

BUSINESS LAW  
by Student's Name

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## Introduction

An auction is a place where goods and other things are sold. An auction differs from an ordinary market place because it happens at a specific time and place for conducting the sales. An auction is also referred to as a public sale conducted by an auctioneer. In auction sales, a bid refers to a price by a person that signifies the intention to pay money for an item that is being sold in the auction. Goods in an auction are sold when bidders make bids on the things. Goods can either be sold separately or they can be put together in groups called lots. Where goods are grouped in lots, each lot becomes independent and has its own rules and procedures of sale.

Legally speaking, a sale is considered to be complete in an auction when an auctioneer declares that a thing has been duly sold. This declaration can be made by a verbal announcement or by a banging of a gavel or ringing a bell or by any other established and well known method of symbolizing the closing of a deal. These customary practices symbolize acceptance of a bid. An auctioneer, however, retains authority to open a bid again if a bid is made before or during the falling of a gavel. This reopening can happen if a subsequent bid is better than the previous one. An auctioneer also has the authority to decline to accept any new bids in which case he would be obliged to declare the goods to have been sold (Bridge 1998).

Vending of things in an auction can be done by auctioning an object to a reserve price or selling without the option of a reserve price. In an auction with a reserve price, a seller/owner of the goods retains the right to refuse to sell the property which is the subject of the auction. This, consequently, means that an auctioneer's announcement of an item to be bid for is merely an invitation to contract and is not an offer seeking acceptance. This, in turn, means that a seller of the good can withdraw that item before the highest bid is made and the auction would end.

A sale is without a reserve where nobody has the right to withdraw the item once it has been officially announced to be open for bidding. Neither an owner nor an auctioneer can claim to have any right to withdraw the item from the auction until the auction is complete unless no bid is made within a reasonable time. This rule was set up in *Barry v Davies* whereby it was held that an



auctioneer would be bound to sell to the bonafide purchaser who had the highest bid, and he retained no right to decline the bid or refuse to deliver the item sold. A bidder is, however, allowed to retract his bid even after the announcement of acceptance of the bid by the auctioneer, and this would, therefore, serve to reopen the bid afresh (Lundmark 1998).

In a sale by auction, a bidder acquires property of the items being sold only if he has paid the price required and has complied with all conditions presented, if there are any. Similarly, once a bidder has paid for the goods in the prescribed manner, a seller or an auctioneer is legally precluded from declining to deliver goods in a manner and a condition in which they were sold. Failure by a seller to deliver goods leaves a buyer entitled to recover a price paid for the goods. Additionally, a buyer is not entitled to recover any money paid for an item that he/she bought knowing that an item had some defects in it, or where a buyer failed to inspect goods to ascertain fitness of goods being bought (De Freitas 2003).

In this particular case, the three ladies, Lorraine, Brenda and Pam, were all willing to engage in an auction sale. The fact that they spent time and money to attend the auction only to find that the time and venue had been changed was of no legal consequence to them or any other party. The very fact that the auction was held is enough. When the auction was held, several conditions were imposed upon all the bidders. There were some vehicles that had been put under a reserve price. These were the vehicles in lots 1-30. The vehicles in lots 31-50 were not put under any reserve. All the vehicles were also to be sold subject to all the faults they contained.

Lorraine bid one vehicle in lot 8 for \$5000. She was, however, not allowed to collect the vehicle because it turned out that the auctioneer had made a mistake in accepting her bid because the reserve price for that vehicle was \$8000. The question for consideration here is whether or not Lorraine was entitled to obtain the vehicle by the virtue of a closed deal between her and the auctioneer. Additionally, there is also a question of what implication of the mistake made by the auctioneer would be.



In this case, Lorraine is allowed to a full reimbursement of her money, because the failure to complete the contract was not her fault but the auctioneers' fault. On the other hand, Lorraine is additionally enabled to obtain damages for the breach of contract by the auctioneer, because the contract had been duly closed when she bid and the auctioneer accepted her bid. She was entitled to collect the car because she had handled the payment in full. The mistake as to the amount of the reserve price was on the auctioneer's and, therefore, failure to deliver the car to Lorraine amounts to a breach of contract.

Brenda, on the other hand, bid for a vehicle in lot 35. There was no price reserved in this lot. However, she was forced to increase her bid from \$3500 to \$4500 after Mr. Tom King bid \$4000. It later turned out that Mr. Tom King was the seller of the vehicle, and the bid he made was a deliberate ploy to inflate the price of the vehicle. In this case, Brenda is entitled to revoke the contract because the auctioneer can be proved to have acted in bad faith. The auctioneer ought to have known the owner of the vehicle and, therefore, decline to take his bid. The act of the seller intentionally inflating the bid is contrary to the rule in *Warlow v Harrison* which holds that an owner of a thing which is the subject to an auction cannot be allowed to bid. Therefore, the act of the seller in bidding for the item was void (Honnold 2009).

