

**BA 333**

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## Table of Contents:

- 1) Essentials of a contract ..... Page 2
- 2) Case ..... Page 5

### **1) What are the essentials of a valid contract**

A contract, by definition, is an agreement by two or more parties, which is intended to be legally binding and supported by consideration. All contracts must have these three elements present for it to qualify as a proper contract in the eyes of the law: offer and acceptance, consideration, and intent to create legal relations. First, we will examine the first part of what constitutes a contract, the offer and acceptance. An offer is a statement said from the offeror to the offeree stating that he would like to formulate a contract between the two parties. The offer must include something specific, and which has value, either monetary or otherwise between the parties. An offer must also state the time period for its validity. If one were not stated, it would be up to the courts to decide what would be the proper length of validity of the offer. Once the validity period of the offer has lapsed, an acceptance of the offer cannot be made, unless the offeror agrees to repeat the offer. The acceptance must be made unconditionally, an acceptance with added stipulations becomes a counter-offer, and it would then be up to the original offeror to accept or reject. An offer must also be made to a specific person. Offers may be done verbally, in writing, or by gestures, and acceptances may be conveyed in the same way. Some offers may be pretty long, or as short as giving an item to a cash registrar in a supermarket. Offer and acceptance is a crucial part in a contract, and without this a contract would not exist. People must be careful when they formulate the contract, pay close attention to what exactly they are offering and what they are accepting. Once there is an offer and acceptance the contract can progress into formulation.

An agreement is not enforceable unless the parties intended it to be legally binding. For contracts to be binding, they must adhere to this rule. This is because contracts are very serious business, and one must not go into them fool heartedly. There are however presumptions regarding this element. First, it is understood that domestic agreements cannot have intent to create legal relations, unless expressly said. Families are an institution and they must be kept sacred and not be bothered with the legalities of court proceedings. There are however some exceptions to this rule. For instance, the case of *Merritt vs. Merritt* shows that there could be intention if both parties expressly showed it. Since the husband signed the paper that contained the terms of the contract, this was deemed to be legal, and thus a contract between the two was formed. This was done when the husband signed the paper promising what he had said. It is also understood that in a commercial agreement, the intent is automatic. This is evident in the case of *Carlill vs. Carbolic Smoke Ball Co.* In an advertisement, Carbolic Smoke Ball Co. stated that if anyone caught the common cold after buy and using the smoke balls as directed, they would give 100 £. The company then deposited 1,000 £ in a bank to show their seriousness. Carlill used the product and was not cured, then sued the company. The company's argument was that the advertisement was just for promotions, and they did not intend to create legal relations. The courts upheld that because of the deposit in the bank, the company showed sufficient intent to create legal relations. Only a fool would argue that when he goes into a shop to buy an item, he didn't really mean to. With these two brought to light, we can clearly see what constitutes intent within a contract. It is one of the vital elements of a contract, and without it a contract cannot exist.

**“The cause which moves a contracting party to enter into an agreement; the material cause of a contract; the price of a stipulation; compensation; equivalent” --Bouvier.**

Finally, we will discuss the last essential of a valid contract, consideration. Consideration is defined as something promised, given, or done that has the effect of making the agreement a legally enforceable contract. For consideration to be valid, it must have four elements present. First, consideration should not be past. One cannot give consideration for an act that has already been done, or a deal that has already been transacted. Past consideration would render the consideration invalid, and there would be no contract. Secondly, consideration need not be adequate, but sufficient. It has to be acceptable to the promisor, monetarily, sentimentally, or otherwise. This is illustrated in the case of *Thomas vs. Thomas* 1842. The widow was allowed by her late husband to stay in the house paying 1 pound for the rent. Later the executors of the will argued that 1 pound is not adequate. It was sufficient for the late husband and therefore the consideration is valid. Thirdly, consideration must move from the promisee, or, the party to which a promise is made. Consideration is the reason why the parties enter into a contract; once the promisee accepts the offer from the promisor, he then gives consideration to validate the contract. Lastly, consideration cannot be illegal. As in all contracts, anything that contains an illegal element would be deemed invalid. All four of these elements must be satisfied for the consideration to be deemed valid in the eyes of the courts. Once the offer is accepted, intent is present and consideration made, the contract would be deemed legal and valid in the eyes of the courts.

## **2) George's case**

First let us examine the facts of this case. George, having gone out jogging, had a mild heart attack. A fisherman then saw that George was in trouble and helped him get to a medical facility where medical treatment was given and his life was saved. Upon leaving the hospital, George searched for the fisherman and promised him and offered to reward him 1,000\$.

If George refuses to pay, the fisherman could take legal action, but he first has to examine the situation. For the courts to enforce payment of the 1,000\$ there must be a valid and legal contract. As discussed earlier, a valid contract has three elements, offer and acceptance, intent to create legal relations and consideration. First, the information given is that George found the fisherman and offered to pay 1,000\$. It did not however say that the fisherman accepted the offer. In the practice of law one can never argue facts on the assumption that they happened. The fisherman, for some strange reason, might have declined the 1,000\$. The presence of acceptance is not clear; this would have to be subject to further investigation. The presence of intent to create legal relations is clearly visible, with the offer of 1,000\$ stated. This is one element of the contract that is not shrouded in mystery, so therefore we may now continue onto the last element of a contract. Consideration must not be past, must be sufficient, must move from the promisee and must not be illegal. The evidence here is clear, the consideration was past and therefore not valid. Having saved his life earlier without George making an express agreement to pay him 1,000\$, the fisherman is legally entitled to nothing from George. It

is out of the kindness of George's heart, and maybe gratification, that he is paying the fisherman 1,000\$. Therefore we can properly advise the fisherman not to pursue legal action if George refuses to pay. By helping George in his time of need, the fisherman would have been protected from any liability of death due to the Good Samaritan Act (Chapter 32-03.1). The fisherman therefore is in a good situation as it is. If George doesn't want to pay the 1,000\$ which he promised that would be on his conscience not the fisherman's.

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