A promise to keep an offer open

Law

A unilateral offer is a contract whereby theofferor makes an express promise in exchange for an act by the offeree.

Aunilateral offer can be accepted through ‘ acceptance by conduct’. This isevident in the case of Carlill v CarbolicSmoke Ball1. In this case, an advert was placed to the any person who gets influenza afterusing the smoke ball within a specific period in return for £100. In addition to that, a unilateral offer canbe accepted once the offeree is satisfied with the conditions. This means thatthe offeror is protected since she will only be contractually obliged toofferee, and the offeree is protected as if she performs the act, the offerorwill be contractually obliged to pay him/her. In a unilateral offer, the condition thatthe offer must be communicated to the offeror is abandoned.

A unilateral offercan be revoked in different situations. For example, a unilateral offer can berevoked through revocation by the offeror. This can happen at any time beforethe acceptance. Revocation is only effective when communicated to the offeree. For example, by disposing of the subject matter elsewhere as this simply makesthe offeror unable to perform and potentially in breach of the contract if theofferee has accepted the offer.

Although revocation must be communicated tothe offeree, it need not be communicated by the offeror. This is supported in thecase of Dickinson v Dodds2where the reliable third-party communication was enough. Also, the offer can berevoked even where the offeror promised to keep it open.

In Dickinson v Dodds, it was also held that a promise to keep an offer open is not binding unlessthere is some separate consideration for the promise to keep the offer open. Thismeans that the offeror can revoke the offer within

the specific time limit ifit has not been validly accepted. Communication of revocation takes effect whenit is received by the offeree. This is supported in the case of Byrne v Van Tienhoven3, in which the revocation of an offer was sent by telegram and was held to becommunicated only when the telegram was received.

Also, in the case of Luxor v Cooper4, it indicates that the offeror could revoke at any time before the act ofacceptance is completed. However, the modern accepted view indicates that onceacceptance of a unilateral offer has begun, and if the performance is not leftincomplete or unperformed as evident in the case of Errington v Errington5, the offeror must give theofferee a reasonable chance for completion but need not wait an unreasonablylong time. A(ii) The definition is of a contract is agreement with certain terms involvingtwo or more people in which there is a certainty to do something in return thatis beneficial, known as consideration. The first problem is whether there were binding contracts between CC and SessexHospital and CC and Dougal. In the case of Storer v Manchester CC6 , the law is not disturbedwith what the people are thinking but what a rational person would concludefrom their conduct.

Next, acceptance isthe final expression of assent to the offer. In Carlill v Carbolic SmokeBall7 acceptance can be by wordsas well as conduct. The court must have evidence as it shows that there was anintention to accept. Lastly, consideration consists of ‘ either some benefitaccruing to one party or some detriment suffered by the other’. To enforce the contract, it must be a correlationbetween the promises.

Regarding the scenarioit is evident that the agreements between both contracts were able to fulfilthe sections of binding contracts; there were suitable offers and acceptances(by conduct). The contracts had consideration because the parties had to receivea loss and benefit. There was a correlation between the parties' promisesbecause there would not have been applicable contracts if there was noconsideration.

Thefirst legal issue is whether there is a consideration when CC promised to payDougal £60 if he delivers the food on time. Consideration as defined in the case of Currie v Missa8″a valuable consideration, consist either in some benefit accruing to the oneparty, or some forbearance suffered or undertaken by the other". Where the promise re-performs an as of nowset up commitment it does not sum to a guarantee. There will be no guarantee ifthe claimant promises to accomplish an obligation which as of now legallyexisted. In Stilk v Myrick9 the seaman was under a presentcontractual duty which meant there was minimal consideration. On the hand, in Williams v Roffey Bros Ltd10 it is now recognised thatthere can be consideration if the claimant completed an already existingcontractual duty.

The defendant had to pay additional funds to the claimant as theagreement was in both parties' benefit, this is the practical benefit rule. Regardingthe scenario, the case Stilk v Myrick supports the fact that there would be noconsideration as Dougal would only perform the obligation which was formerlyowed to CC (defendant). However, valid consideration can be seen when CC hadpromised to rise Dougal's pay. Thisbenefitted both parties as CC and Douglas both wanted to save their reputation, this is the practical benefit rule. CC benefitted after making the payment as Dougalwas able to

fulfil his side of the contract. This indicates that there was a valid consideration due to the promise ofsurging Dougal’s payment, therefore he cannot be responsible for any actions broughtagainst him.

