Contract Law

Edit 0 3 ...

Table of Contents

Introduction

UK **Contract law** has its origins predominantly in case law. The golden era for contract law was the 2nd half of the 20th Century; indeed, much of our law comes from this time. Most of the time contracts work perfectly well. It is only when contracts fail to work well that the law of contract comes into force. Should contracts fail, the remedy at law for a breach of contract is usually *damages* or *monetary compensation*. In *equity*, the remedy can be specific *performance of the contract* or an *injunction*. Both remedies award the damaged party the *benefit of the bargain* or *expectation damages,* which are greater than mere *reliance damages*, as in *promissory estoppel.* These terms are covered fully later on!

Contract law is extremely important in commercial environments, not to mention our everyday lives. It is a law that we use in our day-to-day lives in a range of applications, such as purchasing groceries, or taking the bus. It regulates employment, and administers loans, leases and mortgages. In short – Contract law is everywhere! Contracts put simply are agreements that are **legally enforceable**.

Contracts and other areas of Law

Tort

Contract is a law of obligations and rights, and is in some respects, similar to the law of *Tort*. Contract law can be differentiated from Tort law, as contract law applies strictly to legally enforceable agreements that different parties make. Tort on the other hand, relies predominantly on the civil duties (or obligations) that would not be covered in contract law.

Sometimes, parties may have to choose between a claim in Contract, or in Tort (a party cannot claim twice for damages owed). There are various reasons why people chose a claim in one field over another. In the idiosyncratic Tort case *Donoghue v Stevenson***[1]**.

CONTRACT law governs agreements between two or more parties that are binding in law. Contracts stipulate rights and obligations that can be enforced in courts.	TORT law is similar to contract law, and can loosely be defined as the law around claims for damages that do not arrive through contract.

Donoghue v Stevenson

*Donoghue v Stevenson***[2]** was a decision of the House of Lords that established the modern concept of negligence, by setting out general principles whereby one person would owe another person a duty of care. It was a claim in tort not contract, and is the origins of the modern law of the

Wiki Home
Recent Changes
Pages and Files
Members
Search

Learn-Law
http://learn-law.wikispaces.com

determined that the English law of negligence and the Scots law of delict were identical. The facts of the case are outlined bellow:

- Mrs Donoghue's friend bought her a ginger beer to drink
- Donoghue discovered a decomposed snail in her ginger beer
- She later became quite ill, presumably because of this
- Donoghue initiated proceedings against the seller of the ginger beer, Mr Stevenson

Because it was Mrs Donoghue's friend who had bought the ginger beer, and not Donoghue herself, there had been no agreement between the seller (Mr Stevenson) and the claimant (Mrs Donoghue). This precluded Donoghue from pursuing a claim in contract against Stevenson. Because Donoghue had been given the ginger beer by her friend, she might have tried to sue her friend, but would fail because of her lack of consideration (this is explained later). She might also attempt to sue Stevenson through a collateral contract, but again, her lack of consideration would prevent her succeeding. Donoghue sued in Tort, and won.
Here, there is nothing stopping Donoghues friend from suing Stevenson for breech of contract.

Privity of Contract:

The rule of privity means that a person who is not privy to a contract (a third party), can neither sue nor be sued on that contract

Restitution
In addition to Tort and Contract, there is another obligation that does not fit wholly into either category…
This obligation is that of *Restitution* (or *Quasi-Contract*). Restitution deals with claims for the repayment of money (or other property), based upon unjust enrichment. These are claims that fill the grey area between contract and tort.

Bellow is some examples of restitution and how it comes about:

- Dealing with a benefit obtained through mistake or chance*:* Morally and ethically the one who gains a benefit that he or she has not paid or worked for should not keep it to the rightful owner's detriment. The party that received money, services or property that should have been delivered to or belonged to another must make restitution to the rightful owner. A court may order such restitution in a lawsuit brought by the party who should rightly have the money or property.
- A general equitable principle that a person should not profit at another's expense and therefore should make restitution for the reasonable value of any property, services, or other benefits that have been unfairly received and retained.
- A common example is when a party contracts to provide a service, but the contract is terminated prematurely due to a breach, and the contractor unjustly receives no compensation for partial services rendered

British Steel Corporation v Cleveland Bridge and Engineering Co Ltd[3]

- British Steel Corporation were asked by Cleveland Bridge & Engineering to produce steel nodes
- British Steel Corporation provide them with a quote (an initial estimate)
- The claimants then sent a letter of intent, asking British Steel Corporation to begin working immediately
- British Steel complied, and began work

- Maters such as the price, and date of delivery had not been agreed between the parties

No contract had been made between the two parties. There was however a recompense available for the Steel Nodes through restitution. British Steel Corporation claimed for a reasonable price to be paid, because the work was carried out at the defendant's request. They asked for a reasonable price (*quantum meruit*). The courts allowed this, and British Steel was reimbursed for their work.

