

UNDERGRADUATE PROGRAMME IN LAW

LL4002 – CONTRACT LAW

ASSESSED COURSEWORK 2014/15

STUDENT NUMBER:

1176 Words

Issues

The scenarios in the problem question present pertinent questions on the valid creation, subsistence and enforcement of a contract. In particular, the element of consideration as an important requisite for the creation of an enforceable contract is under scrutiny. Accordingly, issues for determination are;

- i. What are the necessary prerequisites for the creation of an enforceable contract;
- ii. Whether discharging public duty might result to legitimate consideration;
- iii. Whether a contractual duty on hand is a valid consideration;
- iv. Whether work done before a promise to pay is made can be valid consideration; and
- v. Whether Emma's actions amount to a breach of contract.

Law

A contract is an agreement that is legally binding hence imposes obligations that are recognized and can be enforced by law. Common law dictates that for a valid contract to exist, three basic elements must be present. First, an agreement between the parties involved; second, an intention to create legal relations-also known as a contractual intention-; and third, consideration must be present. Together with age and mental capacity, and mutuality of obligations, these elements of a valid contract are cumulative in nature. Therefore, all elements must be present for a valid contract to exist. The first step in the contracting process is making an agreement.

An agreement is a 'meeting of the minds' of the parties involved. An agreement is reached when a party makes a proposal, called an offer, and another party accepts that proposal. To determine whether an agreement is reached, an objective test is applied by answering the question whether a reasonable third party observer would recognize that there had been an understanding between the parties involved. An offer is a statement of an individual's readiness to be bound by the specific terms he proposes in the event that the other party agrees to them.¹ An acceptance is a clear, unequivocal and final response of assent to an offer. It is also an expression of the desire to be bound by the offeror's terms. It must be an assent to all the terms of the offer as they are and must not attempt to vary them in any way. To take effect, it must be communicated to the offeror. Upon acceptance of an offer, an agreement is formed. The agreement is the basis of a contract although it is not in itself sufficient to create legal obligations.

The presence of contractual intention is the other crucial element necessary for the formation of a valid contract. Therefore, both parties involved in the contract should possess the intent to be bound legally according to the conditions of the contract. Contractual intention can be deciphered from the context and circumstances of every case. There is a rebuttable presumption in law that parties to ordinary commercial transactions have the intention to create legal relations and anyone alleging otherwise shoulders the burden of rebutting the presumption.² Social and domestic arrangements often fail to meet the threshold required to prove contractual intention.³

¹ *Stover v Manchester City Council* [1974] 1 WLR 1403.

² *Edwards v Skyways Ltd* [1964] 1 WLR 349.

³ *Balfour v Balfour* [1919] 2 KB 571.

The general Common Law rule on a promise is that it does not bind as a contract unless it supported by consideration. Consideration exists where there is “some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other party.”⁴ Accordingly, consideration is a thing that has legal value that is offered for a promise and which must be given to make that promise enforceable as a contract.⁵ Therefore, a gratuitous informal promise does not qualify as a contract.

Various rules govern the application of consideration. First, consideration must be sufficient but it need not be adequate.⁶ Therefore, it is not necessary that the economic value of the consideration given and that of goods or services received is the same. Second, consideration must not be past therefore it must be given in return for the promise.⁷ However, past consideration may be valid if preceded by a request.⁸ Third, consideration must move from the promisee.⁹ Consequently, a promisee can only enforce a promise if he provides the consideration for it. If a third party provides the consideration, the promisee cannot enforce that contract. Fourth, discharging public duty does not qualify as a valid consideration.¹⁰ However, where such performance goes beyond what is expected of one dispensing this duty, such may constitute valid consideration.¹¹ Fifth, existing contractual duty does not amount to valid consideration¹² unless

⁴ *Currie v Misa* (1875) LR 10 Ex 153.

⁵ *Thomas v Thomas* (1842) 2 QB 851.

⁶ *Chapell v Nestle* [1960] AC 87.

⁷ *Re McArdle* (1951) Ch 669.

⁸ *Lampleigh v Braithwaite* [1615] EWHC KB J17.

⁹ *Tweddle v Atkinson* [1861] EWHC QB J57.

¹⁰ *Collins v Godefrey* (1831) 1 B & Ad 950.

¹¹ *Glasbrook Bros v Glamorgan County Council* [1925] AC 270; *Ward v Byham* [1956] 1 WLR 496.

¹² *Stilk v Myrrick* [1809] EWHC KB J58.

one goes beyond the existing contractual duty.¹³ Finally, part payment of a debt cannot be a valid consideration to releasing the debt in full.¹⁴

Application

Emma's was an offer to pay £10 per week to the officer to which he agreed without challenge. Accordingly, the element of an agreement is satisfied. Contractual intention may be construed from the fact that Emma offered a sum of money in return for the officer's services. After reaching an agreement, she did not take any steps to stop the officer from performing the agreed duties. Further, the officer did perform his end of the bargain without protest. The requirement of consideration is *prima facie* met in light of the amount offered by Emma of 10 per week to the officer in exchange for his services in ensuring that the parking area is unobstructed. However, following the rule in *Collins v Godefrey*, the officer's actions are in performance of the duties for which he is employed by the London Borough of Hempleton. Therefore, unless the officer can show that he went beyond his public duty, he cannot enforce Emma's promise because his claim would fail for lack of valid consideration.

Priyanka is entitled to refuse paying the extra amount to Emma. There was a valid contract for designing the waiting room at a fixed price of £1500 hence Emma already has an existing contractual duty on that ground. Following *Stilk v Myrick*, Emma's claim for an extra amount is invalid. This is because she neither gives an additional consideration for the additional amount she seeks nor proves that she went above what was expected in dispensing that contractual duty. Fred does not have a claim whatsoever against Emma because first, his services were unsolicited hence there was no agreement. Second, the nature of the familial relationship

¹³ *Hartley v Ponsonby* [1857] 7 EB 872.

¹⁴ *Pinnel's Case* (1602) 5 Rep, 117.

between Fred and Emma negates the presence of a contractual intention. Third, following *Re McArdle*, the fact that Fred performed the task before the promise to pay was made by Emma makes it past consideration hence unenforceable.

Conclusion

Pertinent issues arising from the problem question have been addressed. The relevant principles of contract law applicable have been explained, and those principles have been applied to the relevant facts. The Parking Enforcement Officer does not have a claim because his performance of his end of the bargain was, in fact, a performance of public duty which cannot constitute a valid consideration. Priyanka is entitled to refuse paying the extra amount demanded because Emma's pre-existing contractual duty negates the presence of a valid consideration. Finally, Fred does not have a claim because he did the work prior to the promise being made hence it is past consideration.

Bibliography

- Balfour v Balfour* [1919] 2 KB 571.
- Chapell v Nestle* [1960] AC 87.
- Collins v Godefrey* (1831) 1 B & Ad 950.
- Currie v Misa* (1875) LR 10 Ex 153.
- Edwards v Skyways Ltd* [1964] 1 WLR 349.
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- Re McArdle* (1951) Ch 669.
- Stilk v Myrrick* [1809] EWHC KB J58.
- Stover v Manchester City Council* [1974] 1WLR 1403.
- Thomas v Thomas* (1842) 2 QB 851.
- Tweddle v Atkinson* [1861] EWHC QB J57.
- Ward v Byham* [1956] 1 WLR 496.