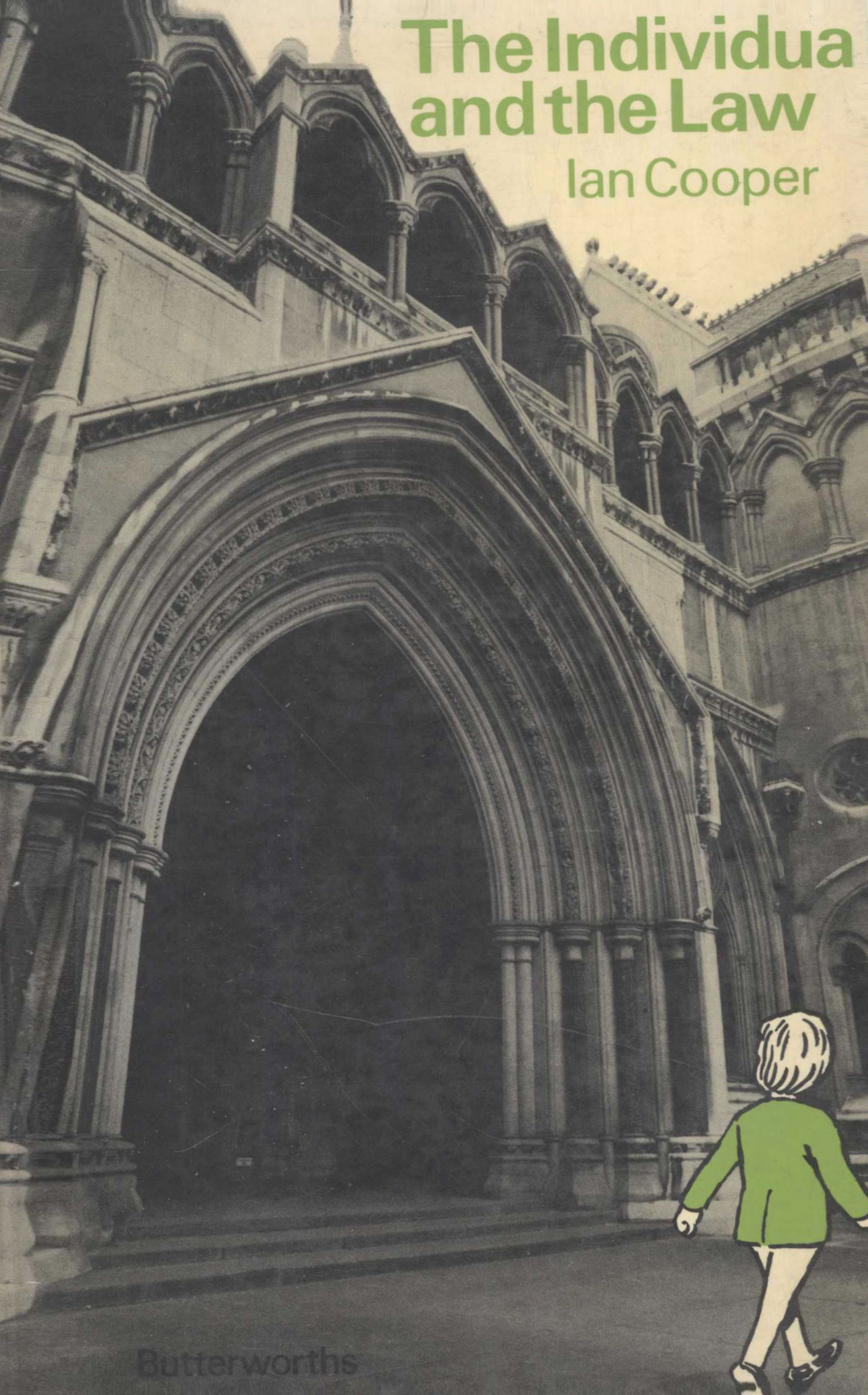


The Individual and the Law

Ian Cooper



Butterworths

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Ian Cooper BA

Lecturer in Law,
Hull College of
Further Education

London
Butterworths
1979

England London	Butterworth & Co (Publishers) Ltd 88 Kingsway, WC2B 6AB
Australia Sydney	Butterworths Pty Ltd 586 Pacific Highway, Chatswood, NSW 2067 Also at Melbourne, Brisbane, Adelaide and Perth
Canada Toronto	Butterworth & Co (Canada) Ltd 2265 Midland Avenue, Scarborough, M1P 4S1
New Zealand Wellington	Butterworths of New Zealand Ltd 77-85 Customhouse Quay
South Africa Durban	Butterworth & Co (South Africa) (Pty) Ltd 152-154 Gale Street
USA Boston	Butterworth (Publishers) Inc 10 Tower Office Park, Woburn, Mass. 01801

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ISBN 0 406 56660 7

The Individual and the Law

In loving memory of my father.
He would have smiled.

Preface

Why is this law book different from all others? The answer is simple: I have deliberately written it to be not only educational, but also entertaining and interesting. It is an attempt to do away with the myth that the law is a dry, dull and boring subject. I have set out first and foremost to write in a down-to-earth style, avoiding the jargon all too often found in legal textbooks supposedly written for the average individual. By writing the book in this simple style, I hope to stimulate the reader's interest in the subject.

This book not only tells you what your basic legal rights are, but also how they apply to you as an individual. From a purely educational point of view, it has been specially prepared to cater for the needs of students in Colleges of Further Education. It is essential reading for those studying for the BEC General Award who have chosen the option module 'The Law and the Individual'. All the learning objectives specified by BEC for this option have been covered. The scope of this book is much wider, however, for at the same time all the general objectives for the BEC General option module 'Consumer Legislation and Health and Safety' have been specifically dealt with. The book will also make useful additional reading for students following the compulsory modules 'The World of Work' and 'Elements of Distribution'. At BEC National level the majority of the legal aspects of modules 3/4 – 'The Organisation and its Environment' and 'The Organisation and the Economics of Distribution' – are also covered.