Further Reading:

Fridman, *The Interaction of Tort and Contract* (1977) 93 L.Q.R. 442

Contracts in a historical context

For information on the historical context and historical evolution of contract law, please refer to:
Simpson, 'A History of the Common Law of Contract' in Cheshire, Fitfoot and Furmston, *Law of Contract* pp.1-16

Introductory Concepts

Traditional Principles

Freedom of Contract

Many of the principles of English contract law were developed in the eighteenth and nineteenth centuries under the classical doctrine of *freedom of contract*. By this theory the parties are free to enter into whatever transactions they wish with a minimum amount of interference by the courts or government. This is an underlining principle of *Free Market Liberalism*, the dominant ideology of the time (encouraged by a general Laissez-Faire philosophy). The sort of government restrictions might include a minimum wage, competition law limits, or restrictions on price fixing.
A consequence of this is that once a contract has been entered into, the parties are legally bound, even if the contract turns out to be a *bad bargain* for them. The law will only intervene in the cases of:

- Fraud
- Illegality
- Some other legal wrong

This theory ultimately breaks down because of the inequality of bargain power; today, both parliament and the courts have adopted measures to help protect the weaker party (such as consumers, tenants, employees).

Europe

It is also important to take into account the effects of Europe on English contract law. The European Community has imposed various directives that effect contract law. In addition, the ***Human Rights Act 1998*** has affected domestic legislation that regulates contract law, such as posed[4] conflict between the *Human Rights Act 1998* and the ***Consumer Credit Act 1974*****[5]****. Also, there has been much work to create a standard European contract law. Such principles are in use by some as an impartial medium for international business transactions (which is bad for English Lawyers – the traditional transitional legal system). While it is worth keeping these in mind, such principles are a long way from being universally adopted, and currently serve only limited application in domestic law.

Types of Contracts

The traditional classification of contract is between *Deeds* and *Simple Contracts*. The following are brief definitions of the different categories.

Deeds

The origin of Deed contracts the medieval charter. The form in which they are made signifies deeds. A deed must be in writing, signed, witnessed and delivered. If it is not in that form, then it is not enforceable as a deed. Deeds are used for a specific purpose in modern law because of a unique property: Deeds **do not have to be supported by consideration** (explained later) in order to be **legally enforceable**.

- Conveyances
- Commissions
- Licenses
- Patents
- Diplomas
- Conditionally powers of attorney can be executed as deeds

At common law, to be valid and enforceable, a deed must fulfill these requirements:

- **State that it is a deed** through using phrases like "This Deed..." or "executed as a deed".
- **Indicate that the instrument itself conveys some privilege or thing to someone**. This can be indicated by using words like “hereby” or the phrase “by these presents” in the clause indicating the gift.
- **The grantor must have the legal ability to grant the thing or privilege**, *and likewise,* **the grantee must have the legal capacity to receive it.**
- Executed by the grantor **in presence of the prescribed number of witnesses**, known as *instrumentary witnesses* (this is known as being in solemn form).
- Originally, affixing seals made persons parties to the deed and signatures were optional, but seals are now mostly outdated, and now the signatures of the grantor and witnesses are primary.
- It must **be delivered to** (delivery) *and* **accepted by the grantee** (acceptance).
- *It should be, but not necessarily, properly acknowledged before a competent officer, most often a registrar (deeds office, deeds registry) or notary public.*

A deed indented or indenture is one executed in two or more parts according to the number of parties, which were formerly separated by cutting in a curved or indented line known as the chirograph.

Simple contracts

All contracts that are not deeds are simple contracts. This is true whether they are made in writing, orally or through conduct. The study of contract law is dominated by the study of simple contracts. There are two main categories of simple contracts, which are *bilateral contracts*, and *unilateral contracts*.

a UNILATERAL CONTRACT is a promise made by one party, stipulating a condition required to enforce it. This means anyone wanting to accept an offer and enter into a unilateral contract, will have to fulfill this condition (a.k.a. the equivalent of the second parties promise in bilateral contracts). It is only after the condition has been fulfilled that the offer has been accepted, the promise been bought, and a contract entered into.	a BILATERAL CONTRACT is the most conventional type of contract. It is any agreement for a present or future exchange of promises. Here a promise by one party is bought by the promise of another. The exchange of promises is what makes the contract enforceable – if only one party gave a promise; it could not be legally enforced.

