

BUSINESS LAW

Name
Subject
Date

Question 1

Introduction

Jackson, a director of Comp-Sales Pty Ltd, offers his cousin Misty of Nu-Shoes Pty Ltd, computer software for \$50,000. Misty replies via email accepting to purchase at the proposed price. Jackson delivers but Misty only avails \$45,000 claiming the rest as a family discount. Jackson demands the full amount, but Misty insists that they do not have to follow the agreement strictly because they are of the same family. The issues for determination arising from the above scenario are whether the parties to the contract had the intention to create legal relations and whether the requisite consideration for the formation of a valid contract is present. These will determine whether Nu-Shoes Pty Ltd is liable to Jackson for the full amount.

Intention to create legal relations

Intention to create legal relations is a fundamental requirement for the formation of a binding contract. It concerns whether the parties to a contract wish it to be subject to contract law. The standard for determining if the intention to create legal relations is present is objective. The objective standard was articulated in *Smith v Hughes* (1871) LR 6 QB 597 by Blackburn J. He concluded that if a person behaves in a manner that would result in a reasonable person believing that he is accepting the terms proposed by another man, and if that other man relying on that conduct enters into a contract, the man will be bound regardless of whether he had the intention to be bound or not. In *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256 the objective test was applied. The court concluded that the statement in the advertisement that the company had set aside the prize money would induce a reasonable bystander into believing that the company had the intention to create legal relations. Therefore, the test considers whether a

reasonable person, taking into consideration of all relevant circumstances of a case, would conclude that those involved had the intention to create legal relations.

Common law has developed an important device that assists in establishing the intention to create legal relations is present. This device is a rebuttable presumption of law which creates a distinction between categories of agreements depending on the contexts within which they are made. These categories are either domestic and societal agreements or commercial arrangements. In the first category, the assumption is that those involved do not possess the intention to be legally bound. The leading case on that point is *Balfour v Balfour* [1919] 2 KB 571 where a spouse had promised his wife maintenance fees in the period he was abroad. The court held that although the wife depended on the payments, the intention to be legally bound was not present. *Balfour* was similarly applied in *Jones v Padavatton* [1969] 1 WLR 328 where it was held that a mother's promise allowing her daughter to use her house is not an enforceable contract.

The presumption may be disproved by evidence. In *Errington v Errington Woods* [1952] 1 KB 290, a father made a promise to his son that he could own their house if he settled the mortgage balance. The promise was found to be enforceable because it had been reduced to writing. In *Merrit v Merrit* [1970] 1 WLR 1211, the presumption was rebutted because the covenant involved people who were separated. Further, reducing the agreement to writing and signing it was also adequate proof of the intention to create legal relations. Further, following *Simpkins v Pays* [1955] 1 WLR 975, where third parties are involved in the agreement, the presumption does not hold. Accordingly, a rebuttable presumption that arrangements made in a family and social settings do not create legal relations exists. However, the presence of evidence to the contrary dispenses with the presumption.

Where agreements are made in commercial or business like contexts, the presumption leans toward the finding of the intention to enter legal relations. *Esso Petroleum Ltd v Commissioners of Customs and Excise* [1976] 1 All ER 117 aptly demonstrates this point. Similarly, in *Edwards v Skyways Ltd* [1964] 1 WLR 349, it was held that in ordinary commercial transactions, a rebuttable presumption that parties have the intention create legal relations exists. Anyone who refutes it bears the burden of dispelling it. However, this presumption can also be refuted by evidence. Recent Australian High Court jurisprudence has cast doubt upon the lifeline of the use of presumptions to establish the presence of the intention to create legal relations. In *Ermogenous v Greek Orthodox Community of South Australia Inc.* [2002] 209 CLR 95, the court asserted that relying on presumptions to establish the presence of the intention to create legal relations is of limited value. Accordingly, any party to an agreement that alleges the presence of the intention to create legal relations must prove it in all cases.

Consideration

Another basic requirement for the creation of an enforceable contract, consideration relates to the bargain made when a contract is concluded. In *Currie v Misa* (1875) LR 10 Ex 153, the court defined consideration as the benefit or loss that each party to a contract bears. Either party to an agreement must accrue a benefit and suffer a detriment. Therefore, following *Thomas v Thomas* (1842) 2 QB 851, consideration is anything that is offered in exchange for a promise that has legal worth. It must be present for that promise to be enforceable as a contract. There are some relevant conditions that must be satisfied for a valid consideration to exist. First, it must be sufficient although not adequate (*Chapell v Nestle* [1960] AC 87). Therefore, it is not a must that the economic value of the consideration and that of goods or services received is the same.

