
AN EXAMPLE OF HOW THE COURTS AND LAWYERS APPLY THE LAW TO SETTLE PROBLEMATIC DISPUTES

You will recall from the preface to Block HL.101 that the aim of the Housing and the Law Unit is to help you to develop a comfortable understanding of the principles of law relevant to your activities and developing responsibilities as a housing professional. Awareness of legal influences can make the difference between uncertain and effective decision-making. Uncertain decision-making often leads to a dispute that can end up in court, which can be a costly process. However, students often ask just how the law is applied to a problem or a dispute. To help you to understand the process, we have included below a worked example of how the law is used to resolve a dispute.

You will see that the provided problem to be resolved concerns the law of contract, which, with the law of tort, was considered in part B of Block HL.102. However, the process of applying the principles of law remains the same, whether problematic disputes involve the law of contract, the law of tort, or other forms of law. You will also remember that it is the law of contract which underpins land law, the law of landlord and tenant, and employment law.

A re-reading of Section 1.2 ‘The law of contract’ contained in Block HL.102 will be beneficial before working through the provided example, which is structured as follows:

1. An introductory reminder of the applicable law and legal precedent;
2. Relevant contract common law cases and the associated principles of law;
3. Considerations when applying the law to a problematic issue;
4. Details of the contractual dispute to be considered;
5. Worked example of applying the law to the contractual dispute;
6. Concluding commentary.

1. An introductory reminder of the applicable law and legal precedent

Section B of Block HL.101 described the sources of law, including **statute law**, which are Acts of Parliament, and **case law**, which is ‘judge-made’ common law. As Parliament is supreme, statute law takes precedence over common law. A fundamental characteristic of the common law is that where the facts of cases are similar they should be treated alike. This means that the courts follow previous decisions and judges determine a case in accordance with legal principles established in previous cases.

This is called the **doctrine of precedence**, which is combined with the **doctrine of binding precedence** or *stare decisis*. This means that legal principles established in cases by the higher courts are binding on the courts that are lower in the court system, with the senior British court being the House of Lords (*Section C of Block HL.101 deals with the Courts System*).

2. Relevant contract common law cases and the associated principles of law

Your re-reading of Section 1.2 'The law of contract' contained in Block HL.102 will have reminded you of some of the legal common law principles and cases that apply to the law of contract. An example provided is the principle established by the case of *Payne v Cave [1789]* that an offer can be revoked (*withdrawn*) at any time before it is accepted or rejected. Other examples are given and, of course, there are many more legal principles that apply to the law of contract but which have not been provided in the outline text contained in Block HL.102.

To help you to work through the provided law of contract problem, we have provided the following list of cases which established the related contractual legal principles. Initially a client's lawyer will consider the facts of any dispute and then consider relevant case law in deciding the likelihood of being successful if the dispute is pursued through the courts. The same legal principles will be used by the judge in deciding the outcome of disputes pursued through the courts.

Note: it will be seen that the majority of applicable principles of contract law were established in 19th century.

- a) ***Partridge v Crittenden [1968]*** – this and other cases have held that an advertisement is an invitation to treat and not an offer (*an offer needs to be distinguished from an invitation to treat: an offer is a statement of willingness to contract on specific terms, whereas an invitation to treat is the first step in negotiations which may lead to an offer*).
- b) ***Hyde v Wrench [1840]*** – acceptance of an offer must be unconditional: the offeree must accept an offer in the exact terms proposed by the offeror, otherwise it is a counter-offer (*In effect, the counter-offer impliedly rejects the original offer and, in turn, becomes an offer*).
- c) ***Stevenson v McLean [1880]*** – a counter-offer should be distinguished from a mere request for information which does not make an acceptance invalid.

- d) ***Routledge v Grant [1828]*** – an offeror’s agreement to keep an offer open for a period of time is not binding unless the offeree provides additional consideration to that intended for any original agreement (*in effect, the agreement to keep an offer open is a separate contract called an option*).
- e) ***Felthouse v Brindley [1863]*** – acceptance of an offer must be communicated.
- f) ***Adams v Lindsell [1879]*** – where acceptance (*of an offer*) by post is appropriate, then it takes place immediately the letter is posted. This is an exception to the normal rule that acceptance of an offer must be communicated. As such, it is an established legal rule of convenience.
- g) ***Bryne v Tienhoven [1880]*** – revocation (*termination*) of an offer is effective only when the actual notice reaches the offeree (*the postal rule – see Adams v Lindsell – only applies to acceptance of an offer and not revocation of an offer*).
- h) ***Payne v Cave [1789]*** – an offer can be withdrawn at any time before its acceptance.
- i) ***Dickinson v Dodds [1876]*** – communication of the revocation (*termination*) of an offer does not always have to be made by the offeror and can be made by a reliable third party (*revocation is considered effective if the offeror has shown, by words or conduct, a clear intention to revoke, and notice has reached the offeree. In effect, the actual means of communication do not matter*).