Elements of a contract

There are three main elements that are required to create a valid, legally enforceable contract:

- The parties must (objectively viewed) be in agreement. Whether an agreement has been made depends on whether there has been both *offer* and *acceptance* (in detail bellow)
- There must be a clear *intention* to be *legally bound*
- Both parties must have provided *consideration* (something that they provide in order to *buy* a

In addition to these basic requirements, both parties must have legal capacity to contract, and not be entering into a contract illegally. When a contract has been entered into under duress, the innocent party may have the right to set it aside.

Offer and Invitation to Treat

Agreement and Promise

Contracts, as previously indicated, are usually regarded as *agreements*. An agreement is ascertained when objectively viewed there has been an offer, and an acceptance of that offer.
One party (the offeror) makes an offer to another party (the offeree) who then accepts the offer on exactly the same terms, and then communicates his acceptance to the offeror.
It is a lawyerly concept, and useful tool for legal analysis of contracts, but it is not a necessarily universal rule. This can be seen from the following statement:
“Although the formation of a contract is conventionally analyzed in terms of whether a contractual offer was accepted, the law does not require rigorous compliance with an analysis along these lines. Nor does it require that any particular communication or act must in itself manifest that the party intends to contract: the court will, if appropriate asses a persons conduct over a period and decide whether its cumulative effect is that he has evinced an intention to make a contract.”**[6]**
While this observation would indicate that offer and acceptance is only of limited use, it is still almost universally used by the judiciary because it can answer the following three questions about contract formation:

- Whether an agreement has been made
- When the agreement was made
- Where the agreement was made

Clarke v Dunraven**[7]**

- Clarke and Dunraven were both members of a yacht club, and entered their yachts into a regatta
- The yacht club rules for the regatta stated that no member of the yacht club were allowed to sue another member of the yacht club, nor were liable for any damage incurred during the regatta
- This was intended to create a contract between the members of the yacht club
- Both parties agreed to follow the yacht clubs rules
- Dunraven crashed his yacht into Clarkes yacht
- Clarke made a claim against Dunraven

This case makes it difficult to analyze the offer and acceptance process, as acceptance on entering the water, or on starting race are ambiguous ways of demonstrating a party’s acceptance. The alternative and more realistic view of these facts, is that the contract was only between the yacht club and the owner, and not the individual parties. The House of Lords held that there was a contract, despite the lack of communication in inducing a contract. In this instance the contract WAS between the yacht owners, and not the yacht club. (This is an example of a multilateral contract).
The **key point** in this example is that there may be times when contracts cannot be examined in terms of strict offer and acceptance.
Here the contract took its force from the common will (consensus ad idem) of the two involved parties.

RTS Flexible Systems Ltd v Molkerei Alois Muller**[8]**

- RTS (Claiment) made a written offer to install food packaging production lines for the defendant (Milkerei
- Molkerei wrote back indicating their willingness to proceed with the project, subject to the signing of a contract containing the full terms within a four week period
- RTS began work on the project (as is often the case in industry)
- Agreement was reached an almost all the terms, vut no formal agreement was signed
- Delays then occurred
- 70% of the contract price had been paid to RTS

Supreme court analyzed this situation, and concluded that RTS was entitled to sue. The parties, as

deciding factor is that all the terms had been discussed in depth, and it was clear that the parties were in agreement; supported by the work done and money paid by both companies. The Supreme Court did however point out the issue of beginning work without a contract. They also pointed out that they would not impose a contract onto parties who had not come to an agreement. Using the objective test seen in Smith v Hughes[9] (see bellow) it was possible in this case that an agreement had objectively been made.

Offer

> An offer is an expression of willingness to contract on certain terms made with the intention (express or implied) that it shall become binding as soon as the person to whom it is addressed accepts it

In this definition, it is important to note that the courts decide *intention* objectively, taking into account little of either parties subjective views. What this means, is that the intention is what a reasonable person would conclude that one party intended to convey to the other.

Smith v Hughes[10]

- Mr Hughes was a racehorse trainer
- Mr Smith brought Hughes a sample of green oats
- Hughes ordered forty to fifty quarters of oats at 34 shillings a quarter
- When the oats arrived, Hughes said they were not the oats he thought he was buying. He had wanted old oats (which are the only ones racehorses can eat), and he was getting new, green oats
- Hughes refused to pay and Smith sued for breach of contract, for the amount delivered and for damages for the amount for oats that were still to be delivered.
- But when the oats arrived, Hughes said they were not the oats he thought they were. He had apparently wanted old oats (which are the only ones racehorses can eat), and he was getting new, green oats.

