Rules Pertaining to a Unilateral Contract: Analysis of Offer and Acceptance

Introduction

A contract has been defined differently according to different authors. A contract, according to Mvunga and others, is an agreement between two or more parties that is intended to be legally binding[footnoteRef:1]. A contract, according to Monahan, is an agreement between two or more parties that the law will enforce[footnoteRef:2]. For there to be a legally binding contract, in most cases, one party should make an offer, and the other must accept to it[footnoteRef:3]. In other words, parties that are contracting must come up to an agreement, as stipulated by the Latin maxim consensus ad idem (meaning meeting of the mind). Eliot and Quin further state that when acceptance takes place, a contract will usually be binding on both the offeror and the offeree, and the rules of offer and acceptance are typically used to pinpoint when a series of negotiations has passed that point, in order to decide whether the parties are obliged to fulfil their promises[footnoteRef:4]. There cannot be a contract that has got half way negotiations. Such a contract cannot be binding. A contract can be expressed in two categories, these are bilateral and unilateral. A bilateral contract is one that involves two parties getting into an agreement (e.g. two companies) while a unilateral contract is one where one party offers a promise rather than an agreement. These will be explained in further details. In the course of doing so, I will explain and discuss the rules that apply to a unilateral contract. Justified precedents will be added to the assignment in order to buttress and justify it. [1:] [2: Monahan. G (2001), Essentials of Contract Law, Sydney: Cavendish Publishing Pty Limited] [3: Eliot, C. & Quin, F., (2009), Contract Law (7th edition), London: Pearson Longman, p.12] [4: Ibid p.12]

Rules Pertaining to a Unilateral Contract

Before explaining what the rules of a unilateral contract are, it is best to explain what it is and differentiate it from what a bilateral contract.

Bilateral Contracts

The Black's Law dictionary has defined bilateral contract as a contract in which each party promises a performance, so that each party is an obligor on that party's own promise and an obligee on the other's promise; a contract in which the parties obligated themselves reciprocally, so that the obligation of one party is correlative to the obligation of the other[footnoteRef:5]. This is a type of contract that involves each party taking on an obligation, usually by promising the other something[footnoteRef:6]. The typical example of the bilateral contract is where X promises to sell some goods to Y in return for Y promising to pay the buying price. In such an occasion, the contract can be held to be bilateral. This is simply because as soon as these promises have been exchanged there is a contract to which both parties are bound. This type of contract is commonly used, by a vast number of people (this includes companies). Even though contracts that include mutual obligations are always called bilateral, there may in fact be more than two parties to such a contract.[footnoteRef:7] [5: Garner, B (1990), The Black's Law Dictionary (9th Edition). Texas: Thompson West P.342] [6: Eliot, C. &

Quin, F., (2009), Contract Law (7th edition), London: Pearson Longman, p.12] [7: Ibid p.12]

Unilateral Contracts

The word Unilateral simply means involving one side. Basically, a unilateral contract, also known as a one sided contract, is a type of contract where one party, the offeror, makes a promise in exchange for an act or services by the offeree. The Black's Law dictionary has defined it as a contract in which only one party makes a promise or undertakes a performance; a contract in which no promisor receives promise as consideration for the promise given[footnoteRef:8]. When the offeree does an act that was promised to them by the offeror, the latter is, by law, obligated to carry through the contract. For example, the court, in the case of Great Northern Railway Co v Witham (1873) suggested, to pay someone £100 to walk from London to York, makes a situation like this a unilateral contracts because only one party has assumed an obligation[footnoteRef:9]. However, the offeree cannot, under any circumstance, be forced to act. This simply because no consideration that has been made; there is only one promise that was made by the offeror. For instance in a situation where A tells B to paint A's house in that B will be given a sum of k2000. B makes no commitment but says that he is not sure if he will able to do it but will be happy to get the k2000 if he finishes. Such a situation is unilateral. This is simply because A has committed himself to pay the K200 in a certain situation but B has not done so. He is definitely free to decide whether he wants to paint A's house or not. A cannot do anything. However, if B decides to paint the house, it will be considered as an acceptance to the k2000 offer that has been given by A. This, therefore forms a contract. [8: Garner, B (1990), The Black's Law Dictionary (9th Edition). Texas: Thompson West P.349] [9: Eliot, C. & Quin, F., (2009), Contract Law (7th edition), London: Pearson Longman, p.]

