

# [Bachelor contract between leila and julie is](https://assignbuster.com/bachelor-contract-between-leila-and-julie-is/)

Bachelor of Business Management Kaplan Higher Education Academy (KHEA)Poh Qing Yong (CT0305955) Daniel Theyagu                          1a)IssueMyadvice to Leila would be based on the issue at hand. The issue is whether thecontract between Leila and Julie is valid, and if it is legally binding. Whether Julie can bring any actions against Leila for not rewarding forreturning the missing gold locket and chain.  PremiseAcontract involves certain basic elements such as offer, acceptance, consideration, an intention to create legal relations and lack of vitiating factors.

An offeris also an intention to enter legal relationship with another party and in thiscase, the party acting on the advertisement by performingthe act of finding the lost gold chain, locket and following the terms stated issaid to have accepted the offer who is Julie, the offeree. As for Leila, shehas made a Unilateral offer as it is a newspaper advertisement made public orthe whole world, and not to identifiable individuals. Anoffer is the willingness of the offeror to enter into legally binding contractwith the offeree.

In terms either implied or expressed by either party toindicate that the contract will be binding to the offeror as soon as acceptanceis conveyed by the offeree Preston Corporation Sdn Bhd v Edward Leong (1982) 2MLJ 22. Anacceptance of an offer may be express (orally or in writing) or implied byconduct. However, an acceptance need not be communicated to or received by theofferor in 3 situations such as the postal or mailbox rule, silence and waiverof communication. For the case of Carlill v Carbolic Smokeball (1893) 1 QB 256, waiver can be described as when the offeror has omitted with the requirement ofcommunication of acceptance. Considerationis necessary to create a legally binding agreement.

It is also benefitsaccruing one party for entering into a contract. In a contract, oneconsideration is also exchanged for another consideration Currie v Misa (1875)LR 10 Ex 153. Authority Thisprinciple of law has been effectively established in the case of Carlill vCarbolic Smoke Ball Company 1893 1 QB 256, where Carbolic Smoke Ball companymade an advertisement to the public whereby if anyone buys the smoke ball andgets flu after using it correctly, would get a reward of £100. However as instructed, Mrs.

Carlill still caught the flu after using the smoke ball. She wanted to claimthe £100 but the company refused to pay as they claim that the advertisementwas not an offer. In the court, Mrs.

Carlill was able to claim the £100 as thecompany has made a unilateral offer through advertisement. Therefore, in this case Julie will be able to claim$50 as of reward from Leila, for accepting her offer. Carlill v Carbolic Smoke Ball Company 1893 1 QB 256 In another case whereby therehas a legally binding agreement. Harbhajan Lal vs. Harcharan Lal (AIR 1924 A11.

539). Inthis case, Har Bhajan Lal created an advertisement through pamphlets statingwhoever being able to trace his son and brings him back to his father, will getRS. 500. In which, the plaintiff saw the advertisement at a railway station, and saw Ram Kishen, realising he is the missing boy.

He then brought him to theRailway Police Station, also sent telegram to Har Bhajan Lal, asking for reward. Similarly, an acceptance hasbeen made by Julie after she had read the advertisement and finds the locketand chain on her way home. Thus, the contract between Leila and Julie has beenmade, resulting in a waiver of communication, without the need to inform orphone Leila.

Harbhajan Lal v Harcharan Lal (AIR 1924 A11. 539). On the next case Gunthing v Lynn (1831) 2B & AD 232whereby Lynn offers to buy a horse if it was a lucky horse, for $5 more. However, it turns out to be otherwise. In this case, the condition when Lynnoffered to pay $5 more, it was too vague to create a binding contract betweenthem.

Therefore, similarly in Leila’s case, she did not state in heradvertisement that anyone who finds it must phone it before returning.  Argument/ claim Leila can argue that she hasexpressly stated her phone number on the advertisement, this would requireJulie to telephone before returning her locket and chain Gunthing v Lynn (1831)2B & AD 232. Moreover, Leila can argue that she puts up advertisement onnewspaper is a unilateral offer whereby it is to the world at large. In theargument, if only Leila’s advertisement is an invitation to treat, there willbe no binding contract between them.

