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QUESTION A

The privity of contract rule highlighted that only the parties to the contract are entitled to do the contract's obligations (Poole, 2016, p. 434). In referring to the case of *Tweddle v Atkinson* [1861] EWHC J57, 1 B&S 393, both fathers agreed to pay the groom a sum of money as the partners get married, but the bride's father died before performing the obligation. The court held that the groom is not entitled to receive money because he is not a party to the contract and is not providing any consideration. However, the Contract (Rights of Third Parties) Act 1999, makes an exemption to the privity rule, which gives the right to the third party to enforce the contract based on certain circumstances (Chen-Wishart, 2018, p. 172; Poole, 2016, p. 439-440).

QUESTION B

No, because it does not apply the rule of consideration, which states that an act should be given in exchange for the promise (Chen-Wishart, 2018, p. 108). In this scenario, the court would deduce that the contract is unenforceable as the consideration for the contract exist based on the act which is done before the other's promise was made (Poole, 2016, p. 120). In *Roscorla v Thomas* [1842] 3 QB 234, 114 ER 496 case has illustrated this rule where both parties have agreed on the purchase of a horse, which then the defendant made a subsequent assurance to the plaintiff that the horse was sound. However, the subsequent assurance is not enforceable because it is past consideration.

On the other hand, if the doctrine of implied assumpsit is applied, a good consideration can still be formed from a past consideration (Chen-Wishart, 2018, p. 114). In this rule, the condition has been clearly explained in the case of *Pao On v Lau You Long* [1980] AC 614 which it is at the request of the promisor to perform, the promisee has an expectation to be paid for the act, and the subsequent promise received rely upon whether a promised would have been enforced if stated earlier (Chen-Wishart, 2018, p. 114; Poole, 2016, 130). Based on the case of *Lampleigh v Braithwait* [1615] Hob 105, 80 ER 255, a past consideration through the request of promisor has applied here where the claimant is requested to get the King pardon. As this consideration is accepted according to the law, hence the defendant must pay the claimant.

QUESTION C

The entire performance rule applies when the agreement stipulates that the other party's contractual liability will be dependent on a condition in which one party needs to do a complete performance (Poole, 2016, p. 314). Divisible contract is the first exception to this entire performance rule (Lawexplores.com, 2016). This exception occurs when the part of one party's consideration is set off against the part of the other party's consideration (Poole, 2016, p. 315). As referred to in the case of *Ritchie v Atkinson* [1808] 10 East 295, a divisible contract can be applied as both parties have agreed on the term in which the payment would be made proportionately based on the price per ton.

The second exception to this rule is the substantial performance (Poole, 2016, p. 317). This exception could be applicable in cases where the contract has substantially been performed even though not fully performed, allowing the promisor to claim for what he has done in performing the contract but still be liable for his partial failure to fulfil the contractual obligations (Poole, 2016, p. 317-318; Chen-Wishart, 2018, p. 474). Referring to the case *Bolton v Mahadeva* [1972] 1 WLR 1009, the occurrence of this exception can be identified by finding the nature defect, cost of repair, and cost of the contract. In this case, there was no substantial performance as the defects amounted to around $\frac{1}{3}$ of the actual cost of the contract. In contrast, in the case of *Hoenig v Isaacs* [1952] 2 All ER 176, the court held that substantial performance may be applied because the defect amount was small in proportion to the contract cost, which was £55 out of £750.

The third exception is the acceptance of partial performance (Lawexplores.com, 2016). If the promisee derives benefit from the contract's partial performance and accepts it, the promisor may claim for quantum meruit; which is the pay for the benefits received by the promisee (Poole, 2016, p. 316). However, the partial performance can be accepted or rejected by the promisee (Poole, 2016, p. 316). In the case of *Sumpter v Hedges* [1898] 1 QB 673, the plaintiff was able to claim for quantum meruit for the materials left on-site used by the defendant but not for the work the plaintiff has done. The rationale for this is that the defendant has the option of using the material left on-site, and thus the defendant's action results in the acceptance of the plaintiff's partial performance as he benefits from it.

QUESTION D

Contract as defined in English contract law is a type of agreement that is enforced by law and act as an exchange medium between parties that give rise to obligations (Poole, 2016, p. 1). To determine with whom Arthur can make a contract, he would need to prove that there is an existence of a valid contract between the parties. There are four elements of requirements for a valid contract to exist which consist of offer, acceptance, consideration, and intention to create a legal relationship. An offer is a willingness of the offeror to the contract based on a specific term which they have to create the intention that it will be bound legally upon acceptance. (Poole, 2016, p. 29). The person who creates an offer is called an offeror meanwhile the person to whom the offer is being made is an offeree (Admin, 2017). Acceptance is a final and unqualified assent to the terms of an offer (Poole, 2016, p. 29). The agreement is created as an offer and acceptance present. Consideration is the price paid for a person's promise (Poole, 2016, p. 120). Lastly, the intention to create a legal relationship is the parties' intention to be legally bound (Poole, 2016, p. 166). It is presumed to be legally binding if it is made in the business context (Poole, 2016, p. 166). Therefore, the upcoming paragraph will clarify whether Arthur has made a valid contract with either Ben, Christine, or Dennis.

