

## Contract Law Assignment

On Monday Samantha offered to sell her oboe to Penny for £1,000. Penny replied  
“I will buy it if I can raise the money”. Samantha promised that she would not sell the oboe to anyone else before Saturday, and added that Penny could collect the oboe at any time before noon on Saturday. On  
Wednesday, Penny phoned and left a message with Samantha’s daughter, Anne, saying that she had got the money and would collect the oboe on Saturday morning about 10.30am. Anne forgot to tell her mother about the phone call. On Thursday morning Samantha was entertaining friends and discussing the sale of her oboe. Gillian was interested and offered to buy the oboe for £1,300. Samantha was delighted with the offer. Samantha posted a letter later that day to Penny saying that she could no longer have the oboe.  
Pat, the Postman, delivered the letter to the wrong address, and Penny, who was disabled, did not receive the letter. She hired a taxi on Saturday morning to collect the oboe.

Advise Samantha and Penny of their legal rights.

The problem regarding Samantha and Penny is a very complicated one. To fully answer it, to advise the two on their legal rights, we must consider various different legal issues. We must pay particular attention to offer and acceptance, and to a lesser degree, consideration.

So initially, we have a straightforward offer from Samantha on Monday to sell an oboe to Penny for £1000. There is no problem with this offer, it states clearly the goods for sale and the price required to purchase them.

The subsequent acceptance is another matter. Penny replies with 'I will buy it if I can raise the money'. The question then arises, is this to be seen as conditional acceptance? If this were to be considered such, then the acceptance would not necessarily be binding.

Samantha then promised that she would not sell the oboe to anyone else before Saturday and added that Penny could collect it anytime before noon on that day.

Then on Wednesday, there is a phone call from Penny hoping to reach Samantha to tell of confirmation of accumulating the money required to purchase the oboe. Unfortunately, Samantha was unavailable and her daughter Anne took the phone call. Penny left a message with Anne that she had the agreed sum of money and would collect the oboe on the agreed day at 10.30am, in this case the Saturday of the same week. Anne then forgot to tell Samantha about the message. Could this still be taken as acceptance of the offer by Samantha? Penny had passed on the acceptance, but it was to Anne, not to Samantha.

On the Thursday, Samantha was entertaining friends and the subject of the sale of the oboe came into conversation. One of her friends, Gillian, was interested and offered Samantha £1300 for the oboe. Samantha was obviously very happy with this offer, as it was £300 over the amount she had offered

Penny. She accepted the offer from Gillian and a contract was formed. In any other circumstances, this would be a very simple and straightforward contract, but due to outstanding issues with Penny, shadows were cast over its legitimacy. If the offer to Penny had already been accepted, where would this leave both Gillian and indeed Penny with regards to claim over purchasing the oboe?

Samantha then decided on the same day to write a letter to Penny explaining that it was no longer possible for her to purchase the oboe as originally agreed. The letter was then posted, but unfortunately was delivered to the wrong address by the postman and Penny never received the letter. Could this letter of revocation be covered by the postal rule? The rule that regards letters of acceptance, which states that the acceptance is binding from when the letter is posted, not when or if received.

As Penny had received no letter of revocation, and therefore had no reason to be suspicious that there was anything going awry with proceedings, as she was disabled she had hired a taxi on Saturday morning to take her to Samantha's home to collect the oboe at 10.30am. She had also placed the phone call and had no idea that the message had not been passed on.

When Penny initially accepted Samantha's offer to buy her oboe, she used the words ' I will buy it if I can raise the money'. This constitutes a conditional acceptance, i.e. the transaction could not take place unless a

condition was met. Conditional acceptance is not binding in a contract, therefore in the first instance no binding acceptance was given so no contract was formed.

The second time Penny tried to contact Samantha regarding the purchase, she made a phone call. She did not however speak to Samantha herself but Samantha's daughter Anne. If Penny had spoken to Samantha, then this would have acted as final agreement, or acceptance, and the contract would have been binding. As this was not the case, it was irrelevant that Anne had forgotten to tell her mother of the message left by Penny, as acceptance has to be communicated to the person offering the goods themselves, i.e. it is not possible to accept an offer when the person offering is unable to receive the acceptance.

*'Suppose, for instance, that I shout an offer to a man across a river or a courtyard but I do not hear his reply because it is drowned by an aircraft flying overhead. There is no contract at that moment. If he wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that I can hear what he says. Not until I have his answer am I bound.'*<sup>1</sup>

Once Samantha had taken the decision to accept Gillian's offer instead of Penny's, she sent a letter of revocation. However, the letter was not delivered, so the revocation was not completed. This is because revocation, unlike

acceptance, does not conform to the postal rule, i.e. the revocation is not completed on posting of the letter, but on delivery of it. In the case of *Byrne v Van Tienhoven*<sup>2</sup> a letter of revocation was sent out. Whilst it was in transit, a telegraph of acceptance was sent, this reached before the revocation was delivered. The postal rule states that as soon as the acceptance was mailed it was valid. It was held that the contract was binding. Whilst in the case of *Samantha and Penny*, there was no completion or termination of the contract; it was still possible for Penny to accept the offer on the morning of the Saturday when she went to collect the oboe.

At the time of the original offer, Samantha placed a specific timeframe for acceptance; this is called a 'firm offer'. When dealing with a firm offer, it is unenforceable, unless there is consideration made. In this case, the fact that Penny had made a phone call to confirm her interest, although not an acceptance, and that she had hired a taxi to take her to collect the oboe constitutes the consideration. Although neither of these are extravagant gestures, the fact that she has taken a burden upon herself show that the consideration has been made.<sup>3</sup> Therefore, it is not valid for Samantha to revoke the offer during the time allowed for Penny to accept the offer made.

Up until now, we can see that there has been no acceptance by Penny, or revocation of the offer made by Samantha. Therefore, in reality, there is no

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<sup>1</sup> Denning L.J. *Entores Ltd v Miles Far East Corporation*, [1955] 2 All ER 493

<sup>2</sup> *Byrne & Co. v Leon Van Tienhoven & Co.* [1880] 5 CPD 344

contract, but we can say that, as neither of the parties knows that their end of the contract has fallen through, and take into account the consideration by Penny, there is a contract inferred by the conduct of the two parties involved. In addition, the contract could still be accepted and held by Penny on the morning of collection.

To summarise Penny's situation, she has not presently accepted the offer but still had the chance to do so. In Samantha's case, her attempts to revoke her offer to accept Gillian's were invalid. The reason for this is that it is not possible to revoke a 'firm offer' during the allotted time when consideration has been shown.

Therefore, Samantha must reject Gillian's offer to buy the oboe and comply with the inevitable acceptance from Penny on the Saturday morning when she arrived to collect the oboe.

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<sup>3</sup> See case of *Thomas v Thomas* [1842] 2 QB ; 114 ER 330