In order to illustrate some of our basic legal rights I have made use of many humorous situations and dialogues. It should be noted, however, that the characters used in these situations are purely figments of my warped imagination, and any resemblance to persons living or dead is purely coincidental.

I would like to express my gratitude to all the people who have helped to make this book possible. I would particularly like to say thank you to my brother-in-law Freddie for his advice and constructive help; to Mrs. Jean Fairpo and her trusty typewriter; to Peace and Taylor Ltd. for the use of their office equipment; and also to Humberside Trading Standards Department, Hull Citizens Advice Bureau,

and Hull Department of Employment for supplying me with valuable information. Last but not least I would like to give a special vote of thanks to my wife Helene, for all her endless encouragement and support during the long hard months of writing this book. I would like to add that any responsibility for errors in the book lies firmly with me.

I sincerely hope students will find this book useful in their studies, that the general reader will find it interesting, and that it will manage to raise a smile or two.

Ian Cooper
July 1979

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1

Contract

1.1 'What's the law of contract got to do with us?'

'That crook Mower agreed to sell me that pig for two quid and now he won't sell it to me for less than £20', gurgled Old MacDonald, whilst drowning his sorrows with the final half of his pint.

'Can't do nowt' less it's in writing' shouted his friend Nosey Parker.

Most of us have heard conversations like this and many of us will have taken part in them. It is a fact that, to the average man, the word contract conjures up visions of a black and white handwritten parchment, which comes out of a lawyer's office with a large impressive wax seal on it. If you don't think of a contract in this somewhat exaggerated form, it is likely you think of a contract at least as a formally written document. Without further hesitation let me shatter these illusions. Apart from one or two important exceptions (which I will deal with later) a contract **DOES NOT HAVE TO BE IN WRITING**. An agreement made by word of mouth without anything in writing at all can be every bit as legally valid as the formal document I mentioned earlier.

'Yeah! but if nothing is written down, how can you prove what was said? It's one person's word against another.'

