

You Be the Judge –You are to play the role of an appellate judge and tell me the proper legal outcome of the fact patterns below. For this assignment, you must hand-write the terms involved, the holding, and your analysis – not the facts or issue. Your analysis must be based upon the law we discussed in class. If there is something you do not understand, you may use your textbook or the internet to help with the legal concepts covered within. Make sure you, like the judges in the cases we have briefed, define everything completely as well as properly apply the facts to the law. Finally, remember - contract disputes are civil claims. This means, plaintiff must establish each element of their claim by a preponderance of the evidence. So, I do not care whether you get the right outcome based on the actual case, and instead I am more interested in how you reach your conclusions.

Case #1 – What is an offer?

Facts: In the early 1890s, English citizens greatly feared the Russian Flu. The Carbolic Smoke Ball Company ran a newspaper ad that contained two key passages:

"£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the influenza 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, shewing our sincerity in the matter."

The product was a ball that contained carbolic acid. Users would inhale vapors from the ball through a long tube.

Carlill purchased a smoke ball and used as directed for two months. She then caught the flu. She sued, arguing that, because her response to the ad had created a contract with the company, she was entitled to £100.

The trial court agreed, awarding Carlill the money. The company appealed.

Issues: Did the advertisement amount to an offer? If so, was the offer accepted?

Case #2 – Letters of Intent

Facts: Eileen Norkunas owned a home in Baltimore, Maryland. The Groves and the Cochran expressed an interest in buying the house. The two couples drafted a handwritten letter, stating:

Letter of Intent

We, Rebecca Cochran, Robert Cochran, Hope Grove and Robert Grove, Buyers-offer to buy 835 McHenry Street, Baltimore, Md. 21230 for \$162,000. Payment by \$5,000 check, this date and \$157,000 by certified or cashiers funds no later than April 17, 2004.

A standard form Maryland Realtors contract will be delivered to Seller within 48 hours. Seller to pay only ½ normal transfer taxes and a 3% commission to Long & Foster. All other costs of closing to be paid by buyers.

The contract will contain a financing requirement for buyers, but buyers will guarantee closing and not invoke the financing contingency.

We will delete the standard home inspection contingency.\

They buyers and their broker signed the Letter. Norkunas accepted the buyers' check for \$5,000 but never deposited it. A few days later, the agent sent Norkunas a package of documents including a "Residential Contract for Sale." Norkunas signed the contract but never returned it to the buyers. A week later, Norkunas informed the buyers that she would not sell the property and took the property off the market.

The buyers sued claiming the letter of intent entitled them to the house. The trial court gave summary judgment for the buyers, but an intermediary appellate court reversed holding that the letter of intent was not binding. The buyers appealed.

Issue: Did the letter of intent create a binding agreement?

Case #3 - Definitiveness

Facts: David Chase was a television writer-producer with many credits, including a detective series called *The Rockford Files*. He became interested in a new program, set in New Jersey, about a "mob boss in therapy," a concept he eventually developed into *The Sopranos*. Robert Baer, a prosecutor in New Jersey interested in writing for television, met Chase and pitched his own idea for a television series about the New Jersey mafia. Baer didn't know that Chase was pursuing a similar idea. Baer arranged meetings for Chase with local detectives and prosecutors, who provided Chase with information about their experiences with organized crime and showed him various New Jersey locations. Baer also met with Tony Spirito, who gave Chase colorful background information about the local mafia. After returning to Los Angeles Chase wrote and sent Baer a draft for *The Sopranos'* pilot, which Baer commented on. After *The Sopranos* became a hit show Baer sued Chase, alleging that on three separate occasions Chase had agreed that if the program succeeded, Chase would "take care of" Baer, and would "remunerate Baer in a manner commensurate to the true value of his services." The District Court dismissed the case, holding that the alleged promises were too vague to be enforced. Baer appealed.

Issue: Was Chase's promise definite enough to be enforced?

Case #4 – Termination of Offers

Facts: A Tom Cat Bakery delivery van struck Elizabeth Nadel as she crossed a street. Having suffered significant injuries, Nadel filed suit. Before the trial began, the attorney representing the bakery's owner offered a \$100,000 settlement, which Nadel refused.

While the jury was deliberating, the bakery's lawyer again offered Nadel the \$100,000 settlement. She decided to think about it during lunch. Later that day, the jury sent a note to the judge. The bakery owner told her lawyer that if the note indicated the jury had reached a verdict, that he should revoke the settlement offer.

Back in the courtroom, the bakery's lawyer said, "My understanding is that there's a note.... I was given an instruction that if the note is a verdict my client wants to take the verdict."

Nadel's lawyer then said, "My client will take the settlement. My client will take the settlement."

The trial court judge allowed the forewoman to read the verdict, which awarded Nadel – nothing. She appealed, claiming that a \$100,000 settlement had been reached.

Issue: Did Nadel's lawyer accept the settlement offer in time?

Case #5 – Clickwrap/Shrinkwrap Offers

Facts: The plaintiffs sued Netscape, claiming that its SmartDownload software illegally captured private information about files they downloaded from the Internet. Plaintiffs downloaded the SmartDownload software from a page on Netscape's web that promoted the program's benefits and, at the bottom, bore a button labeled "download." If, instead of downloading, they had scrolled further down the page, they would have seen a hyperlinked invitation to "review and agree to the terms of the Netscape SmartDownload software license agreement." Clicking through the hyperlinks would have led plaintiffs to the license agreement governing the software's terms of use. Among the license terms was an agreement to settle any dispute through arbitration rather than through a lawsuit. The plaintiffs never read the license terms. In response to their suit Netscape moved the district court to stay the proceedings and compel arbitration. The District Court denied Netscape's motion, ruling that the plaintiffs had not agreed to the terms of the license.

Issue: Had the plaintiffs agreed to arbitrate their claims?

Case #6 – Mailbox Rule

Facts: Organon fired John Soldau, then sent him a letter offering to pay him double the normal severance pay, provided Soldau would sign a full release for any claims he might have against the company. Soldau signed the release and deposited it in the nearest post office. When he returned home, Soldau discovered a check from Organon for the double severance pay. He returned to the post office and obtained from the clerk the release that he had posted; cashed Organon's check; and finally filed a suit, alleging that his firing was age discrimination. The federal district court gave summary judgment for Organon, ruling that Soldau's acceptance of the proposed release was effective when he mailed it, creating a contract. He appealed.

Issue: Did Soldau create a contract by mailing the release?