

LW2903 Business and Law – Answer Guide

The main issue here is whether a contract was formed between Cindy and Rachel. A contract is defined as a legally binding agreement between two or more parties. Cindy may recover damages from Rachel if the parties entered into a valid contract. Formation of a valid contract requires an offer that is accepted before it is revoked. Besides offer and acceptance, consideration and intention to create legal relations must also be present to form a legally binding agreement.

For the first advertisement to constitute an offer, there must be a definite promise or proposal to be bound on specific terms and it has to be definite, not vague. Generally, advertisements are not considered offers because they are too broad and vague. Instead, it is considered as an invitation to treat which is an invitation to invite someone to make an offer. This can be illustrated in the case of Partridge v Crittenden (1968). The case was concerned with an advertisement in the periodical “Cage and Aviary Birds” under general heading “Classified Advertisements” which contained, amongst other things, the words “*Quality British Bramblefinch cocks, Bramblefinch hens 25 s. each*”. This is similar to the current case where the advertisement described the service, the price and the contact details. The advertisement here did not indicate any details on the services offered. Unlike the case of Carlill v Carbolic Smoke Ball Co [1892] where it constitutes a definite promise. This advertisement contained nothing that would lead a reasonable person to believe that Rachel made any promise, undertaking, or commitment.

Cindy and Rachel’s conversation on 2 August can be construed as including an offer by Rachel. During the conversation, the parties established a specific subject matter (i.e., babysitting services for Josh beginning September to December) and a price (i.e., \$2000/week). Rachel also indicated that Cindy could accept by dropping Josh off on 1 September. A reasonable person under these circumstances would conclude that Rachel communicated a willingness to be bound by these terms.

Cindy validly accepted Rachel’s offer by taking Josh to Rachel’s house on 1 September. To be valid, acceptance must come before the offer has been revoked. It also requires an expression of willingness to be bound by the terms stipulated by the offeror and it must be effectively communicated. As stated in the case of Entores v Miles Far East Corporation [1955], the contract was formed in England where acceptance was received. Here, the terms gave Cindy until 1 September to accept, and she did nothing prior to 1 September. When Cindy came to Rachel’s house on 1 September, the offer had not been terminated by its terms. Neither would the offer have lapsed by the passage of a reasonable amount of time, since by its terms it could be accepted on the 1 September and the terms of acceptance match the terms of the offer (Hyde v Wrench (1840)). Thus, the only question left is whether Rachel validly revoked her offer.

Revocation means the offer is withdrawn by the offeror. The general rule was established in Payne v Cave (1789) that an offer can be revoked at any time before it has been accepted. Rachel will argue that she validly revoked her offer on 20 September when she placed her second advertisement or on 1 September when Cindy saw the note on Rachel’s doorbell. However, these arguments are not likely to prevail. Generally, an offeror may revoke an offer at will, and a revocation is effective when received. Offers made by publication may be revoked by publication through comparable means. However, as established above, the offer made by Rachel was not made by publication, but rather was made during

face-to-face negotiations. Moreover, the facts indicate that Cindy did not see Rachel's advertisement on 20 September. Thus, the advertisement did not constitute a valid revocation of the offer. The note on the door presents a closer question. Clearly Cindy did see the note before she dropped Josh off. However, given that the offer said that Cindy could accept by dropping Josh off at Rachel's house on 1 September, and Cindy was at Rachel's house on 1 September before she saw the note, a court could hold that the note on the door came too late—Cindy had already accepted by coming to Rachel's house with Josh as stated in the offer. Cindy could also argue that while she saw the note, it did not mention her by name, she did not think that it applied to her and was ineffective as a revocation.

The agreement here was also supported by consideration on both sides. In the case of Currie v Misa (1875), Lush J said "*a valuable consideration must constitute either a benefit accruing to one party, or a burden suffered or undertaken by the other*". Cindy promised to pay Rachel \$2000 per week in exchange for Rachel's babysitting services, and Rachel promised to provide the babysitting services in exchange for Cindy's promise to pay \$2000 per week. Arguably, a contract was formed between them because there was intention to create legal relations which would then turn the agreement into a legally binding contract.

Cindy will be able to recover her damages. Rachel breached the contract by refusing to babysit Josh. According to Lord Diplock in the case of Photo Production Ltd v Securicor Transport Ltd [1980], where a party breaches, the party has a secondary obligation to pay monetary damages to the nonbreaching party and she is entitled to damages that will put her into the position she would have been in had the promise been performed. Here, if Rachel performed as promised, Cindy would have been paying only \$2000 per week (instead of \$2500) and would not have incurred the expenses of finding alternative service. She is entitled to recover her expenses and the \$500 extra in weekly fees. It should be noted that Cindy would not be entitled to an order of specific performance—i.e., a court order directing Rachel to care for Josh. Generally, the courts will not grant specific performance in a service contract because it is tantamount to forcing someone to work against her will.