

Example of scottish law case study

[Business](#), [Customers](#)



1. Does Tom have a contract of sale with the shop?

A contract of sale denotes a contract where a seller agrees to transfer or transfers the title in the goods to another party for a money consideration, which is referred to as the price. When goods are on display at a shop window, this is an invitation to treat. This means a willingness on the part of the seller to negotiate a contract of sale with the buyer. Therefore, there is no contract yet as the parties are not at consensus ad idem. In an old case of *Harris v Nickerson* (1873), the court held that an advertisement is not an offer, but an invitation to treat and, therefore, no contract yet. This means that Tom did not have a contract of sale with the shop.

2. Will the Bank be bound by the terms of their advert?

In order for a contract to be valid and enforceable, before a court of law, it must meet all the requisite elements of a contract. One of these essential elements is the intention to create legal relations. The question, therefore, that will be before a court of law will be whether the bank in putting up the advertisement intended to create legal intentions with its clients. In the case of *Esso Petroleum v Commissioners of Customs and Excise*, a petrol station made an advert outside their station stating that if a customer bought at least four gallons of petrol he would receive a coin with the likeness of a footballer. The court held that due to lack of consideration on the part of the customer and the fact that there was no intention to create legal intentions, no contract existed. The same principle is applicable in this case Tom does not provide consideration to receiving the I-pod and lack of legal intention on the part of the bank. The bank would not be bound by their terms.

3. Advise to Tom about the ring.

If an offer it made, it should be accepted within the time stipulated in the contract. The Scots Contract Law is the Contract (Scotland) Act 1997, addresses the time element sufficiently. Where a time is not stipulated, then an offer should be accepted or rejected within a reasonable time. The reasonable time test is a question of fact dependent on the circumstances of each case. With regards to the diamond ring, the shop is entitled to review its prices after Tom did not accept their offer for three months. The offer was deemed terminated by lapse of time. My advice to Tom is to pay the new price. However, if he responded promptly, a contract would have been made between them and would advise Tom to seek redress for breach of contract.

4. What is the validity of the contract that Jessie has with the imposter Lucy Jones?

For a contract of sale to be valid, it must meet all the essential elements of a contract. In an attempt to protect the property in the goods of owners, section 23 of the Sale of Goods act, which is applicable in Scotland, establishes the principle of *nemo dat quod no habet*. This is means that a person cannot pass to another the title in goods that he himself does not have. Therefore, if a rogue cheats a party into entering into a contract with him by claiming to be somebody else or misrepresentation some other essential facts, the contract is void. This is because the parties are not at *consensus ad idem*. Seller thinks he is dealing with someone else. The buyer is also aware of this misrepresentation, and relies on it.

Therefore, the contract between Jessie and the Imposter Lucy Jones is null and void. The contract is voidable at the option of Jessie. This was upheld in the case of *Lewis v Avery*. The court held a seller could sue to recover a car

he had sold to a rogue who had impersonated a famous actor to buy a car from the plaintiff. However, if the imposter Lucy Jones sells the car to a third party for value, in good faith and the third party is not aware that the goods have defective title, then the third party acquires a valid title. The principle upheld in such cases is that third party was more innocent in the transaction than the original owner because the original initiated the fraudulent process. This was upheld in the cases of *Ingram v Little* and the case of *Dennat v Skinner*.

5. What legal advice would you give Jerry?

For a contract to be legally enforced, it must be concerned matters that are legal before the court. A contract that concerns itself with an illegal matter cannot be heard or enforced by a court of law. Furthermore, a court of law will restrain itself to interfere with the terms of contract. This is in upholding the principle of equality of parties. The law, therefore, respects the freedom of parties to engage in contracts as they please. This is not, however, true in practice. Most contractual parties have inequality of bargaining power. In realization of these facts, courts have a tendency to interfere with terms of a contract, where there is obvious unfairness. In the circumstances of the case, the contractual terms were unfair to Jerry and, therefore, voidable at his options.

Bibliography

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