

CONTRACT LAW

ASSIGNMENT ONE



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This essay seeks to advise Jack, Logan, and Nell as to whether valid contracts were formed, it will be argued whether each party is liable, or if they are entitled to damages. Sir Frederick Pollock defined a contract as a promise or set of promises (Winfield, 1939), along with Collins (2003), who articulates that contracts are merely a set of legal concepts which analyse the events of economic transactions and regulate the conduct of the parties. Therefore, a contract is simply an agreement, that can be formed between two or more parties. It is important to recognise that any stage of a contract, communication can be orally, or in writing. These obligations are accepted and enforceable in the court of law (Peel, 2015).

Contracts are meant to be legally binding, with the intention to affect and change the legal position of the parties involved. Contracts consist of key elements that include, agreement, consideration, and intention to create legal relations (Governatori et al. 2018). The agreement will occur when one party accepts an offer that has been made by another party. The agreement should be clear and easily executed, ensuring that the law can interpret what one party said or did as an offer, and if, the other party did or said anything that the law can interpret as an acceptance of the offer in question (Craswell, 1996). An offer can be terminated through four main circumstances: acceptance, a lapse of time, rejection from the offeree, or revocation. Revocation means an offer is withdrawn by the offeror; it is to be noted that an offer may be withdrawn at any time before acceptance (McKendrick, 2012). The purpose of consideration is not to provide evidence of a contract but provide the test that a bargain was concluded (Chloros, 1968), this is the benefit that both parties gain. A contract will not be enforceable without the additional proof of an intention to create legal relations (Hepple, 1970), meaning parties must intend to enter into a legally binding agreement.

Jack has sent out an invitation to treat, this is merely an indication that he is willing to enter negotiations but is not yet prepared to be bound (Law Cards, 2004). In the case of **Gibson v Manchester City Council [1979]**, the House of Lords decided that a response to an invitation to treat does not lead to an agreement, and that the response is an offer. Jack's invitation to treat was sent out as a letter to local musicians, offering a price of five-hundred-pound in-return for performance at the student union. In the case of **Carlill v Carbolic Smoke Ball Company [1893]**, it was held that an advertisement containing specified terms to get a reward constituted a binding unilateral offer. There is where the offeror alone makes a promise, and this offer can only be accepted once the offeree has completed performance of the act (Poole, 2016), once the performance has been made, Jack would be legally obliged to fulfill his offer (Rose, 2015). However, since Jack has only sent out an invitation to treat, which is an expression of negotiation, he does not necessarily intend to be bound as soon as it is accepted by another party (Burrows, 2020). Following the case of **Pharmaceutical Society of Great Britain v Boots Cash Chemists**

(Southern) Ltd [1953], which held that the display of a product in a store with a price attached is merely an invitation to treat rather than an offer, meaning Jack has not entered into an agreement at this point. Kate was the first party to reply to Jack's invitation to treat, she disclosed that she would be happy to perform at the student union for five-hundred-pound. Kate's reply to Jack is considered an offer, however, Jack has not accepted her offer, he saw that she had bad reviews, he did not respond. There is currently no valid contract, Jack does not have an obligation to respond to those who express an interest in his letter, this was declared in **Partridge v Crittenden [1968]**, that the vendor was not bound to respond to all individuals that expressed interest in the advertisement. Therefore, on the 15th of May when Kate arrived at the student union, Jack was entitled to tell her to leave. The case of **Caroline Gibbs v Lakeside Developments Ltd [2016]**, gives a reminder that offer, and acceptance must be met to give rise to the legally enforceable agreement. To conclude, there is no valid contract between Jack and Kate.

Following Jack's invitation to treat, Logan replied stating that he would be happy to perform on the 23rd of May, however, his fee would be seven-hundred-and-fifty-pounds. Jack received Logan's offer, and accepted these terms in writing, on the 1st of May via a letter in the post. Logan and Jack have communicated through postal measures, which have their own rules. The postal rule was adopted to avoid problems of uncertainty, acceptance takes place as soon as the letter is validly posted by the offeree (Hashim, 2019). Illustration of the postal rule was seen in **Adams v Lindsell [1818]**, where the court held that acceptance through the post is effective, as the offeree can no longer retrieve it. This circumstance was similarly highlighted in **Entores v Miles Far East Corporation [1955]**. Acceptance has now been made, both parties had control over the agreement (Green and Honkapohja, 1983), and now obligations have been made to each other, Logan's obligation is performance and then Jack's obligation is payment, this means they are both now in a valid bilateral contract.

