

LX1705 – Contract Law Problem Question (Suggested Answer)

On Monday afternoon Alfred discovered that he had lost his fountain pen and wallet and realised that they had probably dropped out of his pocket in the park earlier that day. On Monday evening he displayed the following notice on the park fence:

£500 Reward!

To any person who returns my lost crocodile skin wallet [monogrammed AB] and Barker fountain pen also engraved with my name to: Alfred Bloggs, Dunroamin, 15 Acacia Avenue, Pleasantville.

On Tuesday morning Brenda, a park keeper, found the wallet and returned it to Alfred since his address was inside. She only saw the notice on her return to the park. Later that morning Cuthbert saw the notice when he came to walk his dog.

On Tuesday afternoon Alfred decided to make an insurance claim for this lost pen. He went to the park and wrote "Cancelled!" across the reward notice.

On Wednesday morning Cuthbert came across the pen and returned it to Alfred and Brenda went to see him to claim her reward. Alfred refuses to pay either of them.

Advise Brenda and Cuthbert.

EXAMINATION ANSWER:

Both Brenda (B), and Cuthbert (C), should be advised as to whether they can make a contractual claim against Alfred (A). Thus the essential elements of a legally binding agreement, (offer, acceptance, consideration, intention to enter into legal relations and capacity), will need to be established in each case.

In the absence of any suggestion that the parties concerned lack capacity to enter into a legally binding agreement; or that they are friends/relatives, which would invoke a presumption against intention to enter into legal relations - **Rose & Frank v Crompton Bros**, it will be presumed that both these essential elements of a legally binding agreement are present, thus leaving the elements of offer, acceptance and consideration to be considered more fully.

A contractual offer is 'A proposition put by one person to another that is capable of immediate acceptance'. Such offers must be firm, certain and communicated- **Taylor v Laird**.

A's reward notice appears, at first sight, to be firm and certain - **Scammell v Ouston**. However, in **Partridge v Crittenden**, an advertisement of wild birds for sale was held to be a mere "invitation to treat" as opposed to an offer capable of acceptance. A rationale for this decision is that usually, a seller of goods does not have an unlimited supply. It would therefore be most inconvenient to hold such advertisements to be offers capable of immediate acceptance, as there might then be more concluded contracts than there are goods for sale. However, A's situation can be distinguished from such cases, as it is clear that there is only one wallet and one pen. Similarly, the 'offer' can only be accepted once - in respect of either item.

Thus the facts more closely represent an exception to this general rule; i.e. the unilateral offer, as in **Carlill v Carbolic Smoke Ball**, where an advertisement was held to be communicated to all those who saw it, and capable of immediate acceptance by performing the stipulated conduct. An 'offer to the whole world', (in this case presumably limited to those who actually see the notice on the park fence so as to establish), binding in the first instance on the offeror only, (i.e. unilateral), becomes a bilateral contract, enforceable by both parties, once a person performs the conduct stipulated. A has stipulated the conduct required – the return of his wallet and pen, and the reward money is clearly stated.

Any claim that the promise of a reward was a mere "puff" as opposed to something more meaningful and substantial, could be overcome by the fact that both the pen and the wallet were personalized so could not easily be replaced. Thus it seems likely, that at the time the promise was made, A was determined to try and recover the specific items, as opposed to replacing them or making an insurance claim. If he believed that offering a reward was the best way of doing that, this would provide evidence of his intention that his promise be taken seriously, as with the deposit of money in the bank in **Carlill**, and thus make it more likely that the promise could become a binding term of any contract that followed.

Thus A's advertisement would appear to be a unilateral offer. Nevertheless it may still fail for uncertainty over the actual conduct required – i.e. whether the £500 is for the return of both items together? or is it divisible in the sense that each person who returns one item, gets a proportion of the £500? or even £500 each? If any ambiguity is resolved by applying the doctrine of contra proferentem - **White v John Warrick & Co**, it will be construed against Alfred as the party relying on it, so £500 might be payable for each item. However, if the proposition fails to be an offer due to uncertainty, then there could be no contract between either A and B or A and C.

Assuming the offer of reward passes the test of certainty, an acceptance must be unconditional, unequivocal and exactly mirror the terms of the offer - **Hyde v Wrench**. As a general rule it must also be communicated to the offeror - **Powell v Lee**.

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SJ Ball



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