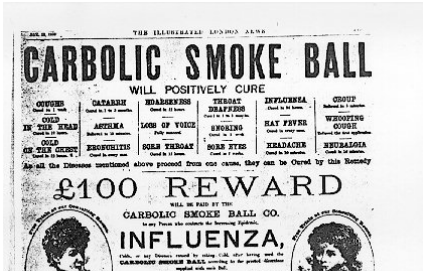
The court decided that although it may not subjectively seem fair, Hughes should have to pay Smith. The fact that Smith did not tell Smith about the variety of oats, and through his lack of expertise, the burden of responsibility is on Hughes to ascertain any information lacking in representation. The offerees mistake, and the fact that he is subject to a bad bargain has no impact on the validity of the contract.

Intention to make an offer

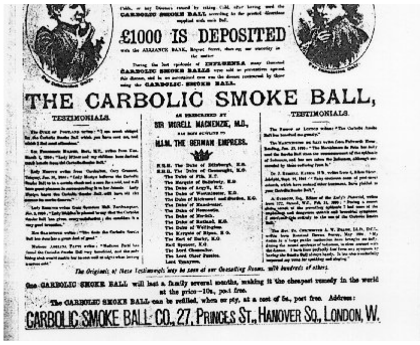
Carlill v Carboxylic Smoke ball co.

The Carbolic Smoke Ball Company made a product called the "smoke ball". It claimed to be a cure for influenza and a number of other diseases, in the context of the 1889-1890 flu pandemic (estimated to have killed 1 million people). The smoke ball was a rubber ball with a tube attached. It was filled with carbolic acid (or phenol). The tube would be inserted into a user's nose and squeezed at the bottom to release the vapours. The nose would run, ostensibly flushing out viral infections.

The Company published advertisements in the Pall Mall Gazette and other newspapers on November 13, 1891, claiming that it would pay £100 to anyone who got sick with influenza after using its product according to the instructions set out in the advertisement:



"£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks, according to the printed directions supplied with each ball."



“£1000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter.”

“During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against this disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball.”

“One carbolic smoke ball will last a family several months, making it the cheapest remedy in the world at the price, 10s. post free. The ball can be refilled at a cost of 5s. Address: “Carbolic Smoke Ball Company, “27, Princes Street, Hanover Square, London.””

Mrs Louisa Elizabeth Carlill saw the advertisement, bought one of the balls and used it three times daily for nearly two months until she contracted the flu on 17 January 1892. She claimed £100 from the Carbolic Smoke Ball Company. They ignored two letters from her husband, a solicitor. On a third request for her reward, they replied with an anonymous letter that if it is used properly the company had complete confidence in the smoke ball's efficacy, but "to protect themselves against all fraudulent claims" they would need her to come to their office to use the ball each day and be checked by the secretary. Mrs Carlill brought a claim to court. The barristers representing her argued that the advertisement and her reliance on it was a contract between her and the company, and so they ought to pay. The company argued it was not a serious contract.
The statement “£1000 is deposited” indicated that the company had a clear willingness of intent to be legally bound by the offer. This is what prevents to offer from being deemed “Mere Puff”. Without this intention to be legall bound, there would be no contract, and Carlill would not have a valid claim.
In Carlill, the problem arises of when the offer was accepted. Was it when Mrs Carlill purchased the smoke ball, started to use the Smoke ball, or when she contracted flu? Because the offer was only for those who had completed all terms of the offer (as is normal practice in unilateral contracts), it was only after Mrs Carlill had caught the flu after using the smoke ball, that she was validly able to accept the offer. Because all of the conditions had been satisfied, Carlills conduct was an acceptance of the offer.
Mrs Carlills conduct need not have been communicated for acceptance to occur. This is normal in unilateral contracts, despite the normal requirement for acceptance to be communicated. This is reaffirmed in the case Taylor v Allan.

Taylor v Allen**[11]**
Taking a car out on the road does not amount to an acceptance of an offer to insure unless there is clear evidence that the party intended to deal with that insurance company.
The difficulty with acceptance by conduct is that it is difficult to determine precisely what the terms of the contract are. This may result in the court refusing to acknowledge the existence of a contract at all. In situations where the price may not have been fixed the courts are prepared to impose a reasonable price provided that it clear that the parties have agreed to contract as opposed to merely ‘agreeing to agree': Sale of Goods Act s. 8(2).
Lord Parker’s dictum however, indicated that offers can be accepted uncommunicated.