On the 23rd of May Logan arrives at the Student Union and is told by Jack that his services are longer needed. Logan receives full payment of seven-hundred-and-fifty-pounds but is still dissatisfied as he was expected to make an extra five-hundred-pounds through the sale of his merchandise at the event. Jack is in breach of contract, although he has paid Logan in full, he has not fulfilled his obligation to allow Logan to perform at the student union. However, it is unlikely that Logan is entitled to damages amounting to five-hundred-pounds, as in the case of **Hadley and Anor v Baxendale and Ors [1854]**, it was held that only foreseeable losses or special circumstances mentioned in advance could be claimed. This means that because Logan failed to mention any possible merchandise sales in the initial contract, along with his 'expected' sales amount not being guaranteed, there is no certainty that this would have happened. Through duty of mitigation, Jack could also argue that Logan is not entitled to damages, as innocent parties who have suffered a breach of contract are only

entitled to damages to cover their losses if they have taken reasonable steps to minimize the extent of their losses (Finch and Fafinski 2019). As Logan did not mention he wanted to sell his merchandise at the event he is not entitled to a payment from Jack. This is seen in **Brace v Calder [1895]**, as the claimant had failed to take advantage of the opportunity to reduce his losses, and more recently illustrated in the case of **Steele v Robert George and Co Ltd [1942]** where the claimant also failed to mitigate his damages. Jack breached the valid contract made between himself and Logan, however, due to Logan failing to disclose his possible merchandise sales in the contract he is unable to claim damages.

On the 12th of May, Jack accepted DJ Masons offer to perform at the student union for one-thousand-five-hundred-pounds, however, he accepted this offer on the basis that DJ Mason would perform on the 23rd of May without releasing he was already in a valid contract with Logan to perform on this date. Jack decided to pay Logan in full, with the intention that DJ Mason's performance would be going ahead. However, when DJ Mason arrived at the student union and saw Logan, he was embarrassed about the situation and only performed for two out of the three-hours, resulting in DJ Mason breaching his obligations to fulfill his part of the agreement. This gives Jack the option to regard the breach as a repudiation of the contract, bringing the contract to an end (Oakley, 1977), and therefore Jack, the innocent party, would be discharged from any obligation to pay DJ Mason. This was seen in **Heyman v Darwins Limited [1942]**, where the primary obligations under the contract came to an end through repudiation being accepted. Jack can argue that DJ Mason failing to perform for the three-hours that was initially agreed, he has accepted the repudiation from Jack. This would result in Jack not being legally obliged to pay DJ Mason for any of his performance. The case of **Cutter v Powell [1795]**, illustrated a no completion, no payment precedent. It is important for Jack to be aware that he may be liable to pay DJ Mason for part performance, a contract may still be enforceable even if one of the parties does certain acts by which the contract is partly performed (Law and Martin, 2009). Since DJ Mason performed for two out of the three hours that was initially agreed, this could be seen by the court of law as substantial performance and would result in Jack still being liable to his contractual obligations, this was seen in the case of **Hoenig v Isaacs [1952]**. It is likely that Jack would be legally obligated to pay DJ Mason the full amount of one-thousand-and-five-hundred-pounds.

After DJ Mason left the student union, Jack asked his friend Nell to perform her regular stand-up comedy routine. The day after her performance, Jack wanted to show how grateful he was and stated he would pay her two-hundred-and-fifty-pounds. Due to there not being any discussion of payment before the performance took place, it is likely that the courts would see this circumstance as a domestic agreement, the courts will presume that this agreement was not intended to be legally binding (Stone and DeVenny, 2015). In the case of

Simpkins v Pays [1955], it was held that irrespective of their social relationship and informal text, an intention to create legal relations was present. This means that it is possible to argue an intent to create legal relations is present even between social circumstances. Nell has another option, following the case of **RTS Flexible Systems Ltd v Molkerei Alois Müller [2010]**, the contract was negotiated 'subject to contract' and work began before the final contract was executed. Therefore, she could argue that due to the time-sensitivity of the situation that there was no time to discuss payment before the act of performance. This means she could argue that negotiations were not yet reached to meet agreement before the performance, showing there was an intention to create legal relations between the parties even though there was no mention of monetary values.

As previously mentioned, consideration is an essential element within a contract, and without it, a contract is not valid, and therefore cannot be legally binding. Professor Ames defines consideration as any act or promise by one party given in exchange for the promise of another (Beale, 1903). This leads to the presumption that there is no consideration between Jack and Nell, as there was no promise between them, especially as Nell did not expect anything in return for her act of performance. When Jack asked Nell to perform her regular stand-up routine, it heavily implies that they have worked together in the past, and it is important to consider that in the court of law, past consideration normally means no consideration. In the case of **Eastwood v Kenyon [1840]**, it was held by Lord Denman DJ, who found that the consideration was past and was executed long before (O'Sullivan and Hilliard, 2012), due to this he decided the consideration was unenforceable. This circumstance was soon after held in the case of **Roscorla v Thomas [1842]**, where the courts held that consideration must not be past. On account of the heavily precedented stance of past consideration meaning that there is no valid consideration, it is clear to see that there is no consideration between Nell and Jack, resulting in their agreement not being legally bound.

