

Assignment 1 - Contract Law (BMLW5006)

Kashvini Suvarmani (2026686)

Question (a)

One of the key concepts of contract law is the privity of contract. Generally, only contract parties can take legal actions under it and only the parties to a contract are bound by it “privity of contract is a common law that states that if you are not a party to a contract, you cannot benefit from it or be held accountable for its obligations” (Privity of Contract Definition | Legal Glossary, n.d.). Most of these rules will be obtained from case laws.

One of the leading case laws is *Tweddle v Atkinson* [1861]. When a couple got engaged, their fathers agreed that if they married, they would provide Tweddle's child money (Teacher, 2013). The groom's father paid as arranged, but the bride's father passed away before he could (Teacher, 2013). Despite the fact that Tweddle's son had the right to seek to enforce the promise, his lawsuit against his father-in-law was unsuccessful since “the groom was not a party to the arrangement and the consideration did not shift from him” (Teacher, 2013). As a result, he was unable to perform the contract (Teacher, 2013). There are a few other case laws such as “*Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915], *Jackson v Horizon Holidays Ltd* [1975], *Beswick v Beswick* [1968], *Scruttons v Midland Silicone* [1962]” and more are represented or illustrating the doctrine of privity (Durham University, 2021).

Question (b)

“Consideration known as a promise of value in exchange for entering into a contract” (Schubert, 2021). Every contract must include consideration in order for the agreement to be legally binding, it is one of the most important parts of forming a valid contract. (Schubert, 2021).

So, past consideration will be known as consideration that is completed is finished earlier to exchange of a promise, and it will not support a legal contract in general. Unless, consideration is included at the time the contract was made for the contract to be valid (UpCounsel, 2021). In my opinion, part consideration is not a good consideration due to unable to negotiate or unforce able. According to Legros, 2021, “Past consideration is no consideration: consideration must be executive or executed, not past”. “Consideration must be delivered or something promised in the present or in the future, but anything done earlier cannot be considered good consideration” (Legros, 2021). As a result, a past act or payment does not

represent consideration for the current agreement. The example cases of past consideration are *Roscorla v Thomas* [1842].

There are few major exceptions to the past consideration rule which is “if one party, at the request of the other, performs a service of a kind that is normally paid for, the court will usually assume that the service was meant to be paid for and will enforce a later promise to pay”. This rule applies to any working environment and selling or buying products or services. Such as the owners of businesses would pay their employees salaries after they have done their work. Another example is when you are buying delivery food or taking a taxi, you have accepted the negotiation or discussion beforehand and agree to pay for the services after they have done their services. Here, both of the party is accepted and agreed that they will pay and receive the payment after the services have been made. And, another example case is *Lampleigh v Braithwait* [1615].

Question (c)

The case *Cutter v Powell* (1795) is under the discharge of contract in performance. The basic rule of this discharge of contract is in an entire contract all obligations must be performed. The case *Cutter v Powell* (1795) is about “Mr. Cutter, a sailor, was employed by one Mr. Powell to sail as a second mate aboard the said ship from Kingston, Jamaica to Liverpool, England” (Editor, 2021). “Cutter's employer gave him a promissory note stating that ten days after the journey reached the agreed-upon destination, that is when the ship arrived in Liverpool, he would be paid 30 guineas in exchange for his services” (Editor, 2021). “The journey, which was scheduled to last 10 weeks, began as promised by both parties” (Editor, 2021). “However, Mr. Cutter died in the sixth week of the journey, failing to fulfill his side of the contract” (Editor, 2021). It is claimed in the court the payment was based on him working on the ship to Liverpool because he did not meet the requirement given by his employer, the widow was entitled to nothing (*Contract Unit 30 - Preview Definition Requirements For a*, 2021). And, “Mr. Powell declined to give any compensation to Cutter's wife because he believed the contract was an express contract and any delivery of consideration required full performance and past performance” (Editor, 2021).

