In Defence of *Ingram v Little*: Understanding Collateral Offer and Acceptance

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1. Introduction

In the line of cases on mistake as to identity in face-to-face transactions, the case of *Ingram v Little*[1] has been heavily criticised, including by a majority of the House of Lords in *Shogun Finance Ltd v Hudson*.[2] It is often said to have been wrongly decided. In particular, it is difficult to see how *Ingram v Little* can be reconciled with *Lewis v Averay*.[3] The latter case is typically considered to be the correctly decided case, particularly given the earlier decision of *Phillips v Brooks*.[4] However, it is possible to arrive at an interpretation of *Ingram v Little* which reconciles the trio of cases in this line.

This article seeks to argue that an appropriate framework for understanding such face-to-face transactions, and all face-to-face transactions in general, is one centred around collateral agreements. Such transactions make better legal sense under this framework. This article then relies on one such specific collateral agreement, that centred around the method of payment, to explain why *Ingram v Little* can be reconciled with the other face-to-face mistake as to identity cases.

To simplify illustrations, we would always use A as the vendor, B as the rogue, C as the person the rogue purports to be, and Z as the *bona fide* purchaser.

2. Face-to-face versus Indirect Contracts: The Art of 'Collapsing'

Collateral contracts are poorly defined across most of contract law. One would be hard pressed to find some unifying doctrine explaining collateral contracts on the whole. This section explores what will be referred to as the collateral agreement theory in face-to-face transactions.

The basic idea of a collateral contract places a promise, that is contractually binding in a contract, "collateral" to the "main" contract.[5] A collateral contract is hence a secondary contract, its existence premised on the primary contract. The consideration of a collateral contract can be, and in practice often is, derived from the signing of a primary contract. Collateral contracts have been a flexible instrument which has allowed the courts to give effect to the intentions of parties despite hurdles such as the parol evidence rule or the doctrine of privity.

However, the courts have generally been hostile towards finding the existence of a collateral contract in most situations after the comments of Lord Moulton in *Heilbut Symons & Co v Buckleton*.[6] In that case, Lord Moulton had, in *obiter*, recognised the existence of collateral

[1] [1961] 1 QB 31 (CA).
[2] [2003] UKHL 62, [2004] 1 AC 919 [1], [22] (Lord Nicholls), [87], [110] (Lord Millett), [185] (Lord Walker).
[3] [1972] 1 QB 198 (CA).
[4] [1919] 2 KB 243 (KBD).
[5] Paul S. Davies, *J.C. Smith's The Law of Contract* (1st edn, OUP 2016) 155.
[6] [1913] AC 30 (HL).

contracts, but had said that such contracts must be very rare due to their nature. More often the terms would be part of the primary contract or agreement, and that collateral contracts would be 'viewed with suspicion by the law'. Even so, many cases often ignore or distinguish Lord Moulton's comments, and proceed to find collateral contracts where appropriate.[7] The finding of collateral contracts in such cases are very often driven by policy considerations. A good example of this would be the infamous case of *The Eurymedon*,[8] which involved a collateral contract springing into existence to grant stevedores the benefits of limitation clauses contained within the bill of lading, a primary contract which they were not a party to.[9]

In a face-to-face transaction, collateral contracts are, and should be, much more common than in written contracts, particularly in light of how such negotiations tend to be concluded. The reason for this can be derived from considering offer and acceptance principles together with policy arguments.

The distinction between a written contract and a face-to-face contract on offer and acceptance terms exists because a written contract automatically 'collapses' the negotiations into a single contract. There is hence much less of a role for collateral contracts, since the usual inference is that if a term would be enforceable, it would have been included in that single contract, as part of the parol evidence rule.[10] The courts would hence understandably be hesitant to find that a collateral contract gives effect to a term not included in that primary contract unless there are facts which rebut that inference. In a face-to-face transaction there is no such unification, because this final contract does not exist in written form.

There are three potential competing interpretations of negotiations in face-to-face transactions, the first two operating on a 'collapsing' analysis, and the last on a collateral agreement basis:

1. The negotiators are constantly making counter-offers which include as a common understanding everything that has been part of negotiations to that point;
2. The negotiators are making invitations to treat until the final offer is made, which "collapses" all of the earlier discussions into a single offer; or
3. The negotiators are creating collateral offers which may or may not be accepted, and the rejection of a collateral offer does not represent a rejection of the offer as a whole.

