

CASE STUDY

by [Name]

Contract Law

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Location

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Case Study

Introduction

In the modern-day world, television (TV) shows present one of the technical types of agreements. In some instances, such agreements involve international participants, and judges are chosen from different countries to preside over the shows. Given their transnational nature, the shows have the potential of raising critical issues, such as conflict of laws. Accordingly, the parties involved need to meet all the fundamental requirements of a contract, taking into account any expected challenges especially if the parties are from different jurisdictions. Against this backdrop, the present paper explores the fundamental elements of a binding contract under the English law, as well as the consequences of breach of contract. The main purpose of the paper is to advise Simon on how to make his intended contract binding and enforceable in England. The paper is, thus, structured into two themes: the fundamental elements of a binding contract; and the effect of breach of contract.

Requirements of a Binding Contract

In any analysis of a contractual relationship, the conceptual framework usually provides a foundation upon which the legality and binding nature of the relationship can be determined. According to Allen & Overy (n.d.), the term “contract” refers to an agreement which gives rise to enforceable obligations. It may also refer to a promise or set of promises which is enforceable in law (Stevenson, 2008, p.1). In this sense, the aspect of enforceability is very key in the law of contract. The other important aspect of a contract is that the parties must voluntarily reach an agreement. It should, however, be noted that not all agreements or promises are enforceable contracts. For Simon’s intended agreement to be binding and enforceable in England, certain elements must be present. Under the English law of contract, the fundamental elements comprise offer, acceptance, consideration and intention to create legal relations (Adams, 2016). According to the House of Lords, in *Gibson v Manchester*

City Council [1979] 1 WLR 294, some of these elements (offer and acceptance) are inapplicable only in exceptional circumstances. These fundamental elements characterise both the English and United States (US) contract law (Taylor, 2015, p.2). They are discussed below.

Offer

A contract in the instant case will come into existence when Simon makes an offer which is accepted by the American celebrity sisters, and both parties have the necessary capacity. The subject matter of the contract must be legal and all formalities must be agreed upon and observed by both parties. According to MacMillan and Stone (2012), an offer is an unequivocal manifestation by a party of its intention to contract with another (p.15). The party who expresses his intention to contract is known as the offeror and the one to whom the intention is expressed is the offeree. The offer may be implied or express. An offer differs from an invitation to treat because the latter involves the offeree inviting the offeror to make an offer. Thus, one requirement that Simon needs to meet is to make an offer to the American celebrity sisters Kim, Khloe and Kourtney. The offer must clearly spell out the terms upon which the parties will be bound to avoid instances where the American celebrities will fail to accept because of ambiguity or lack of understanding. For example, Simon's offer should state the requirements for the TV show to be effective, the duration of the contract, expected consideration, and choice of law issues. Importantly, the intention of the American celebrities to be bound upon acceptance must be clearly spelt out in the offer (MacMillan and Stone 2012, p. 15). Most of all, the wording of the offer must be unequivocal and certain.

Moreover, the offer must be communicated to the offeree. The rationale for this was stated in *R v Clarke* (1927) 40 CLR 227, where it was pointed out that there cannot be *consensus ad idem* in the absence of knowledge of the offer. Effective communication can be achieved by placing the offer in a strategic place where any reasonable bystander can see,

especially in offers made to the general world. The present case involves parties from two different jurisdictions: United States and England. Thus, the ideal mode of communicating the offer can be an email or telephone. Simon's offer must also prescribe the method by which the American celebrities will effectively communicate their acceptance. If he insists on a particular method, for instance email, it will become a condition of the contract. The offeree is free to accept or reject the offer. The offer may be terminated, for instance, if the American celebrities reject it or make a counter-offer. Other ways through which an offer may be terminated include time lapse, revocation, and death of the offeror.

Acceptance of the Offer

The other important element of an enforceable contract is acceptance. This is an unconditional manifestation of assent by the offeree. It can be expressed orally, impliedly or in writing. In *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, the plaintiff accepted the defendant company's offer by purchasing the special drug. Acceptance must be within the stipulated or reasonable time, as the case may be. This may be illustrated by the case of *Ramsgate Victoria Hotel Co v Montefiore* (1866) LR 1 Ex 109, in which an offer was made in June, but the plaintiff did not accept until November when it had already lapsed. The offeree's silence does not constitute acceptance. It may be construed to mean that the offeree has rejected the offer.

Further, as a general rule, the offeree must communicate his acceptance to the offeror. If Simon's offer specifies that the American celebrities must accept by post, acceptance is considered complete immediately their letters are posted, whether they reach Simon or not. This rule is referred to as the postal rule of acceptance.

Consideration

For Simon's intended agreement to be a binding contract, it must be supported by consideration. This is a fundamental element of a contract under the English common law.