Of course you're quite right. It is easier to establish the existence of a contract if you have it written down. Obviously, if our friendly farmer Old MacDonald had got something in writing from Mower to say he would sell him the pig for two quid, MacDonald may have been able to enforce the sale of the pig to him for that price. However the fact that nothing is in writing does not affect the validity of the contract; it just makes it more difficult to prove.

Some of you may be saying to yourselves:

'Don't see the point of learning all this stuff anyway, it's nothing to do with me, I don't get involved in contracts, and the law and stuff like that.'

Yet again this is the common view of this subject. An ordinary person believes that contracts are for fat businessmen, company executives and clever lawyers. In fact the average person is again correct; the law of contract does affect all these types of people . . . but it doesn't stop there; it affects everybody, including *you*. Surprises you doesn't it! Let me tell you, everytime you get on a bus to go to college you make a contract; everytime you buy a 'pie and pint' in your favourite pub at lunch time, again you make a legally valid and binding contract; if you book a holiday, call in the plumber, eat in a restaurant or just get a job, you have made what the lawyers call a contract.

'You mean everytime I do a deal, or make an agreement with someone, I've made a contract? I don't like the sound of that, it sounds dangerous to me, I'd better watch what I do in future.'

Well to a certain extent you're right again. In fact, most business deals you make (and don't forget that includes buying your greasy fish and chips on the way home tonight) would be looked upon by the law as a contract.

'How do I know when I'm making a contract and when I'm not? I make deals and agreements with people all the time, like yesterday I rang up this bird and asked her out. I'll meet you at 7.00 tonight I said. So there I was outside the ABC waiting for her in the pouring rain when I saw her coming down the street towards me looking like a demolition site with bleached hair, well that was it, I was off, wouldn't you, I mean . . . I'd have felt a right fool being seen with that creature. Surely I haven't made a contract with her?'

As I mentioned earlier most business agreements are in fact contracts, but the opposite is also true; most social and domestic agreements do not usually amount to contracts. So agreeing to go out with a girl or boyfriend or giving your kid pocket money or arranging to give someone a lift home are not regarded by the law as contracts. The all important point at this stage, is that, if the deal is a legally binding or valid agreement known as a contract, then the law gives the people involved certain rights and duties relating to that agreement. If either party fails to fulfil these duties, or infringes the other's rights, then certain remedies may be available. To simplify things even more let us think of a contract as nothing more than two promises. A promise by one person to do something, and in return the other person promises to do something else. For example if I made a

contract with you to buy your pet Zebra, then you would be promising to give me the animal and in return I would be promising to pay you a sum of money. If either of us broke our promise, perhaps, I didn't give you any money at all after you kept your side of the bargain, then the law would give you some sort of compensation or some other type of remedy. (We will deal with remedies later on.)

SUMMARY

So far then we have learnt that a contract is nothing more than a series of promises. Promises that may be enforced by the courts of law if one person breaks his promise. We have seen that contracts can be made orally, or in writing: both are usually equally valid. We have also discovered that the law of contract applies to us all, we cannot avoid it. You should have also realised by now that as this subject affects us so much, for example in buying things from shops, finding and taking a job, a basic knowledge of this subject can be extremely useful in our everyday lives.

Having looked at what a contract is, and the importance of it, let's now have a look at the way contracts are made, to see which agreements are valid and which are not.

1.2 What makes a contract a contract?

'I'll have a large piece of fish with chips, and peas,' said Greedy to Greasy, the owner of the chip shop.

'Okay,' said Greasy, 'do you want them open or wrapped?'

'Wrapped, please,' drooled Greedy hungrily.

'That's 50p then, please', said Greasy politely.

What's happened in this situation is that Greedy has made a contract with Greasy to buy some fish, chips and peas. If we analyse what has happened more closely, Greedy has entered the chip shop and *offered* to buy some fish, chips and peas from Greasy and Greasy *accepted* this offer when he said, 'Okay'. By this stage they have almost made a contract. Any legally binding agreement, no matter what type, begins like this, with one person offering to do something. He might offer to buy something as Greedy did, or perhaps offer a service, such as the service a plumber offers to his customers, or, if he is a possible employer, he might offer somebody a job. Just an offer though is clearly not enough to make an agreement. The person to whom the

offer was made must accept the offer in order to arrive at some form of agreement.

