Offer and acceptance

Law

OFFER AND ACCEPTANCE Bert cannot hold Alf liable for selling the computer to Charles despite an agreement to keep the offer until Sunday because the agreement was unenforceable for lack of consideration.

Advertisements, like display of products, do not usually constitute an offer, but is merely regarded as ‘ invitation to treat.’ In Harris v Nickerson, 1 a person advertised in a newspaper that he will display for auction certain items for three days in a certain place. The plaintiff travelled to the specified place to make a bid, but the items were withdrawn on the third day of the auction dates. The High Court held that the advertisement did not constitute a legitimate offer for which the plaintiff could make an acceptance, but merely an invitation to treat. Similarly, in Partridge v Crittenden, 2 the High Court ruled that there was no violation of the law prohibiting the offering to sell wild birds except those bred in captivity and of the closed-ring specimen despite the advertisement to that effect because it was merely an offer to treat and not a legitimate offer of sale. There are of course, exceptions to this rule as those indicated in such cases as Carlill v Carbolic Smoke Ball Co, 3 where the inclusion of the £1, 000 deposit was taken to mean as proof of the serious intent of the advertiser, and Williams v Carwardine, 4 where the advertisement offering reward to any informant in a murder case was held as a general contract with anyone who could provide the information without taking into account the motive of the informant.

Thus, there was no initial valid offer by Alf in his advertisement. Neither was there a valid offer/acceptance by Bert when he initially called Alf over the phone considering that he was unsure at that time. Moreover, the agreement between him and Alf for the latter not to sell the computer until Sunday is unenforceable because of the lack of consideration that is an essential

element in a contract. In Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd, 5 a tyre maker sued a retailer for selling its tyre below the agreed retail price as previously agreed it and its dealers. One of the reasons why the High Court ruled against the plaintiff was that the defendant was not a party to the agreement in issue and there was no consideration flowing from the promisee to the promissor. Also, in Routledge v Grant 6 the Court held that an offer can be revoked despite an agreement to keep the offer for a certain period if no consideration was paid for that agreement. In the case at bar, there was no option money given by Bert to Alf to seal the agreement and make it enforceable.

Even if the promise to hold the sale is valid, the new offer, which was valid, made by Bert on Tuesday and its rejection of Alf has wiped the slate clean. Thus, on Tuesday, there was no existing valid acceptance by Alf because Bert had made a counteroffer to the original terms of Alf. In Hyde v Wrench, 7 the High Court ruled that any counteroffer cancels the original offer. Since there was no valid offer and acceptance on Tuesday, Alf was therefore, free to dispose of the computer to any other buyer on Wednesday. The postal rule on acceptance and rejection do not apply here as it would be a superfluity considering that there was no valid offer and acceptance and the agreement to hold off the sale was unenforceable for lack of consideration.

References:

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256.

Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd [1915] UKHL 1.

Harris v Nickerson [1873] LR 8 QB 286.

Hyde v Wrench [1840] EWCH Ch J90.

Partridge v Crittenden [1968] 2 All ER 421.

Routledge v Grant [1828] 130 ER 920.

Williams v Carwardine [1833] 5 C&P 566.