3. Considerations when applying the law to a problematic issue

You will know from Block HL.102 that contracts by housing organisations can embrace a diverse range of contractual agreements. Such agreements may be for the supply of stationery and office cleaning services, for contracts to build or improve dwellings, or tenancy agreements and employment contracts. Individually, you also enter into contracts daily from the purchase of newspapers and other small consumer goods. Also, you will periodically make larger purchases, such as cars, furniture, washing machines and property. Whichever type of contract you may encounter, it is important to remember that the principles of the law of contract still apply.

You may consider that, given your studies of the law of contract, surely the respective parties to a dispute must understand who has made and accepted an offer. Often both parties consider that it is the other party who had made the offer or who has accepted the offer. This can occur when a party considers they have accepted an offer, but unwittingly have, in fact, made a counter-offer.

Once you are faced with a contractual dispute, the facts and implications need to be appraised in reaching a view on whether or not it merits being pursued through the court system. Remember, too, that disputes can be resolved by alternative forms of resolution, such as arbitration, mediation, conciliation or through the use of an ombudsman (*details of which are given in Section C.3 of Block HL.101*). Your knowledge gained in studying the Housing and the Law Unit should help to guide you in seeking more detailed legal advice from a lawyer. Remember that a lawyer, based on the apparent facts, can only advise on the probability of the likely outcome to the dispute. This is because the judge in court will hear evidence of claim and counter-claim from the two parties, which, in turn, may lead to further points of clarification that will be taken into account when applying the law to reach a decision.

In considering the contractual problem described in the next paragraph, you are in a similar position to that of a lawyer called on to advise a client. Consequently, in considering the problem, you must consider the facts as provided and not make ill-founded assumptions. Nevertheless, if there are uncertainties, you should consider the implications of the different options possible, supporting your reasoning with legal principles, case law and, if relevant, statute law. Work through your approach in a logical and sequential manner. You need to determine whether it appears that there is a legally-binding contract in existence: if not, there is not valid dispute. This requires, as defined in Section 1.2 of Block HL.102, consideration of whether the four essential elements of a contract, namely offer, acceptance, consideration, and legal intention to be contractually bound, are present.

4. Details of the contractual dispute to be considered

At the time of the transfer of your local authority's housing stock to the newly-formed Vermont Housing Association, you joined the Association as a housing officer. Six months after taking up your post, your Chief Executive, Mary Spencely, knowing of your '*Housing and Law*' studies sought your advice. She explained that the Association was experiencing difficulties over agreements to buy 20 large replacement second-hand 19th century chimney pots for a terrace of its historic properties. The details were that the Association, advised by its surveyor, had advertised in various specialist publications for the chimney pots. In response, two people, John Robinson, representing a building salvage firm, and Rachel Fasnott, representing a demolition contractor, had written each offering to sell on behalf of their companies 10 chimney pots at respectively £195 & £155 per chimney pot. In both cases, the letters stated that the Association would be responsible for collection of the pots. John, in his letter to the Association, also wrote that '*...if you intend buying the chimney pots please let me know by Friday 25 February*'.

From the provided descriptions, the chimney pots appeared to be suitable and the Association's surveyor went to inspect them. The chimney pots offered by John Robinson were in good condition, and the surveyor advised that he would think about them further before making a decision. On visiting Rachel Fasnett, the surveyor found that the condition of her chimney pots was not as good as those offered by John Robinson. He advised that he would think about her offer and asked that she keep it open until Monday 28 February. Two days later the surveyor heard from his cleaning lady, whose sister coincidentally cleaned Rachel's house, that Rachel had agreed to sell her chimney pots to someone else. As a result, on 23 February he wrote a letter on behalf of the Association to Rachel confirming acceptance of her offer to sell 10 chimney pots.