This happens when one party invites theother to make an offer to create a contract but, invitation to treat is not anoffer. Therefore, accepting an invitation to treat is just merely making anoffer and this means there is not contract between them as she is only invitingto make an offer. This can allow Leila to refuse to pay Julie the reward.  Counter argument / claim In this case, although Leila has stated her number inher advertisement, Julie can argue that the advertisement was not clear enough. Leila should have stated on her advertisement saying that Julie should callbefore returning. However, it clearly stated that there will be a reward of $50for returning of locket and chain, regardless of returning to the address givenor calling beforehand Harbhajan Lal vs.

Harcharan Lal (Ibid). Leila still refuses to rewardJulie even when she tried collecting her reward at 1 Titanic Drive and she toldJulie she should have telephoned first before collecting so that she would beable to claim her reward. However, by Julie returning the items to Leila, ithas already become a contract thus, no phone calling was required and so, Juliewill be able to claim her reward because the terms were met.  Conclusion Based on the argument presented, there is bindingcontract between Leila and Julie. Through executed consideration, whereby anact done by one party, for exchange of promised made. When it has beencompleted by the party, the consideration will have said to be executed. Assuch, Leila will have to fulfil to Julie’s consideration as Julie found thelost item while on the way home Currie v Misa (Ibid) In addition, with theContract Law, the offer by Leila has been made to the world at large whichJulie has accepted it.

Moreover, thisadvertisement was made to the world at large and Leila would not know who willtake the offer, which means it is a unilateral offer and thus, anyone who findsit and returns it is deemed as an acceptance of the offer.  1b) My answer would have been different if it was anexchange done independently or any exchange or promise, which would be known aspast consideration. In the following case R v Clarke (1927) 40 CLR 227, Clarketried claiming the reward of $1000 after he had provided the information towhich leads to the conviction of a murderer of 2 policemen named Walsh andPitman. However, Clarke was not able to claim any reward because back in Junewhen he was on trial, he gave the information, so he would be able to clear hisown name for the murder. At that point, Clarke was not aware of reward andthus, there is no contract binded.

With that, the consideration that he hasmade was in the past. Therefore, a consideration will not be valid if aconsideration was made in the past Roscorla v Thomas (1842) 3 QB 234. Addingon, if he does not know about the rewards, he will not be entitled for it. Iwill conclude that in Julie’s case, if she had not read the advertisement, thiswould also mean that she will not be aware of the rewards. Therefore, afterJulie was then told about the reward by April after finding the returning thelocket and chain, it would not be a valid consideration because it was done inthe past. With the next case, Re McArdle (1951) Ch 669, WilliamMcArdle left a house to his five children in equal shares. His wife, Ms McArdledid improvements to the house costing £488 and even get her children to signdocuments, promising to repay Ms McArdle after everything has been evenlydistributed. After distributing evenly, the children refused to pay her.

Inthis current situation, Ms McArdle had already performed the work before sheasked for payment. Thus, similarly to R v Clarke (1927) 40 CLR 227, herconsideration was in the past, and it is not a good consideration which adds onto not a valid consideration Roscorla v Thomas (Ibid). In addition, it was only a promise to pay, asthe promise to make payment came only after the consideration has performed, which resulted to transaction has not been completed.   2a) Issue The legal issue here is to advice Adam, what will beremedies available because Edwin has breach of contract due to Edwin hasalready agreed to sell Adam a 1925 Rolls Royce for $500, 000 but refused to sellafter someone offers to buy at a higher price, $700, 000.

PremiseA contract has requirements for it to be legallybinded. Firstly, there must be a meeting of minds (consensus ad idem), wherebyboth parties must show there are intentions to create legal relations with eachother. Secondly, there must be consideration of both parties such as money paidfor work done.

Adding on, legal capacity to contract is one of the elementswhich make a contract. For example, there must have a legal age for a party toenter into a contract. Breach of contract is a failure, performing anypromise that forms part of the contract without any legal excuse. Remedies for breach of contract has five elements toit which includes specific performance whereby it is used on a party to dospecific thing. quantum meruit, voidable, injunction and void.  Authority The following case Mareva Compania Naviera SA vInternational Bulkcarriers SA the Mareva (1980) 1 All ER 213, Mareva Injunctioncould be a third remedy for Adam.

