

Contract Law

A contract is a legally binding agreement between two or more parties and contract law sets out the framework and legal obligations for these promises (Mottershead and Grant, 2009, p.366). In order for a contract to exist, there has to be an offer from one party and an acceptance of that offer from another party (Scott, 1955, p. 148). In common law, a contract requires three necessary elements to have legal effect and these are: an agreement (offer and acceptance), consideration, and an intention to create legal relations; If any one of these elements are missing then a contract will not be enforceable as stated by Leonard (2019). To establish whether Kate and Jack have formed a contract (prior to Kate arriving at the event), it is vital to analyse the common rules of offer and acceptance (agreement) and this will involve assessing the interaction with an objective approach as the courts can not read the two parties' minds (Quinn, 2019, p. 3).

The first essential element of a valid contract is an agreement, which is divided into offer and acceptance and there can be no enforceable contract unless the parties have come to an agreement (Jaffey, 1975, p. 604). An offer may be expressed orally, in writing or by conduct ; Importantly, an offer is an expression of willingness to enter a contract on specified terms with the purpose or intention that it will become binding once accepted by the offeree (the person receiving the offer) (Advocates For International Developments, 2016). Differing from offers, an invitation to treat occurs in the starting stage of a transaction which one party invites the other to make an offer or to enter into negotiation as illustrated in '*Gibson v Manchester City Council*' (1979); In this case, the court held that the defendant had only entered into negotiation (after

sending a price for the purchase of a home) and did not make an offer to the claimant (which would have formed a contract if he accepted). Moreover, as a general rule, advertisements are an invitation to treat rather than offers because they are opportunities to generate interest and they are usually not open to instant acceptance unless it requires a performance by the offeree (Andrews, 2012, p. 36). The letter Jake sent out to local musicians was an attempt to generate interest from artists who are willing to perform, but not necessarily on the specified term (£500 per gig), because he states that he is 'willing to negotiate', which gives the offerees a chance to make an offer that Jake can then choose to accept or reject (Andrews, 2012, p. 36). Furthermore, Jack's letter is comparable to goods on display at a shop as these goods are generally regarded as an invitation to treat since they are not open to immediate acceptance (thus they can be negotiable) as illustrated by the courts in *'Fisher v Bell'* (1960).

Nevertheless, it appears that offers could be made to a group of people, the general public, and even the world at large as clearly demonstrated in the case of *'Carlill v Carbolic Smoke Ball Co'* (1892). The court of appeal in *'Carlill v Carbolic Smoke Ball Co'* (1892) concluded that offers made to the general public (in this case "the world at large") are accepted when a member of the public acts upon it; These types of offers are commonly known as a unilateral contract because only one party assumes an obligation under the contract and more importantly, they are not negotiable (Quinn, 2019, p. 6). Conversely, where two parties assume an obligation under a contract, it is usually referred to as a bilateral contract; In the context of Jack's advertisement, he is looking to form a bilateral contract on the grounds that his statement can not be accepted without his consent (Quinn, 2019, p. 7). Similarly, the case of *'Partridge v*

Crittenden' (1968) shows that an advertisement specifying goods or services at certain price is a mere invitation to treat as oppose to an offer; the court expressed that if advertisements were consistently treated as offers, it would lead to assumptions that sellers have unlimited supplies of the goods or services which could be provided for anyone who sees their adverts. It should be noted that the crucial difference between an invitation to treat and an offer is that: "An acceptance of an invitation of treat does not create a contract, and acceptance of an offer does. Acceptance of an invitation to treat is in fact an offer" (Quinn, 2019, p.5). Consequently, Kate's reply to Jake's letter will certainly constitute as an acceptance of an invitation to treat thus making an offer to Jack to perform at the event for £500, which will then require an acceptance from Jake in order to fulfill mutual obligations (Bilateral contract) (McDermott and McDermott, 2001, p. 4). Of course, the general rule of acceptance must be considered in order to decide whether Kate's offer has been accepted; The rules suggest that to finalise an offer to enter into a bilateral contract, an acceptance must be communicated to the offeror (Wilkinson-Ryan and Hoffman, 2015, p. 1285).

