

Legal Environment

Contract 2 Offers – Part 1



Learning Objectives

- Quick Review
- Making a Contract
- What is an Offer?
- What is not an Offer?
- Shopping Online

Quick Review

- A contract is a **legally binding agreement**
- That means there must be some kind of agreement between two parties which a court will view as a valid contract

Making a contract

- Now that we know that a contract is a legally binding agreement, we need to know how to create such an agreement
- For a contract to exist, we must show that an **offer** was made by one party which was **accepted** by another party
- And that legal relations were intended (ie the parties intended to make a contract)

Definition of Offer

- The person making the offer is the **offeror**
- The person who accepts the offer is the **offeree**
- An offer is a promise by the offeror to be bound in a contract on particular terms if there is a proper acceptance of the offer by the offeree

Simple Example 1

- John says to Jim, “I will sell you this book for £10”.
- Jim says, “I agree”.
- We have an offer and an acceptance
- John is the offeror
- Jim is the offeree

Simple Example 2

- Jane says to Betty, “I will give you £20 for your watch”.
- Betty says, “OK”.
- Again, we have an offer and an acceptance
- Jane is the offeror
- Betty is the offeree

Identifying an Offer

- In the two examples, it is very clear that the statements are offers
- However, in real life, the situation is often more complicated
- It may be necessary to examine the statement and the circumstances in which it was made to see if it is an offer or some other kind of statement which is not an offer

Identifying an Offer (cont.)

The following types of statement are **not** offers:

- statement of intention
- supply of information
- invitation to treat

Statement of Intention

- If a person is simply stating their intention, then this is not an offer because they may change their mind in the future
- They are not offering to be bound by a contract

Statement of Intention (cont.)

- For example, a man married a woman because her father told him that she would get all her father's money when he died.
- The court decided this was not an offer.
- It was just a statement of the father's intention at that time
- It was possible that he could change his mind later

Supply of Information

- If you simply supply information, this is not an offer
- For example, you own a BMW car.
- Someone asks you how much you would be prepared to sell it for.
- You say, “I’d want at least £25,000 for it”
- This is **not** an offer by you
- You are simply informing the person of how much you would expect to get if you sold the car

Invitation to Treat

- This is an invitation to others to make offers
- In other words, you are asking other people to make an offer to you
- The previous example of the BMW is an invitation to treat
- When you say, “I’d want at least £25,000 for it”, you are inviting the person to make an offer to buy the car for £25,000 or more

Invitation to Treat (cont.)

Some common examples of invitations to treat

- goods displayed in a shop window
- goods displayed on the shelf of a self-service shop
- a public advertisement
- a share prospectus

Goods displayed in a shop window 1

- If you see goods displayed in the window of a shop, this is not an offer to sell them to you
- It is an invitation for you to enter the shop and make an offer to buy them

Goods displayed in a shop window 2

- For example, you see a camera in the window of a shop with a price tag on it which says £200
- This is **not** an offer by the shop to sell you the camera for £200
- It is an invitation by the shop to you
- They are inviting you to enter the shop and offer to purchase the camera for £200

Goods displayed in a shop window 3

- This may seem like a very small difference. However, it is important
- Because it is you who makes the offer, the shop can refuse to sell you the camera
- Or they may say, “I’m sorry: the price is actually £300”.
- The shop could not do that if displaying the good in the window was making an offer

Self-service shops

- Many shops (like supermarkets) display their goods on shelves and you choose what you want to buy and take those goods to the cash desk
- Again, displaying goods like this is an invitation to treat, it is not an offer
- You make the offer when you take the goods to the cash desk

Self-service shops (cont.)

- The reason for this is that if displaying the goods on the shelves was an offer, then when you picked something up you would be accepting that offer
- You could not change your mind and put the goods back because a contract would have been made and the shop could make you buy them
- Obviously, this would be a ridiculous situation

A public advertisement

- Again, this is an invitation to treat and not an offer
- If you advertise your BMW for sale in your local newspaper at offers over £25,000, you are inviting people to make offers to you
- You are not making an offer

A public advertisement (cont.)

- However, sometimes an advert can be an offer
- Remember Carlill v. Carbolic Smoke Ball Company?
- The court decided this was an offer because it stated exactly how the medicine should be used and how much would be paid if the medicine failed to work

A public advertisement (cont.)

- Also, no one could negotiate with the company on the terms
- Usually with an advert you would expect some negotiation on price
- Eg: the sale of your BMW at **offers over £25,000**

Share Prospectus

- This is not an offer
- It is an invitation to buy shares in a company

Shopping Online

- It is now possible to buy many things online using the Internet
- There is no special law for online contracts
- However, there have not yet been any court actions to test how the ordinary law of contract applies to online shopping
- But there have been a couple of interesting situations

Argos

- Argos is a UK company which sells goods at a discount
- They also have a web site where you can purchase products (www.argos.co.uk)
- In September 1999, Argos advertised a Sony TV on their web site at a price of £2.99
- However, the price should have been £299

Argos (cont.)

- Many people spotted this and ordered a TV online
- According to the law of contract, the details online were not an offer but an invitation to treat
- So Argos could have refused to sell for £2.99

Argos (cont.)

- However, when people placed their orders online (ie they made an offer) they received an automatic email from Argos confirming the sale
- This would be an acceptance of the offer and a contract would have been created
- Argos actually refused to honour any of the sales
- It was not clear from Argos online terms and conditions when a contract would be created

Argos (cont.)

- Unfortunately, due to the costs involved none of the purchasers took the matter to court
- So we have no guidance on online contracts

Argos Part 2

- Argos made a similar mistake at the end of August 2005
- Their web site showed televisions for sale for only £0.49 !!
- However, this time Argos did not have a problem
- After their error in 1999, they changed their terms and conditions

Argos Part 2 (cont.)

- Their terms and conditions now state that a contract is not formed until the goods are sent out to the customer
- This gives them time to correct any errors
- As part of the ordering process, customers have to confirm that they have read and agree to these terms and conditions

Kodak

- In January 2002, Kodak offered a special deal on its web site (www.kodak.co.uk) for a camera plus accessories for only £100
- The correct price should have been £329
- Nearly 5000 people ordered this camera
- Just as with Argos, they received an automatic email confirming their purchase

Kodak (cont.)

- At first Kodak refused to honour these purchases
- However, they realised that their reputation could be seriously damaged, so eventually they agreed to honour the contracts

Online Shopping (cont.)

- These three examples should be a warning to businesses selling online
- Forming a contract online is not a difficult process, but businesses need to make sure that they have proper procedures and terms and conditions
- Standard terms which state exactly when the contract is formed, and how the supplier will deal with errors or malicious tampering must be included both in clear standard terms on the site itself, and also in any confirming email which is sent.

Online Shopping (cont.)

- Close attention should be paid to ensure that terms and conditions, and the confirming email are consistent in their wording and function.

Summary

- For a contract to exist, we must show that an **offer** was made by one party which was **accepted** by another party
- The person making the offer is the **offeror**
- The person who accepts the offer is the **offeree**
- An offer is a promise by the offeror to be bound in a contract on particular terms if there is a proper acceptance of the offer by the offeree

Summary (cont.)

- Some types of statement are **not** offers:
 - statement of intention
 - supply of information
 - invitation to treat

Summary (cont.)

- Businesses selling online using web sites should be careful that their ordering systems and terms and conditions do not put them in an awkward situation by appearing to accept offers and create contracts where they have made a mistake over price

Reading

- Chapter 5
 - page 111 section 5.2 first paragraph
 - page 112-3 section 5.2.1