specifying any particular method of acceptance, then postal rule would apply and Colin would have entered into a binding contract with Jock. However, Colin was well aware of the term of the offer which is to hand the acceptance to Willie, but instead he posted the letter and rejected the offer.

It was clear by the offeror to receive the acceptance by Willie, therefore in this case the postal rule does not apply – see *Holwell securities v Hughes*

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(1974). It is thought that there is no legally binding contract between Colin and Jock.