Stone has stated that it is for this reason, it being one sided, that this type of contract is referred to as unilateral[footnoteRef:10]. He further states that they can also be described as 'if contracts', this is simply because it is always possible to formulate the offer as a statement beginning with the word if[footnoteRef:11]. For instance, if you paint my house, I will give you k2000. This was seen in the case of Carlil v Carbolic Smoke Balls[footnoteRef:12] where the plaintiff, Carlil, saw a newspaper advertisement placed by the defendant, Carbolic smoke balls, claiming that their 'smoke ball' would cure all sorts of illnesses including influenza. More importantly, the advertisement also stated that the defendants offered to pay £100 to any person who used one of their smoke balls and then succumbed to influenza within a specified time. The plaintiff purchased their smoke ball and subsequently came down with a nasty bout of the 'flu. She sued the defendant for the £100. The defendants argued, inter alia, that an offer must be made bilaterally, that is, an offer cannot be made to the entire world. However, the court disagreed and held that an offer can be made unilaterally (that is, an offer can be made to the entire world). [10: Stone, R. (2002), The Modern Law of Contracts (5th edition), London: Cavendish Publishing Limited, p.34] [11: Ibid,p.34] [12: [1893] 1 Q.B. 256]

This was also seen in the case of Lefkowitz v Great Minneapolis Surplus Store Incorporation[footnoteRef:13] where the defendants, Great Minneapolis Surplus Store Inc, placed an advertisement in the newspaper for the sale of fur, which said that it would be sold on the basis of 'first come first served'. The claimant, Lefkowitz was the first to respond to the advertisement, however, the defendant refused to sell it to her on the basis that it was a 'house rule' only to sell to female customers. The claimant brought a claim for breach of contract, claiming that the defendant was bound by its 'first come first served' promise. The question at

hand in this case was whether the advertisement constituted an offer of sale or merely an invitation to treat (in which case there was no contract).The courts allowed the claim. It was held that a binding obligation on the defendant arose from the specific language of the advertisement. The test applied to distinguish an offer from an invitation to treat was that of mutuality of obligation: whether, on the facts of the case, a performance had been promised in return for a performance which was requested. In this case, the advertisement was an offer that the defendant would transfer the goods to the first person to respond, and as such, its terms could not be changed once it had been accepted and the contract was formed without the agreement of the other party. The defendant therefore did not have the right to impose new conditions which were not contained in the published offer after acceptance. A contract was formed unilaterally. [13: (1957) 86 NW 2d 689]

There must be some certain rules, for there to be a legally binding contract in the unilateral sense. These rules are:

There must be a Unilateral Offer

For someone to prove an action in contract. They must prove that there was an offer that was made during a transaction. If not, then an action for breach of contractual obligation cannot succeed. If A asks B to paint his house, that A would give B a k2000 for the completion of the job, would constitute an offer. An offer, according to Stone, is an indication by one person that he or she is prepared to contract with one or more others, on certain terms, which are fixed, or capable of being fixed, at the time the offer is made[footnoteRef:14]. In the case of Storer v Manchester City Council[footnoteRef:15], an was offer defined as an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed. Basically, an offer is an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted by the offeree[footnoteRef:16]. Stone has stated that an offer can be made by words, conduct or a mixture of the two. An offer maybe addressed either to an individual, or to a group of persons, or to the world at large; and it may be made expressly or by conduct[footnoteRef:17]. In the case of Hart v Mills,[footnoteRef:18] it was stated that a person, at common law, who has contracted to sell goods and tendered different goods might be considered to make an offer by conduct to sell the goods which he had tendered. Thus, unilateral offers are where the offeror promises to pay for the act by the offeree. Unlike a bilateral offer, a unilateral offer is one that can be given to a multitude of people, as was the case in Carlil v Carbolic Smoke Balls Co Ltd. If a court can prove contractual intent on a party, an advertisement can be considered to be an offer[footnoteRef:19]. For example advertisements of rewards for the return of lost or stolen property, or for information leading to the arrest or conviction of the perpetrator of a crime, can be regarded to be offers, which are, therefore, unilateral[footnoteRef:20]. Catherine and Quin have stated that advertisements can be treated on the basis that a contract can normally be accepted without any need for further negotiations between the parties, and the person making the advertisement intends to be bound by it[footnoteRef:21]. For instance, in the case of Bowerman v Association of British Travel Agents Ltd[footnoteRef:22] where a package had been booked with tour operator who was a member of the defendant association (ABTA). A notice displayed on the tour operator's premises stated, among others, that in the event of financial failure of an ABTA member before commencement of the holiday, "ABTA arranges for you to be reimbursed the money you have paid for your holiday". It was held that these words constituted an offer from ABTA since they

would reasonably be regarded as a member of the public booking a holiday with an ABTA member. An offer can be made to the whole world, but the contract is limited to portion of the public who come forward and perform the condition of the offer stated. Bowen LJ in the case of Carlil v Carbolic Smoke Bomb Co Ltd has stated: [14: Stone, R. (2002), The Modern Law of Contracts (5th edition), London: Cavendish Publishing Limited, p.25] [15: [1974] 1 W. L. R 1403] [16: Mvunga, P.,& Malila, M. & Ng'ambi, (nil), Mvunga, Malila and Ng'ambi on Contracts,] [17: Treitel, G.H, (2003), The Law of Contract (11th edition), London: Sweet and Maxwell, p.9] [18: [1846] 15 L.J.Ex. 200] [19: Murray, R, (2011), Contract Law the Fundamentals (2nd edition), London: Sweet and Maxwell, p.29] [20: Treitel, G.H, (2003), The Law of Contract (11th edition), London: Sweet and Maxwell, p.13] [21: Eliot, C. & Quin, F., (2009), Contract Law (7th edition), London: Pearson Longman, pp. 14-15] [22: [1995] N.L.J. 1815.]