Bowerman v Association of British Travel Agents Ltd**[12]**
Carlill was applied in Bowerman v Association of British Travel Agents Ltd

- A notice displayed in the offices of members of the Association of British Travel Agents (‘ABTA’)
- Notice stated that ABTA would reimburse holidaymakers in certain circumstances
- In the actual booking of the holiday, this was not referred to, or put into the terms of sale
- It was held that there was contract between ABTA and people who had booked holiday with ABTA members.

The wording of the notice was clear and imposing, which created an unqualified obligation on ABTA. Moreover, there is a well-known risk in the travel industry that operators will become insolvent, so that a statement that the ABTA would protect holiday makers in such situations would be very important to those

ABTA had made it a cornerstone of the promotion of their members to emphasize how ABTA would protect holidaymakers, and ABTA's president in interviews often used the words 'ABTA promises'.

Upton RDC v Powell[13]**

- The defendants (Powell) house was on fire
- Defendant phoned the police for help
- Although he was entitled to the free fire services of the Pershore fire brigade (he lived in their district), the police contacted the nearby Upton Fire Brigade
- Upton fire brigade put out Powell's fire
- It was held that Powell had to pa for Upton fire brigade's services

Because the police acted as an intermediary, it was difficult to establish that a contract had existed. Even one was found then it was difficult to judge between whom it was concerning. Powell had no intention of getting Uptons services instead of the free services by Pershore. He had not made an offer to Pershore, but through his conduct he made no attempt for the fire brigade to stop their services. It could be argued that there was a contract between Powell and the Police, and the Police and the fire brigade, but the police would have provided no consideration. Because of this the claim was not in contract, but instead in *quantum meriut restitution*

Powell retained the brigade's services with no fixed wage agreement, so a reasonable sum awarded.

This case establishes that acceptance must be in response to an offer, as here Powell made no offer to the brigade.

O'Brien v MGN Ltd[14]**

- The Mirror Group Newspaper put scratchcards with its newspapers. If the card came up with money, players called a premium rate number to see if the amount matched a mystery bonus cash amount.
- Mr O'Brien on 3 July 1995 got two sums of £50,000. 1471 other people did as well, because MGN had distributed too many by mistake. MGN had only intended to have one prize of £50,000.
- MGN held a draw among the 1472. MGN pointed to "Rule 5", which said there would be a draw where more prizes were claimed than available. Rule 5, however, although published in some newspapers, was not to be found in the 3 July 1995 edition.
- This newspaper only said 'Normal Mirror Group rules apply.' Mr O'Brien had seen that. The question was whether Rule 5 was incorporated into the scratchcard agreement.

Hale LJ held that Rule 5 was incorporated. She noted that Rule 5 was no big burden on the claimant like in Interfoto nor excluding liability for injury like Thornton, but simply deprived a windfall

Offers in advertisements

Advertisments for goods for sale are normally classified as invitations to treat.

Grainger & Son v Gough[15]**

Grainger & Son was a wine merchant, here the wine merchant sent out a pricelist for a collection of wine. X Wished to buy some wine at the price indicated in the pricelist. The wine merchant argued that this pricelist was not an offer to buy the wine. It was instead was encouraging offers to buy the wine, or an *invitation to treat*. The court agreed with he wine merchant, that the advertisement of goods in the price list was merely an invitation to treat.

Lord Herschell said dealing with a price-list:

"The transmission of such a price-list does not amount to an offer to supply an unlimited quantity of the wine described at the price named, so that as soon as an order is given there is a binding contract to supply that quantity. If it were so, the merchant might find himself involved in any number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out, his stock of wine of that description being necessarily limited."

This is important today with online merchants. When a seller lists a good on his website, they are only indicating that they will sell the goods, subject to stock. If a seller received a sudden influx of requests to buy a product before they were able to remove the advertised item from their website, then without this

contracts would have been concluded in terms of offer and acceptance, then the seller would have been in breach of contract, and therefore would be liable to be sued as such.

