

Contract case study



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Contract Case Study

Contracts are a legal binding agreement made between two or more parties to work on and to accept all the terms binding to it. All business needs to form a contract during its business life cycle. The two important aspects of a contract are the offer and acceptance. The party that makes an offer in a contract is called the offeror and the party who accepts the offer made by the offeror is called the offeree. There are many terms and conditions stated in the contract which have to be accepted by both the parties to enter in to a legal binding contract. The offeror must state his readiness to create a binding contract by accepting the terms to the offeree. The offeree can offer to form a binding contract an individual, group of people and to the public. Offers made to the public are considered as an invitation to treat since it welcomes offers by many people within a stated time in which the offers need to be made. But there is a significant difference among offer and invitation to treat. The response to an offer is usually acceptance whereas in the case of invitation to treat, the response would be an offer. Invitation to treat is more as an invitation to make an offer by understanding the terms. Invitation to treat helps in getting a variety of offers and therefore increasing the chance to accepting a better and a more profitable contract.

In the case study given, Golden Antiques had posted an advertisement on Monday through the internet which had stated “ For sale, three Victorian style beds, gorgeous, £5000 each, cash, will brighten up any bed room!” This advertisement is an invitation to treat since it was made to the general public and a response to this invitation to treat would be considered as an offer. This relates to the case of *Partridge v Crittenden* [1968]¹ “ An

advertisement by Partridge appeared in the magazine ‘Cage and Aviary Birds’, which contained the words quality British, Bramble Finch cocks, 25 shillings each. Partridge was charged with illegal offering for sale of a wild bird against s. 6(1) of the Protection Birds Act 1954” Therefore this will form a unilateral contract since the offer to be in a legal binding contract has been decided by only one party. David, the manager of White Halls Ltd sends an email to Golden Antiques immediately saying that he is interested in buying all three Victorian style beds at the cost of £4500 each and enquires about any credit facility available upon this purchase. This is an offer made by White Halls Ltd to Golden Antiques. Therefore in the current situation, White Halls is the offeror and Golden Antiques is the offeree. The offeree (Golden Antiques) must decide upon the offer made by White Halls Ltd and can take any decision since accepting or rejecting the offer is completely in their hands. The reply made by White Halls Ltd must be considered just as a request for information about the terms and other opinion available in the contract. White Halls have not accepted the original terms and cannot be considered to be a counter offer. Therefore a request of information cannot enforce a binding contract. A similar case related to this would be the case of *Stevenson, Jacques and Co V McLean* [1880]² “McLean wrote to Stevenson asking if he wanted to buy iron ore at 40S per ton in cash, and the offer was open till Monday. Stevenson asked if the goods were available on credit. They received no answer. On Monday afternoon they contacted the defendant to accept the offer, but the iron had already been sold to someone else. The plaintiff won the case against McLean”

Golden Antiques responded to the email sent by White Halls Ltd seeking information about the price and the credit facility being available. Golden antiques in response said the following “ We are not prepared to sell for less than £5000 each. Credit facility only available if your guarantor is acceptable to us. Please confirm by close of business today if interested.”

By stating this Golden antiques have made a counter offer to their initial offer. This counter offer states that the contract can be enforced only at the original price mentioned and their terms. They have taken into consideration about the credit facility and have stated that it is available only if White Halls Ltd’s guarantor is acceptable to them. They have also mentioned that the acceptance to the counter offer has to be conveyed by Tuesday. Stating the time frame for the acceptance, Golden antiques have made it very clear that the acceptance to this offer will not be accepted after Tuesday and therefore be communicated properly. Counter offer is an offer made against the previous offer by the former offeree after taking into consideration the request of information by the offeror. This counter offer is usually the final offer made in the good interest of both the parties to form a legal binding contract. The counter offer nullifies the previous offer made by the offeree. No contract can be formed if this counter offer is not accepted by the offeror. A relevant case would be the case of *Hyde V Wrench* [1840]³ “ Wrench offered to sell his farm for £1, 000 but Hyde declined. He offered £950 and then Wrench refused to accept. Finally Hyde agreed to buy the farm at old price but Wrench refused, therefore a counter offer destroys the original offer”.

After providing a counter offer, Golden antiques will now be the offeror and White Halls Ltd will be the offeree. The counter offer will become a legal binding contract if White Halls Ltd accepts the counter offer made by Golden antiques. Golden Antiques have specified that the offer is valid till Tuesday and any acceptance received after this date will not be taken into consideration. This says that they need a response immediately through effective and fast means of communication. The case related to this will be the case of *Tin V Hoffman* [1873]4 “ in this case the offeree was specified to reply by post, any method which to be more effective or faster than post was also acceptable”. In this case, the offeror had specified the means of communication through which the acceptance had to be communicated. The court ruled that the offeree must accept this technique of communication or the next best alternative to communicate to the offeror. Relating this to the case study, Golden antiques have said that the acceptance to the counter offer need to be made by earliest on the Tuesday which made it obvious that a reliable and fast communication was necessary. If this was not communicated properly or was delayed due to a slower means of communication, the offer becomes invalid due to lapse of time.

