

# Common law persuasive essay



**ASSIGN  
BUSTER**

In order to determine whether Jacky could sue Samantha for breach of contract, we have to examine whether there is a valid contract between them. According to Oxford Dictionary of Law<sup>1</sup>, a contract is a legally binding agreement arises as a result of an offer and a corresponding acceptance. However, consideration (unless the contract is by deed), the intention to create legal relations and the contract is legal have to co-exist for the contract to be legally binding. There are two major concerns in this question: firstly, whether there is a contract formed on 2nd October; secondly, whether there is a contract formed on 5th October.

Hereinafter, I will examine the case with the criteria mentioned and analyse the likelihood of having a valid contract between the parties. Firstly, the offer and the acceptance is too vague to be legally binding. Samantha's advertisement is quite vague as it is not specific enough to be qualified as an offer. It is stated in the text, "red toyota, in good condition", but what is the other details like the model and its age? Besides, an advert could not produce a valid offer. As in *Partridge v Crittenden*<sup>2</sup>, when ordinary people read an advert, they will assume the product might not be available and there could be out-of-stock. Therefore, Samantha's advert is an invitation to treat and cannot be accepted by Jacky's expression of desire to buy the car.

Jacky's "offer" to buy Samantha's car on 2nd October is vague too. Jacky used, "he could come to buy...

", and the wording is uncertain to make it an offer. A helpful case to this is *Gibson v Manchester City Council*<sup>3</sup>. The ratio of this case is certain terminologies have to be used to make an offer, and I think those refer to "

will” or “ am coming” etc. The use of “ could” pragmatically suggested Jacky’s ability to buy but does not imply that he will come and buy the car on 5th October. Therefore, Samantha “ acceptance” can not be recognised by law and it is more probable to say that she agreed to agree in the future.

One may argue that there is a bilateral contract as it takes the form of an exchange of promises<sup>4</sup>. In this case, it will be Jacky promises Samantha that he will pay \$65, 000; and, on the other hand, Samantha will sell the car to him on 5th October. However, on top of offer and acceptance, promise would only be treated as contractually enforceable if it was backed by an intention to create legal relations from both parties and it was supported by consideration<sup>5</sup>. The ratio established in *Edwards v Skyways Ltd*<sup>6</sup> presumes commercial promises have intention to create legal relation, unless and until proved otherwise.

Since the purchase of a car is regarded as commercial, a reasonable man will agree that the parties intended to be legally bounded by law. In spite of the intention of the parties to be legally bounded, there is no consideration to back up the promise in this case to give a reason for enforcement<sup>7</sup>. The abiding importance of consideration in English contract law was established in *Misa v Currie (1874-75)*<sup>8</sup>, where Lush J. said that consideration may consist “.

.. either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other...

” Although the Court does not require the consideration to be adequate, it must be sufficient. In other words, consideration must have “ some value in the eye of law” 9, regardless of its reasonableness<sup>10</sup>. Since neither Jacky nor Samantha incurred a legal detriment after the promise on 2nd October, ie, give a deposit, or other benefits, sufficient consideration is absent. Jacky may argue that his consideration came later on 5th October.

However, consideration has to be co-extensive with the promise for which it supported, not subsequent<sup>11</sup>. Consequently, the promise between Jacky and Samantha thereby is highly unlikely to be enforced by law; Samantha has no legal obligation in performing her promise on 5th October. Is there a contract formed on 5th October? The answer is very unlikely, due to the absence of meetings of minds. As Samantha had implicitly “ rejected his offer” through her relative, Jacky knew that she was no longer minded to sell the car to him (since he got upset on hearing this).

This raises the question of whether Samantha’s message from her relative is regarded as authoritative as Samantha saying to Jacky personally. The decision made in the Court of Appeal in *Dickinson v Dodds*<sup>12</sup> recognised that an authoritative agent of one party can communicate on behalf of that party to another. *Dickinson*, the potential buyer was informed by a Mr. Berry, the seller’s agent that the seller (*Dodds*) had been offering or agreeing to sell the property to one Allen. The Court held that communication had taken place through Mr.

Berry and the case also established the importance of meeting of minds of the offerer and offeree, James L. J said, “ ...

to constitute a contract, appear that the two minds were at one, at the same moment of the time, that is, that there was an offer continuing up to the time of the acceptance. If there was not such a continuing offer, then the acceptance comes to nothing...

It is to my mind quite clear that before there was any attempt at acceptance by the plaintiff, he was perfectly well aware that Dodds (the seller) has changed his mind, and that he had in fact agreed to sell the property to Allan (the third party). Since Samantha had changed her mind, there is no agreement between the parties. Therefore, there is no contract to be enforced. What if the argument of a contract is formed on 2nd October prevails? As the consideration will come later on 5th October which they agreed upon when Jacky paid \$65, 000 to Samantha and Samantha will give her car to Jacky. There could be a contract and Jacky could sue Samantha a breach of contract because she did not sell her car. However, the court will consider very much on the certainty of the term used in the offer for a contract to be binding. Therefore, it is very unlikely that a contract is formed.

**Conclusion** The promise made by the two parties on 2nd October 2009 is only an agreement to enter a contract in the future. Despite Jacky performed what he promised and intended to buy Samantha's car on 5th October, there is no obligation that Samantha has to sell her car to him. On the other hand, Samantha also communicated her refusal to Jacky through her relative, which is an authoritative agent. Since the "acceptance" is merely an agreement to future contract, it is very unlikely to be enforced by the Court. Hence, it is unlikely to say that there is an enforceable contract; Jacky will be very unlikely to succeed in suing Samantha a breach of contract. What if

Jacky had given Samantha HK\$5, 000 on 2 October 2009? There might be sufficient consideration to support a contractual agreement. Sale of Goods Act 1979 s2(1)13 stated that, “ A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price.

“. In that sense, a contract may form when Jacky offer \$5, 000 and Samantha accepted, which there is a money consideration as the buyer paid a price. However, for it to be sufficient, Samantha has to agree with the amount of HK\$5, 000. The answer will therefore be different, because there is sufficient consideration to support the agreement co-extensively.

The money is a benefit to Samantha and a detriment to Jacky. Conversely, the product is a benefit to Jacky and a detriment to Samantha. A legally binding contract is formed because the situation now consists of offer and acceptance, consideration and an intention to create legal relations.