



School of Law

Assessment Cover Sheet and Academic Integrity Statement

Module: LAW4007M

Title: Contract Law and The Civil Justice System

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1.)

Alice: Vase

Issue:

Alice has seen a vase displayed in a store with a price tag of £500. She has told the owner (Bob) that she will return after thinking about it. She then proceeds to send an email to Bob saying she will buy the vase for £400; Bob does not reply. Alice shows up a week later with £400 to buy the vase, however, Bob refuses and insists on the original price of £500. The issue lies in whether Alice had a legally binding contract with Bob to purchase the vase for £400 with regards to her email.

Rule:

When considering whether a contract is valid and legally binding, it is seen that when an offer is proposed to another party, silence does not amount to an acceptance¹.

Application:

To determine whether Alice would have a legally binding contract with Bob to purchase the vase, it must be determined as to whether the email she sent would have created one. When examining the scenario, it is seen that the initial price of the vase displayed in the store was an invitation to treat, where offers are merely invited and the display of the vase itself is not an offer². Alice then sends an email to Bob saying she will buy it for £400, creating an offer to Bob, which he may accept; Bob does not respond, and silence is not acceptance, and as such a valid legally binding contract is not created. If acceptance had been communicated and received from Bob, then the contract would have been effective³. This acceptance would have had to match the terms that Alice proposed - otherwise, it would create a counter-offer⁴ - and from Bob's insistence on the £500 price tag, this is unlikely to occur.

In conclusion, Alice would have had a legally binding contract if Bob had sent acceptance which matched the terms that she proposed when she had sent the email. However, as no

¹ Felthouse v Bindley [1862] EWHC CP J35

² Fisher v Bell [1961] 1 QB 394

³ Entores v Miles Far East [1955] 2 QB 327

⁴ Hyde v Wrench (1840) 49 ER 132

acceptance was communicated and silence is not valid acceptance⁵, there is no contract and Alice does not have a claim to the vase at that price.

⁵ Felthouse v Bindley [1862] EWHC CP J35

Jack: Book**Issue:**

Moving on, Jack sees a sign placed by Emma that says: "All Books £10". He picks up a book and insists on buying it for £10. Emma refuses, explaining that the book is worth £200. Can Jack sue Emma?

Rule:

When discussing the display of priced goods, they are regarded as mere invitations to treat and not offers. The offer is then made by the customer which the shopkeeper is free to accept or reject⁶.

Application

Emma initially created an invitation to treat when she placed the sign in the window of her store regarding the £10 price tag of the books. This invitation to treat is not an offer, but rather an invitation to offers from customers. When Jack insists on buying the book for £10, he is, due to no offer being created, creating an offer of his own of which Emma has the option to accept or not. Emma doesn't communicate acceptance of this offer, which means a legally binding contract is not made⁷.

In conclusion, due to the initial price tag being an invitation to treat and not an offer, Jack had made an offer to purchase the book at £10 which Emma then could - and did - reject. As there was no acceptance of the offer made by Jack, there was no legally binding contract and thus Jack cannot sue Emma.

⁶ Fisher v Bell [1961] 1 QB 394

⁷ Entores v Miles Far East [1955] 2 QB 327

Claire: Vase

Issue:

Phil has promised to buy Claire a vase on their anniversary. He then refused to buy the vase and an argument ensued. They divorced, and Phil once again promised to buy the vase for Claire if she left their dog with him. Claire left the dog and Phil, once again, refused to buy the vase. Can Claire do anything?

Rule:

Initially, there must be a determination as to whether there was an intention by Phil to enter into a legally binding agreement, which is “determined objectively and not by enquiring into respective states of mind”⁸. In marital scenarios, the general principle is that there is no intention to be legally bound⁹ unless there is evidence to the contrary¹⁰.