The reason other interpretations cannot be offered is because of how offer and acceptance works. Many of these fundamental principles sit uncomfortably with face-to-face transactions, since these principles in practice apply more appropriately to written commercial contracts, which are usually indirect, well-considered, and presented in a singular or small number of documents.

Here, face-to-face transactions are influenced by two principles of contract law, one applying more primarily to limit the forms of analyses, and the other applying in a subsidiary fashion to dictate the shape of these analyses. The first, primary principle is that where an offer is made, and a second offer or counter-offer is subsequently made, the initial offer would be

[7] See *Webster v Higgin* [1948] 2 All ER 127 (CA) or *Shanklin Pier Ltd v Detel Products Ltd* [1951] 2 KB 854 (KB).
[8] [1975] AC 154 (HL).
[9] See also *The Starsin* [2003] 2 WLR 711 (HL) where the House of Lords explicitly referred to *Eurymedon* (op. cit.) style contracts as collateral in nature, as well as examining how the collateral contract interacted with the bill of lading.
[10] See Lord Moulton's comments in *Heilbut Symons* (n 6).

invalidated .[11] The second, subsidiary principle is that an agreement, through the contents of the offer, needs to be fully negotiated with all key terms included in order to be valid.[12]

The problem with the 'collapsing' interpretations is that a face-to-face transaction differs from a more indirect transaction via a written contract. Typically, in a written contract, not everything discussed in negotiations translates into a contractual term. The interpretation of the contract further stipulates the characteristics of the clauses within the tripartite division of terms, which is vital for understanding the obligations of the parties on breach of these clauses. In a face-to-face transaction, this filter between negotiations and final contractual term rarely exists. This is particularly so because the safeguards of ratification, explored below, do not exist in face-to-face transactions, resulting in difficulties both evidential and legal.

In a written contract, 'collapsing' a contract works because it allows for parties to ratify some form of final contract in a clear fashion. Given that the parties are aware of what this 'collapsed' contract contains,[13] this ratification would typically be an agreement as to the contract in its 'collapsed' form,[14] both in terms of the express wording and the implication of the terms within the tripartite classification. Where a 'collapsed' contract falls outside the intention of one of the parties, who does not notice or realise the significance of the term and instead believes that his obligations or rights were different under the contract, there exists a unilateral mistake as to terms. Such a unilateral mistake as to terms generally renders a contract void.[15]

An attempt to 'collapse' face-to-face transactions necessarily skips this intermediate section of ratification. To broadly read a face-to-face transaction as 'collapsing' into a complete contract is problematic due to the intense difficulties of interpretation, particularly since the courts would necessarily be confronted with differing evidence. The courts in such circumstances would have to make a contract for the parties through an attempt to give effect to their intentions, but this leads to problematic outcomes for certainty.

Firstly, it requires the courts to consider the intentions of the parties at the time of contracting without the benefit of sufficient evidence, since there are rarely clear records if parties had not intended to make a written contract. Secondly, the characterization of terms in such a created contract is difficult to discern without the benefit of interpretation of a written contract, since parties often enter into such contracts with differing motives which the judge has to weigh on a balance and give effect to in varying forms. Such an approach effectively structures the parties' contracts for them, which the courts have traditionally been hostile to.[16] Furthermore, it must be recognised that the courts are only involved because there is a dispute between the parties. This almost certainly involves a disagreement as to the contents of the contract, both in the sense of what terms are incorporated within the contract, as well as the relative classification of the terms into the tripartite categories. Such situations are already complicated enough even with a written contract to rely on for interpretation. Without such a written contract, the courts are faced with conflicting evidence provided by each party about intention and the course of negotiation. The difficulties in collapsing in complicated transactions can result in gaps of judicial logic that make it more difficult for the courts to ensure that they are staying within the bounds of certainty, and make appeals far more likely. All of this leads to a waste in resources.

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[11] *Hyde v Wrench* (1840) 3 Beav 334 (Court of Chancery).

