

# FUNDAMENTALS OF LAW

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## Question 1

### Part 1

#### Issue

A prospective buyer stumbles upon an advertisement which talks about the sale of a van on the van and also provides a mode of communication. The buyer communicates with the seller and even explains that loans will have to be entered into in order to make the purchase. The seller states that with an advance payment that day the buyer could buy the van and pay the balance by 1<sup>st</sup> November. The buyer makes no communication but sends the advance payment through cheque. When he seeks possession of the van the seller states that the same has already been sold and the advance cheque had not been cashed. The issue here is to determine the rights of the buyer in this situation and the defense available to the seller. The result of a Court proceeding with such a dispute would have to be assessed.

#### Rule

Contractual obligations refer to various duties that arise and must be observed by parties to an agreement that has legal enforceability. Thus in case of such agreements the formation of such a relationship must be determined at the onset. A contractual relationship originates from an offer that has been made. However an advertisement for a product would not be construed as an offer as that is only made when a prospective customer chooses such a product and seeks to pay for it. Thus an advertisement would be termed as an invitation to treat as judicially interpreted in *Partridge v Crittenden*<sup>1</sup>. However once an offer is made the acceptance of the same would be equally important. In case of acceptance there would have to be communication from the offeree

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<sup>1</sup> [1968] 1 WLR 1204.

and once acceptance begins the original offer cannot be revoked. This is well settled in the judgment in *Errington v Wood*<sup>2</sup>. Acceptance can be invoked through post as laid down by the principle in the postal rule as reiterated in *Adams v Lindsell*<sup>3</sup>. This case further states that as far as the offeree is concerned acceptance is made through conduct once the same has been posted irrespective of time of receipt. Varying the terms of the original offer or making counter offers would change lead to revocation of the offer and thus the counter offer would have to be accepted as determined by the Court in *Hyde v Wrench*<sup>4</sup>.

### **Application**

The facts and circumstances laid down show that a buyer found an invitation to treat and made an offer based on the same. The seller made a counter offer demanding an advance that very day. The buyer sent the advance through post in the same. Thus the variation of the offer made by the seller revoked the buyer's offer as determined by the case *Hyde v Wrench*. Thus the buyer's offer would now be an invitation to treat as per *Partridge v Crittenden* and the buyer would now have to accept the offer made by the seller to form a contract. Following the postal rule stated in *Adams v Lindsell* it can be inferred that the acceptance was complete when the buyer posted the cheque. Thus following the law applied in *Errington v Wood* once such an acceptance has been made and put in motion the offer cannot be revoked thus a contract would exist between the buyer and the seller. The buyer would thus have the right to seek breach of contract. The seller may try the defense of no consideration having been received due to not cashing the cheque. However, due to the postal rule such a defense would be struck down and more importantly the Court would be inclined to decide in favor of the buyer.

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<sup>2</sup> [1951] EWCA Civ 2.

<sup>3</sup> [1818] 1 B & Ald 681.

<sup>4</sup> [1840] EWHC Ch J90.

## Conclusion

In this case the buyer could claim breach of contract. The seller may try the defense of no acceptance however the same would not hold ground in court. The Court would decide in favor of the buyer.

## Part 2

### Issue

If the court does decide in favor of the Buyer the remedies available to the buyer would have to be assessed.

### Rule

In cases of breach of contract the Court seeks to ensure that the party that has suffered is brought to a position of equity which he would have if the contract would have been performed completely. This mode of compensating the party that has suffered is termed as damages and the same is assessed based on the losses faced by the party that has suffered. In such a case compensatory damages would be awarded by the court and the court would try to bring the suffering party to an equitable position as stated in the judgment in *Robinson v Harman*<sup>5</sup>. This case also talks about the assessment of loss by parties and states that the first would be determined by the expectation of the suffering party. The second would be based on the reliance placed by such a suffering party as stated in *Tabcorp Holdings Ltd v Bowen Investments Pty*

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<sup>5</sup> [1848] 1 Ex 850.