Second, consideration must not be past hence it must be given in return for the promise (*Re McArdle* (1951) Ch 669).

Application

The law requires that an agreement can only be enforced if those involved had the intention create legal relations. By applying the objective test, we inquire if a reasonable person in the circumstances would have recognized the intention to create legal relations between Jackson and Misty. The context of their agreement is commercial because both Jackson and Misty act on behalf of their respective companies. Consequently, the fact that they are cousins does not have a bearing on the issue because they were both representative of their companies hence underlying the commercial nature of their agreement. Without evidence to the contrary, a reasonable person will conclude that both had the intention to be legally bound. The nature of the arrangement between Jackson and Misty is informal because it was not executed in the form of a deed. Therefore, this means that consideration must be present for the agreement to be enforceable. Consideration is something of value exchanged for the promise that one receives. In this case, requirements of consideration are met because Jackson, the seller, has delivered the computer software, while Misty, the buyer, promises to pay \$50,000 although she pays \$45,000 instead. There is a valid consideration.

Conclusion

Due to the commercial nature of the agreement between Jackson and Misty, there exists the intention to create legal relations. Misty's acceptance of Jackson's price without attempts to counter it signifies unequivocal acceptance hence an agreement is present. The exchange of

money for the computer software is a valid consideration. Therefore, Jackson can enforce the agreement against Nu-Shoes Pty Ltd.

Question 2

Introduction

Chicken Galore advertised a promotion with a car as the prize for the winner. Brian Smith purchases chicken and redeems a ticket. Christian More also acquires two tickets albeit through scavenging. All tickets acquired by the two as well as other people are winning tickets. However, Chicken Galore cancels the promotion and declares all tickets null and void citing printing errors that led to numerous winning tickets being available instead of just one. The issue for determination, in this case, is if the component of agreement essential for the creation of a valid contract is satisfied hence obliging Chicken Galore to provide both Christian and Brian with a car.

Agreement

An agreement is described as a 'meeting of the minds' of those involved in the formation of a contract. It is brought about by a mutual communication between these parties (*Household Fire and Carriage Accident Insurance Co Ltd v Grant* (1879) 4 Ex D 216). It refers to a common understanding between the people who choose to enter into a contract. It is made once a person floats a suggestion, called the offer, and another person unequivocally accents to the suggestion, a gesture known as acceptance. These are the basic elements that make up an agreement under contract law. To determine if an agreement is made, an objective standard is used. Accordingly, the threshold is whether a reasonable third-party would recognize that an understanding between the involved parties has been reached.

i. Offer

In *Stover v Manchester City Council* [1974] 1 WLR 1403, an offer was defined as a statement that expresses a person's willingness to be legally bound by the specific conditions which he proposes in the event that another person agrees to the same terms. A person making such statement is referred to as the 'offeror' while the recipient of the offer is an 'offeree.' The requisite characteristics of an offer are that it must be promissory in nature. Therefore, it must comprise a duty to give, do or acquire liability in relation to another person (*Placer Development Ltd v Cth* (1969) 121 CLR 353). Further, it must be adequately complete. Another element of an offer, as espoused in *Partridge v Crittenden* [1968] 2 All ER 421, is that the offeror must have the intention that the offer leads to a contract upon acceptance. Further, following *Carlill v Carbolic Smoke Ball Company* [1893] 1 QB 256, an offer must be directed to either a specific person or to an identifiable and ascertainable group of people. Accordingly, it can be directed to a particular person or the whole world.

The *Carlill* case presents a perfect example of a unilateral contract which is an agreement where acceptance is made through the performance of an act that signifies acceptance of the terms of the offer. Therefore, an act is performed in exchange for the promise (*Australian Woolen Mills Pty Ltd v The Commonwealth* [1954] HCA 20). An offer must be told apart from an invitation to treat. The intention of the maker of the statement or conduct must be scrutinized to establish the difference. In this regard, it is paramount to establish if the maker of the statement intended that an agreement arises the moment the statement receives a confirmatory reply or if it was simply intended to elicit further negotiation. An authority on this point is *Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd* [1953] 1 All ER

482. The court concluded that exhibiting drugs at a self-service store is an invitation to treat rather than an offer.

ii. Acceptance

Acceptance denotes a final, unequivocal response to the specific terms of an offer by an offeree that signifies an inclination to comply with the offeror's conditions. Therefore, it must be an assent to the same terms that made up the offer. Further, the person who makes it must be the one to whom the offer was directed. According to *Crown v Clarke* (1927) 40 CLR 227, to constitute an acceptance, it must be in exchange for an offer that the offeree had specific knowledge. The general rule is that to be effective, communication of the acceptance is necessary (*Powell v Lee* (1908) 99 LT 284. Acceptance only takes effect upon receipt by the offeror.