For example:

'Yes, I'll sell you my fish, chips and peas,'

'Yes, please do come and mend my burst pipe' or

'Yes, I'll accept your offer of a job'.

So then, we can see that one party making an offer and the other accepting it is a necessary part of creating a contract.

Apart from these two elements, other things are also necessary in the creation of a legally binding agreement. Both parties must exchange something of value to show the sincerity of the promises they have made to each other: The law calls this giving *consideration* and without it no contract has been made. In the earlier example Greedy has offered to buy some fish, chips and peas and Greasy has accepted; but obviously until Greedy hands over the 50p and Greasy has given Greedy the food, no deal will have been made. The exchanging of the 50p for the fish, chips and peas is known by the law as the consideration.

'You mean, this consideration thing is really just paying for things, and there's no contract 'till that's been done?'

Well, that's almost right. The way to think of 'this consideration thing', as you put it, is as the element of exchange in a deal. Sometimes you just simply exchange money for goods, for example exchanging 50p for some fish and chips. This is called a contract for the sale of goods. Another example would be exchanging your time, skill and effort for a wage, as in a contract of employment. On other occasions, however, you may only exchange promises to do something, or to obtain something in the future, for example if you book up with 'Grotty Tours', your local travel agent, to go to that favourite Spanish resort 'Costa Del Packet', then you will have made a contract even though you have not apparently exchanged anything at all, apart from probably having to pay a small deposit. In fact the consideration in this agreement is nothing more than promises. A promise by you that you will pay the rest of the money in the future and a promise by them to arrange for transport and accommodation in 'Costa Del Packet' on the dates you have agreed.

'So all you have to do, then, to make a contract is to make someone an offer, have it accepted, exchange some kind of promise and you've cracked it. That means then I must

have made a contract with that bird I told you about earlier that looked like a demolition site. I mean, I offered to take her out, she accepted, and we did make each other promises . . . I won't tell you exactly what they were 'cos I'm shy, but if what you're saying is right, then I must have made a contract with her, and I'll be in trouble with the courts . . . help!'

Don't panic, you're not really correct. As I told you before, most social and domestic agreements do not usually amount to contracts. That's because apart from making an agreement and exchanging promises both people involved must *intend to create a legal relationship*. I think perhaps you had a different type of relationship in mind with that 'bird' you keep on about.

'Mind your own business.'

Seriously though, apart from an offer, an acceptance and consideration (the element of exchange) it is also essential that the parties to the agreement have an intention to create a legally binding relationship.

'So anybody then whose deal has all these things will have made a contract. Have I got it now?'

Well almost, apart from the fact that not anybody can make a contract. The law obviously protects certain people from making contracts like infants and mental patients, for example, because others may take advantage of them. So to make a contract you must have what the law calls *legal capacity*. It would be absurd, for example, wouldn't it, to claim you have made a contract with a five year old child because he had offered to buy your car and you had accepted.

SUMMARY

In baking a cake one needs certain essential ingredients, for example flour, eggs, sugar, milk etc. If you put your mixture in the oven without one or more of these important ingredients then you will not at the end of the day get a cake out of your oven, merely a 'hot mess'. In the same way a contract needs certain essential ingredients in its formation. It needs five essential things:

- 1) a valid offer;
- 2) a valid acceptance;
- 3) valuable consideration (the element of exchange);

- 4) an intention to create legal relations; and
 - 5) both parties must have the capacity to make a contract.
- If any one or more of these ingredients is missing, then just like the cake failing because of its missing ingredients, there will be no contract.

Having established what the correct recipe for a contract is, let's now look at each of the elements in turn to see some of the legal rules relating to each one, and see how they are used in practice.

1.3 A valid offer

The first part of an agreement is the making of a valid offer

How the offer
is made

'I'll offer you one thousand pounds for that fantastic bionic leg of yours', said Frank Gruesome, the manager of a well-known football team, to Steve Austin, the Six Million Dollar Man.