*Ltd*<sup>6</sup>. Thus the damages would be a consolidation of both assessments and thus would be assessed based on the total loss.

### **Application**

In the scenario given it may be inferred that relying on the existence of a contract the buyer made substantial monetary investments and the same would be redundant in the absence of the agreed purchase. Moreover, the buyer had also secured the required finances for the purchase as agreed between the parties and would also be at a loss before the investor. In consideration of the expectation measure which has been developed in *Robinson v Harman* as well as the reliance measure relied upon in *Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* it may be inferred that in this case the Court would be inclined to award compensatory damages which included the losses incurred through the investment in the business as well as the loss of business opportunity due to the detriment caused to the investor. Thus, the Court would include the financial implications of all such factors when awarding compensatory damages.

### **Conclusion**

The Court would be inclined to pass a judgment awarding compensatory damages to the buyer. These damages would include all losses faced due to the expectation of the contract as well as all losses incurred due to reliance on the contract.

### **Question 2**

#### **Chattel Mortgage**

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<sup>6</sup> [2009] HCA 8.

A mortgage is primarily a security given against a form of loan. A chattel maybe stated to be a movable property capable of being possessed or owned. When a loan is sought for the acquisition of ownership of such a chattel or movable property the said chattel could be mortgaged to secure the loan<sup>7</sup>. Thus in such a case the object sought to be owned is secured against the finances procured to obtain the same.

### **Perfection**

Perfection can be deemed to steps required to make a securities interest enforceable against a third party after creation of a securities interest<sup>8</sup>. In usual cases after the creation of a securities interest the parties to the same have obligations however perfection allows these obligations to be bestowed on third persons.

### **Fixture**

A fixture is an attachment to immovable property. These are so attached that these are now a part of the property that they are affixed to. Thus when the immovable property is passed through conveyance or inheritance these fixtures are also transferred to the same as stated in the case *Hulme v Bingham*<sup>9</sup>.

### **Torrens – System of registration for land rights and interests**

This is a mode of registration of the rights of ownership of a particular immovable property. This would thus act as evidence of the ownership rights and can establish title conclusively<sup>10</sup>. Thus, it would be assessed that such a mode of acquisition of land allows the

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<sup>7</sup> Sheehan, Duncan. *The principles of personal property law*. Bloomsbury Publishing, 2017.

<sup>8</sup> Coffee Jr, John C., Hillary Sale, and M. Todd Henderson. "Securities regulation: Cases and materials." (2015).

<sup>9</sup> [1943] KB 152.

<sup>10</sup> Hepburn, Samantha. *Australian Principles of Property Law*. Routledge-Cavendish, 2013.

owner to establish beyond any doubt that the land does belong to the same<sup>11</sup>. The owner would thus have all rights of title and would hold all vested interests in the same.

### **Leasehold**

This is a property that has been vested in the hands of another person devoid of any ownership rights. A lease hold functions as a let out premises that is used by a tenant also known as a leasee<sup>12</sup>. Due to the leasing of the premises the owner receives rent from the parties this is known as consideration in contractual law. The tenant gains peaceful enjoyment of the leasehold premises as consideration for this contract.

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<sup>11</sup> Bhandar, Brenna. "Property, Law, and Race: modes of abstraction." *UC Irvine L. Rev.* 4 (2014): 203.

<sup>12</sup> Duncan, William D., and Sharon A. Christensen. *Commercial leases in Australia*. Thomson Reuter, 2017.

## Bibliography

### Case laws

*Adams v Lindsell* [1818] 1 B & Ald 681.

*Errington v Wood* [1951] EWCA Civ 2.

*Hulme v Bingham* [1943] KB 152.

*Hyde v Wrench* [1840] EWHC Ch J90.

*Partridge v Crittenden* [1968] 1 WLR 1204.

*Robinson v Harman* [1848] 1 Ex 850.

*Tabcorp Holdings Ltd v Bowen Investments Pty Ltd* [2009] HCA 8.

### Articles

Bhandar, Brenna. "Property, Law, and Race: modes of abstraction." *UC Irvine L. Rev.* 4 (2014): 203.

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