

Chapter 4

On 1 April, Jack placed an advertisement in a national English newspaper which states that Jack will pay £50,000 to anybody who cycles from London to Zagreb in 30 days, leaving on 1 June. Many competitors set off on 1 June. Only Curtis, David, Edgar, and Tony reached Zagreb within 30 days.

On 10 May, Jack heard that Curtis—a famous cyclist—intended to take part in the challenge. Jack posted a letter to Curtis to inform him that he would not be eligible for the prize, but this letter was lost in the post and never read by Curtis. After the start of the race, Jack's financial situation took a turn for the worse, and on 15 June, Jack placed another advertisement in the same newspaper to withdraw his offer of a £50,000 prize. David only learned of this once he had reached Zagreb. Edgar was told of Jack's second advertisement by a journalist on 16 June, but Edgar did not believe the journalist. Tony only found out about both advertisements on arriving in Zagreb. Tony had decided to cycle from London to Zagreb in order to keep his friend, Edgar, company and to see if he could rise to the physical challenge.

Advise Jack. Would your answer be different if Jack's newspaper announcement had appeared on the morning before the start of the race?

The advertisement made by Jack in the newspaper is an offer to the public with the value of £50,000 serving as proof of sincerity of the offer rather than being a mere sales puff. With analogy to *Carlill v Carbolic Smoke Ball Co*, as it is an offer to the public it would not be reasonable to expect any of the cyclists to inform Jack that they had accepted the offer and were setting off on 1 June. However, it is possible that this may be distinguished because the cyclists have a month within which to tell Jack of their participation.

Whether the offer is open for Curtis to accept depends on whether the offer is open to him. As the offer was made to 'anybody', it is difficult to conclude that the contract was impliedly made only to amateur cyclists. As to Jack's revocation by a letter, it is doubtful that the postal rule would apply. In *Byrne v Van Tienhoven*, Lindley J held that the revocation could not be effective until received. Whilst the facts can be distinguished here in that Curtis was yet to accept the unilateral offer, the postal rule is a rule of convenience (*The Brinkibon Case*), and there is no convenience in terminating the offer on 10 May if Curtis never receives the letter. Furthermore, the burden is on Jack to ensure that the communication is received by Curtis and had weeks within which to make sure that Curtis was informed of his ineligibility via the letter or via other means.

Whether Jack is entitled to revoke the offer depends on whether there was an implied 'collateral' promise not to revoke his offer if the cyclists begin their journey. On analogy with *Errington v Errington*, it can be suggested that the opportunity to withdraw the contract at any time when on the journey would be an arrangement that no cyclist would accept given the cost of travel and maintenance. On the other hand, it may be suggested that there is remuneration in the sense of achievement of completing the journey that was absent in *Errington v Errington* and that here the implication was not necessary to give business efficacy to the contract. Here, the cyclists took the

Comment [A1]: This might be right, but it would be good to distinguish *Carlill* since in that case money was deposited with the bank. There is no similar show of sincerity in this case.

Comment [A2]: This is generally the case in unilateral contracts.

Comment [A3]: Why would this be important?

Comment [A4]: See further, in particular, Chapter 12 on interpretation.

Comment [A5]: Clear that it will not – the postal rule only applies to acceptance. See Chapter 4, Section 3(d).

Comment [A6]: So what do you understand convenience to mean here?

Comment [A7]: Relate this to the key concept of "communication" – revocation must be communicated as a general rule.

Comment [A8]: Relate this to *Luxor v Cooper* – Chapter 4, Section 2.

risk of not receiving substantial remuneration. Because the cases can be distinguished in this way I would conclude that there is no implied promise that Jack would not revoke the offer.

Comment [A9]: This is a possible conclusion, but is far from obvious. The opposite view is similarly tenable.

The effectiveness of the withdrawal of the offer by the second advertisement should depend on whether reasonable means were taken to withdraw the offer. On one hand, a newspaper would be a more time- and cost-efficient way for Jack to communicate information to cyclists when he does not know of all competitors and his financial situation has deteriorated. On the other hand, he posted this in a UK newspaper when it is reasonable to expect the cyclists to have left the UK by 16th June. On balance, as there were likely cheaper ways to communicate to places on the journey, such as through letters to stops on the cycle route, it is likely deemed that the posting of the withdrawal in itself would not be effective to revoke the offer. As David only learned of the withdrawal of the offer after completing the terms of the contract, it can be suggested that he is entitled to the prize money. If the newspaper announcement had appeared on the morning of the race, the revocation may have been successful given that it is more reasonable for the cyclists to have had access to the newspaper or for the information to have reached them before they left the country.

Comment [A10]: Again, it would be best to refer to the key element of communication.

Comment [A11]: This is an imaginative possibility. But how practicable is it?

Comment [A12]: Would it be reasonable to expect cyclists to read the newspaper on the morning of the race?

Whether the information Edgar received from the journalist was enough to revoke the contract depends on whether it is viewed that it was reasonable for Edgar to rely on the information received from the journalist. *Dickinson v Dodds* is authority that an offer can be revoked by a reliable third party. The onus is on Jack to show that it is unreasonable for Edgar to doubt the accuracy of that information provided by the journalist. Jack could point to the fact that a journalist is meant to be a reliable source of information.

Comment [A13]: This is crucial. In *Dickinson* the third party was reliable. This might be a distinguishing feature here.

Comment [A14]: This might be considered to be a generous view of journalists! Others might suggest it is right to be suspicious of what you are told by (some) journalists.

Tony's motive of accompanying Edgar and seeing if he could rise to the physical challenge is irrelevant to the formation of the contract, on authority of *Williams v Carwardine*. Whether the fact that Tony did not hear of the offer and revocation on completion of the journey affects the validity of the contract between Jack and Tony depends on whether Tony knew of the offer before the information of his completion reached Jack, on authority of *Gibbons v Proctor*, and whether this occurred before he heard of the revocation and it was reasonable to rely on the information he received. Given the facts suggest Tony heard of both simultaneously, it may be difficult to argue that a contract arose between Jack and Tony.

Comment [A15]: This is a difficult decision that might be worth exploring further.

Overall essay feedback: This is a good answer that covers the key points very well. If this were to be produced in an exam, it would score a high 2.i (at least).