Partridge v Crittenden[16]****

- On the 13th April 1967 an advertisement by the appellant (Arthur Robert Partridge) appeared in the periodical "Cage and Aviary Birds", under the general heading "Classified Advertisements" which contained, amongst others, the words “Quality British A.B.C.R... Bramblefinch cocks, Bramblefinch hens 25 s. each.”
- In no place was there any direct use of the words "offer for sale".
- A Thomas Shaw Thompson wrote to Partridge asking him to send him an ABCR Bramblefinch hen (a brambling) and enclosed a cheque for 30s. On the 1st May 1967 Partridge sent a brambling, which was wearing a closed-ring around its leg, to Thompson in a box.
- Thompson received the box on 2 May 1967 and was able to remove the ring from the bird's leg without injuring it.
- Partridge was charged by Anthony Ian Crittenden, on behalf of the RSPCA, with illegally offering for sale a wild life bird which was not a close-ringed specimen, bred in captivity, against s. 6(1)* and Sch. 4* of the *Protection of Birds Act 1954.*
- The magistrates decided that the advertisement was an offer for sale and that the ABCR Bramblefinch hen was not a close-ringed specimen bred in captivity, because it was possible to remove the ring from the bird's leg.
- Partridge was convicted, was fined £5 and ordered to pay £5 5 s. advocate's fee and £4 9 s. 6 d. witnesses' expenses.
- Partridge appealed against conviction.
- The court of appeal held that the advertisement was in fact an invitation to treat

s 6(1) of the Protection of Birds Act 1954: "If... any person sells, offers for sale... (a) any live wild bird... including in Sch. 4 to this Act of a species which is resident in or visits the British Isles in a wild state, other than a close-ringed specimen bred in captivity;... he shall be guilty of an offence..." Sch 4 of the Protection of Birds Act 1954 has the heading: "Wild birds which may not be sold alive unless close-ringed and bred in captivity" and amongst the names in the schedule is "brambling".

Denton v G.N.R.[17]****

Denton caught a train that was late. He sued Great National Railways for breech of contract. Denton ultimately failed. The offer relevance is in deciding when a contract was made; Denton’s claim failed because at the time of catching the train, no contract had been made. The timetable was held to be an *invitation to treat* and not an *offer*. Denton had made the assumption that the timetable was an offer, and sued for breech of contract. The courts instead decided that the offer would have been made either when the ticket was bought, or the claimant got on the train. It was an invitation to treat and not an offer because it was made to the public at large, but this view would still allow for interpretation of the timetable as a unilateral contract.

Statement of Intent:

“Statements which are made in relation to the intention of a party or the occurrence of some event in the future do not constitute misrepresentations should they fail to eventuate. This is because at the time the statements were made they cannot be categorized as either true or false. However, similarly to the first point above, an action can be brought if the intention never actually existed. This can be illustrated by the decision in *Edgington v Fitzmaurice* (1885) 29 Ch. D. 459, which deals with a statement of intention by the directors of a company to use loaned money to alter company buildings and make purchases to expand the company’s operating options. It was found that the directors actually intended to repay current debts and according it was held by the judges that the contract was voidable”

the consideration at all." Instead, the consideration is the buying of a ticket. It is at this point that a contract has been made. The train company has not made a contract to provide services at the times specified on the timetable, instead only issued a *statement of intent*.
The essence of this case is that a general publication is not an offer unless it can be read clearly and unambiguously that way; here this was not the case.

Displays in Shops

Fisher v Bell[18]**

This case reaffirmed what was found in the case law regarding offers in advertisements. It set the precedent that in sale of goods in shops; an offer is created when the customer presents the item to the cashier together with payment. Acceptance occurs at the point the cashier takes payment.

- The Defendant displayed a flick knife in the window of his shop next to a ticket bearing the words "Ejector knife – 4s."
- Under the *Restriction of Offensive Weapons Accontents Restriction of Offensive Weapons Act 1959*, section 1(1), it was illegal to manufacture, sell, hire, or offer for sale or hire, or lend to any other person, amongst other things, any knife "which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife".
- On 14 December 1959, the Claimant, a chief inspector of police force, brought forward information against the Defendant alleging the Defendant has contravened section 1(1) by offering the flick knife for sale. This loophole was closed by Restriction of Offensive Weapons Act 1961 [1] Ban on Flick Knives: which inserted after the words “offers for sale or hire” the words “ or exposes or has in his possession for the purpose of sale or hire”.

The display of the flick knife in the store window was merely an invitation to treat. The seller made no explicit indication that they were planning to sell the knife.

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd[19]**

The Court held that the display of a product in a store with a price attached is not sufficient to be considered an offer, but rather is an invitation to treat.

- Boots displayed medicine on the shelves of their shops
- Under the *Pharmacy and Poisons Act 1933* s.18, medicines must be sold under the supervision of a registered pharmacist.
- The issue was whether the sale of goods in boots conflicted with the statute

It was held that the sale of goods did not conflict with the statute. The claimants argued that by displaying the goods in the store with a price tag, boots was making an offer, and when a shopper selected and put the drugs into their shopping basket, that was an "acceptance". Boots instead argued that the buyers made the offer, when they took a product to the cashier’s desk, which was accepted by the sale of the item. The pharmaceutical society’s argument is unfeasible, because it would mean that having selected an item, they would be legally bound to purchase an item, and would be unable to change their mind about buying the item, should for example they see a similar product that would better suit their needs.
It is not clear whether the offer is accepted when the seller asks for price, or when the buyer pays for the goods.