[12] *May & Butcher Ltd v The King* [1934] 2 KB 17 (KBD).

[13] Following the doctrine of incorporation by notice in cases such as *Interfoto v Stiletto Visual* [1988] 1 All ER 348 (CA).

[14] *L'Estrange v Graucob* [1934] 2 KB 394 (CA).

[15] *Staloil ASA v Louis Dreyfus Energy Services LP* [2008] EWHC 2257 (Comm), [2009] 1 All ER (Comm) 1035.

[16] See for example the general principles in *May and Butcher* (n 12) and *Scammel (G) and Nephew Ltd v Ouston* [1941] AC 251 (HL).

This difficulty of collapsing unwritten contracts is well illustrated in a very recent case of *Leslie v Farrar Construction Ltd.*[17] This case involved a series of construction projects negotiated and performed with no written contract. The arguments in the Technology & Construction Court were largely rooted on interpretation problems:[18] whether certain statements made could be counted as contractual terms or not, and whether the contract was ended by repudiatory breach or consent, which depended on a finding of a contractual term by the judge. The complex nature of the case made the number of contracts important, a factor which the judge failed to give due account to when applying legal logic in solving the myriad problems that cropped up under the unwritten contract. He ordered that damages on one project could be set off against the profits another,[19] which would usually only work if both were operating on the same contract or transaction, while also holding that certain mistaken payments were irrecoverable by an unjust enrichment claim once the transaction was closed off,[20] which implied that the projects were under different contracts that could be closed off from one another. As a result, the claimant appealed arguing on the basis that there was only one contract, as evidenced by the set off order, and so they were entitled to reclaim the mistaken payments in an unjust enrichment claim.

The complexities of interpretation being evidenced by that case aside, the conclusion the Court of Appeal reached was equally telling. They quickly resolved the conflict by dismissing it as a question of finding of fact.[21] In practice, however, the Court of Appeal in interpreting the judge's finding reached the conclusion that there were in fact separate agreements to close off each transaction at the end of each project, which was independent from the primary framework agreement. This necessary outcome results by reading Jackson LJ's conclusion in line with the facts. The framework agreement was not concluded at the same time as any agreement to close off. It is almost certainly impossible to argue that parties had earlier agreed to close off in the framework agreement, such that if Leslie had asked for a detailed account for auditing purposes Farrar would have been able to reply that they were not entitled to this since they had agreed not to do so. This agreement to close off must necessarily exist as separate from the framework agreement and must almost certainly be tied to the projects individually, which means that an agreement to close off one project does not prejudice another.

Such logic draws very close parallels to the collateral agreement theory. Firstly, the Court of Appeal effectively accepted that the separate agreements followed the terms of the primary contract except for the terms that the parties chose not to enforce,[22] which bears similarities to the doctrine of collateral contracts.[23] Secondly, the Court of Appeal still implicitly accepted that the projects were tied to the primary contract and correspondingly, the fulfilment or otherwise of these projects would not have directly affected the primary contract unless it could have been deemed as sufficient grounds for a breach of that primary contract itself. This emphasis on the primary contract and its relative independence from the other terms that form the collateral contracts or agreements is in line with a collateral agreement theory.

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[17] [2016] EWCA Civ 1041.
[18] [2015] EWHC 58 (TCC).
[19] ibid [191]-[197].
[20] ibid [254]-[255].
[21] *Leslie* (n 17) [42]-[44].
[22] ibid [44]. If the projects that were finished were different from the projects that were unfinished, this could only have been on the basis of the costs settlement term in that relevant project on completion. This implies that the project agreements would have been the same, and the only comparison that could be made here would be back to the framework agreement.
[23] This is in line with the arguments adopted by the majority in *The Starsin* (n 9) on the question of what terms could be read into the separate collateral agreements. See also Edwin Peel, "Actual carriers and the Hague Rules" (2004) 120 LQR 11 for a detailed analysis of these arguments in *The Starsin* (n 9).