A contract come into existence only when the latest offer or counter offer is accepted. Acceptance conveys that two or more parties have agreed to all the terms and condition specified in the contract. The most important part of acceptance would be the method of communicating. This is important because acceptance is not effective if it is not communicated. The other important aspect of acceptance is that the parties must obey to the way of communication decided upon i. e. if the offeror has specified a means a

communication through which the acceptance has to be communicated, it must be followed. This has to be communicated effectively and within the time frame in which the offer will be valid or it will be cancelled due to lapse of time. If revocation is made before the acceptance takes place, the offer will be cancelled.

After receiving the counter offer made by Golden antiques, David faxes the acceptance stating his willingness to purchase the three Victorian style beds at £5000 each. This acceptance letter also includes the letter from Black Halls Ltd, the guarantor for White Halls Ltd which states “ It is our policy to ensure that our subsidiary, White Halls Ltd remains solvent at all times.” This letter of acceptance by the offeree was not transmitted properly and therefore was not received by Golden antiques. A case that relates to this situation will be the case of *Felthouse V Bindley* [1862]5 “ Felthouse tried file a case on the basis of breach of contract however Bindley had the case favoured to his side since it was stated that acceptance was not communicated thus a contract was never really formed”.

David posted his acceptance on the same day at 5pm even when he was aware of the fact that there was a postal strike on that day. David was well aware that the letter of acceptance would not reach the offeror, Golden antiques at the right time. Therefore, David must have opted for a better means of communication which would be reliable, effective and fast. The time frame being given in the counter offer shows the urgency and importance of communicating the acceptance as fast as possible. But posting the letter is considered as being received according to the postal rule thereby leading to forming a legal binding contract. Postal rule apply where

the means of communicating the acceptance to the offer is post or telegram. Postal rule states that the acceptance is effective on the date and time at which the letter is posted and not when the letter of acceptance is received. The postal rule ignores the facts of the time taken to deliver the post and any other circumstances such as post being lost. The case that satisfies this will be case between Adams V Lindsell [1818]6 “ because to the wrong address the post by the Lindsell reached Adams by 5th of September. Adams replied back to Lindsell but the letter reached by 8th of October and the time limit was till 7th of October. The defendants argued that the time limit specified had been passed and they didn’t heard a reply hence the offer was already lapsed. However if Lindsell would have addressed the first letter correctly then the plaintiff’s could have managed to reply back in time. However the plaintiffs won the case since the postal rule was being applied”.

On the other hand, there are many exceptions to the postal rule. The postal rule does not apply if the method to communicate the acceptance has been specified by the offeror. White Halls Ltd and Golden antiques had initially started communicating through e-mails and ways a very reliable and fast way to communicate among the parties. Golden antiques showing the urgency and the given time frame show that they were expecting a response from White Halls Ltd through e-mail or a fax. This can be seen when Golden antiques said “ Please confirm by close of business today if interested” and can therefore be taken as an exception to the postal rule. The fax sent by White Halls Ltd was not clear and hence the acceptance was not communicated effectively. David from White Halls Ltd must have tried to send through a different fax machine or might try another time. David must

have e-mailed the acceptance letter to Golden antiques which was their initial way of communication. This could have been better than posting a letter of acceptance when he was assured about the delay which will be caused due to the postal strike. Therefore, the postal is not applicable in the case of White Halls Ltd and Golden Antiques. A similar case would be Entores Ltd V Miles far East Corporation [1955]7 “ In this case it shows that both the parties had instant communication method (that is telex in this case). Entores sued the M E C for breaching from the contract. The court stated that the negotiations were made by telex so instant communication was available. The defendants tried to argue with postal rule, however it was ruled that if acceptance was made on telex then the postal rule won't doesn't apply”.

Postal rule does not apply in the above detailed case and the acceptance was not communicated. There has been lapse of time and no contract was formed. Therefore the offeror, Golden Antiques is eligible to form a new contract with the third party and has no legal binding contract existing with the previous party.

Roger an accountant who has prepared the financial statements for Golden Antiques called up on Wednesday morning saying that he is interested in buying the Victorian style beds. In this situation, Roger is the offeror and Golden Antiques is the offeree. Roger has provided the service of preparing the financial statements are half the cost he usually charges. This is an example of past consideration and a past consideration has no value in the future. There can be no consideration given for an activity performed in the past. It's the parties own will to charge for an activity to be performed and

form a contract for which he will get a return from the other party which are agreed upon by the parties. A relevant case here would be the case of *Re McArdle* [1951]8 “ the agreement to pay the money was not enforceable as a contract as the work had been completed and the consideration was wholly passed”. The offer made by Roger is valid since there has been no contract between Golden Antiques and White Halls Ltd.