Application:

Phil’s initial promise to Claire to purchase the vase would be seen as an agreement which was not intended to be legally binding due to their marriage being at an amicable point and the court’s interpretation that there is no intention to be legally bound as such, and no such consideration by Claire is seen (where there is “some benefit accruing to one party” and some “loss or responsibility given, suffered or undertaken by the other”¹¹) There seems to be no evidence to the contrary, as no such evidence has been mentioned in the extract. Since Claire is adamant that Phil had contracted to buy her the vase, evidence could exist to the contrary suggesting legal intention. Still, the burden of proof is upon Claire as a claimant, should she take legal action, where the courts would have to be satisfied (standard of proof) that the event would have been more likely than not to have occurred (balance of probabilities)¹². Claire then becomes divorced from Phil, and he promises to buy the vase in exchange for their dog from herself. When Claire leaves the dog, this satisfies the requirement for consideration from her side of the agreement, however, when Phil does not buy the vase for Claire this does not satisfy his consideration, and thus breaks their agreement. Since the agreement was made when their relationship had ended, the courts would determine that this was made to be legally binding. The presumption against legal

⁸ Edmonds v Lawson [2000] 2WLR 1091

⁹ Balfour v Balfour [1919] 2KB 571

¹⁰ Errington v Errington Woods [1952]

¹¹ Curie v Misa (1875) LR 10 EX 153 at p162

¹² Jeremy Cooper, ‘The Burden and the Standard of Proof’ *Principles in Practice* (Judiciary.UK, 2008)

relations does not apply when two partners are not living together in amity but are separated or about to separate¹³.

Conclusion:

While the initial agreement for Phil to purchase the vase would not be actionable due to the lack of legal intention due to their relationship being in an amicable state, the latter agreement would be actionable as it was made when Claire and Phil had separated. It thus would be presumed to be legally binding, with appropriate consideration present. Claire can sue Phil for the vase; however, the burden of proof will be on her as the claimant.

¹³ Merritt v Merritt [1970] 1 WLR 1211

2.)

Arthur: Betty

Issue:

Arthur had been promised by his aunt, Betty, £2,000 if he went on holiday abroad and came back “happy and with some colour in your cheeks”. Arthur had planned a holiday in the Caribbean as such. As Arthur boards his plane, he receives a text saying that Betty’s offer no longer stands. Does Arthur have rights towards the £2,000 offered?

Rule:

When discussing agreements, there must be certain terms. However, where a contract is uncertain, but performance has commenced, the courts are much more likely to uphold the contract¹⁴. However, with agreements made in a domestic scenario, the courts usually find that there is no intention to be legally bound¹⁵. Promises broken, however, could potentially be resolved by the doctrine of promissory estoppel, which stops a person from going back on a promise; it must be used only as a “shield, not a sword”¹⁶ and there must be inequity¹⁷.

Application:

Betty has promised £2,000 to Arthur if he comes back “happy and with some colour in your cheeks”. This in itself is ambiguous and not a clear piece of consideration for an agreement which is required, however, due to Arthur’s performance of this when he plans the holiday and returns “tanned and happy”, this could be much more likely to be upheld in court. The idea of this being a domestic arrangement, however, allows the courts to find that there is no intention to be legally bound, making the arrangement non-legally binding. Without this legally binding nature, there would be little Arthur could do to claim the £2,000 from Betty, and the doctrine of promissory estoppel, due to it being only used as a “shield, not a sword”¹⁸, could likely not help with any legal action taken by himself.

¹⁴ *Foley v Classique Coaches Ltd* (1943) 2 KB 1

¹⁵ *Jones v Padavatton* [1969] 1 WRL 328

¹⁶ *Combe v Combe* [1951]

¹⁷ *DC Builders v Rees* [1966]

¹⁸ *Combe v Combe* [1951]

Conclusion:

While Betty and Arthur would have most likely had a legally binding arrangement due to performance, the domestic nature of the arrangement allows a court to find no intention to be legally bound. As such, and due to the little chance promissory estoppel will help, Arthur will be, most likely, unable to sue Betty for the £2,000.

Arthur: Charles**Issue:**

Arthur has agreed to take photographs of locations in return for £3,000 from Charles. Charles hears of Betty's refusal to pay £2,000 to Arthur and offers to pay him £2,000 in fear that Arthur will run out of money and not take all the agreed photographs. Having taken all the photographs, Charles accepts them and refuses to pay Arthur more than the £3,000 originally agreed.

