
Basic Rules for Offer and Acceptance Applied in Determining the Validity of Contract

Introduction

The underlying key principles in the formation of a contract pertains to the enforcement of rights, duties and obligations between legal subjects. Communication plays a significant role as it determines the validity and establishment of contractual obligations or duties between parties. English law notably has followed the traditional doctrine for concluding a contract by providing that essential requirements to conclude a contract comprises of an offer and acceptance. In determining the validity of a contract, the English courts apply the objective test on whether a contract has been concluded. In the case of *Paal Wilson & Co. AIS Partenreederei Hannah Blumenther* an objective test was applied whereby the courts noted that an offer is valid if the other part had reasonably accepted the offer despite the fact that the offeror did not have the intentions of making offer to the offeree. This also is in accordance with what was stated in the *Smith v Hughes* case that the validity of a contract is not based on the mental state but rather on an act which is inferred from the conduct.

On the other hand, the Interpretation of the validity of a contract can be looked at from a Draft Common Frame Reference (DCFR) perspective which is a comprehensive academic text that is taken into account by both academics and the European courts. From the DCFR perspective as shall be discussed below, a contract is concluded in distinct different ways which includes but is not limited to oral and writing but also the conduct or acts of parties.

Discussion on English law requirements - Version 1

Regarding the Scenario in Version 1, the basic rules for offer and acceptance apply in determining the validity of contract concluded by electronic means. As a first step, one would advise Antonine that in terms of English law for an offer to valid it must be clear and certain, and it will be assessed on whether the wording or content used in the email is adequate to be considered as an offer that is capable of being accepted. In this analysis, it is logical to take note of the *Gibson v Manchester City Council* case whereby the wording "may be prepared to sell" does not amount to an offer. It is therefore plausible to note that the courts give more weight to the words used in determining whether they constitute to the formation of a valid contract and in the provided Scenario a contract was concluded between the parties.

The application of Gibson's principle to Version 1 scenario is in accordance with the essence of clear and certain terms in a contract. In addition, it is plausible to further argue that the mode of communication in conveying the contractual obligations between the parties should not be the area of focus rather this should be on the interpretation of the message on whether an offer was valid and was it capable of being accepted. This also corresponds to the cases of *Bigg v Boyd Gibbins Ltd* and *Harvey v Facey* whereby the courts noted that the evidence of the emails is sufficient to constitute a contract hence given the nature of the scenario in version 1 it leads to the conclusion of a contract between the parties.

In addition, in terms of English law for an offer to be valid it must be properly communicated to the offeree. English law recognizes the acts of both parties regardless of the intention of the offeree or offeror. This is provided for by the famous case of *Smith v Hughes*, from this case the essential requirements of a valid contract are not dependent on the mental state or intention of the parties rather this should be based on the conduct of the involved parties. With reference to Version 1, it can therefore be further argued that an agreement had been concluded on the consideration of obligations. This point of view is supported by the acknowledgement of emails and the conduct by Bartos' director which affirms the objective of the girder to be sold to Antonine. In the case of *Store v Manchester City Council*, it was noted that in order to determine the significant requirements of a contract, there should have been a communication or an expression of willingness of being bound on contractual terms by the offeror and this should have been unconditionally accepted by the offeree. From the facts provided in Version 1, a contract was concluded as the essential requirements of offer and acceptance were fulfilled, the offer made by Antonine was clear and without any uncertainties which led to Bartos' acceptance as acknowledging receipt of Antonine's offer in the email which included obligations.

Discussion on DCFR Requirements - Version 1

As per the DCFR requirements, one can further argue that a contract was concluded between Antonine and Bartos, this is withdrawn from the act of both parties to bring about the legal effect wherein from the exchange of the emails as there was no creation of hindrances. From the face of it as expressed in the given scenario the intention of both parties to be bound by a conclusive agreement is clearly provided for as evidenced by the definite terms in the price and number of the Girders to be provided by Bartos to Antonine.

