

The details of three potential contracts are set out below case study examples

[Sociology](#), [Ethics](#)



- Using examples of relevant case law, distinguished between the following types of contract.

- Bilateral and Unilateral contracts

Contracts can either be bilateral or unilateral in nature. The bilateral contracts are the most common contracts and refer to agreements whereby each of the contractual parties make a promise to the other party. For instance, in a contract for the sale of a car, the buyer promises to pay the seller £200, 000 in exchange for the seller's promise to deliver the title to the property. A unilateral contract on the other hand only involves one party to the contract making the promise. For example, in a contract involving a lost property, the property owner might promise compensation to the searcher in case the latter finds the lost property. However, in this contract, the searcher is not obliged to find the lost property, but the property owner is obliged to pay the compensation in case the latter finds the lost property.

- Expressed and Implied contracts

Express contracts consist of agreement in which the parties to the contracts state the terms of their contractual relationship. The terms in these contracts can be stated either in writing or orally. However, the terms of the contract must reflect the intention of all the parties involved. For example, if a patient goes to a clinic to seek medical attention and promises to pay, he is obliged to pay the compensation under the express contracts. An implied contract on the other hand refers to that contract arising from conduct, from assumed intentions, from some relationship among the immediate parties, from the application of the legal principle of equity (Roger, p. 516). For example, if a doctor treats a patient needing emergency services in the occurrence of an

accident, the patient is obliged to pay the doctor's services under implied contracts.

- Void and Voidable contracts

A voidable contract refers to an agreement, which is enforceable by the law at the option of one or more parties thereto, but not at the option of the others (Tulsian, pp. 1-7). In these contracts, usually one party is bound to the terms of the contract. For instance, a case involving a minor and an adult is voidable because the minor does not possess contractual capacities. A void contract on the other hand refers to contracts that cannot be enforced by either party to the contract. The law considers these contracts as though they had never been formed. Examples of these contracts include gambling, prostitution, and other contracts involving illegal subjects.

When Joseph put the vase in the window of his shop with the sign stating that he was selling the exceptional 19th century at an offer of £500, this is referred to as an invitation to treat and does not constitute an offer. This is usually an invitation to interested parties to make offers to form a valid contract. Nevertheless, Benedict sent his offer of £500 through his letter but did not receive a reply from Joseph; therefore, there was not contract between the two, just offers. Even though Kevin latter accepted the to buy the piece of art at £450, he only wrote a letter to Joseph, but did not get the former's reply, maybe Joseph had changed his mind when Kevin walked out of the shop. On Daniela's arrives at the shop and Joseph accepts his offer, the contract legally binds Joseph to sell to Daniela at £400 when he comes with the money. For instance, in Partridge v Crittenden: Advertisements in printed publications of goods at certain price are normally considered

invitations to treat and are not offers (Books, LLC, General Books LLC).

Considering that Joseph had not replied to the letters from Ben and Kevin, I would advise him to sell to Daniela.

Before entering into a contractual agreement, the parties to the contract often make statements aimed at either inducing or encouraging the other parties to enter into the contract. However, later in the contractual relationship, a dispute might arise as to which of the terms of the contract should be considered a part, a term, of the contract, and which statements should be considered as merely a pre-contract talk (Chris, p. 2). In cases where the parties to the contract have equal knowledge of the terms of the contract, and they enter into the agreement, both parties are obliged to perform their responsibilities to the latter according to the terms stipulated in the initial contractual terms. If either party feels that any of the terms in the contract do not conform to his conditions for the agreement, the party is free to withdraw from the contract before agreeing to the terms therein. In addition to the terms stated in a contract, either party can also make peripheral statements to the contract. These peripheral statements include a gentleman's agreement. A gentleman's agreement refers to a verbal or written understanding between the contractual parties backed solely by the integrity of the counterparty to abide by the terms of the agreement (Chris, p. 5). Some of these peripheral agreements in a contract are not legally binding, especially a gentleman's agreement, even though it might be documented alongside the agreements in the terms of the contract. However, it is viewed that such peripheral statements have negative effects on business relationships in case either party to the contract fails to honor

his promise. For instance, according to Sarah Godfrey, an associate at Bircham Dyson Bell LLP, she believes that King Abdullah of Jordan court battle with the trustees of a London estate for allegedly refusing to honor a gentleman's agreement is unlikely to be successful, as law cannot enforce gentleman's promise.