The three of the exceptions to the entire performance rule from *Cutter v Powell* (1795) is the following case was determined by the “Court of King's Bench, which was primarily controlled by common law rules” (Editor, 2021). The second rule was the “common law rules of contract law were used by recognising the arrangement between the contract's parties” (Editor, 2021). And, “entire consideration cannot be assigned,” according to a common law

doctrine is the third rule. (Editor, 2021). According to the governed considerations, there are 4 rules that need to be applied which is “consideration must move from the promise, consideration must not be past, consideration need not be adequate and consideration must be sufficient” (Ariffin, 2021). Here, one of the rule considerations must not be past in this case.

Question (d)

According to the textbook provided by Treitel on “The Law of Contract and Anson’s Law of Contract a contract defines an agreement that is enforceable by a court of law or equity and that is legally binding between parties” in the branch of the law (Allen & Overy, 2016). To create a legally enforceable contract, there must be a valid offer and acceptance. According to the scenario above, there is no binding between Arthur and 3 other parties which are Christine, Dennis and Ben in the statement above. Due to no valid contract is an existence between the parties that reach all of the elements to establish a contract.

In order to complete a contract, the parties who are Christine, Dennis and Ben must come to an agreement that must be supported by elements such as agreement, intention to create a legal relationship, consideration, capacity, form, consent and legality by both parties (Solicitors, 2017). An agreement is formed when one side party offers and the other party accepts it and it requires a ‘meeting of the minds. The presence of an agreement alone does not prove the existence of a valid contract, however, consideration and the intention to create legal relations should be proven.

An “offer is an expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed” (Allen & Overy, 2016). The person who makes the offer is the offeror which is Arthur and the person to whom the offer is made is the offeree who is Christine, Dennis and Ben. An offer can be made by oral, written or conduct. The offer must be precise, and given to the offeree in a correct manner in both unilateral and bilateral offers, as they are the ones who will be accepting it. Unilateral offers involve one of them making a promise, whereas bilateral offers involve two people making exchanging promises (Teacher, 2013). It is quite often that an offer is a statement of conditions to which we are eager to be bound (Allen & Overy, 2016). "An offer might be made to a single individual or a group of individuals (Teacher, 2013).

Such as the famous case “*Carlill v. Carbolic Smoke Ball Company (1893)*” (All Answers Ltd, 2019). “This case is an example of a ‘unilateral contract’, where an offer is made to the whole world at large and may be accepted by performing the conditions by anyone who had notice of the offer” (All Answers Ltd, 2019). The same goes for this scenario, the offer made by Arthur to everyone and an advert is not a valid contract. When an offer is accepted, a contract is formed, and an offer differs from an invitation to treat.

An invitation to treat (ITT) can be identified by the intent with which it is given in each circumstance (Allen & Overy, 2016). An invitation to treat (ITT) is “inviting other parties to make negotiate and a willingness to receive an offer to form a contract” (Team, 2021). “Advertisements, auctions, requests for tenders, displays of goods for sale, and mere statements of price” are the 5 types of invitations to treat (Teacher, 2013).

The general rule of invitation of a treat for advertisements is that it is considered as invitations to treat but in some of the cases an offer is applied rather than an invitation to treat if there is a specific guarantee to be bound. And, “if detailed phrases are used to bind someone and all relevant terms are trusted, the advertising is more likely to be viewed as an offer rather than an invitation to treat” (UpCounsel, 2020). Such as the case “*Carlill v. Carbolic Smoke Ball Company (1893)*” (All Answers Ltd, 2019). In the scenario, Arthur advertises the full details of the sale of his watch to invite another party to communicate and to create a binding agreement. Such as the dates of the sales, contact details which included a postal and email address and in the ‘Antique-tickers’ magazine.

