

Contract law case analysis: felthouse v bindley, holwell v hughes, byrne v tienho...

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Felthouse v Bindley (1862) 11 CBNS 869 (CCP) Summary: •” For a contract to come into existence, the offeree had to communicate his acceptance of the relevant offer to the offeror.

” •This means that for a contract to come into play it has to be a bilateral agreement. One party cannot decide to enter someone else in a contract. Also, the case implies that changes in a contract nullify prior acceptances- if the contract changes, you need to agree the terms again. The Case:

•F[elthouse] wanted to buy a horse from N[ephew]. •They agreed on a price, however N later found out F thought they had agreed at ? 0 when he wanted 30 Guineas. •F wrote to N on Jan 2nd 1861 stating ‘ if I hear no more about him,

I consider the horse mine’ for a price that was in the middle of ? 30 and 30Guineas.

•N did not reply to this letter. •N got B[indley] to auction his farm stock, but said to keep the horse aside as N considered the horse to be F’s. Still sold by accident. •N wrote to F (on the 27th Feb 1861) saying that he was very sorry and that the horse was sold. In this letter, N implied heavily that in his mind the horse belonged to F. N even offered compensation of another horse.

F’s lawyers say that by not replying, it fulfilled the term of ‘ if I hear no more about this...the horse is mine’. This was then backed by the Letter of the 27th Feb. ‘ It was not necessary that he should accept to the contract by writing: it is enough to show that he accepted it’ The Judgement: •Debate over the letter of 27th Feb: does it bind the horse to F? •Originally found in favour for the Plaintiff (F), to receive ? 30.

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- Deemed a non-suit by Judge Dowdeswell as 'sufficient title or possession of the horse, to maintain the action, was not vested in the plaintiff at the time of the wrong'- ie the letter of 27th Feb was seen as non binding. Dowdeswell: 'at the time of the wrong no sufficient memorandum in writing, or possession of the horse, or payment, to satisfy the statute of frauds.'
- Judge Wiles stated that N had not told F directly he accepted the contract until after the sale by B on the 25th.

The letter came on the 27th- after the sale. • Making B pay F damages would also break LEGAL PRECEDENT of Stockdale v. Dunlop , 6 M. ; W. 224 where a Judge gave the verdict that the a third party is not tied to the terms of a contract of two other people.

In Stockdale v Dunlop, a ships cargo was lost, the ship was insured for 'profits of the cargo'.

As the profits were never 'made' [as stuff was never sold] the insurer wasn't bound by possible profits that the contract implied. • Applying that to this case: B wasn't bound by a possible contract between F and N. 8-Holwell Securities Ltd v Hughes [1974] 1 WLR 155 (CA) Summary: • Need to carefully and explicitly follow the terms of a contract. • If something needs to reach someone by a set day, it needs to actually reach there, not just 'probably reach there' • Even if you can reasonably expect it to reach there but it doesn't, it's your fault: You need to express due diligence in your methods to ensure it actually gets there.

This is precedent for an exception to the postal rule that states that 'a contractual offer can be deemed to be accepted when it leaves the offeree

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and enters the postal system. ' BUT the wording in this contract was ' reach' by the due date, not ' sent'. The Case: •Terms set about on 19th October 1971, between plaintiff and the vendor: option to buy property. Accept within 6 Months. In writing to the vendor and pay vendors solicitor ? 4. 5K •14-Apr-1972, Plaintiffs Solicitor sent letter by hand to Vendors solicitors + a cheque, so as to exercise the option.

Also sent, via franked mail, to the vendor himself, saying they want to exercise the option to buy. •By 20th April, the letter still not arrived to vendor. The defendant denied that the option had been exercised in accordance with the terms of the option agreement.

•Plaintiff says that option exercised as soon as mail to Vendor went into Postal service. •Also, when letter given in person to vendors, they phoned the vendor saying what was going on [this was within the time limit] – did this constitute ' notice'? The Judgement: •Judge Lawton: Hare v Nichol 1965. An option to purchase or re-purchase property must be exercised strictly within the time limited for the purpose.

' •Precedent stated that posting fulfils that they exercised their intention to buy in most cases: Lord Herschell in in Henthorn v Fraser: " Where the circumstances are such that 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, the acceptance is complete as soon as it is posted. •' There is, of course, nothing in that phrase to suggest that the notification to the defendant could not be made by post', but the Terms stipulated that " The said option shall be

exercised by notice in writing to the intending vendor within six months....”