However, unilateral contracts constitute a concession to the rule on communication of acceptance. For example, in *Carlill*, it was asserted that communicating acceptance was not necessary and that acts in performance according to the terms of the offer constituted valid acceptance. In the circumstances, it was not viable to stringently require that communication is made. Therefore, the performance of an act is valid acceptance in instances of unilateral contracts. In *Daulia Ltd v Four Millbank Nominees Ltd* [1978] 2 All ER 557, the court opined that the moment a person begins unequivocally doing acts requested in unilateral contracts, this amounts to an acceptance and the offer cannot be revoked thereafter. However, in the Australian case *Mobil Oil v Wellcome International* [1998] FCA 205, the full Federal Court refuted the existence of a general rule that states that a unilateral contract offer cannot be withdrawn after someone has already started performing the specified acts.

Application

Chicken Galore's promotion offers a car as a prize for anyone who successfully participates by buying the stipulated amount of dinner boxes. The advertisement of the promotion is a *prima facie* invitation to treat. However, the situation being similar to the one in *Carlill* requires that those who take up the challenge must buy at least 25 dinner boxes to get coupons redeemable as tickets. This is a requirement of performance of an act in exchange for a chance to participate in the promotion. Accordingly, the scenario presents an instance of a unilateral contract. The offer of a car as a prize is promissory in nature. The offer is sufficiently complete because the prize, a Mazda CX-9 is sufficiently ascertainable and certain. Further, the actions required to qualify for the prize are clearly set out. Following the rule in *Carlill*, the proposal is in this case directed to the whole world and Chicken Galore customers to be specific. Therefore, as a unilateral contract, the requirements of a valid offer are satisfied.

Acceptance in unilateral contracts is signified through performance. Both Brian Smith and Christian More have unequivocally performed the acts required to signify acceptance of Chicken Galore's offer. Since the performance of required acts has already commenced, the common law position as expressed in *Daulia* is that the offeror cannot revoke the offer. However, the Australian position as espoused in *Mobil Oil* denies the existence of such a general rule. Consequently, without a rule inhibiting revocation after performance as commenced, Chicken Galore can revoke the offer even though Brian and Christian, as well as other people, had already begun performance in light of the printing error that frustrated fulfillment of the contract.

Conclusion

Following *Mobil Oil v Wellcome International*, Chicken Galore are not under an obligation to give both Brian and Christian a Mazda CX-9 because it is not commercially viable to require strict performance in the circumstances.

Bibliography

Australian Woolen Mills Pty Ltd v The Commonwealth [1954] HCA 20

Balfour v Balfour [1919] 2 KB 571

Carlill v Carbolic Smoke Ball Company [1893] 1 QB 256

Chapell v Nestle [1960] AC 87

Crown v Clarke (1927) 40 CLR 227

Currie v Misa (1875) LR 10 Ex 153

Daulia Ltd v Four Millbank Nominees Ltd [1978] 2 All ER 557

Edwards v Skyways Ltd [1964] 1 WLR 349

Ermogenous v Greek Orthodox Community of South Australia Inc. [2002] 209 CLR 95

Errington v Errington Woods [1952] 1 KB 290

Esso Petroleum Ltd v Commissioners of Customs and Excise [1976] 1 All ER 117

Household Fire and Carriage Accident Insurance Co Ltd v Grant (1879) 4 Ex D 216

Jones v Padavatton [1969] 1 WLR

Merrit v Merrit [1970] 1 WLR 1211

Mobil Oil v Wellcome International [1998] FCA 205

Partridge v Crittenden [1968] 2 All ER 421

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd [1953] 1 All ER
482

Placer Development Ltd v Cth (1969) 121 CLR 353

Powell v Lee (1908) 99 LT 284

Re McArdle (1951) Ch 669

Simpkins v Pays [1955] 1 WLR 975

Smith v Hughes (1871) LR 6 QB 597

Stover v Manchester City Council [1974] 1 WLR 1403

Thomas v Thomas (1842) 2 QB 851