

# Differences between written and verbal contracts (bluto vs. wimpy)

Law



Differences between Written and Verbal Contracts: The Case of Bluto v Wimpy

Differences between Written and Verbal Contracts: The Case of Bluto v Wimpy. The Facts of the Case Wimpy offers to sell Bluto a boat for \$500. Bluto replies, " I think I want the boat, but let me have a week to consider." Wimpy replies, " OK. I won't sell the boat to anyone until after one week from today." The next day, Wimpy sells the boat to Popeye for \$600. The day after, Wimpy tells Bluto he already sold the boat. Nevertheless, Bluto tenders \$500. Main Issues The main issue under investigation in this case is whether a mere intention to buy creates a legally binding acceptance to an offer in a contract. The second core issue to investigate in this case is whether Wimpy's commitment not to sell the boat until a one week period elapses creates a contractual obligation to perform the sale of the boat or whether it was a simple gentleman's agreement that has no basis for action in contract law. Thirdly, it would be important to consider whether Wimpy's offer to sell a boat to Wimpy under no clear and certain terms of sale constituted a valid offer or a mere invitation to treat. The court hearing this case will also seek to elaborate on the extent to which inclusion of an illusory promise in contract bargaining invalidates the contract. The Rule Applicable Two main concepts of contract law are applicable in this scenario. The first rule concerns the concept of invitation to treat alongside the doctrine of limitations and the statute of frauds. Analysis of the Case In this case, Wimpy has no contractual obligation to sell the boat to Bluto because in essence there can be no breach of a contract that is not in existence. A valid contract requires the presence of a valid offer from the offeror to sell or discharge of his/her property at a stated fee, often referred to as the consideration. The

offer must be met by an express or implied acceptance indicating the willingness to buy the property in question in the terms and conditions specified by the offeror. The offer must be devoid of ambiguity and expressly state the nature of performance. In the scenario of *Wimpy v Bluto*, the indication by Wimpy that he is willing to sell his boat to Bluto at \$ 500 can be treated as a mere intention to sell rather than an offer to sell the boat. It is an indication of a desired price at which he would dispose of the boat rather than a settlement or an agreement to sell the boat (*Carlill v Carbolic Smoke Ball Company* 1893) . Omissions of when and where he intends the boat makes the offer ambiguous and vague. Secondly, the agreement between Wimpy and Bluto is unenforceable because it lacks valid acceptance to buy. When Bluto said that he needed a one week period to consider his decision to buy the boat, he fails to expressly accept the offer to purchase the at the stated consideration amount. The promise by Bluto that he would buy the boat only after taking a week to rethink deliberate is illusory as it unduly gives him the option of nonperformance should he consider opting out of the agreement. This illusory promise to buy at a later date fails to meet the threshold for a proper acceptance of Wimpy's offer and as such renders the contract invalid. Additionally, Wimpy's promise not to sell was verbal, never witnessed and hence cannot be authenticated. As such, that promise was a simple gentleman's agreement that does not create any legal relations between Wimpy and Bluto. If Wimpy were a merchant and his promise not to sell the boat for one week was in writing, the contract still remains invalid and unenforceable because Bluto's promise to pay a sum of \$ 500 in a week's time is lacking in consideration or legal motive to induce the contract. The

promise to buy lacks any surety and will leave Wimpy with no remedy if Bluto defaults. Conclusion The enforceability of an oral contract depends on the parties' ability to prove its creation and existence. If not properly witnessed, most oral agreements fail the validity test of a contract, especially where no consideration is involved. These are often treated as simple gentleman's agreement. Wimpy's offer to sell was a mere indication of the motive rather than an action to sell the boat to Bluto. Bluto's promise to buy the boat after a week's rethink is lacking consideration and legal motive to induce an acceptance hence fails to meet the threshold of a valid acceptance to an offer. As such no breach exists in this case as there was no contract in the first place. However, receipt of money in lieu of a non-existent contract is fraudulent and the affected parties have a chance to recover the money paid if there exists a valid proof of the same. Bluto's Remedies Even though no valid contract exists between Wimpy and Bluto, Bluto can still sue Wimpy for fraudulent conduct since he (Wimpy) went ahead to receive money from Bluto despite his full knowledge that the boat had already been sold to someone else. On selling the boat, it have been prudent for Wimpy to not accept Bluto's due impossibility of performance occasioned but the non existence of the subject matter (the boat). Furthermore, silence on the part of Wimpy having sold the boat to someone else and receiving money from Bluto would have implied an acceptance to sell a boat which ordinarily was not in existence anymore. This was fraudulent and Wimpy should be made to recompense Bluto all the monies paid thereof. Reference Morgan, J., Shedd, P., and Corley, R. (2010). Business Law, 3rd Edition. BVT Publishing