Pam paid \$1000 for a lot 45 vehicle. It later turned out that the vehicle was faulty and she would be required to spend an extra \$700 to have it repaired. It occurs that Pam does not have any right to recover her money because the auction had placed visible notices to the effect that all vehicles were being sold subject to their faults. It was Pam's duty to ensure that the vehicle she intended to buy was in sound condition. Failure to make an inspection precluded her from claiming any compensation afterwards.

#### Formation of a Contract

A contract is a legally binding agreement between two or more parties. The parties involved in a contract are an offeror and offered. A valid contract establishes rights for a person accepting the offer and obligations for a person offering . This rule was set up in *Carlill V Carbolic Smoke ball*



*Co. Ltd* whereby the defendant was obliged to perform the obligations bestowed on them by virtue of an offer they had made even though the offer was a multilateral one. This means that once the contract has been agreed to, an offeror has a duty to deliver the goods to an offeror in the manner in which they agreed. An offeror, on the other hand, has a duty to discharge with the contract in an appropriate manner. That means he is required to pay the contract price or perform any other action the contract demands him to. Failure by either party to discharge the obligations on their side amounts to a breach of contract and appropriate remedies may ensue including and not limited to a claim for damages (Furmston & Tolhurst 2010).

A contract becomes duly legally binding if an offer is made by one party and accepted by the other party without any modifications as to the terms of a contract. Any modifications of the terms cause termination of the previous contract and drafting the new contract. A contract is not also considered fulfilled until an accepting party pays a certain amount of money or performs other action specified by the contract. The consideration serves to signify the intention by an accepting party to perform a contract within the terms it is premised on. In this case, Ronald considered the advertisement offering to sell four canoes for \$3000. He, however, only needed three canoes and in that instance he offered to buy three canoes, of the fourth that were being offered for sale, at \$2500 which is legally considered as a counter offer (Pathak 2007).

Bargain Canoe Sellers had been duly informed of the timelines in which Ronald could accept the offer. He had specifically instructed them to communicate not later than 20th December of that month. By the afternoon, December 20th, Ronald had not heard from Bargain Canoe Sellers, because they had sent the accepting letter to the wrong postal address. Since Ronald had not officially received any notice, he decided to purchase other canoes and dispense with the canoes from Bargain Canoe Sellers.

Bargain Canoe sellers now insist that they have a contract with Ronald to buy the canoes. The question here is whether or not there existed a valid contract between the Canoe sellers and



Ronald by virtue of the letter sent on 18th December. Another question is whether Ronald was entitled to revoke the contract and buy other canoes.

In solving these issues, one will first have to consider the process of communication during the contracting process. Under the law, acceptance of an offer through sending of a letter is considered to have been made once the letter has been posted by the person accepting the offer. As such, once Bargain Canoe Sellers had sent the letter to Ronald, that acceptance would have been considered as duly sent immediately when the letter was sent. However, Bargain Canoe Seller sent the letter to the wrong email address and, therefore, in essence, they would not be considered to have made the acceptance communication duly. Consequently, no contract was entered between the two parties.

On the other hand, it is provided for in law that an offeror can revoke an offer at any time before the offer is accepted. In this case, since Ronald had already made a counter offer on the offer initially made by Bargain Canoe Seller, he was, in essence, the offeror. Therefore, he was legally entitled to revoke the offer at any time before it was accepted. However, he was required to communicate such revocation in due time and in a prescribed manner so that he would relieve himself from any obligations under the contract (Zimmermann & Whittaker 2000).

In this regard, Ronald, upon receiving no communication from Bargain Canoe Sellers within the time he had instructed them, sent them a letter. Therefore, communication through sending of letters is deemed to have been made once the letter was posted. Therefore, since Ronald had already sent the letter, communication can be deemed to have been duly made.

The question now to be considered is the legal position Bargain Canoe Sellers is involved in. Considering that they failed factually to communicate their acceptance to Ronald within the timeline that Ronald provided, it is immaterial that the failure to make the due communication was the result of an error that was partly exacerbated by Ronald provision of two mailing addresses that served to confuse Bargain Canoe Sellers. Either ways, Bargain Canoe Seller were endowed with a



duty to ensure that they made the communication appropriately in order for the contract to become effective (Zimmermann & Whittaker 2000).

Additionally, Ronald had a legal right to revoke an offer at any time before it was accepted. With regard to the foregoing factual circumstances, no acceptance was made by Bargain Canoe Sellers and, therefore, any revocation he made was valid and well within the law. As such, Ronald did not breach any contract and no remedies can be claimed against him.

### Conclusion

With regard to the foregoing, a contract forming process is a procedural matter which requires every aspect to be put in place accordingly for the requisite rights and obligations to come into effect. Failure by either party to observe the procedural aspects leaves a contract unenforceable against either party because a contract that has not been duly concluded is prone to legal deficiencies that cannot be cured in contract law, but in other branches of law, for instance, equity or torts. It is, therefore, necessary to comply with the statutory regulations and procedures.



## References

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