The reason such an analysis was favoured by the Court of Appeal is because it avoids many of the difficulties of direct collapsing. If they had directly collapsed the contract into a single written form as the parties operated on (parties had acknowledged that there was a primary 'framework agreement') then it would have resulted in difficulties in giving effect to the intentions of parties. Furthermore, it allowed the Court of Appeal to strip down the contract to its essential conflict, which they did by classifying the contractual matrix as a finding of fact.[24] This prevented them from being bogged down in having to consider how the relatively unexplored contractual matrix operated and allowed them to jump right into the heart of the dispute on appeal. This sort of approach would definitely be of much more assistance to a trial judge examining evidence on a complicated transaction, but even here it shows the benefits of its simplicity. Nevertheless, to reach this outcome, the Court of Appeal in some sense resorted to academic evasion in responding to the argument.[25]

The collateral agreement theory suggested goes further. It argues that what should have been done is to distil the primary contract down into the bare minimum amount of terms needed to sustain its existence, taking into account the factual circumstances to determine if any terms ought to fall within the primary contract, and annex the other terms to it as collateral contracts. This means that apart from a primary contract term, the courts can examine each of the other terms on the basis of their own existence, rather than worry about the difficulties of whether it would bring down the rest of the contract with it. This would be similar to the approach adopted in the Court of Appeal above, except in a much more expanded form.

Of course, some of these collateral contracts may be sufficiently integrated into the primary contract that the failure of it would substantially deprive a party of its consideration under the primary contract, entitling them to repudiate. This is, however, separate from whether the term would have constituted a condition if it was part of the primary contract, which is usually much trickier to deal with. Alternatively, a collateral contract may provide the right of termination of the primary contract, which is also separate from the same.

A dissected contract both allows the courts to construe each separate agreement within its own dimension, understanding that all terms within that internal area are effectively conditions for the purpose of that stage, while at the same time reducing the evidential difficulties faced by the courts in having to interpret the contract into the tripartite term classification system. The breach of a collateral contract would usually call for damages unless it can be shown to be intrinsically linked to the consideration of the primary contract. It would, in practice, lead more often to an outcome which is more in line with the intention of the parties than under a 'collapsing' approach. This is a better match with situations where consideration is promised during the course of negotiations and parties then modify details of the contract made after initial negotiations are concluded without subsequently promising any further obligations.

[24] As recognised above at n 21.

[25] *Leslie* (n 17) [42]. Jackson LJ ultimately read the issue as being one centred on the form of transactions, rather than being a number of contracts issue, the latter being how it was phrased in submissions.

3. Collateral Agreements and Manner of Payment

With the role of collateral contracts for face-to-face transactions established, its potential role for face-to-face mistake as to identity cases can now be explored.

The case of *Pharmaceutical Society of Great Britain v Boots*[26] made it clear that in a shop, the display of goods is only an invitation to treat. C would pick up the good and offer to purchase that good to the vendor, A. A would then accept the offer, and the contract would be completed when C transfers the relevant consideration. The illustration would be:

C: I would like to purchase this good. (Offer)
A: I agree to sell you this good. (Acceptance)
C transfers money to A. (Consideration)
C takes the good. (Performance of A's obligation)

A collateral agreement will be introduced into this basic transaction: 'manner of payment'.

Parties need to come to terms on key issues in order for an agreement to have been made. Chief among these is price.[27] However, the manner of payment is not a key term that needs to be reached as part of the primary agreement. Indeed, there are many agreements commercially where, after the contract is signed, the contracting party would direct the other party to, for example, liaise with their secretary, in order to establish how to pay. What this means is that the manner of payment has the capacity to exist as a separate agreement in and unto itself. It is difficult in practice to claim that in negotiating the manner of payment after the primary obligations have already been agreed, any negotiation as to the manner of payment made would constitute a counter-offer that would invalidate the primary offer.

However, it must be noted that there is a distinction between an agreement and a contract, a contract being an agreement supported by consideration. As long as there is no consideration, the primary agreement is not binding on either party. This does not, however, change the fact that the primary agreement exists. Hence, in a negotiation where the primary agreement is made, but parties cannot come to any consensus on the collateral agreement, then no consideration has passed. This is because C has not promised that he would give money to A, while A has not promised that he would give the goods to C. In such circumstances consideration is usually analogous with the primary obligation and the contract would only truly be locked in by the provision of the obligation ie the transfer of property in the goods or money, following which it would also lock in a corresponding promise to transfer the other (which is different from whether that is actually transferred or not). Prior to that either party has the capacity to withdraw from the primary agreement. This would be illustrated as follows:

C: I would like to purchase this good. (Offer)
A: I agree to sell you this good. (Acceptance)
C: Am I allowed to pay by Debit Card? (Collateral Offer)
A: Unfortunately, our store does not take Debit Cards. Can you pay by cash instead? (Collateral Counter-Offer)
C: I do not have cash on me. (Collateral Rejection)
A: I am sorry, but we only accept cash. (Enquiry)
C: In that case I no longer want to purchase this good. (Rejection)

[26] [1952] 2 QB 795 (QBD).
[27] *May & Butcher* (n 12).

In this case, the primary offer and acceptance had already been established. However, no consideration passes between the parties. Hence, while a primary agreement has been arrived at, both A and C are able to resile from it.

It is, however, imperative to distinguish the above situation from one such as this:

> C: I would like to purchase this good, and I would like to pay by Debit Card. (Offer)
> A: I agree to sell you this good, but our store does not take Debit Cards. Can you pay by cash instead? (Counter-Offer)
> C: In that case, I will not purchase the good. (Rejection)

In this situation, the 'manner of payment' is incorporated as a term within the primary offer. The offer is made on the premise that the manner of payment is made in a specific form. This can be seen most clearly in written contracts. If a written contract states all of its contents within, including how payment is to be made (for example, a c.i.f. letter of credit which usually states something like 'cash on sight within 30 days on complying presentation') it would necessarily be part of the primary agreement and, if accepted, contract. It would be a breach of the primary contract if the manner of payment differs from what was stipulated as part of the primary offer.

4. 'Void' v 'Voidable': Mistake as to Identity

By conceptualising manner of payment as a collateral contract, a distinction between 'void' and 'voidable' contracts can be envisaged in mistake as to identity cases. A 'void' contract exists when the primary agreement is made between A and C, rather than A and B, since offer and acceptance are made to different parties. Conversely, a 'voidable' contract exists when the primary agreement is made between A and B. This can coexist with a 'void' collateral contract which is made between A and C.

The heart of the issue hence lies with the manner of payment. Two questions are presented that need to be resolved. The first is whether the manner of payment is an agreement between A and C or A and B. If it is the latter, then there is no significance whether the collateral contract exists or not. The second is whether the manner of payment is part of a collateral agreement or whether it is incorporated into the primary agreement. In the former, the primary contract would be 'void', while in the latter it would be 'voidable', *ceteris paribus*.

For the first, the key underlying thread in all of the concerned cases (on face-to-face mistake as to identity) is that payment was made by cheque. This is important, because a cheque is an identity specific document. Cheque payments are essentially credit notes directed to financial institutions that allow a disbursement from the party who owns the cheque as evidenced by the chequebook registered in his name, to the party receiving payment, whose name is written on the cheque (A), for the amount specified on the cheque. The details on the chequebook and the verification of those details are hence an integral part of the manner of payment. In the cases that follow, this verification is generally achieved by checking the address to the name. The details form an important part within the offer and acceptance itself; when a cheque is made in C's name, it is implied that the offeror of the cheque was C or otherwise authorised by C to do it. Only such a person can authorise a disbursement from C's account via cheque.

Hence, when B makes an offer of a cheque, he is making it in the name of whoever the chequebook is registered to, since only such a person can authorise a disbursement from that account. This name can be either B or C.

If the chequebook was registered in the name of C, the manner of payment as an agreement would be made between A and the only party who could offer the cheque, C.

If the chequebook was registered in the name of B, B would be making an offer in his own name. A, on the other hand, is accepting with reference to who he believes B is if B provides information that is false for verification purposes (relating to C). The logic for this is analogous to that in *Cundy v Lindsay*,[28] since in that case the address on the letter was B's address, but A was intending to contract with C. Here, even if the name on the cheque was *de facto* B's name, by putting himself out to be C in an identity specific manner of payment, A would still have accepted the cheque by an acceptance with respect to C.

For the second requirement, the question of whether the manner of payment constituted a collateral agreement requires close examination of the facts, in particular the course of negotiations that have occurred.

