Contract Law Report: Basic Principles Of Law

Contract law is about the enforcement of promises. Not all promises are legally binding. Courts look for the presence of certain elements which when present the agreement becomes a contract.

A contract begins with an offer. This is an expression of willingness to contract on specified terms, made with the intention that it'll be binding once accepted by the person to whom it is addressed. There must be an objective manifestation of intent by the offeror to be bound by the offer if accepted by the other party. Therefore, the offeror will be bound if his words or conduct are such as to induce a reasonable third-party observer to believe that he intends to be bound, even if in fact he has no such intention. An offer can be addressed to a single person, to a specified group of persons, or to the world at large. An example of the latter would Carlill vs Carbolic Smoke Ball Company (1892). An offer may be made expressly or by conduct.

This raises the point that there are documents that look like a contract that aren't legally binding. Such as an invitation to treat.

An invitation to treat is an indication of readiness to conduct business and invite the other party to make an offer or commence negotiations. A display of goods in a shop is commonly an invitation to treat as shown in Pharmaceutical Society vs Boots (1953).

Contracts are either bilateral or unilateral. A bilateral contract is an agreement between at least two people or groups. Most business and personal contracts are bilateral. In bilateral contracts, a party has promised a particular action to another party in response to that party's action. Whereas, unilateral contracts, involve an action done by one person or group alone. Unilateral contracts allow only one person to make a promise or agreement.

Acceptance is a last and definite expression of assent to the terms of an offer. Yet again, there must be an objective indicator, by the recipient of the offer, of an intention to be bound by its terms. An offer must be accepted in accordance with its terms to form an agreement. It can be accepted by conduct. Acceptance has no legal consequence until it is communicated to the offeror (because it could cause issues to the offeror to be bound without being aware that his offer had been accepted).

The exception to the rule is that a postal acceptance. It takes effect when the letter of acceptance is posted, even if the letter becomes lost or delayed. However, the postal rule doesn't apply if it is stated by the express terms of the offer.

An offer that requires acceptance to be communicated in a particular way can usually only be accepted in that way. If acceptance occurs through an immediate medium for instance email, it will become binding at the time and place of receipt. Note that an offeror cannot demand that the offeree's silence amounts to acceptance. When a party attempts to vary the terms of an offer this is not acceptance it is a counteroffer. Which the original offeror can either accept or reject. For example, where the offeror offers to trade on its standard terms and the offeree implies acceptance, but on its own standard terms, that represents a counteroffer. Making a

counteroffer amounts to a rejection of the original offer which cannot subsequently be restored or accepted (unless the parties agree).

An offer may be revoked at any time before its acceptance; however, the revocation must be communicated to the offeree shown in Byrne vs van Tienhoven (1880). Although revocation need not be communicated by the offeror personally (it can be done by a reliable third party), if it is not communicated, the revocation is ineffective. For a unilateral offer to be revoked it must be published to the public.

In common law, a promise is not binding as a contract without it being supported by consideration (or it is made as a deed). Consideration is an item of “value' which is given for a promise and is mandatory in order to make the promise enforceable as a contract. This is conventionally either a loss to the promisee and/or some benefit to the promisor. Consideration has to be sufficient but need not be adequate. Although a promise has no contractual force unless some value has been given for it, for example, Thomas vs Thomas (1842) the promise to pay £1 a year for rent was sufficient despite it not being adequate due to this being lower than usual rent prices. Courts do not, usually, question whether an adequate value has been given (in the sense of there being any monetary correspondence). This is because they do not generally interfere with the deal made. Another rule about the sufficiency of consideration is that the consideration must be given after the promise for it to be enforceable. A promise given when the alleged consideration has been finalized is unenforceable. In the case of Re McArdle, the plaintiff renovated a house his siblings had a beneficial interest in when he asked them to pay towards it which they agreed to do it was decided that the agreement wasn’t enforceable as the work was done before the promise. For the promise to be enforceable before consideration it must meet three criteria:

1. The act constituting the consideration was done at the promisee’s request.
2. The parties must have understood that the work was to be paid for in some way.
3. The promise would be legally enforceable had it been made prior to the act constituting consideration.

Consideration cannot be from the past. Furthermore, the promisee must give the consideration. While consideration must move from the promisee, it need not move to the promisor.

There are three different types of existing obligations which can be claimed to be consideration.

1. Obligations that rise under the law, independently of any contract.
2. Obligations which are due under a contract with a third party.
3. Obligations which exist under a contract with a person who has made a new promise, for which the existing obligation is alleged to provide good consideration.

An example of the first obligation is a member of the public paying a public official to carry out one of their duties. The promise of payment would be unenforceable as there is no consideration due to the public official is only doing their job.

In the second situation which concerns the performance or the promise to perform, an existing obligation owed under a contract with a third party. The courts take the view that this can provide good consideration for a new promise, for example, the promise to marry in Shadwell vs Shadwell (1860).

Finally, the third existing obligation, that owed under a contract with the party making the new promise, this arises from the promise being clear but unrealistic in certain situations, the contract becomes modified to the extent where it is uncertain. An example of this is Williams vs Roffey (1991) where Williams was still allowed to collect extra payments for work even though he does not do more than he was contracted to.