In this case study, the initial terms of the contract stated that Christine would complete his contractual obligations before 23rd May, and that he would receive £5, 000 for his work as the compensation. However, when Christine approached Alexander that he would not complete his contractual obligations within the deadline, Alexander's agreement to increase the compensation with an additional £1, 000 could be treated as a gentleman's agreement. This is because Christine legally consented to the initial compensation within the stipulated deadline without undue influence. Therefore, in this case, when Alexander fails to honor his promise to make the additional payment, Christine is not legally obliged to receive the additional payment of £1, 000 from Alexander. Moreover, Christine completed his obligation within shorter deadline than initially indicated in the contract, which could imply that they could even provide the software without necessarily getting additional payment. Alexander could argue that the Christine did not merit the additional payment, and that he only made a gentleman's promise in order to ensure that the job was done in time.

a) Pamela, a student, offers to pay her brother Joe if he would help her with an assignment. Joe has helped but Pamela refused to pay up.

This contract involves both a gentleman's agreement, and can also be considered a void contract. In this contract, despite Pamela promised to pay

her brother that she would pay him if he helped her with an assignment, which is outlawed according to the school rules. The student is aware that she is supposed to provide her own honest work in the assignments, and that getting outside assistance is outlawed. Therefore, this is a void contract. Additionally, she only promised to pay, and they did not actually get a formal agreement. This is considered a gentleman's promise.

b) Aisha and her friend Juliet regularly play bingo together. When they started doing so, they both signed a piece of paper to the effect that if either of them ever won more than £200, the money will be shared equally. Aisha has won £5,000 and is refusing to pay any proportion of it to Juliet

The constitution of the United Kingdom considers bingo as a gambling game. Additionally, in the law related to contracts, gambling is outlawed, and any contracts involving outlawed subjects are void (R v Kelly, 2008). Even though the parties to this contract mutually consented to the terms of their contract, the subject (bingo) of the contract is illegal, thereby making the contract illegal and void. The contract is therefore considered not to have been formed and non-existent.

c) Makenzie, a taxi driver, agrees to take Michael to the airport. Michael will pay the full fare. Makenzie now says that he would rather go to watch a football match and will not therefore be taking Michael

Every party to a contract has to consent to the terms of the contract after considering that the terms to these contracts are legally actionable in case either party fails to honor his contractual obligations. In this case, having stated their terms, both parties agreed to carry out their contractual obligations: Makenzie would drive Michael to the airport, and the latter would

pay the taxi driver for his services. Therefore, in the event that the taxi driver fails to honor his contractual obligations, the taxi driver is therefore liable to pay a compensation to Michael for failing to perform his duties. Negligence refers to the conduct that falls below the standards of behavior established by the law for protection against unreasonable and foreseeable risk (DeMitchell, pp. 76-83). The law of negligence provides that for the plaintiff to prove that the defendant bears responsibility for the consequences of the resulting actions, the plaintiff must prove that the latter had the duty to the plaintiff, that the defendant breached this duty by acting in a manner considered below the standards of conduct. The plaintiff must also prove that the negligence of by the defendant caused the harm to the former, and that the harm actually occurred. According to the law of negligence, the defendant has the responsibility to ensure that any preventable foreseeable risks in the contract are avoided and that the plaintiff has to understand that the circumstances surrounding the contract include compensation in case of negligence.

In this case, negligence occurred in both parties; while Mrs. Joel failed to read the contract and went ahead to sign it constitutes negligence on her side. The contractual requirement required that Mrs. Joel would read the conditions attached to the contract before signing it, and that she understands every aspect of the contract. On the other hand, according to the standards of conduct, Office Supplies Ltd. was obliged to ensure that they supply Mrs. Joel with computers and software that would perform according to her requirements. Therefore, the fact that Office Supplies Limited supplied Mrs. Joel with goods that failed to meet her requirements

constitutes negligence on their side.