Auction Sales

In auction sales in general, the *offer* is made by the bidder, and *accepted* by the auctioneer, conventionally *communicated* through use of the auctioneers hammer. The offer made by a bidder seemingly lapses on the production of a new offer by a different bidder. Where there is no reserve, the auctioneer therefore has the right to refuse to refuse to accept the highest bidders bid (as reaffirmed by the sale of goods act). If however a reserve is present, then the auctioneer is obligated to accept the highest bid (subject to the bid exceeding the reserve price), and the bidder would be unable to revoke their bid (or offer). Here there is no contract between the bidder and the seller, instead there is a contract between the bidder and the auctioneer, as the auctioneer has contracted with the bidders, to sell an item subject to the reserve price being attained.

Sale of Goods Act 1979 s. 57(2) states that the offer is accepted by the fall of the auctioneers hammer, and until that time, a bidder may retract their offer.

Warlow v Harrison[20]**

- When an item is advertised in an auction without reserve, then the usual auction rule applies, that a bid is an offer and it can be accepted or declined.
- However, there is a further, unilateral offer, by the auctioneer to whoever turns out to be the highest bidder. That offer is to accept the highest bid. Therefore, the auctioneer can be sued if he does not accept the highest bid.
- In this case the plaintiff bidder lost the case on a technicality, and the decision on the unilateral nature of the without reserve auction was therefore obiter. However, it was followed in Barry v Davies [2000].

Facts of the case:

- Property was advertised for sale at public auction without reserve.
- The vendor had overbid the plaintiff, when the plaintiff was in the position of being the highest bidder, and the property had been knocked down to the vendor.
- The plaintiff (Warlow) sued the auctioneer, arguing that being the highest *bona fide* bidder, there was a contract, which the auctioneer, as his agent was bound to complete.

It is important to remember, with this interpretation of the law that the auctioneer is acting as the agent of the seller, and so the contract was between the seller and the buyer.
obiter dictum suggested that the auctioneer would be bound to sell to the highest bidder, offering an exception to the general rule.

Harris v Nickerson[21]**

- The defendant (the auctioneer) advertised that certain items (including office furniture) would be sold at the auction
- The plaintiff (Harris) attended the auction to buy the office furniture, but the office furniture had been withdrawn from the sale
- The plaintiff claimed that the advertisement amounted to an offer to sell the furniture, which he had accepted by attending the auctions
- The claim failed

This is essentially dealing with an advertisement, and not an auction sale. Here, it was held hat the advertisement did not amount to a promise to sell the furniture. This is because, as previously indicated, an advertisement making no explicit promise, or an intention to be legally bound cannot be the basis of an offer, and should be instead classified as declaration of intent.
This also makes sense, because the holding of an auction is an invitation to treat, and not an offer. If the plaintiff won the case, that means that the advertisement created a legally enforceable obligation to imply certain requirements of an invitation to tread, which is highly unplausable.

Barry v Heathcote Ball & Co[22]**

In an auction without reserve, the auctioneer is bound to sell to the highest bidder.

- The auctioneers (defendants) put up for auction two car engine analyzer machines (with a value of £14,000 each)
- The auctioneer failed to secure any bids with his opening price, and asked for bids of £5,000 and £3,000 before inviting the bidders attending to make any offers
- The plaintiff (Barry) then made a bid of £200 for each machine
- The auctioneer then decided to withdraw the machines from the auction as he felt he could obtain a greater amount elsewhere
- After advertising in a magazine, a few days later the machines were sold for £750 to a new party
- The plaintiff sued, as he felt that the auctioneer should have been obligated to sell the machines to him, on the basis of a collateral agreement
- The court of appeal agreed, and the auctioneer was liable for damages for the £27,600 (£28,000-£400)

goods were removed from the auction.

British Car Auctions v Wright[23]**

- The appellants sold a car in a unroadworthy condition
- Under the Road Traffic Act 1972 it was an offence to sell such a vehicle
- The appellants (auctioneers) were charged with offering for sale a vehicle in such a condition
- They were convicted in the Magistrates' Court, they appealed
- The appeal was held, because holding the auction only constituted partaking in an invitation to treat, not an offer to sell goods
- It was held that the buyer makes an offer which the auctioneer then either accepts or rejects

The offence is to sell, not to create an invitation to treat.
There is never an offer to sell, only an offer to buy.