For example, in the transaction in *Phillips v Brooks*:[29]

> B: I would like to purchase these goods for 3000*l*. (Offer to A)
> A: I accept, and the price is 3000*l*. (Acceptance to B)
> B: I would like to pay by cheque. I am C, and this is my address. (Collateral offer to A)
> A: I can confirm that C lives at that address and the cheque is in his name. (Collateral acceptance to C)
> B transfers the cheque to A.
> A allows B to take a gold ring.

The conclusion here is that the collateral agreement is 'void'. However, the primary agreement is turned into an actionable contract between A and B with the transfer of the consideration. Either the cheque (as a representation of a promise for payment) is valid consideration, in which case the primary obligation of A is to give the gold ring (which he does) and the rest of the goods under the primary contract, or the gold ring is valid consideration, in which case A is obligated to fulfil the rest of the contract by providing the rest of the goods while B is under an obligation to pay A the required amount.

Because there is now an actionable contract, B receives proper ownership title of the goods, and when he transfers them to Z, Z is protected as a *bona fide* purchaser for value against a claim by A in the tort of conversion. However, because the contract between A and B was entered into by fraudulent misrepresentation, A has an equitable remedy against B to rescind the contract. The fraudulent misrepresentation link here is drawn from the collateral contract, a misrepresentation as to fact based on B's capacity to pay under the cheque. A would not have agreed to the primary contract if A was aware that B could not, or would not, pay. Here the fraudulent misrepresentation is not based on the identity of B, but on the attributes of B; specifically, the capacity of B to pay for the primary contractual obligation.[30]

Next in the line of cases to be considered is *Lewis v Averay*, which heavily criticised the decision of *Ingram v Little*. Oftentimes in textbooks the facts of the case are stated to be analogous.[31] This is, however, misleading, because it fails to take into account the relative offers and acceptances made in both of these cases. In *Lewis v Averay* the transaction proceeded thus:

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[28] (1878) 3 App Cas 459 (HL).
[29] *Phillips* (n 4) 246 (Horridge J).
[30] See *King's Norton Metal Co Ltd v Edridge, Merrett & Co Ltd* 14 TLR 98 (CA).
[31] See for example Davies (n 5) 67-8.

A or B makes an offer to sell/buy the car for £450, and this is accepted by the other party. (Offer and Acceptance between A and B)
B tries to pay by cheque in C's name. (Collateral Offer to A)
A requests proof of identity.
A accepts payment by cheque in C's name. (Collateral Acceptance to C)
A gives the car, logbook, and test certificate to B.

Hence, the correct outcome is that the collateral agreement once again fails to materialize, or is 'void', because the collateral offer and acceptance were not directed at the right parties. However, the primary agreement remained. This primary agreement is 'voidable' in the sense that it is vulnerable to rescission. This primary agreement was in turn made an actionable (but 'voidable') contract once A transferred the property to B, at which point B was under a binding promise to pay A for the full amount. As a result, Z would, as in the outcome of that case, have received valid title, and the courts rightly held that the claim in the tort of conversion fails.

5. Analysing *Ingram v Little*

Ingram v Little, however, presents a very different story.

The plaintiffs advertised their car in a newspaper. The rogue replied to the advertisement and test drove the car. They negotiated for the price and Ingram, who was negotiating for the plaintiffs, accepted an offer of £717.[32] However, the rogue pulled out a cheque book, and Ingram realised the rogue intended to pay by cheque. Very significantly, she told him that she was only willing to sell for cash and cancelled the agreement.[33] The rogue then misrepresented himself as a businessman, Hutchinson, and provided an address. The plaintiffs verified that there was indeed a Hutchinson with the initials provided living there.[34] The plaintiffs then agreed to sell the car to the rogue, who gave them a cheque signed with his name, and left with the car.[35]

The most immediately striking fact that seems glossed over in the analysis of this case in *Lewis v Averay* is that the primary agreement was at one point withdrawn. This meant that the subsequent offer to purchase was coloured by the 'manner of payment', which in turn went to the identity of the rogue as Hutchinson (or rather, the 'correct' Hutchinson).