The Mareva Compania Naviera SA issued a writto claim against International Bulkcarriers SA the Mareva, the defendants forunpaid hire and damages for repudiation of a charterparty. However, in thiscase, the court extended the injunction duration to restrain the charterersfrom disposing the they had.  In this remedy, Adam could seek for Mareva injunctionfrom the court whereby it could freeze Edwin’s assets. With this, Edwin willnot be allowed to sell his vehicle to the Arabian Sheik. Another remedy for Adam would be the injunctionswhereby it is a court order restraining a person from doing a certain act.

Injunction could be granted if the damages would be an insufficient remedy. Therefore, Adam could ask for an injunction from the court, so Edwin will not be able tosell the Rolls Royce 1925 to the Arabian Sheik. As we can see from the caseWarner Bros v Nelson (1936) 3 All ER 160, Nelson entered into a contract withWarner Bros and during this period, she is only allowed to only perform forthem. Nelson then left the country to and had another contract with anothercompany. Warner Bros then brought injunction to restrain her from working forother company.

Under the next case, Nutbrown v Thornton (1805) 10 Ves159 Specific Performance is a remedy when used by a court, for a party to dosomething specific. In this case, the claimant entered into a contract with thedefendant as he wants to purchase a machinery. However, the defendant breachesthe contract and did not deliver the machineries purchased by the claimantthus, specific performance of the contract was sought, and it was granted. Therefore, the defendant was forced to sell. Similarly, for Edwin, he has breached the contractunder the facts of law whereby he refuses to sell even with the terms ofcontract, knowing that the Rolls Royce is very rare in the market, he couldsell the vintage car at a higher price. In this remedy, Adam could seek for Mareva injunctionfrom the court whereby it could freeze Edwin’s assets. With this, Edwin willnot be allowed to sell his vehicle to the Arabian Sheik.  Argument / claimAdam can argue that the time when he agreed to buy1925 Rolls Royce from Edwin, they have already entered into a contract.

Inother words, if Edwin does not want to sell to Adam, he could be sued for thebreach of contract. This is because according to the case Hochster v De La Tour(1853) 2 E&B 678, Hochster as the plaintiff who agrees to help De La Tour, the defendant as a courier. However, the defendant decides not to hire him as acourier.

The plaintiff then sued him for breach of contract and the court heldthe plaintiff. Counter-Argument / claim As a counter-claim, Edwin may argue that even thoughthe Arabian Sheik offered $200, 000 more to buy the Rolls Royce, Edwin did notsign the contract with him and this means they have not entered into acontract. He could also argue that he was still hesitating when an ArabianSheik offers to pay $200, 000 more which can lead to misrepresentation.  Conclusion Based on the discussion above, Adam could take legalactions against Edwin by seeking for injunction or Mareva injunction whereby itcould freeze or stop Edwin from selling the vehicle. In addition, Adam couldalso enforce specific performance on Edwin to force him to comply with the termsand conditions. With these legal actions taken, Edwin will have to sell theRolls Royce 1925 at the initially offered price, $500, 000.  2b) Yes, my advice would be different if it was a latemodel Mercedes Benz. This is because comparing a late model Mercedes Benz and avintage Rolls Royce, the price of both vehicles will be different.

Moreover, Rolls Royce is harder to find in the market due to its rarity. For a remedy, both liquidated and unliquidated damages are possible. My advice would beunliquidated damages as it is for a party who suffered the loss after contracthad been performed properly.

Moreover, in this case, Edwin refuses to sell theMercedes Benz is a breach of contract which Adam could suffer a loss and thus, money damages could be the compensation.  References http://www. uniset. ca/other/cs4/19801AER213. htmlhttps://www. casebriefs. com/blog/law/contracts/contracts-keyed-to-farnsworth/performance-and-breach/hochster-v-de-la-tour/https://www. scribd. com/doc/53012937/Preston-Corporation-Sdn-Bhd-v-Edward-Leong-Orscarlill v carbloc currie v misa https://indiankanoon. org/doc/174774/