According to the question, an invitation to treat can be raised by Arthur. Invitation to treat is an invitation to enter negotiation and accepting it does not create an agreement (Poole, 2016, p. 29). There are five categories of invitation to treat which is advertisements, shop displays, auctions, and request for tenders (Lawbite.co.uk, 2021). By referring to the case of *Pharmaceutical Society of Great Britain v Boots Cash Chemist (Southern) Ltd* [1953] 1 QB 401 (CA), a bilateral contract advertisement does not amount to an offer meanwhile an advertisement of a unilateral contract does. This scenario of Arthur advertising an advertisement for the antique watch with the price of £15,000 in the magazine would fall under advertisement by bilateral contract. This is because the advertisement requires a two-way communication exchange, and he has stated "open to serious offers" which means that he is merely requesting others to make an offer for the watch. Hence, no binding offer was created on Arthur's part. We can refer to this category of invitation to treat with the case of *Partridge v Crittenden* [1968] 1 WLR 1204. Referring to the case, the wild birds advertised in the advertisement are just an invitation to treat and the offer would be made by the customer. The offer can freely be accepted or rejected by the appellant, and he will not be considered guilty.

On 4th May, Ben has made an offer to purchase the antique watch for £15,000 to Arthur which was sent through the letter. The letter arrives at Arthur on May 7th. In making a valid offer, the offeror must make sure that the offeree has the knowledge and be communicated of the offer (Poole, 2016, p. 59-60). According to the case of *Taylor v Laird* [1856] 25 LJ Ex 329, the claimant did not communicate his offer of work as an ordinary crew member to the defendant, hence, no valid offer was established. In this case, Ben's offers only be communicated to Arthur on 7th May, as that is when the offer was received by the offeree. Although Ben used the letter as the method to communicate the offer, the postal rule cannot be applied. This is because the postal rule only applies when the communication of acceptance of an offer is by post, even if it is delayed or lost in the post (Poole, 2016, p. 63-64). Ben is just creating an offer in this case. In applying to the case of *Adams v Lindsell* [1818] 1 B & Ald 681, he has posted the letter and whatever happens to the letter, he is not in control anymore such as if any delay or loss of the letter. Therefore, the contract is completed after he posted the letter. Hence, no valid contract between Arthur and Ben as acceptance is not being communicated by Arthur after the letter reaches him.

On 5th May, Christine made an offer of £11,000 for the antique watch to Arthur which then he replied with a new offer of the antique watch amounted to £13,000. This action resulted in a counteroffer as a valid acceptance of an offer must mirror the image of the offer which means that the offeree must accept all the offeror's original terms (Poole, 2016, p. 51). If any terms are changed or new terms are added, a counteroffer is being made which hence reversing the roles of offeror and offeree (Poole, 2016, p. 51). According to the case *Hyde v Wrench* [1840] 49 ER 132, an offer of selling the farm for £1000 is being made by the defendant to the claimant. The defendants refused the claimant's offer of £950 in his reply. The claimant then agreed on the offer to buy the farm for £1000 but is not accepted by the defendant. The court held that as the counteroffer has cancelled the original offer, there was no enforceable contract formed. On the same day, Christine responded saying she could pay £11,000 now and £2,000 by the end of the month. This scenario is merely a request for further information because it is a reply to a request from the offeree to the offeror that does not change the original offer's terms, hence remains the offer to be open. In the case of *Stevenson, Jaques & Co. v Mclean* [1880] 5 QBD 346, an offer by the defendant to sell the iron to the complainant is being made. Then, the complainant has asked about the delivery to the defendant through telegram, to which no response was received, but the iron was sold to another party. The court held that the

complainant just requested further information not making a counteroffer, which the defendant should answer.

Then, on 6th May at 2 pm, Christine accepts Arthur's offer of selling the antique watch for \$13,000. Hence the offer is still valid as no counteroffer is being made. However, as the communication of acceptance is made through the instantaneous method, which is email, the receipt rules apply, which the party needs to identify whether the email was sent during or after office hours (Poole, 2016, p. 67-68). If the email is sent during office hours, the acceptance will be upon received but if the email was sent after office hour, the acceptance would be upon the other party's knowledge of the email (Poole, 2016, p. 67-68). This rule can be supported by the case of *Brinkibon Ltd v Stahag Stahl GmbH* [1983] 2 AC 34 which stated that acceptance made by telex is deemed complete and valid when the message is heard by the offeror, as the telex, in this case, is frequently sent outside of business hour. The reason is that telex is one of the methods of instantaneous communication. Hence, as the email was sent by Christine at 2 pm, a valid contract will exist because the email was sent during office hours, which means that acceptance of the offer will be valid upon receiving.

On 6th May, Dennis has shown an interest in purchasing the antique watch to Arthur by email with an offer to buy presumed at £15,000 according to the advertisement, which then Arthur has replied and made a counteroffer of £13,000 to Dennis for the watch. Later that day at 5 pm, he accepted the offer. As Dennis uses email as the method of communication of acceptance, the receipt rules apply. Thus, as he manages to communicate his acceptance during the office hour, hence his acceptance of the offer is valid, and a valid contract does exist between Dennis and Arthur.

As a result, a valid contract exists between Arthur and Christine, as well as Arthur and Dennis.

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