

Business law assignment

[Business](#), [Management](#)



Your best friend witnessed the two of you making the arrangement. It is to celebrate your birthday and you buy a new dress, shoes and accessories for the date. He does not turn up and does not text you with an explanation. Can you sue him? If so, why? If not, why not? She would be unable to sue him as this is a social agreement which is unenforceable by law. Neither party has entered into a legally binding contract.

Should you choose to break such an agreement, the consequences will be no more serious than upsetting or disappointing your friends. This is similar to the case of *Spaceman v Spaceman*, in which a husband purchased a new car and told his wife that it was for her in an attempt to save their marriage. The marriage eventually broke down and during the divorce Mrs. Spaceman tried to get the car. Unfortunately for Mrs. Spaceman, as no legally binding contract was entered into and this was only a domestic agreement, the car was awarded to Mr. Spaceman.

While *Spaceman v Spaceman* is a domestic agreement and the above case is a social agreement, they are both still unenforceable by law. Therefore, she would be unable to sue her boyfriend for breaking their agreement. You get up early on a Saturday morning and take the train to Glasgow. In the window of Next store in Argyle Street, you see the leather jacket of your dreams; a little Victoria Beckham number, just what you have always wanted. The price tag says £50. You run in the store, find the appropriate rack, check for your size and color and wow! The price tag still reads £50. You rush to the point of sale and present the jacket and a fistful of pound coins to the girl. Does she have to sell you the jacket at that price? The shop assistant does not have to sell the boy the jacket at that price as it is well established that shops do not

offer goods for sale, they indicate a willingness to negotiate. However, a shop owner does not have to sell anything against his will and has an absolute right to refuse an offer to buy. This means the offer is not made by the seller to sell, the offer is made by the buyer to buy.

The case which is similar to this was the case of *The Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Limited (1952)*. The outcome of this case was that the goods on the shelf constituted an invitation to treat and the offer was made by the customer ND accepted at the cash desk by the salesperson as agent for the employer. The confusion arises where shops themselves use expressions such as “special offer” which are incorrect. In more recent times, however, the cash desk is referred to as the “point of sale” which, in law, is an accurate description.

Therefore, the shop assistant does not have to sell him the jacket as he was merely making an offer and it John is fifteen years old. Last weekend his mother gave him money to buy a heavy coat to wear to school during the winter. In a moment of weakness he bought a leather jacket, which was reduced in a sale. Fearful of his mother's wrath, he tried to return the jacket, but the shop refused to refund the money. How might age have affected John's contractual capacity? The Age of Legal Capacity (Scotland) Act 1991 provides a basic rule that children under the age of 16 have no contractual capacity.

Thus a contract made by or with such a young person will be null and void. However, there are important exceptions to this rule. A person under 16 can enter into transactions “of a kind commonly entered into by persons of his

age and circumstances” provided the terms are reasonable. This is designed to allow a younger person to acquire increasing untactful capacity as he grows older as social circumstances change and in accordance with the level of independence which the parent or guardians choose to allow such a person to enjoy.

The disadvantage of this exception is uncertainty. Thus, while it is clearly common for a young person aged 12 to buy sweets or travel on a bus, is it normal for him to buy a personal computer? Where there is doubt, it may well be safer to contract with the parents or guardians. In recognition of this, the 1991 Act continues with the old rule whereby a young person with no legal capacity of his own may have contracts formed on his behalf by the person exercising parental rights and responsibilities, normally the child’s parents.

In addition to the 1991 Act introduced by the Children (Scotland) Act 1995, a person under the age of 16 has the capacity to instruct a solicitor in connection with any civil matter and can sue or defend civil proceedings. Bobby Bucksaws went out with friends for the evening to celebrate his birthday. Two days later he woke up to find his room was full of inflatable pink elephants. He telephoned his pal, Turner Hoot, who told Bobby that a man called Tenant had resorted Bobby to buy the elephants, so that he could sell them at a profit at the next T in the Park.

