

Business Law: CIMA Year One

Contracts

A contract consists of three ingredients:

- an agreement
- a consideration
- an intention to create a legal relationship

A contract can be described as a legally enforceable agreement. When ruling on contracts, courts look to identify an offer from one party, and the acceptance of that offer from the other party.

Agreements: the offer

For example: “I will pay you £200 to tile my kitchen”

Adverts are not offers, but invitations to treat. Someone is not, therefore, able to accept an advert.

Partridge v Crittenden (1968) – note, a criminal case

C had some birds to sell, and advertised them in a magazine with the words “Bramble finch cocks and hens 25 shillings each”. It was actually a criminal offence to sell or *offer to sell* such birds. However, this advert was held to not be an offer – if it were, people may accept the offer for more stock that exists and then C would be in breach of contract. Therefore, the courts decided C was not making an offer since he didn’t intend to satisfy every acceptance.

However, in some cases the intention of the advertiser makes a difference.

Carlill v Carbolic Smoke Ball Co (1893) – see p33 of CIMA manual

CSB patented a medical preparation called ‘the Carbolic Smoke Ball’ and advertised the product with a declaration that they would pay £100 to anyone who succumbed to influenza after having used their product as specified. The advert contained the words “to show our sincerity, we have deposited £1000 in the Alliance Bank”. C caught the ‘flu, CSB refused to pay. C sued. The key word was deemed to be ‘sincerity’ – the advert was deemed to be an offer. C complied with *the terms of the offer* by catching ‘flu.

The latter case is true for most adverts where a reward is offered.

Goods on a shop shelf are also invitations to treat. If this were not the case, and the price was an offer, then putting items into a basket would constitute an acceptance, and customers would be obliged to buy anything they picked up.

When considering if an offer has been made, courts must decide if it has been communicated to the offeree before agreement was made. For example, if you find a lost pet and return it to the owner, and later find out that there was a reward for the return of the pet, you cannot claim that reward; the offer existed but had not been communicated to you by the time you accepted the offer (by finding and returning the pet).

Offers can be revoked at any time before acceptance. However, an offer cannot be revoked if the accepting party pays for an option to accept the offer at a later date.

If a counter-offer is made, the original offer is declared null and void.

A offers a price of £500

B makes a counter-offer of £300 which A rejects

B cannot now accept the offer of £500 unless it is re-made.

Agreements: the acceptance

Once acceptance exists, the contract is complete.

Silence cannot be taken as an acceptance unless it is specified by the offeree (not the offeror).

Felthouse v Bindley (1863)

F stated that if he didn't hear the opposite, he would assume the horse was his.

The horse was actually sold to another. The court ruled that no contract had been made.

The *ratio decendi* of this case is that silence cannot be imposed as a form of acceptance. However, if silence is not imposed upon the other party, acceptance is considered to hold.

Re Selectmove Ltd

The Inland Revenue was owed money by S; S offered to pay by instalments.

The IR Officer did not have authority to accept the offer, but the court considered that if he did, silence would have been considered acceptance.

Communication of the acceptance is required for the contract to exist. There are two exceptions to this. Firstly, if the offeree merely needs to carry out their side of the contract to show that acceptance exists, there is no need for further notification. A good example of this is Carlill v CSBCo, as described above.

Secondly, if acceptance has been posted by the offeree but not received by the offeror, it is still considered to hold. This is the "postal rule", which applies to non-instantaneous communication; acceptance is taken at the time of posting. Note that this applies only to acceptance, and not to any other communication.

Adams v Lindsell (1817)

L wrote to A on the 2nd September offering the sale of wool, requiring an answer “in the course of post”. The letter was delayed and arrived with A on the 5th September; A immediately replied. The letter was posted on the 6th September, but did not arrive with L until the 9th September. L had sold the wool to another party on the 8th September, which would ordinarily have revoked the original offer. However, the courts found that because the acceptance was posted before the offer was revoked, the contract stood.