To accept this offer, Golden Antiques sends a letter of revocation of the offer on Wednesday to David of White Halls Ltd saying that the Victorian style beds are no longer for sale. A revocation is the termination of an offer. Once a revocation has been communicated, the acceptance of an offer will be ignored and is no longer possible. Revocation is an exception to the postal rule and is considered only when revocation is received by the other party. In a situation where offer and revocation was made on the same day, the decision will depend on whether the offer or the revocation was received first. This will be further explained by the case of *Byrne & Co V Leon Van Tienhoven* [1880]? “ Tienhoven tried to withdraw the offer, they posted the letter by 8th of October which was received by Byrne & Co by the 20th of October. It was ruled that the offer couldn’t be withdrawn since the acceptance was already into existence due to the postal rule”. In this case the time gap between the revocation and offer being received is very small and is therefore harder to judge whether revocation is effective or not. Golden Antiques received the acceptance letter by post at 3: 45pm on Thursday and the fax on revocation is received until 4: 00pm. In my opinion revocation should be effective since the posting of the letter is not considered as a means to communicate acceptance in this case.

Advise on the parties legal position:

There are three parties in this case which are Golden Antiques, White Halls Ltd and Roger. The above detailed case shows that there is more evidence in the favour of Golden Antiques than that of David. Golden Antiques have obeyed the terms of forming a contract and on the part of revocation. They have made it clear on the terms of the contract and also have given the time frame in which the other party must respond and give in their acceptance.

The advertisement made by Golden Antiques is an invitation to treat. David the manager of White Halls Ltd makes an offer and negotiates the price of the Victorian style beds. But this is rejected by a counter offer made by Golden Antiques to David and specifies the time frame in which he must convey his acceptance. David tried to fax the acceptance letter but due to technical difficulties was unable to do so. He then posted the letter to convey the acceptance which he was well aware of not being able to make on time. This offer was not affective after Tuesday due to lapse of time. David must have used a better means to deliver the acceptance. He could have adopted the initial way of communication which was email.

Revocation letter was then sent by Golden Antiques to David of White Halls Ltd stating that the beds are no longer available for sale. According to the postal rule, the revocation has to be received before the acceptance was received. But in this scenario, the postal rule should be ignored since posting a letter was not an acceptable form of communication in a situation with a short time frame. Therefore David will not be able to take any legal action

against Golden Antiques. On the contrary, it will be considered as David's fault of not considering the terms of the contract.

Legal advice to the parties:

The three parties involved in this case are Golden antiques, White Halls Ltd and Roger – the accountant. From the given clear picture of the case above, it is quite comprehensible that The Golden Antique's side of the case was more convincing as compared to that of David. If the manager of white halls ltd, be likely to sue golden Antiques, they will not be accused for any claims. Golden antiques had made its company's intentions very clear from the very beginning, i. e. when they had first advertised their invitation to treat. David first makes an offer showing his interest towards the purchase of the Victorian style beds, which was immediately rejected by making a counter-offer by golden Antiques. In the offer it was very well stated that if acceptance not conveyed by Tuesday which in turn makes the postal rule irrelevant. When the acceptance sent by fax was not communicated due to transmission errors, David should have used some other means of communication which would have been equally fast and effective. As the acceptance was not communicated on time the offer has lapsed.

Golden antiques then sent a letter stating the revocation of the offer as they had now decided to sell the beds to Roger and are legally contracted with White Halls. Even though the Revocation of the offer was received or conveyed after the receipt of the acceptance letter from David, this will be regarded as David's fault for not complying with the terms of the offer.

Therefore, it is not advisable to take any legal actions against Golden Antiques because the judge verdict will be on the favour of Golden Antiques.

TABLE OF CASES

1. Partridge v crittenden {1968} 1 WLR 1204,{1968}2 ALL ER 421, (1968)112 SJ 582
2. Stevenson, jacques & Co v Mclean {1880} 5 QBD 346
3. Hyde v Wrench (1840) 3 Beav 334
4. Tin V Hoffman (1873)
5. Felthouse v Bindley (1862) 11 CBNS 869
6. Adams v Lindsell (1818)1 B & Ald 681, {1818} 106 ER 260
7. Entores Ltd v Miles Far East Corporation {1955} 2 QB 327,{1955} 3 WLR 48,{1955} 2 All ER 493, CA
8. McArdle, Re {1951} Ch 669,{1951} 1 All ER 905, (1951) 95 SJ 651, CA
9. Byrne & Co v Van Tienhoven & Co (1880) 5 CPD 344

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