According to Peterson J, in the case of *Thomas v Thomas* [1842] 2 QB 851, 114 ER 330, consideration refers to something which the law considers valuable which is given by the offeror or offeree. It may be a benefit to the offeror or a detriment to the offeree (MacMillan & Richard Stone, 2015, p.35). Its nature can be executor or executed. Ehsan (2008) points out that, although consideration should be sufficient, the law does not specify that it must be adequate. In the instant case, Simon's proposed fee of £1,000,000 is sufficient consideration considering the benefits expected from the show.

Intention to be Legally Bound

This element represents one of the most fundamental requirements of a binding and enforceable contract (Gulati, 2011, p.127). Arguably, a contract may not legally bind the parties unless they express their intention to be bound (MacMillan and Stone, 2012, p.15). In the same vein, Simon's contract will not be binding unless the parties involved express their intention to be bound. Thus, by expressing an intention to be bound, the parties shall have attached legal liability to their agreement and any contravention will mechanically open a window for a legal action. In the instant case, Simon and the American celebrities need not to expressly state their intention in their contract. The substance of the contract should be worded in such a way that any reasonable person can infer their intention to be legally bound. This is an objective test.

In the recent case of *RTS Flexible Systems Limited v Molkerei Alois Müller GmbH & Co Kg (UK Productions)* [2010] 1 WLR 753, the plaintiffs were contracted to improve the packaging process in the defendant's yoghurt factory. The plaintiffs commenced the exercises based on a letter of intent which had been exchanged between the two parties. Unfortunately, the letter expired, but the two parties continued negotiating without reaching any formal agreement. As a matter of fact, the letter contained a draft contract with standard terms and conditions. According to the trial court, a valid contract existed, but it did not

reflect the contents of the letter of intent. The Court of Appeal overturned this reasoning, but case proceeded to the Supreme Court, which applied an objective test premised on the parties' communication and actions. According to Lord Clarke, the existence of a binding contract depends not upon the parties' subjective state of mind, but upon a manifestation of their exchanges, and whether a reasonable person would deduce that the parties had an intention to be bound based on the contractual terms and conditions.

In conclusion, Simon's contract will be binding and enforceable if it reflects the foregoing elements. As for the issue of ensuring that all his business dealings are binding under the English contract law and actionable only in the English courts, Simon should include an exclusive jurisdiction or forum clause in the contract based on international treaties relating to contract and the rules governing conflict of laws in England. At common law, such a clause provides a weighty indication of the parties' mutual intention to be bound by the law of the chosen jurisdiction (Marshall, 2012, p.35). This means that the clause should not be imposed on one of the parties. The parties must freely agree on the applicable law. In the instant case, the substantial part of the contract is to be performed in England. As such, Simon's choice of England as the appropriate forum is not misguided.

Consequences in the Event of Breach of Contract

Under a normal contractual relationship, the parties enter into a contract and agree to comply with their obligations. If, contrary to the agreement, the celebrity sisters fail to attend the finale of the show, this will amount to a breach of contract. As a general rule, Simon will have the option of suing the sisters for damages or specific performance in an English court. Damages are a common law remedy, which is awarded by the court to return the plaintiff to the original status quo ante. As such, damages are compensatory in nature. Damages may be nominal or substantial. Nominal damages constitute the amount awarded to the plaintiff to show that his right was violated but the evidence presented before court did not prove actual

loss. On the other hand, substantial damages refer to the money awarded for the actual loss suffered by the plaintiff. For instance, if the American celebrity sisters fail to attend the finale show, Simon will undoubtedly not achieve his objective of raising applications, viewing figures and advertising revenue globally. The actual revenue will, therefore, be lower than expected. Thus, if it is proved that the contract was not vitiated by any supervening events, Simon will be entitled to substantial damages (Moss, 2004, p.154). The link between the actual loss and the defendants' failure to attend the show must be established, failing which this remedy will be too remote and irrecoverable. It may be prudent for the parties to agree beforehand the amount payable in the event of a breach. The amount specified is referred to as liquidated damages.

In the alternative, the court may order that three celebrities to perform their part of the bargain. This is an equitable remedy which is granted where common law remedy of damages is inadequate. In the present case, Simon may decide to pray that the court compels the three sisters to perform their contractual obligations. The court will have the discretion to make this order based on such maxims as clean hands and delay. However, the practicality of this remedy is questionable based on whether the time allocated for Simon's TV show has lapsed or not.

Conclusion

In a nutshell, the contract between Simon and the three American celebrities can only be binding or enforceable if it displays the fundamental elements of offer, acceptance, intention to create legal relations, and consideration. However, courts may shift from one or more of these elements to cope with the reality of contemporary business dealings. On the issue of making the contract actionable only in the English courts, the parties should mutually agree that England will be the applicable forum.

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