An oral offer

This is the first stage of negotiations – an offer by one person to another. As we have said already, all contracts begin like this. However, there are various ways in which an offer can be made. For example, it could be made orally, in other words, by word of mouth, like Frank Gruesome saying he is offering to buy Steve Austin's bionic leg. It could also be put in writing, for example Frank Gruesome writing to Steve saying:

A written offer

Dear Steve,

I want my players to be stronger, faster and fitter, therefore I am writing to offer you one thousand pounds for your bionic leg.

Love and kisses,

Frank Gruesome.

Offer made by
conduct

The offer may also be made purely by conduct without anything being said or put in writing at all. So a request by Steve Austin saying:

'Anyone who will offer me one thousand pounds for my bionic leg, please raise your hand.'

If Frank Gruesome were to put up his hand, then this action would amount to an offer.

'Yeah, but surely one way is better than another. What I want to know is what to do if I want to make someone an offer?'

Well, of course, you're right. In everyday business life, the offer is made in the safest and most practical way. When you walk into a shop, for example, to buy a bag of crisps, it would clearly be absurd to put your offer in writing before you got to the shop. So the most practical way, from a common sense point of view, is to make your offer orally. So a statement like: 'Crisps please', would be sufficient. On the other hand, for business safety, a company or an individual may put his offer in writing in the form of a letter or a standard form, so that in the future, should any queries arise, there is written proof of exactly what was offered.

To whom the offer can be made

'Okay then, there's something else I want to know. Can you make this offer to anybody, or does it have to be a particular person?'

To a particular person

I'm glad you asked me that, because it really brings me on to the next point I wanted to make, which is that an offer can be made to one individual, a 'particular person' as you put it. In this case, only that person can make an acceptance. Alternatively an offer can be made to anybody, in which case anyone could accept. Let me show you what I mean. Suppose, for example, you've been along for an interview to Hardfilers Co Ltd for a job as a filing clerk and they've said they'll let you know soon whether or not you've got it. Eventually you get that dreaded letter which happily says:

Dear Mr. Hardworker,

In connection with your interview here last week we are pleased to be able to offer you the position of junior filing clerk.

Please read all the enclosed conditions of your employment and sign the acceptance slip and then return it to us as soon as possible.

Yours sincerely,

Cuthbert Bossman
(Managing Director)

In this situation an offer has been made by Hardfiler Co Ltd to one specific individual – Hardworker. This means

that no one else can accept the offer. He is the only one in that fortunate position. Even if Hardworker doesn't want the job, it's no good his next-door neighbour, Slimy, saying:

'Hardworker doesn't want the job but I'm a bit hard up, I'll accept your offer.'

Slimy's acceptance would be of no use at all. The offer was made to one person only, Hardworker, and only he can make a valid acceptance.

'What about these offers to anybody then? You said you'd tell us about them.'

To the whole world

Be patient, I'm coming to that right now. It is true that it is perfectly legal and common to make an offer to the world at large. In other words anybody who hears of the offer could come forward and accept, so creating a contract. Suppose for example, I place an advertisement in the paper offering a reward of £10 to anyone who finds and returns to me my pet bee. Then of course anyone who sees or hears of the advert, and does find and return the bee to me will have accepted the offer and would be able to claim the reward.

'But that's plain stupid, nobody could catch a bee and return it, they'd get stung wouldn't they! Haven't you got a real live case to tell us about instead of these daft made-up examples of yours?'

Okay, if that's what you want – you're right, the example I gave you was rather silly to say the least. You may be surprised, however, to hear that even some real cases can be rather amusing too. I'll show you what I mean. There was one case which has become famous for illustrating the legal principal that an offer can be made to the world at large and then can be accepted by anyone. The case was called *Carlill v Carbolic Smoke Ball Co.*

'Hang on, hang on a minute. How do you mean the case was called . . . whatever it was you said?'

Well, when real cases come to court to be decided, the case is given the name of the people involved in it. This case involved a lady called Mrs. Carlill and a company called the Carbolic Smoke Ball Co.

'Oh, I see . . . well, why is Mrs. Carlill mentioned first then?'