Of more concern is the default of fulfilling the obligations by Bartos in contrast to the unambiguous wording in the exchange of emails between the parties. Intriguingly, Bartos' acceptance was expressed in the acknowledgment of email sent to Antonine without any parameters. Additionally, DCFR Art II: -4:206 provides also that time limit is an essential factor in determining the validity of acceptance. Thus, as there is no referral to time limit in the offer provided it can therefore be upheld that the acknowledgement of the offer by Bartos amounts to a conclusive contract.

It is paramount importance to further take note of the intention of both parties as provided for by Art II: -4:102 of the DCFR. Thus, in relation to the provisions of this Article, the intention of Bartos in entering into a binding agreement with Antonine is distinctive as further inferred from Bartos Director's conduct whereby he highlights the commencement of work by Bartos thereby bringing about the legal effect to the contract as reasonably understood by Andy, Antonine's director.

As regards to the effective requirements of the Contract, the DCFR provides the essential factors in determining the validity of a contract. In the provided scenario the terms of the contract have been expressly outlined in the emails as well as the obligations of the parties hence in light of the above discussion it can be noted that a contract was concluded between Bartos and Antonine.

Discussion on English law requirements - Version 2

Regarding Version 2 it can be provided that acceptance in terms of English law is not binding until it is communicated to the offeror as such it creates a legally binding contract. It is therefore imperative for both parties to agree on the methods which must be used for acceptance . One can also note that the English Common law makes no restriction to the use of electronic communication and considering the provided scenario in version 2, the general law pertaining to English law articulates that an offer may be revoked before its acceptance by the offeror at any time . The rule is further applied to the cases where the offeror made a promise to the offeree to keep the promise open. The rationale behind is that a valid contract entails both parties to have the same objectives in concluding a binding contract, therefore in this scenario a contract has not been concluded.

In the case of Dickinson v Dodds it was noted that “revocation may be effective without any formal notice to whom the offer was made” . This corresponds with the English law requirements that the offeror has the upper hand to revoke an offer irrespective of time limit for the offeree to accept the offer. This therefore leverages Carden’s right to revoke the contract despite the fact that Daube had accepted the offer without having read the email that was in the spam folder.

Notwithstanding the above, lack of consideration is a distinctive factor which allows revocation of an offer in English law. The absence of consideration disregards the obligation of the offeror to keep his offer open despite clearly giving a specific timeframe by which the offeror has to accept the offer . With regards to the provided facts of version 2, one can therefore note that Carden met the requirements of the revocation of the offer whereby he communicated his revocation of the offer to Daube. Additionally, the revocation of an offer is not invalidated if not communicated by the offeror rather the most significant element that should be considered by the offeree is the fact that the offeree lacks the intention to be bound to contract terms with the offeree . Hence in light of the given facts in the scenario no contract was concluded between the parties.

Discussion on DCFR Requirements - Version 2

The questions on the validity of a contract are essential as there are a number of ways by which a contract can be concluded. In this regard it is important to take into account the emphasis of the DCFR requirements. In terms of DCFR’s third paragraph of Article II. –4:202, revocation of an offer should be followed through before the acceptance of the offer by the offeree and the offeror should not have been aware of this acceptance. Additionally, revocation of an offer is valid in the cases where the offeree has become aware of the revocation before accepting the offer.

However with regards to the facts in Version 2, the accepted offer by Daube results in a binding contract even though Carden had intentionally revoked the offer, this is based on the fact that the offer clearly stated a fixed time for its acceptance which is not allowed under Article II.–4:202(3) (b) rendering it irrevocable.

It is apparent to further note that the contract came into existence as provided for under Article II.–4:202(3) (c) Daube reasonably relied on the offer in performing its contractual obligations and also taking into account that Carden’s email was sent without a subject ending up in the spam folder and any reasonable person in the position of Daube would not have anticipated the

revocation of the offer letter to be in the spam folder of emails. Therefore, in light of the DCFR requirements, a contract was concluded between Daube and Carden.

Conclusion

From the above discussion, it is imperative to conclude that the application of the DCFR principles and the English Common law stems from different backgrounds in determining whether a valid contract has been concluded between the parties. However, the application of Draft Common Frame Reference Principles on revoking an offer is far much more complicated than the English law. From the analysis, the English Law tend to be clearer in outlining the certainties of an offer and acceptance whereas the DCFR give the armor of protection to the advantaged contracting party hence making it more complicated.