This is because the latest contract he entered with CC voided the effectivenessof the terms in the previous contract11. B) Negligence is whensomeone who owes you a duty of care has failed to act according to a reasonablestandard of care and this has caused you damage. Negligence is for the mostpart comprised of three elements which are a duty of care, the breach of dutyand causation.

Before one can sue for harms in negligence, it must first beproven that a duty of care is owed. If a duty of care isn’t proven, then noliability can be imposed – irrespective of how reprehensible the defendant’sconduct was or how much the claimant has suffered. The law states that if it isreasonably foreseeable that an individual might suffer harm due to the actionsof another individual, then that person owes you a duty of care. The legitimatetest for finding out whether a lawful duty of care exists, in any givencircumstance was established through the case of Donoghue v Stevenson12.

The neighbour principle developed by Lord Atkins indicates that reasonablecare must be taken in order to avoid omissions that could reasonably beforeseen as likely to harm one’s neighbour. When the duty of care has been proven, determining whether the duty of care has been breached is the next step. Breachof duty requires the defendant to have been at blame by not satisfying theirduty towards the claimant. In order to prove a breach of duty, the courts applya two-stage test: firstly, a question

of law, the standard of care thedefendant ought to have worked out and secondly, a question of fact and whetherthe defendant's conduct fell underneath the required standard. In the case of Blyth v Birmingham Waterwork13, the standard of care required is that of a ' reasonable man', which is quiteobjective. For example, in the case of Hallv Brooklands Auto-Racing Club14, the classic image of a reasonable man offered by law is ' man on the Claphamomnibus'.

A reasonable person would consider the risk when choosing to act in acertain way and in deciding the standard of care required. The magnitude ofrisk ought to be considered. This implies considering the likelihood that thedefendant's conduct could cause harm and how serious that harm is likely to be. The less likely harm caused, the lower the standard of care required. This issupported in the case of Bolton v Stone15as the risk of the injury caused by the ball was minimal. This meant that thedefendant had taken preventative measures and a reasonable person would nothave expected the damaged caused. As a result, the defendant had not breachedthe duty of care as it had satisfied the standard of care required.

However, ignoring minimal risks might not always be reasonable. For example, in the caseof Haley v London Electricity Board16. The House of Lords concluded that it was reasonably foreseeable thatunaccompanied blind pedestrians may walk that route and therefore thereasonable person should not ignore the risk to blind pedestrians, especiallydue to the gravity of the potential injury. The seriousness of possible damagecaused ought to be considered by a reasonable person as the more serious thedamage, the more prominent the standard of care. In the case of Paris v Stepney Borough

Council17, the claimant had lost sight in one eye and the defendant was aware of this butfailed to provide protective goggles to wear at work. As a result of this, theHouse of Lords found that the likelihood of the harm happening was little, butits consequences were big. Subsequently, the defendant ought to have takenadditional care to supply googles to the claimant. The courts will consider thepractical measures the defendant could have embraced in order to avoid thedamage.

The more prominent the risk of injury, the greater the need to takeprecautions. In the case of Latimer vAvec Ltd18, it was concluded that the defendant took all reasonable steps to avoid theaccident in the situation. Closing down the factory was the only alternativewhich would be deemed as an unpractical, unreasonable solution. The moreprominent the social utility of the defendant’s conduct, the less likely it isthat the defendant will be held to be n negligent. However, if the defendant’saction is illegal, the defendant will be required to work out a high degree ofcare to legitimise a little risk of harm to others. This is supported in thecase of Watt v Hertfordshire CountyCouncil19where the court found that the advantage of sparing the lady caught in theaccident was more prominent that the risk of harming the fire warriors.

Therefore, the defendant had satisfied the standard of care required. Nonetheless, the nature of work of the emergency services does not make themimmune from negligence claims. The current state of knowledge must be used todetermine what a reasonable person, in the defendant’s situation, could haveforeseen.

This is supported in the case of Roe v Minister of Health20 as Denning LJ stated that '.. the courtmust not look at the 1947 accident with 1954 spectacles..

.'. This isbecause when the case was heard, the defendant had to be judged by the state ofknowledge at the time in 1947 which meant that the duty of care owed by thehospital to the patient had been broken. On the contrary, there are a fewrestrictions on the meaning of the term reasonable as feminist legal scholarsargue that in deciding who is the reasonable standard to be breached, the lawshould base its decision less upon pure logic and formulas and much more uponemotional obligations.