- Judge Russell emphasised the part in Bold. Had it said “ The offer constituted by this option may be accepted in writing within six months’, then posting would be enough. • He continued that ‘ acceptance requires to be communicated or notified to the offeror, and is inconsistent with the theory that acceptance can be constituted by the act of posting’.

In the words of Judge Lawton: it does not apply when the express terms of the offer specify that the acceptance must reach the offeror • Also that the telephone calls between solicitor and vendor WAS notice but not IN WRITING.

- A lot more complex understanding: Law of Property Act [1925 version] part 4, states that you can post an agreement and it’s a valid claim in so much as the ordinary delivery date [when the post can reasonably come] is within the allotted time for you to agree to the contract.

This goes against the precedent that sending is an act of agreeing as you could send on day before deadline, and so contract would be valid as you POSTED in time but the due date would be after the deadline so invalid.

- More Complex: Law of Prop 1925- part 4 is for a very specific set of occurrences that must happen. And in this case, it wasn’t enough to be covered by section 4. QUESTION: LAW OF PROP 1925:

4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter ... and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered. “ vendor should be fixed with actual

knowledge of the exercise of the option save in the circumstances envisaged in the subsections” The letter wasn’t returned to the plaintiff. The letter would have arrived ‘ in time’ if Royal Mail hadn’t messed up.

WHY DOESN’T THIS APPLY IN OUR CASE? – Byrne ; Co v Leon Van

Tienhoven ; Co (1880) LR 5 CPD 344 (CPD) Summary: •Plaintiff[byrne]:

bought tinplates. Defendant[Leon V. T]: sold the tin plates and later tried to

withdraw claim. •An offer of a contract sent by letter cannot be withdrawn by merely posting a subsequent letter which does not, in the ordinary course of the post, arrive until after the first letter has been received and answered.

•Ie- you can form a contract or agree to one by posting, but cancellation, as it can lead to one of the parties from loosing out, must be agreed by both AT THE SAME TIME, before being taken on.

The Case: •By letter of the 1st of October the defendants wrote from Cardiff offering goods for sale to the plaintiffs at New York.

•Contract was: subject to your cable on or before the 15th- ie can be accepted up to the 15th. •The plaintiffs received the offer on the 11th and accepted it by telegram on the same day, and by letter on the 15th. •On the 8th of October the defendants posted to the plaintiffs a letter withdrawing the offer. This letter reached the plaintiffs on the 20th. Note: between the time the plaintiff offered then withdrew his offer, the market value of tin plates went up 25% •The defendant says: the offer made by their letter of the 1st of October was revoked by them before it had been accepted by the plaintiffs by their telegram of the 11th or letter of the 15th.

•The plaintiff said: a contract for 1000 boxes came into existence between you and ourselves. It requires the consent of both parties to a contract to cancel same. If instead of writing to us on the 8th you had cabled 'offer withdrawn,' you would have protected yourselves and us too. cables travel a lot quicker- would have arrived before the 11th; when the plaintiff accepted the contract] The Judgement: • Case is an action for the recovery of damages for the non-delivery by the defendants to the plaintiffs of 1000 boxes of tinplates •These letters and telegram would, if they stood alone, plainly constitute a contract binding on both parties. •QN: Whether a withdrawal of an offer has any effect until it is communicated to the person to whom the offer has been sent? • OR: Whether posting a letter of withdrawal is a communication to the person to whom the letter is sent? Routledge v.

Grant : An offer can be withdrawn before it is accepted. •Judge Lindley accepts that many feel that: There can be no contract if an offer is withdrawn before it is accepted, although the withdrawal is not communicated to the person to whom the offer has been made, because there is not in fact any such consent by both parties as is essential to constitute a contract

•BUT-QN: whether posting the letter of revocation was a sufficient communication of it to the plaintiff? •Judge accepts that Dunlop v. Higgins states that posting= accepting despite not reaching other party. BUT this assumes that the letter arriving is thought of as binding. Ie- initially, plaintiff awaited a letter to form a contract.

But as for the cancellation letter: they were unaware of its arrival or existence. •As the plaintiff had no way of knowing the defendant would send a letter cancelling the order, it is not an acceptable cancellation. •Plaintiff had also resold the plates for profit- so they would undergo loss by the contract being ' broken' •Defendant also argued: Plaintiff did not send bankers note [as the agreed form of payment] instead, they sent credit note. Judge argues that this is a moot point: the defendant never was going to ship the goods so no matter how he was paid or not paid- it does not matter. • ' The defendants did not return the letter of credit because it is not a banker's acceptance, but because the offer was withdrawn' •whilst the plaintiffs were always ready and willing to perform the contract on their part the defendants wrongfully and persistently refused to perform the contract on their part