As the Association had not received any more offers in reply to the advertisements, it also decided to buy John Robinson's chimney pots and posted a letter of acceptance on 24 February. Recalling that John Robinson's company had a large van, the Vermont Housing Association's letter stated that *'...we accept your offer but would be pleased if you could consider arranging delivery of the ten chimney pots.'* The next day, 25 February, the Association's surveyor, when visiting a local builders merchant, saw 10 suitable chimney pots for sale at £160 each, which he bought on behalf of the Association. He was unable to contact John Robinson at his office so rang his home and left a message with his sister, Judith. The message was that the Association no longer wished to buy his company's chimney pots and that the Association's letter of acceptance was to be ignored when it was to be delivered. Judith told John of the Association's message the same evening, and John received the Vermont Housing Association's letter on Monday 29 February.

As a result of her discussions with the surveyor, Mary Spencely understands that, because of the telephone call which revoked acceptance of John Robinson's offer, the Association does not consider it is legally bound to buy the chimney pots. Also, because Rachel Fasnett did not revoke her offer before it was accepted, she is legally bound to sell her chimney pots to the Association.

Requirement: advise your Chief Executive, Mary Spencely, whether Rachel Fasnett is legally bound to sell her chimney pots to the Association, and whether the Association is legally bound to buy John Robinson's chimney pots.

Now let us work through the contract problem.

5. Worked example of applying the law to the contractual dispute

Whether or not the Vermont Housing Association can refuse to take delivery of John's chimney pots or require delivery of Rachel's chimney pots depends upon whether there is a binding contract between itself and John and then Rachel.

In section 3 'Considerations when applying the law to a problematic issue', the four essential elements of a contract were identified as offer, acceptance, consideration, and an intention to be legally bound. In the provided contractual problem, all parties represent business or commercial organisations. Consequently, unless there are express words to the contrary, the courts would apply the legal presumption that the parties intend their agreement to be legally binding (see 1.2 (e) of Block HL.102).

Firstly, who is making the offer? Is it the Vermont Housing Association who advertised and offered to buy chimney pots? And if so, did John and Rachel then accept the offer?

No, the Association were not making an offer for there was no offer to contract on specified terms. Instead, by advertising in magazines, it was hoping to receive offers from others which, after the principle established by *Partridge v Crittendon*, would be considered as an invitation to treat.

As it is clear that John and Rachel made offers on specific terms, *the next consideration is whether the Association's letters of 23 and 24 February were valid acceptances of the offers.* In the case of Rachel, she had sold her chimney pots to someone else, but what of the surveyor's request that she keep her offer open until 28 February? From the facts, there is no evidence that she agreed the request. Even if she had agreed to keep the offer open, it would not be binding because, as held by *Routledge v Grant*, an agreement to keep an offer open for a period of time is not binding unless the offeree provides additional consideration.

We also know that the Association only wrote to Rachel accepting her offer once they had learnt she had sold the chimney pots elsewhere. *The question here is whether Rachel had revoked her offer before the Association's acceptance letter.* Revocation, as held in *Bryne v Tienhoven*, is effective only upon notice of it reaching the offeree. Certainly, there is no evidence that Rachel personally contacted the Association to revoke her offer. However, we know from another authority determined by *Dickinson v Dodds* that communication of the revocation of an offer can be made by a

reliable third party. Here, the Association did learn indirectly, through the sister of a cleaner employed by the Association's surveyor, of the sale of the chimney pots to another party. Consequently, unless the Association can provide evidence to show that the surveyor's cleaning lady and her sister are not reliable third parties, the court will hold that Rachel's offer was revoked before the Association accepted her offer. If so, Rachel will not be legally bound to sell her chimney pots to the Association.

In the case of John Robinson, was the Association's letter of 24 February a valid acceptance? The Association's letter is seen to comply with the principle, held in *Felthouse v Brindley*, that an acceptance of an offer must be communicated. However, you will remember that John's offer letter asked that if the Association intended buying the chimney pots they should let him know by 25 February. From the provided facts, we know that the Association's letter of acceptance was not received until 29 February. Nevertheless, there is an exception to the normal rule that acceptance must be communicated. It is known as the postal rule, which, as held in *Adams v Lindsell*, confirms that where acceptance by post is appropriate, then it takes place immediately the letter is posted. As John Robinson made his offer by post, it is appropriate to reply by post. As the Association's letter was posted on 24 February, the day before John's deadline, then it would appear to be a valid acceptance and a legally binding contract came into being at the time of posting. This would mean that the Association would be liable to buy John Robinson's chimney pots.