After receiving the computers and software from Office Supplies Limited, and that they eventually failed to work, Mrs. Joel has the responsibility of proving that the supplier failed to provide the relevant goods according to the standards of conduct, which later led to her losses and eventual cancellation of the contract with Expansion Limited. Therefore, when Office Supplies Limited accepted negligence in its supplies, the latter is liable for the harm caused to Mrs. Joel despite the exclusion clause in the contract. Additionally, even though Mrs. Joel also had negligence on her side, this did not cause any harm to Office Supplies Limited. Moreover, even though the exclusion clause indicates that Office Supplies are not liable for any financial losses or other losses. However caused, occasioned by using hardware of software products supplied by the company,' it does not include the provision that negligence is unattainable.

- Explain the fundamental differences between a liability in tort and contractual liability

There are fundamental differences between contract and law torts and the liabilities related to each of these laws. One of the most significant differences in these laws is the issue of consent. In a contract, the parties must enter into the agreement with prior agreement and without coercion, and that each party must consent to the terms of the contract. Therefore, in case of a mistake or misunderstanding between the parties to the contract, the party that fails to perform his contractual obligations is liable to the damages caused to the party to the extent that he is responsible to the damage. On the other hand, the interactions involved in torts are not based

on consent. A tort generally entails interference with the health, safety, privacy, or profit of the victim. While the liability in contracts stipulate that the victim should be compensated to restore his position prior to the occurrence of the damages, the liability in torts seek to award compensation to the victim for their loss, and sometimes to punish the defendant.

- Duty of Care

According to the duty of care, which refers to the circumstances and relationships that the law recognizes as giving rise to a legal duty to take care, failure to take such care can result in the defendant becoming liable to pay for the damages caused to the injured party resulting from the breach of duty of care. The duty of care began in a negligence case of *Donoghue v Stevenson* (1932), which was the first successful attempt to set out a general principle on the duty of care. According to later developments of the duty of care, owing to the case of *Caparo v Dickman* (1990), three general tests were established. These ensured that it was reasonably foreseeable that the claimant would face the injuries, that there was sufficient proximity between the parties and that it is fair, just and reasonable to impose liability on the defendant (UK Law Online). In addition, the claimant must prove that there has been a breach of this duty of care. In my opinion, I believe that Sean and Jane can sue the restaurant because they can prove that due to a breach of care and negligence on the part of the restaurants, they suffered damages, which include medical and social implications. Additionally, despite this constituting a tort of negligence, the fact that Sean settled the £70 bill at the hotel implies that they had a contract with the hotel.

Vicarious liability, also referred to as imputed negligence refers to the legal

principle that assigns liability for an injury to an individual who did not necessarily cause an injury to the claimant, but holds particular legal relationship to the person liable for negligence. For instance, in the relationship between a driver and the tour and travel company, the company is liable for the negligence of their driver. Similar relationships occur with parent-child, or husband-wife relationships. On the other hand, negligent misstatement refers to the misrepresentation of truth, which being taken at the face value by the client, ultimately leads to the latter suffering some kind of disadvantage (Hodgson, 94-128). According to the laws in the United Kingdom, if a professional makes a professional negligent misstatement that eventually leads to a client suffering financial loss may amount to a possible successful claim for damages.

Before the *Hedley Byrne v Heller & Partners* (1982), the professional negligent misstatement was unattainable. However, this case led to the successful professional negligence claim. In the case of Angelina and Christian Auctioneers, the latter sent Brad, a furniture expert to provide a valuation at Angelina's flat. However, despite Christina Auctioneers instructing Brad to desist from giving advice outside his field of expertise, Brad continued to give his opinion about the painting that Angelina asked him about it. This resulted into a negligence that later resulted in financial loss to Angelina. Vicarious liability defines the relationship between Christina Auctioneers and Brad, its furniture professional. Additionally, according to professional negligence misstatement, Brad made a misstatement that eventually led to the company's client losing money by selling the painting cheaply. In this case, Christina Auctioneers are responsible for the

negligence of Brad, who acted out of the instructions of the company, but he was sent on official duty. Therefore, if Angelina should sue for the damages, she should address her complaints against Christina Auctioneers, and not Brad, the furniture professional.

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