

OFFER

(Stage 1 of the formation of a Contract)

Introduction

Formation of the agreement/contract is dependant on the will of the parties involved, always remember parties can form it in any way they want, within the core principles as laid down by English Courts. Remember the contract law is made by the decisions of the courts, so always read and try to remember the case law and principles laid down by it.

Offer Definition

Trietel defined offer as ; "an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed", the "offeree"¹.

Important Case Law

Carlil v Carbolic Smoke Ball Company

This case is very important and laid the foundation of the contract law. Offer can be understand from this case law. According to the facts Carbolic offered in the newspaper that they will pay 100 GBP to any one who proved that their product have not prevented flu, after its use. As per good faith they deposited 100 GBP in Bank as well. Mrs Carlil used it and cached flu. Mrs Carlil's husband was a Solicitor in London. He notified the Carbolic Company and the said company asked Mrs Carlil to come to their office and use it. The product again failed. Matter went to court. The Plaintiff (Carlil) argued that the product failed on them and they are liable to get 100 GBP. The Carbolic (Defendant) argued that it was not a serious offer but a 'mere puff'. The Court held that the offer was binding in law as Defendant has attached a condition with it. Whoever fulfill that condition would qualify for reward. As Mrs. Carlil fulfill the condition by catching flu. Court further elaborated that the defendant gas also deposited 100 GBP in account which shows their seriousness.

¹ G.H. Treitel, *The Law of Contract*, 10th edn, p.8.

Unilateral Contracts

Carbolic case also refer the Unilateral contracts, Unilateral contracts are those which associated with a condition. For example someone offer to sale a car to highest bidder, now the offer is of highest bid, and if you give highest bid the car will be yours.

The Legally Binding Offer

That to understand the legally binding offer, it must be understood that it will be such an offer which is binding to obey by the person to whom it is addressed. Person can be public at large. You need to understand it by the help of case laws and your answer in exam would not be complete if you do not refer case law. Lets examine the following case law ;

If an auction is advertised with condition of highest bidder to be the succeder than it would be an binding offer as laid down in the case of **Barry Vs, Davies**², in this case highest bid is the condition of acceptance of offer.

But if auction is only advertised than it is only an invitation for general public to come and bid, that means the seller wants the public to come and give an offer. It is termed as Invitation to treat which you will be learning in following paras, the case you need to quote here is **Payne Vs Case**³, where auction was only advertised with no conditions.

A shop owner who is offering some goods on his shop (while displaying), is only causing invitation to treat **Payne Vs Case**⁴, the special offer on a product also does not make it a binding offer or offering for sale at a very low price also is not the same⁵ and will be consider as invitation to treat, as in the case of **Argos**⁶ in 1999 where they mistakenly put a TV on sale for 3 GBP, it was argued and established that the public has to give the offer on it, as the TV is on invitation to treat and Argos is at liberty to sell the product or give the acceptance of the offer to convert it into a legally binding contract or offer.

Therefore, it is need to be remember that the offer with some conditions of sale would amount to a legally binding offer, such as you must have seen in super stores buy one get one free offers, that includes both offer and invitation to treat, as buying a specific

² Barry Vs, Davies [2000] 1 WLR 1962

³ Payne V cave (1789) 3 TR 148

⁴ Supra 5.

⁵ See BBC website <http://news.bbc.co.uk/2/hi/business/441740.stm>, 8/09/1999 published at 12:10 GMT 13:10 UK, Business : The Econmy Argos Invitation to "Treat"

⁶ Ibid.

product would give you another product free, here the free product is on legally binding offer, and the product for which you are paying were on invitation to treat, you need to separate offer from invitation to treat, as free product is an offer to you, when you offer for the product advertised for the sale.

Invitation to treat

According to UK courts the concept focuses on the point that some offers are regarded as invitation to make an offer, here the case of **Fisher Vs. Bell**⁷ is an exact example to understand, as the shop keeper display some prohibited knife for sale in his shop, the Court held that it is an invitation to treat and the offer had been made by the purchaser who went into the shop, for buying the product, such as he must have said, "I want to buy this product", his this statement is an offer and the price attached with it is a sale consideration (Value, you will learn more about it in coming chapters), if the shop keeper accept his this statement/offer, that would be an agreement/contract and binding.