If we illustrated this:

B makes an offer to purchase the car for £717. (Primary Offer to A)
A accepts the offer. (Acceptance to B)
B produces a cheque book, and A cancels the agreement. (Rejection)
B misrepresents his identity. (Invitation to Treat)
B makes an offer to purchase the car for £717 with a cheque in B's name. (Subsequent Primary Offer to A)
A accepts the offer, with the understanding that the cheque was in C's name. (Acceptance to C)
B gives the cheque to A and takes the car.

[32] *Ingram* (n 1) 33.
[33] ibid.
[34] ibid.
[35] ibid.

Here there was never any valid collateral agreement that existed together with a primary agreement. This was because A had rejected the primary agreement before receiving the collateral offer (at the point where the cheque book was produced). In order to resume negotiations, it was necessary for B to include the manner of payment within a primary offer. It was particularly helpful that A stated in very clear terms a desire to cancel the agreement at the point that the cheque book was produced.

Once an agreement is cancelled, it can be in no better position than if a counter-offer was made to an offer: the initial offer by B would no longer be available for acceptance by A. This meant that the third primary offer made would contain both the manner of payment, the price, and the subject matter. This was accepted by A with respect to C, since A accepted with an understanding that the cheque was valid in C's name. As a result of this, there was no offer and acceptance, no valid agreement, and the contract is hence 'void'.

In *Ingram v Little*, the Court of Appeal analysed the case relying on offer and acceptance. The court, even the dissenting Devlin LJ, contended that it is important to rely on the circumstances to construct the offer and acceptance, which is undoubtedly correct.[36] The majority concluded that A did not intend to accept the offer with respect to B, but instead to C.[37]

The weakness of the judgment, however, was that their conclusion here was left far too open-ended. The phrasing of offer and acceptance was made in particularly broad terms, and this thereby leaving their analysis open to attack on the basis of breadth. In an identity analysis, it is necessary to draw the connection back to why the specific identity of the purchaser is an important circumstance to be taken into account. The only reason why the court could make an effective analysis on identity is because identity is a fundamental part of the manner of payment here, a cheque payment. Once they could come to such a conclusion, it makes sense that this identity specific component must be a part of the primary contract itself to make that contract void. Otherwise, their outcome could not have been reached. Taking that into account, the Court of Appeal here would have needed to ask themselves the question of when the identity specific component is or is not part of the agreement and why. This would have set a natural limit for their arguments. This was, however, not achieved by the Court of Appeal. As a result, subsequent cases were naturally able to constrain the scope of *Ingram v Little*'s dicta.

As a result, the majority of the Court of Appeal failed in their analysis on two levels. Firstly, they failed to identify why A did not intend to accept the offer with respect to B, but instead to C. Secondly, they failed to identify why this identity-specific circumstance should be taken to be a part of the agreement. The solution suggested here is a collateral agreement framework, since it squarely reconciles the cases in this field.

Despite the analytical failure of the Court of Appeal, through the analysis provided in this article, it is submitted that the outcome of *Ingram v Little* was nevertheless correctly decided. By incorporating an identity-specific term, the manner of payment, within the primary agreement or contract, it redirected the target of the offer or acceptance to that specific individual, meaning that by offer and acceptance, that primary contract would be "void" because the offer and acceptance were made to different parties.

[36] *Ingram* (n 1) 48-49, 54 (Sellers LJ), 56 (Pearce LJ), 63-64 (Devlin LJ).
[37] ibid 49-50 (Sellers LJ), 59-62 (Pearce LJ).

6. Conclusion

In conclusion, the article relies on the following propositions:

1. Face-to-face transactions rely on the existence of collateral agreements and contracts to give them a sensible framework in context;
2. 'Manner of payment', if dealing with identity-specific forms of payment like cheque payments, redirects the target of an offer or acceptance away from a more general model (offer or acceptance to either B or C) to an identity specific model (offer or acceptance to C);
3. 'Manner of payment' can, depending on the facts, be either part of the primary agreement or a collateral agreement; and
4. The difference between the cases dealing with unilateral mistake as to identity is best understood by deciding whether the manner of payment is incorporated within the primary agreement or a collateral agreement.

As a result, on account of these propositions, by paying attention to the specific negotiations within each case, *Ingram v Little* was not wrongly decided, and the outcome of the case can be reconciled with the other cases in this area.