Consider, looking at the factors which might affect Bobby’s capacity to contract, whether or not there is a binding contract. What is the difference between a void and avoidable contract? Intoxication through drink or drugs

would render a contract avoidable if the offer had reached the stage where he no longer knew what he was doing. Mere impaired Judgment will not suffice as in the case of *Taylor v Proven* (1864) – in the evening, after a few good drinks, Proven agreed to buy Attlee from Taylor at a price which, in a sober state earlier in the day, he had considered too high.

The court refused to set aside the contract. Had Proven lost his reason to such an extent that he was unaware that he was buying cattle, the matter might have been decided differently. Even if he satisfies such a stringent test, the intoxicated person must still take reasonable steps to set aside the contract as soon as he sobers up, or he may be barred by moral and taciturnity (delay and silence) as in *Pollock v Burns* (1875) – Pollock, a habitual drunkard, signed a bill of exchange while drunk. Six months later, he challenged the validity of the bill but, by this time, he was personally barred by moral and taciturnity.

Also he was not so drunk as to be know what he was entering into and he attempted to cancel the contract as quickly as he could, then he may be able to have the contract set aside. Side, a garage owner wants to expand his car showroom. Unfortunately, his premises are in conservation area and it seems unlikely that he will obtain planning permission for the extension. However he is approached by the Director of Planning for Dunedin Council. It is agreed that if Side gives both the Director and the Chairman of the Planning Committee a substantial discount on used cars, planning permission will be granted.

Side gives each of the men E, OHO Off new car. However, two months later Side's planning application is refused. Side intends to raise an action for the return of the discount. Will Side's action succeed? Side's action will not succeed as this contract never existed. It was illegal from the start and would therefore be unenforceable by law. Being a bit depressed, George was spending a lot of time in his local, the Chandlers Public House, in Cleveland. Standing in the bar one evening, he noticed a small sign which up till then had escaped his notice.

It stated " The management do not accept responsibility for loss injury or damage howsoever caused to customers, their property or effects arising out of their use of these premises" After a few drinks George turned to pick up his Jacket, which he had hung up on a hook provided by the management, only to find that it had been stolen. Disgusted he walked towards the pub door and in the course of this Journey, tripped over a piece of worn carpet and fell and broke his nose. Outline the main provisions of the Unfair Contract Terms Act 1977 as amended.

Does George have any remedy against the Public House owners for the loss of his Jacket and the personal injury sustained by him. Unfair Contract Terms Act 1977 – At common law an exclusion clause which was either an express term or effectively incorporated into the contract would be upheld. However exclusion clauses are now also subject to controls by ACTA 1977 which limits the extent to which civil liability can be avoided by means of contract terms or by the use of non-contractual notices. The act as originally enacted did

not apply to non- contractual notices in Scotland although it did apply to such notices in England and Wales.

However, SYS of Law Reform (Miscellaneous Provision) (Scotland) Act 1990 amended the 1977 Act so that as from 1st April 1991, non-contractual notices in Scotland are also subject to the Act's provisions. Examples of these would be notices in public places seeking to exclude liability for loss or damage to persons using the facility free of charge or to survey reports prepared for building societies or similar secured lenders, which cause loss too buyer through inaccuracy. SYS contains control in respect of a term of a contract or a provision in a notice which attempts to exclude liability for either a breach of contract or for negligence.

Where a contractual term or a provision of notice attempts to exclude liability for death or personal injury, that term or provision shall be void; where a term or provision in a notice attempts to exclude other liability that term or provision shall be upheld if it was fair and reasonable either to incorporate that term in the contract or to allow a reliance on the provision in the notice. George would not have a remedy against the Public House belongings while he was in the pub. The notice which stated this would be noninsured fair and reasonable and would be upheld if he were to go to Court.