To conclude Jack sent out invitations to treat to local musicians intending to find artists to perform at the student union. The first offer he received from this was Kate's, after discovering she had bad reviews online, he decided not to accept her offer, there was no valid contract between them. Jack accepted Logan's offer via the post, he mistakenly double-booked him with DJ Mason. The valid contract between Logan and Jack had been breached, Logan received full payment, however, as he did not disclose with Jack that he was planning on selling merchandise at the student union, he was not legally entitled to damages as they were uncertain. DJ Mason was embarrassed by the double booking, and only partially performed his contractual obligation, however, it was considered substantial, Jack is, therefore, obliged to pay DJ Mason in full settlement. Finally, due to DJ Mason's early departure, Nell was asked by Jack to perform her regular stand-up routine, the conclusion was that the agreement between Jack and Nell

could be argued that it was an intention to create legal relations, however, due there being no valid consideration, this agreement is not legally binding in the court of law, meaning that if Jack decided that retract his two-hundred-and-fifty-pounds offer, it is in his legal right to do so, legally there would be no breach of contract.

BIBLIOGRAPHY

Case Law

Adams v Lindsell [1818] EWHC KB J59

Bradley v Calder [1895] 2 QB 253

Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1

Caroline Gibbs v Lakeside Developments Ltd [2016] EWHC 2203

Cutter v Powell [1795] EWHC KB J13

Eastwood v Kenyon [1840] 11 AD&E 438

Entores Ltd v Miles Far East Corporation [1955] EWCA Civ 3

Gibson v Manchester City Council [1979] UKHL 6

Hadley and Anor v Baxendale and Ors [1854] EWHC J70

Heyman v Darwins Limited [1942] AC 356

Hoening v Isaacs [1952] 2 All ER 176

Partridge v Crittenden [1968] 1 WLR 1204

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] EWCA Civ 6

Roscorla v Thomas [1842] 3 QB 234

RTS Flexible Systems Ltd v Molkerei Alois Müller [2010] UKSC 14

Simpkins v Pays [1955] 1 WLR 975

Steele v Robert George and Co Ltd [1942] AC 497

References

Beale, J, H. (1903) 'Notes on Consideration', Harvard Law Review, 17(2), p.71.
Available at:
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/hlr17&div=16&id=&page=> (Accessed 5th March 2021).

Burrows, A, S. (2020) A Casebook on Contract. 7th edn. Oxford: Bloomsbury Publishing Plc.

Chloros, A, G. (1968) 'The Doctrine of Consideration and the Reform of the Law of Contract', International and Comparative Law Quarterly, 17(1), pp.140-141. DOI: 10.1093/iclqaj/17.1.137.

Collins, H. (2003) The Law of Contract. 4th edn. London: LexisNexis Group.

- Craswell, R. (1996) 'Offer, Acceptance, and Efficient Reliance', *Stanford Law Review*, 48(3), pp. 482-483. DOI: 10.2307/1229277.
- Finch, E and Fafinski, S. (2019) *Law Express: Contract Law*. 6th edn. Harlow: Person.
- Governatori, G. et al (2018) 'On Legal Contracts, Imperative and Declarative Smart Contracts, and Blockchain Systems', *Artificial Intelligence and Law*, 0(0) pp3-4. DOI: 10.1007/s10506-018-9223-3.
- Green, J. and Honkapohja, S. (1983) 'Bilateral Contracts', *Journal of Mathematical Economics*, 11(2) p.1. DOI: 10.1016/0304-4068(83)90035-6.
- Hashim, R, C. (2019) 'Postal Rule in Acceptance via Email', *Commonwealth Law Bulletin*, 0(0) pp.2-3. DOI: 10.1080/03050718.1552523.
- Hepple, B, A. (1970) 'Intention to Create Legal Relations', *Editorial Committee of the Cambridge Law Journal*, 28(1), pp.122-123. DOI: 10.2307/4505359.
- Law Cards (2004) *Contract Law*. 4th edn. London: Cavendish Publishing.
- Law, J. and Martin, E, A. (2009) *A Dictionary of Law*. 7th edn. Oxford: University Press.
- McKendrick, E. (2012) *Contract Law*. 5th edn. Oxford: University Press.
- O'Sullivan, J. and Hilliard, J. (2012) *The Law of Contract*. 5th edn. Oxford: University Press.
- Oakley, A, J. (1977) 'Damages for Breach of Contract after a Contract has been Repudiated', *The Cambridge Law Journal*, 36(1), pp.20-21. DOI: 10.2307/4505971.
- Peel, E. (2015) *Treitel The Law of Contract*. 14th edn. London: Sweet and Maxwell Ltd.
- Poole, J. (2016) *Casebook on Contract Law*. 13th edn. Oxford: University Press.
- Richards, P. (2017) *Law of Contract*. 13th edn. London: Pearson Plc.
- Rose, F. (2015) *Blackstone's Statutes on Contract, Tort, and Restitution 2015-2016*. 26th edn. Oxford: University Press.
- Stone, R. and DeVenny J. (2015) *The Modern Law of Contract*. 11th edn. London: Routledge.
- Winfield, P, H. (1939) 'Some Aspects of Offer and Acceptance', *Law Quarterly Review*, 55(4), p499. Available at:
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/lqr55&div=36&id=&page=> (Accessed: 4th March 2021).