Rule:

When discussing contractual duty, the performance of an existing duty is not a good consideration for another agreement¹⁹ unless it confers a practical advantage²⁰.

Application:

When Charles offers the initial £3,000 to Arthur in exchange for photographs, this shows a clear intention for the contract to be legally binding. There is an exchange of money in return for the photographs. Halfway through the holiday, when Charles offers to pay Arthur the extra £1,000, this is for the same existing contractual duty and does not make good consideration. It does not seem to offer any practical advantage beyond assurance that the photographs will be taken. As such, Charles is not legally obligated to pay Arthur the extra £1,000 unless there is an added benefit, such as more photographs.

¹⁹ *Stilk v Myrick* [1809] EWHC KB J58

²⁰ *Hartley v Ponsonby* [1857] 7 EB 872

Conclusion

While Charles would be obligated to pay Arthur the initial £3,000, the added £1,000 relied on the idea that it would be a good consideration for a new agreement, which it is not. It offers no benefit to Charles and no loss to Arthur, and as such is not legally binding. Charles does not have to pay Arthur any more than the initial £3,000 and Arthur does not have the right to claim any more.

Arthur: Darren

Issue:

Arthur has taken his camera to Darren and Arthur agrees to pay £200 for a service. Darren then telephones Arthur and says he will have to charge another £100. Arthur reluctantly agrees. When he returns, Arthur finds a bill for £300 waiting for him from Darren. Can Arthur refuse to pay the extra £100?

Rule:

The general rule is that the performance of an existing contractual duty is not good consideration²¹ unless it goes beyond an existing duty²².

Application:

When Arthur initially agrees to pay Darren £200 to service the camera, there is good consideration from both sides as there is a gain by both parties and a loss from both, which is required for a contract to be legally binding²³. As such, the contract between both parties is legally binding for the initial £200 asking price for the service. When Darren telephones Arthur requesting another £100 for the same service, this is seen as consideration based upon an existing contractual duty and as such is not seen as good consideration for a legally binding contract. As such, even though Arthur reluctantly agrees, there is no legal binding of this agreement, and thus Darren cannot sue for any lack of payment other than the initial £200 agreed.

Conclusion:

²¹ *Stilk v Myrick* [1809] EWHC KB J58

²² *Hartley v Ponsonby* [1857] 7 EB 872

²³ *Dunlop Pneumatic Tyre co Ltd v Selfridge Ltd* [1915] AC 847

When Arthur finds Darren's bill of £300 waiting for him, he can refuse to pay this sum and would only be required to pay the initial £200 for the service. This £200 consideration is part of a legally binding agreement, while the extra £100 requested by Darren is not. Should the service have included extra benefits for the £100 wherein Darren would have gone beyond the existing contractual duty, then Arthur would have most likely had to pay this. With Darren's service agreement merely relying on an existing contractual duty, Arthur would be required to pay the initial £200 only.

Cases

- Balfour v Balfour [1919] 2KB 571
- Combe v Combe [1951]
- Curie v Misa (1875) LR 10 EX 153 at p162
- DC Builders v Rees [1966]
- Dunlop Pneumatic Tyre co Ltd v Selfridge Ltd [1915] AC 847
- Edmonds v Lawson [2000] 2WLR 1091
- Entores v Miles Far East [1955] 2 QB 327
- Errington v Errington Woods [1952]
- Felthouse v Bindley [1862] EWHC CP J35
- Fisher v Bell [1961] 1 QB 394
- Foley v Classique Coaches Ltd (1943) 2 KB 1
- Hartley v Ponsonby [1857] 7 EB 872
- Hyde v Wrench (1840) 49 ER 132
- Jones v Padavatton [1969] 1 WRL 328
- Merritt v Merritt [1970] 1 WLR 1211
- Stilk v Myrrick [1809] EWHC KB J58

Bibliography

- Cooper J, 'The Burden and the Standard of Proof' *Principles in Practice* (Judiciary.UK, 2008)