So, there is a valid offer here and communication or negotiation with the offeree which indicated there is a unilateral contract and bilateral contract. In the scenario, a unilateral contract offer is made to Ben since he did not have exchange mutual promises because his letter has arrived late. Whereas Christine and Dennis, have exchanged mutual promises with Arthur and Arthur reduces the price from £15,000 to £13,000. This will be considered as is bilateral contracts offer. Bilateral contracts are widely applied in retail activities and the type of bilateral contract offer is the sale of goods in the invitation to treat (Teacher, 2013). The example case of invitation to treat in displays of goods for sale that is applied is the case *Fisher v Bell (1961)*. “A shopkeeper displayed a flick knife with a price tag in the window under the Restriction of

Offensive Weapons Act 1959 which made it an offense to ‘offer for sale’ a ‘flick knife’. He was found not guilty since the display of goods in a shop window is only an invitation to treat, not an offer. The offer is made by the customer, which the shopkeeper is free to accept or reject” (All Answers Ltd, 2019).

Here, Arthur has agreed to Christine on reduced the price since Christine has a shortage of money on 5th May. And, Arthur maintains the same pricing of £13,000 for Dennis also on 6th May at 11 am. Since, the bilateral contract offer is an invitation to treat (ITT) and there are no acceptances elements in this contract, therefore there will be no valid agreement will be formed with the other parties.

While an “acceptance is a final and unqualified expression of assent to the terms of an offer” (Allen & Overy, 2016). The acceptance should be considered as a mirror image rule, in which the acceptance must exactly match or combine the offer (Gordon, 2021). The general rule of acceptance is that acceptance must be communicated to the offeror. It means if the acceptance did not communication, there will be no any agreement with the parties. There are an exception to the general rule of communication since the offeror might choose not to express the acceptance within their offer. The main accepted situations where this will commonly occur are acceptance by conduct, acceptance of unilateral offers and acceptance by post.

The principle silence doesn’t amount to acceptance which means the acceptance must be communicates to the offeror. When the offeror is silent and inactivity, it will be ambiguous by definition (Solicitors, 2016). It is when the offeror is silent when having an agreement with the offeree. There might be several reasons for the quiet and inaction (Solicitors, 2016). But, this principle will not amount to acceptance due to silence and inaction. Since, there is no communication acceptance between the offeree and offeror. It won't be assumed to be accepted until it's accompanied by action that suggests acceptance (Solicitors, 2016). One of the examples cases is *Entores v Miles Far East Corporation* [1955]. In this case “if a man shouts an offer to a man across a river but the reply is not heard because of a plane flying overhead, there is no contract. The offeree must wait and then shout back his acceptance so that the offeror can hear it” (Teacher, 2013). In this scenario, Arthur remains silent after agreeing to the new offer or term and ending the original offer by reducing the price from £15,000 to £13,000.

A rejection of acceptance is when the offeree introduces the offer with a new offer containing new terms and rejects an original offer since the offeree accepts a new conditional offer (Teacher, 2013). If the offeree rejects the offer, it is no longer valid and cannot be accepted in the future (Teacher, 2013). This is also called a counter-offer. The case *Hyde v. Wrench* (1840) is one of the good examples of a counter-offer (Teacher, 2013). In this scenario, Arthur accepted the change or end the original offer and create a new offer in accordance with the preference Christine. The original offer is £15,000 and the new offer is £13,000. This offer is also applied to Dennis since both of these parties are unable to have £15,000 at the moment of the offer. On the other hand, even it was late Ben's letter arrived at Arthur's house, Ben still is willing to pay the original amount of the offer for £15,000 but Arthur could not go back to the original offer since the offer has been destroyed.

In conclusion, this scenario illustrates that this is an invitation to treat and has a valid offer but there is no valid contracts or agreement exist for the sale of the watch. According to the definition of a valid contract is the acceptance and the offer should be combined and follow the mirror image rule to have a complete or legal agreement. Since, there is no mutual acceptance between the 2 parties there is no contract exists. Arthur has the freedom to accept or reject that offer and will not be liable for any breach of contract since there is no valid contract.