In the case of his personal injury however, he would be able to have a remedy against the Public House owners as the notice which attempted to exclude liability for personal injury would be void and the Public House owners would be held liable. Maggie is interested in purchasing a flat. She

decided to approach an estate agent who was selling a flat she could afford and had all the specifications she was interested in. When she entered the premises, a rather dubious looking character approached her and asked if he could help. Maggie professed an interest in a flat in nearby Killable Road which appeared to be reasonably priced. Well”, said the agent. “ It’s funny you should be interested in that property. You’re the third person this morning to express an interest in that flat, so if you’re keen you’d better move it! ” Maggie rushed round to her solicitors and instructed them to put in a legally binding offer. They did so and the offer was accepted. Maggie was very pleased until she heard through a friend who worked in the estate agency, that apart from herself no- one had shown any interest in the flat. What effect, if any, would the estate agent’s misrepresentation have on the contract which followed.

Why? Misrepresentation is a false statement of fact, misleading conduct by which one part induces the other to enter into a contract with him. The misrepresentation may be made innocently, fraudulently or negligently, but the effect on the contract is the same. When the misrepresentation causes an essential error, the contract is void. If the error induced is collateral then the contract is avoidable. It is only possible for a contract to be set aside if restitution in interregnum (entire restoration) is possible, i. . The parties are restored to their original positions.

If this is not possible, the contract will stand. Innocent Misrepresentation – This is where a statement has been made with an honest belief in its truth. No damages are awarded and the only remedy is to have the contract set

aside provided restitution in interregnum is possible. If its not, then there is no remedy at all. (Boyd & Forrest v Glasgow & South Western Railway 1915).

Negligent Misrepresentation – This does not involve deliberate dishonesty but occurs where there has not been reasonable care in checking the accuracy of information given.

However, before there can be liability for breach of duty of care, a duty of care must have been owed in the first place. This arises when a person of some skill giving information knows, or ought to know, that this information will be relied upon. In this case the victim has a statutory right [introduced by the Law Reform Miscellaneous Provisions (Scotland) Act 1985] to sue for damages as an alternative to, or in addition to, the right to have the contract set aside. Fraudulent Misrepresentation – This is where a statement is made in the knowledge that it is untrue or it is made recklessly I. E. Thou knowing or caring whether it is true or false. In the case of Maggie, the estate agent’s misrepresentation would be considered fraudulent. However, as the statement had no effect of the contract which followed the contract would still stand. The misrepresentation did not have anything to do with what was in the contract. The estate agent would be allowed a little exaggeration. This can terminate a contract which is perfectly valid and, at least in theory, can be performed, but sequent events, outwit the control of either party, have made the end result materially different from what the parties originally intended.

This concept was illustrated in cases known as the “ coronation cases” because they arose from difficulties arising from the postponement of the

coronation of Edward VII due to the king's illness. In *Krill -v- Henry (1903)* a contract was formed for the hire of rooms in Pall Mall to overlook the coronation procession. In theory it would have been possible for the contract to be performed, i.e., the hiring of the room, but the outcome – looking at the London traffic instead of the procession – would have been so different from what the parties originally had in mind as to frustrate the contract.

Sometimes frustration is used to cover not only frustration as explained, but also illegality and impossibility. It is important to note that frustration does not make a contract void; it simply means that the contract has been brought to an end, however, where money has been paid in advance, this falls to be paid back. Counter Offer Since the parties must achieve consensus in idem before a valid contract is formed, it follows that an offer that is accepted by proposing new terms, does not form a contract.

What happens is that the original offer has been rejected and replaced by a new offer or counter offer that can be either accepted or rejected. A counter offer is quite often known as qualified acceptance, (*Wolf and Wolf v Foray Potato Co. 1984*). Instantaneous Methods of Communication In law, a contract must be effectively communicated. This can be done by instantaneous methods of communication such as email or vocalism. If for example, the email was not received or the vocalism had been deleted by someone else and never listened to by the person it was for, then there would be no communication of the contract and the contract would be void.