In addition, acceptance must correspond entirely with the terms of the offer (Mirror image rule), and it also must be final together with unconditional (Pannebakker, 2013, p. 134). Moreover, the former principle is important (and should be established first) because without it, for example, Kate could potentially enter a binding contract she did not anticipate if Jake decides to accept the offer but fails to communicate this to her effectively (Quinn, 2019, p. 21). In the case of *'Entores Ltd v Miles Far East Corp'* (1955), Lord Denning explained that if one party offers to enter into a contract with another party, the latter's reply (acceptance) must be heard or reach the offeror

effectively; In addition, Lord Denning prescribed two types of communication of acceptance which are non-instantaneous (applies to the post) and instantaneous communication (applies to everything else). Furthermore, offers that are accepted through instantaneous communication such as email or telephone, will usually take effect at the time and place of receipt (Advocates For International Developments, 2016) whereas acceptance through non-instantaneous communication such as post will take effect once it is posted. Importantly, an offeror who wishes to withdraw their offer may do so as long as the offer has not been accepted and that the withdrawal is also communicated to the offeree effectively as seen in the case of *'Byrne & Co v Leon Van Tienhoven'* (1880); In this case, the offeror was late in his attempt to communicate the withdrawal of his offer by telegram after the offeree had already sent an acceptance letter for the offer (withdrawal had not been communicated prior to acceptance). Although acceptance of an offer is commonly made orally, in writing or by conduct (for example delivering goods as a response to an offer to buy), an offeror could prescribe a method of acceptance for their offer (Harvard Law Review, 1920, p. 595). However, where an offeror only intends to be bound by acceptance communicated in a particular way, they will have to notify the offeree of this or else they will be bound by any acceptance communicated in a different way as demonstrated by the case of *'Manchester v Diocesan Council of Education v Commercial and General Investments Ltd'* (1969). In the context of Kate's offer, if she had informed Jake that communication is not required to accept her offer, then it would be reasonable for her to show up at the event in spite of not receiving a letter back from Jake (Harvard Law Review, 1920, p. 596). However, according to the case of *'Felthouse v Bindley'* (1862), an offeror cannot

specify that the offeree's silence will amount to an acceptance unless, as seen in *'Re Selectmove Ltd'* (1993), the offeree suggest that their silence is sufficient for an acceptance. Therefore, since Jake has not suggested silence as sufficient for acceptance (to any offers) in his advertisement, Kate cannot infer that her offer has been accepted which means that the two have not formed a contract (Harvard Law Review, 1920, p. 596).

Next, as mentioned before, advertisements are generally regarded as an invitation to treat; acceptance of an invitation to treat creates an offer which requires further acceptance by the offeree (Lawble, 2013). When offers are made, they will not continue indefinitely (they come to an end at some point) and the common law provides that offers may cease to exist in the following circumstances: Revocation from the offeror (lawful anytime up until acceptance); After a reasonable length of time (known as lapse); or when it has been rejected by the offeree (usually through a counter-offer) (Quinn, 2019, p. 9). The legal terms for revocation of an offer was set in the case of *'Payne v Cave'* (1789) where it was established that an offer may generally be revoked any time before acceptance. Moreover, depending on the subject of the matter, offers may lapse if they have been open for a reasonable length of time as seen in the *'Ramsgate Victoria Hotel Ltd v Montefiore'* (1866) where it was held that the offeree's (claimant) acceptance to sell shares to the offeror was long-overdue (5 months late) as shares are a commodity that last only seconds on the stock market. Offers made by one party could certainly come to an end after it has been rejected by another, but an offer could equally cease to exist where an offeree makes a conditional offer or a counter-offer (Corbin, 1917, p. 197). For instance, in the context of Logan's response to

Jake's advertisement, he has rejected the initial offer (made as a result of accepting the invitation to treat) by placing his own offer to perform at the student union for £750, which cancels the original offer (£500 per gig) (Corbin, 1917, p. 198).