References

1. Allen, & Overy. (2016). *Basic principles of English contract law*. Advocates for International Development. Retrieved from <http://www.a4id.org/wp-content/uploads/2016/10/A4ID-english-contract-law-at-a-glance.pdf>
2. All Answers Ltd. (2019, Jun). *Agreement Cases - Formation, Acceptance, Termination*. Retrieved from <https://www.lawteacher.net/cases/agreement-cases.php?vref=1>
3. Ariffin, N. N. (2021). *Law of contract elements of contract consideration prepared*. SlideToDoc.com. Retrieved from <https://slidetodoc.com/law-of-contract-elements-of-contract-consideration-prepared/>
4. *Contract Unit 30 Preview Definition Requirements for a*. (2021). SlideToDoc.com. <https://slidetodoc.com/contract-unit-30-preview-definition-requirements-for-a-3/>
5. Durham University. (2021). *Privity Handout - Lecture notes 15 - Lecture 7 Privity Required Readings Depending on your choice of*. StuDocu. Retrieved from <https://www.studocu.com/en-gb/document/durham-university/contract-law/privity-handout-lecture-notes-15/12889511>
6. Gordon, J. (2021, September 24). *Mirror Image Rule - Explained*. The Business Professor. Retrieved from https://thebusinessprofessor.com/en_US/122296-law-transactions-amp-risk-management-commercial-law-contract-payments-security-interests-amp-bankruptcy/mirror-image-rule
7. Legros, A. (2021). *What is past consideration?* Movie Cultists. Retrieved from <https://moviecultists.com/what-is-past-consideration>
8. *Privity of Contract Definition | Legal Glossary*. (n.d.). LexisNexis. Retrieved from <https://www.lexisnexis.co.uk/legal/glossary/privity-of-contract>

9. Schubert, J. (2021, October 15). *Past Consideration in Contract Law: Definition & Cases - Video & Lesson Transcript*. Study.com. Retrieved from <https://study.com/academy/lesson/past-consideration-in-contract-law-definition-cases.html>
10. Solicitors, L (2016). *Legally Binding Contracts & Terms: Basics of Contract Law*. Hall Ellis Solicitors. <https://hallellis.co.uk/contract-law-basics-formation/>
11. Solicitors, L. (2017). *Formation of contract: Intention to create legal relations*. Levi Solicitors LLP. Retrieved from <https://levisolicitors.co.uk/news/intention-create-legal-relations/>
12. Teacher, Law. (November 2013). One-sided Contract. Retrieved from <https://www.lawteacher.net/free-law-essays/contract-law/one-sided-contract.php?vref=1>
13. Teacher, Law. (November 2013). An Offer Is a Proposal Made by One Party to Another. Retrieved from <https://www.lawteacher.net/free-law-essays/contract-law/an-offer-is-a-proposal-made-by-one-party-to-another-contract-law-essay.php?vref=1>
14. Teacher, Law. (November 2013). Offer Termination Methods. Retrieved from <https://www.lawteacher.net/free-law-essays/contract-law/offers-and-rejection-law-essay.php?vref=1>
15. Teacher, Law. (November 2013). Offers and Invitation to Treat. Retrieved from <https://www.lawteacher.net/free-law-essays/contract-law/offers-and-invitation-to-treat-contract-law-essay.php?vref=1>
16. Teacher, Law. (November 2013). Tweddle v Atkinson - 1861. Retrieved from <https://www.lawteacher.net/cases/tweddle-v-atkinson.php?vref=1>
17. Team, LawBite. (2021, December 1). *What Is An Invitation To Treat? | LawBite*. Lawbite. Retrieved from <https://www.lawbite.co.uk/resources/blog/what-is-an-invitation-to-treat>

18. UpCounsel. (2020). *Is an Advertisement an Offer or an Invitation to Treat?* UpCounsel. <https://www.upcounsel.com/is-an-advertisement-an-offer-or-an-invitation-to-treat>
19. UpCounsel. (2021). *Past Consideration*. UpCounsel. Retrieved from <https://www.upcounsel.com/past-consideration>