Comparing Harris v Nickerson & British Car Auctions v Wright
These cases highlight the conflicting rules about auctions. *British Car Auctions v Wright* indicates that an auction is only an invitation to treat, and that the auctioneer is under no obligation to sell to the highest bidder (they may accept or reject their offer); however, in *Harris v Nickerson*, it was held that the holding of an auction with reserve created an obligation on the auctioneer to sell to the highest bidder.
Both cases are legally valid because of an important difference between the two cases; in Harris v Nickerson, their was a reserve price set by the auctioneer, which had been met by the bidder, and in British Car Auctions v Wright, there was no reserve price.

Offer and Requests for Information

Harvey v Facey[24]**

- A request was sent by the claimant (Harvey) stating, “Will you sell us Bumper Hall Pen? Telegraph lowest cash price”
- Defendant (Facey) replied, stating “Lowest cash price for Bumper Hall Pen, $900”
- Claimant then contacted Defendant saying “We agree to buy Bumper Hall Pen for the $900 asked by you”
- It was held that there was no contract

Here, the defendants merely gave information that was requested by the claimants. They made no indication that they were offering to sell the Bumper Hall Pen, instead, only stating the price they would accept, should they wish to sell the Bumper Hall Pen.

Stephenson Jacques & Co. v McLean[25]**
A counter offer may be distinguished from a request for information where in response to an offer to sell goods at a stated price made by the defendants, the claimants replied inquiring whether delivery could be made over two months. No reply to this inquiry was received, but the claimants accepted the offer. It was held that there was a binding contract; the claimant’s reply was a request for information and not a counter offer.

- McLean wrote to Stevenson, Jacques & Co. in Middlesbrough asking if he could get an offer for warrants on iron ore. (INVITATION TO TREAT)
- Stevenson offered 40s per ton in cash as the lowest price, with the offer open till Monday. (OFFER)
- McLean telegraphed saying ‘Please wire whether you would accept forty for delivery over two months, or if not, longest limit you could give.’ At 9:24am (REQUEST FOR INFORMATION)
- Stevenson did not answer
- Stevenson sold at 1:25pm to someone else.
- McLean, before hearing, telegraphed saying he accepted the original offer. (ACCEPTANCE)
- Stevenson refused to deliver the iron, and McLean brought an action for non-delivery.

Lush J held that the defendant's telegram at 9.42 was not a rejection of the offer but a mere inquiry about

finished, that was not effective until it reached the plaintiffs.
The request for information was decided not to be a counter offer – this is because McLean made no indication of making or rejecting an offer, only an inquiry.

[1]***Donoghue v Stevenson*** [1932] UKHL 100
[2] **Ibid**

[3]*British Steel Corporation v Cleveland Bridge and Engineering Co Ltd* [1984] 1 All E.R. 504
[4] The litigation in this instance actually failed, but it has brought the risk to greater attention
[5] ***Wilson v Secretary of State for Industry*** [2004] HL 2004
[6] ***Maple Leaf Macro Volatility Master Fund v Rouvroy*** [2009] EWHC 257
[7] ***Clarke v Dunraven*** [1987] A.C. 59, HL
[8] ***RTS Flexible Systems Ltd v Molkerei Alois Muller GMBH & Co.*** [2010] 1 W.L.R. 753

[9]***Smith v Hughes*** (1871) LR 6 QB 597
[10]***Smith v Hughes*** (1871) LR 6 QB 597
[11] ***Taylor v Allen*** [1966] 1 QB 304
[12] ***Bowerman v Association of British Travel Agents Ltd*** [1995] N.J.L. 1815
[13] ***Upton RDC v Powell*** [1942] 1 ALL ER 220
[14]***O'Brien v MGN Ltd*** [2001] EWCA Civ 127
[15] ***Grainger & Son v Gough*** [1896] A.C. 325 (H.L.)
[16] ***Partridge v Crittenden*** [1968] 2 All E.R. 421 (Q.B.D.)
[17]**Denton v G.N.R.** [

[18] ***Fisher v Bell*** [1961] 1 Q.B. 394 (Q.B.D.)
[19]***Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd*** [1953] EWCA Civ 6
[20] ***Warlow v Harrison*** [1979] 1 E&E 309

[21]***Harris v Nickerson*** [1873] L.R. 8 Q.B 286
[22] ***Barry v Heathcote Ball & Co*** [2001] 1 All E.R. 944 (C.A.)

[23] ***British Car Auctions v Wright*** [1972] 3 All E.R. 462
[24] ***Harvey v Facey*** [1893] A.C. 552

[25] ***Stephenson Jacques & Co. v McLean*** [1880] 5 Q.B.D. 346