…It is an offer made to all the world; and why should not an offer be made to all the world which is ripen into a contract with anybody who comes forward and performs the condition?...Although the offer is made to the world, the contract is made with that limited portion of public who come forward and perform the condition on the faith of the advertisement[footnoteRef:23]. [23: Carlil v Carbolic Smoke Bomb Co Ltd[1893] 1 Q.B. 256]

There must be acceptance to the unilateral offer

The acceptance of an offer is the second part of determining whether an agreement between the parties that are contracting. An acceptance, according to Garner, is an offeree's assent, either by act or implication from conduct, to the terms of an offer in a manner authorised or requested by the offeror, so that a binding contract is formed[footnoteRef:24]. This simply means that acceptance is made through the performance of the act that has been stipulated in the offer. This, therefore, means that; looking at the previous example, for there to be an acceptance, B is supposed to paint the house that has been stated in A's offer. However, the offer and acceptance must match. Murray has stated that the law requires that for the offer and acceptance to be matched, they should be mirror images of each other. If a legally recognisable offer has been made then in order for this to develop into an agreement, there is need to be an unequivocal acceptance of that offer[footnoteRef:25]. However, a party is not obligated to accept an offer that is given by an offeror. The general rule is that acceptance must be communicated to the offeror. However, there is an exception to this rule, regarding a unilateral contract. Carrying out the stipulated task is enough to constitute acceptance of the offer. For example in the case of Errington v Errington[footnoteRef:26] where a father told his son and daughter that he would give them the family house if they would manage to pay for its mortgage. While paying for the mortgage, the father died and the representatives of his estate sought to revoke the father's offer. The court of appeal held that an offer, at this point, could not be revoked because the parties had embarked upon performance of the stipulated act, which meant that there was acceptance from the children. In the case of Carlil, acceptance comes in when the plaintiff uses the smoke balls and still gets influenza. [24: Garner, B (1990), The Black's Law Dictionary (9th Edition). Texas: Thompson West,p.12] [25: ibid] [26: [1952] 1 K.B290]

There must be consideration

This is a very important aspect in the equation of forming a unilateral contract, as it makes it legally enforceable. Consideration, as explained in the case of Currie v Misa[footnoteRef:27], in

the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other." In this case, it was also held that for there to be a legal contract, there must be some consideration that must be in the form of a benefit gained or detriment suffered arrangement by the parties. This rule is focussed on the theory of reciprocity: "something of value in the eyes of the law" must be given for a promise in order to make it enforceable as a contract. This simply means that there must be something of value that both parties must offer. However, it is not just any promise. In Re Hudson[footnoteRef:28], it was held that a mere gratuitous promise does not amount to a contract. This is because it is not legally enforceable. With reference to the case of Carlil, Consideration comes in when there is a value for the defendants, which is created following the advertising of the smoke balls, thus the detriment being the £100 reward. On the other hand, the benefit for Mrs Carlil was the reward of £100, and the detriment was spending the time and effort to use the smoke ball as was specified as well as contracting influenza. [27: [1875] L.R. 10 Ex. 153 at 162] [28: [1885] 54 L.J. Ch. 811]

Conclusion

All in one, a unilateral contract, which is sometimes referred to as a one sided contract, is a contract where one party, the offeror, makes a promise in exchange for an act or services by the offeree. This simply means that, for there to be a unilateral contract, there must be some certain rules that must be fulfilled. The first one is that there must be a unilateral offer. This is when one party willing proposes to enter into a contract. Such can be either made expressly or impliedly. They can also be made to one person as well as a multitude of people, through advertisements as expressed as expressed in the case of Carlil v Carbolic Smoke balls Co Ltd. The second rule is that the unilateral offer must be accepted. This is when the offeree performs the act that has been proscribed by the offeror. The offer cannot be revoked once the offer has been accepted. In a unilateral contract, there is no need for communication to be done in order to show acceptance, as was stipulated in the case of Carlil. The other rule is that there must be consideration. This simply means that there must be in the form of a benefit gained or detriment suffered arrangement by the parties. These are the rules that apply to a unilateral contract.

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