In another case of **Partridge Vs. Crittenden**⁸ it is been held that the advertisement in the News Paper will be considered as an invitation to treat as the person who wants to buy the product will make an offer. The law later on developed/endorsed in case of **Pharmaceutical Society of Great Britain Vs. Boots Cash Chemist (Southern) Ltd.**⁹, wherein it has been held that a display in the shelves of a self-service shop is an invitation to treat, with an offer made by the purchaser at the checkout and being accepted by the shop assistant ; makes a contract.

Communication of Offer

Communicating the offer properly to the 'knowledge' of the offeree, all what you have to remember in it.

It is based on common presumption that the offer must be communicated and get into the knowledge of the person(s) to whom it is addressed. If offer is not communicated properly it will not be binding, even if it is been accepted by the offeree, as minds should be met (meeting of the minds) before any agreement and there is no contract without knowledge.

You will read relevant case law in coming chapter of acceptance.

⁷ [1961] 1 QB 394

⁸ s[[1968] 1 WLR 1204

⁹ [1953] 1 QB 401

Latest Cases/Judgments of English Courts on the concept ;

1.Allama Construction Ltd Vs Bonner [2010] UKEAT006_09_1205(12 May 2010)

Facts

The Employer agent during case litigation in Employment Tribunal offer the Employee/Claimant to settle the litigation in 1000 GBP. But subsequently denied to pay and pronounce the offer as Invitation to treat.

Legal Principle

The Appellate Tribunal held that it was not invitation to treat as the Employer has completed the communication and the claimant solicitor has accepted the offer. As there was specific quoted money involve than we cannot say it as an Invitation to treat as the Employer intention to finish the litigation by giving some money to the claimant, which was legally binding offer, as what happen in Carbolic case.

2. Interfact Limited and Pabo Limited Vs. Liverpool City Council [2005] EWHC 995 (Admin)

Facts

The two companies in separates trail and cases, are licensed adult video shops, they supplied adult videos to the customer on the telephone/e-mail without verifying the age, which was illegal. The order was place by the Respondent department of Trading Standard Dept., after going through there catalogue, where it is written that the customer can place the order via electronic communication. The Interfact and Pabo contended that it was an invitation to treat and they were not offering it to sell or supply.

Legal Principle

The High Court held that as the order has been placed and supplied, therefore, the contract has been executed, and the Interfact and Pabo committed offence by supplying through illegal mode.

In my opinion the concept of Invitation of Treat will still apply but the offence committed has also to be satisfied in its own capacity. In this case the issue has also been argued whether the concept Invitation to treat applied in the criminal acts/offence, in my opinion the Inerfact and Pabo act was of contract, as of selling the product, but to without verification of age is matter of criminal law, therefore both has its application and consequences. As if it is proved that the companies have not offered them to sell but they have supplied it which is against the law.

The detailed reading of this case is also important to understand the contract law and its absorption in other laws like criminal law, this is because the contract law is foundation of many branches of law.

3. **Fahim Anar and Others v Dresdner Kleinwort Ltd & Anor [2010] EWHC 1249 (QB) (28 May 2010)**

Facts

The Defendants announced to pay the bonuses to the claimants in a seminar and also forward letters in this regard. But subsequently did not comply with the announcement.

Legal Principle

The superior Court held that it was legally binding offer made by the Defendant and are liable to pay it.

4. **University of Plymouth v European Language Center Ltd [2009] EWCA Civ 784 (24 June 2009)**

Facts

The appellant employee through e-mail offer to provide facility of 200 beds/rooms to the students, through which it is presumed by the respondent that the said appellant is willing to renew its yearly contract for providing language teaching facility on its campus.

Legal principle

Court held that mere e-mail does not render a binding offer and a contract.

5. **Amalgamated Metal Corporation Plc v Wragge & Co (A Firm) & Anor [2011] EWHC 887**

Legal Principle

The offer can also be subject to contract.

Key Points To Remember

1. Offer is "an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed".
2. Offer with a condition would be binding if the said condition is fulfilled by the offeree.
3. Carlill v Carbolic Smoke Ball company case
4. Legally Binding Offers are those offer which are ; if accepted would be binding. Such as Carlill case/ Offer with conditions e.g Highest bid to be accepted.
5. Products placed in stores are invitation to treat not offers. And such Adds which invite you to offer also invitation to treat and not offers.
6. Offer must be made to the knowledge of the offeree. Full Communication.

By this stage you must Understand ;

What is an offer

Self Assessment Question ;

How offer differ from Invitation to treat. Why court regarded Carbolic Company offer serious.



www.b-c-p-s.com

0208 – 1331422 or info@b-c-p-s.com