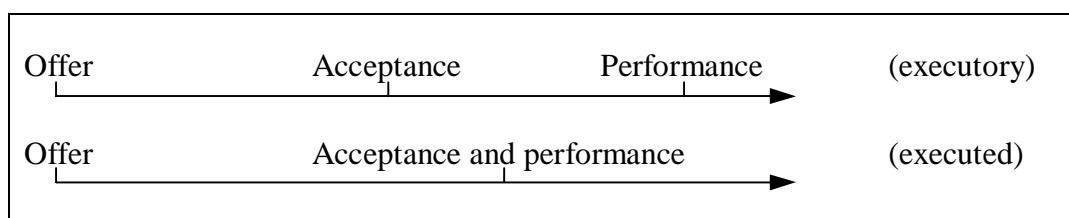
Consideration

Consideration is the second vital component of a contract. Contracts exist in terms of something exchanged for something else – that is, they deal with bargains and not promises.

Say that A owed B money. If they agree to write off this debt, B has shown consideration (that is, he has forgone the money owed to him). A has not shown consideration – that is, he has not contributed anything. For a contract to be valid, both parties must show consideration.

Two types of consideration exist:

- executory consideration – this applies to a contract which is yet to be performed at the time the contract is made (at the time of acceptance)
- executed consideration – this applies to a contract which is performed at the time of acceptance (relatively rare; see *Carlill v Carbolic Smoke Ball Co*)



Note that for executed consideration, acceptance must be in the form of performing one side of the contract. Even in this case, the consideration on the other side of the contract is usually executory.

For a contract to be valid, consideration must be sufficient but need not be adequate. That is, there must be consideration (some monetary valuation), but there need not be an equal value on both sides of the contract. *Thomas v Thomas* (1842) held that a contract existed even when the claimant had been renting a house from the defendant for £1 per year.

Past consideration – that is, when a party has shown consideration before the contract is formed – does not count as sufficient except in two cases:

- work follows a prior request

- the type of work carried out is within a business environment and would normally expect to be paid for

The main law for consideration was set out in Pinnel's Case (1602).

Cole owed Pinnel £8 10s, due to be paid on November 11th. Cole offered to settle the debt in October by paying £5. P accepted.

Despite this, P later sued C for the remainder.

The 'second contract' in this case – of P agreeing to a lower payment, does not have consideration on both sides. P gives £3 10s consideration, but C gives nothing, since he was already legally bound to pay the £5.

However, P lost this case. The debt was due in November, and C paid the £5 in October. The Judge therefore ruled that the £5 was **not** a part-payment of the debt, and therefore was consideration.

Any agreement to settle a debt for a lesser amount is not a contract, unless the lesser sum is paid:

- at a different time,
- in a different place, or
- in a different form

to the original contract.

A number of examples of this can be found on page **XXX**. In addition,

In the 17th century, ships often sailed to and from Estonia on goods runs. The captain of a ship paid crew members a certain sum each (say £10) for the journey London – Estonia – London. On arrival in Estonia, the crew would threaten to leave, which would mean the captain could not return. In reply, the captain would offer the crew more money (say £15) so that they would accompany him back. However, on arrival in London, the captain only paid the original £10, since the crew were legally obliged to sail back to London and therefore have not shown any consideration for the extra money.

Promissory Estoppel

There exists one further situation in which Pinnel's Case law does not apply. This is where one party has depended on the agreement to a significant extent and has made decisions based on this promise which would lose them money if the agreement were withdrawn..

Central London Property Trust Ltd v High Trees House Ltd. (1947)

H rented a block of flats from C for £2500, and sublet these. During the war, property rents fell significantly, and H agreed with C to reduce the payment to £1250 per year until the end of the war, so that H could reduce the rental on sublets. After the war, C sued for the difference. Note that in the agreement,

C gave \$1250 consideration a year, while H gave none – ordinarily this would make the second agreement not a contract, and therefore H would lose. However, the judge gave an equitable judgement of promissory estoppel, and C lost.

Promissory estoppel is an equitable judgement designed to be used when:

- something is promised
- this thing is intended to be relied upon
- this thing **is** relied upon.

Therefore we can adapt Pinnel's Case law to give:

Part-payment of a debt cannot be held as consideration unless it is made at a different time, it is made in a different place, it is made in a different form, or promissory estoppel applies.

Privity of a contract is an extension of this. The owner of the flats has a contract with the landlord, who then sublets. The sublettee cannot sue the owner since no contract exists between the sublettee and the owner, and there is no consideration from the sublettee to the owner.

Intention that the contract should be legally binding

This is the third element of a contract, and is self-explanatory.