Look again at the Association's letter of 24 February because it is questionable whether or not it was an acceptance. We know that, as held in *Hyde v Wrench*, any acceptance of an offer must be unconditional, if not, it will be considered a counter-offer. You will see that their letter stated that the Association '... accept your offer but would be pleased if you could consider arranging delivery of the ten chimney pots.' Whether this letter was a valid acceptance now hinges on whether delivery of the pots was a condition of acceptance or whether it was a request for information to be considered by John Robinson. With reference to the principle established by *Stevenson v McLean*, we know that a request for information does not change the terms of an offer and so is not a counter-offer. If the court takes this view, then the letter of acceptance is valid and the Association will be legally bound to buy John Robinson's chimney pots. However, if the court considers that the reference to delivery in the acceptance letter is a condition, then it would become a counter-offer. In turn, the counter-offer impliedly rejects John's offer and, itself, becomes an offer. In such circumstances, no contract has come into being and the Association would not be legally bound to purchase the chimney pots.

The court's decision would hinge on the additional evidence presented by, respectively, the Vermont Housing Association and John Robinson's company. Obviously, the Association, who do not want to purchase the chimney pots, will wish to present their reference to delivery of the pots as being a condition of acceptance. This contrasts with the likely approach to be adopted by John Robinson, which will be to persuade the court that the Association's reference to delivery was no more than a mere request for information about whether John would be prepared to deliver the pots. If successful, the Association would be legally bound to buy John's chimney pots.

There is one final point you need to consider, namely, the Association's telephone call advising John's sister that they no longer wished to buy the chimney pots. *Is this telephone call relevant?* As considered above, if the Association's letter of acceptance, posted on 24 February, is a valid letter of acceptance, then a contract exists. In such circumstances, the Association is legally bound to buy the chimney pots, or, if it breaches (*breaks*) its contract, then John Robinson will be entitled to a remedy, usually in the form of damages. However, if the court considers the Association's letter to be a counter-offer, then the telephone call to John's sister becomes relevant.

If the Association's letter is considered to be a counter-offer, it becomes, in turn, an offer, which, if not withdrawn, could be accepted by John when the Association would become legally bound to buy the chimney pots. Consequently, although the Association think they are withdrawing an acceptance, if their telephone call is considered effective, it will have the beneficial action of withdrawing their offer.

From the provided case-list you will see that, as held in *Payne v Cave*, an offer can be withdrawn at any time before it is accepted. Also, that the principle arising from *Bryne v Tienhoven* confirms that revocation (*termination*) of an offer is effective only when the actual notice reaches the offeror. However, as considered in connection with Rachel Fasnett's chimney pots, it was held in *Dickinson v Dodds* that communication of revocation can be made by a reliable third party. Consequently, unless the Association can provide evidence to show that the surveyor's cleaning lady and her sister are not reliable third parties, then the court will hold that the Association's offer was revoked.

Your advice to your Chief Executive, Mary Spencely, would be that, on the facts, Rachel Fasnett would not be held legally liable to sell her chimney pots to the Vermont Housing Association. Also, the question of whether the Association is legally bound to buy John Robinson's chimney pots will depend on the interpretation by the court of the reference to delivery included in the letter of acceptance. If the Association can present evidence that the delivery of the chimney pots was a condition of acceptance, then the acceptance letter becomes a counter-offer and there would be no liability to purchase John Robinson's chimney pots.

6. Concluding commentary

When reflecting on your working through the facts of the contractual dispute, you may have come to the conclusion that the application of legal principles, arising from case law, is little different to logically applying a set of rules. This is not surprising, for the law is made up of individual laws, which, in effect, are rules that regulate the rights and duties that are important for the common good, and also protect individual rights and duties. As such, laws are a set of rules, principles and ideas that are recognised by the State to bring order to everyday living. In particular, the law of contract establishes a degree of certainty and confidence in business and commercial dealings.

We mentioned above that in appraising the contractual dispute you are in a similar position to that of a lawyer called on to advise a client. It is important to remember that you can only advise on the probability of the likely outcome to the dispute. This is because the judge in court will hear evidence of claim and counter-claim from the two parties, which, in turn, may lead to further points of clarification that will be taken into account when applying the law to reach a decision.

Finally, although your Housing and the Law Unit should provide you with a comfortable understanding of the law, it is not intended to give you a lawyer's detailed grasp of the law. For example, the course has dealt with the key elements of contract, namely offer, acceptance, consideration and legal intention. A more detailed study of the law of contract would confirm that there are other aspects, such as contractual terms, misrepresentation, exclusion clauses, undue influence and illegal contracts, that can complicate and influence the resolution of contractual disputes. Nevertheless, your knowledge would lead to more effective decision-making, including when to seek more detailed legal advice to help to minimise unnecessary or unavoidable disputes.

