
LW2903 Business and Law - Assignment Question

On Friday 17 January 2020, Ada advertised for the sale of KF94 masks at her shop. Eric inquired about the availability of these masks and was told that these masks are sold as a pack of 20 for \$330 a pack - to be delivered early February. Eric ordered 3 packs and was told to make a direct transfer to Ada's bank account by the following Friday, 24 January 2020 before 9:00pm – as she is travelling to the Mainland to visit her relatives over the Lunar New Year. The product will be delivery by Shun Fung Express to a Shun Fung Store or an EF Locker of Eric's choice. Eric went to the bank and made the transfer immediately after leaving the shop. He sent a photo of the transfer receipt to Ada and told her he would like to pick it up from the EF Locker located at Kowloon Bay.

Later that afternoon, Kevin found out he can purchase these KF94 masks from Ada's and he called to inquire the details. Ada told Kevin the same thing, that the order and payment must be made by Friday 24 January 2020 before 9:00pm. Kevin did not place an order immediately as he thought it was too expensive at the time. He wanted to check the price at other shops before making the purchase. In the end, Kevin decided to get the masks from Ada. He wanted to see if Ada can give him a discount if he purchase 10 packs of mask. Kevin called Ada on 18 January 2020 and left a message on her mobile phone and said *"This is Kevin, we spoke yesterday over the phone and I would like to buy 10 packs of KF94 masks from you. Since I am buying 10 packs of KF94 masks, would you be willing to accept \$3000 instead of \$3300? I will transfer \$3000 to your account on Monday 20 January 2020 if I do not hear further from you"*.

On Monday 20 January 2020, Kevin heard nothing from Ada and he transferred \$3000 to Ada's bank account. On Tuesday 21 January 2020, Ada heard Kevin's voicemail and she tried to call Kevin from China but without success. She informed him by SMS that she cannot sell the masks for \$3000 and she will transfer \$3000 back to his account when she is back in Hong Kong.

After the Lunar New Year, Ada was told by the supplier in Korea that there will be a delay in the delivery of the masks, and she called Eric immediately to inform him that the masks will arrive in March.

Both Eric and Kevin are not very happy about this. They want to know what they can do in this situation.

Advise Eric and Kevin.

LW2903 Business and Law - Assignment Answer Guide

This is a Contract Law question. In particular, it is concerned with the formation of a contract. A contract is defined as a legally binding agreement between two or more parties. To form a binding agreement, the first requisite is that the agreement consist of an offer, acceptance, consideration and intention to form legal relations. At least two parties - one of them, an offeror, makes an offer which the other, the offeree accepts.

An offer is an expression of willingness to contract made with the intention that it shall become binding on the offeror as soon as it is accepted by the offeree. It is important to distinguish between an offer and an invitation to treat at this stage. By looking at the facts, Ada advertised on Friday 17 January 2020 for the sale of KF94 masks at her shop. **With that in mind, a person is said to be making an invitation to treat by inviting others to make an offer. Where a person accepts the terms of the invitation, he makes an offer but there is still no contract.** The maker of the invitation is free to accept or reject the offer. Common examples of an invitation to treat includes an auction, display of goods in a shop, tenders and advertisements. For advertisements, the case of *Partridge v Crittenden* (1968) illustrated that an advertisement was said to be an invitation to treat not an offer. The case was concerned with an advertisement in the periodical "Cage and Aviary Birds" under general heading "Classified Advertisements" which contained, amongst other things, the words "*Quality British Bramblefinch cocks, Bramblefinch hens 25 s. each*". In no place was there any direct use of the words "offer for sale". This is similar to the current case where the advertisement described the product, the contact number and the name of the contact person. Another case which can illustrate this point is in the case of *Grainger & Son v. Gough* - Lord Herschelle said "*dealing with a price-list does not amount to an offer to supply an unlimited quantity of the wine described at the price named, so that as soon as an order is given there is a binding contract to supply that quantity, because if that is the case, the merchant might find himself involved in any number of contractual obligations to supply wine of a particular description which he would be quite unable to carry out*". By analogy, the advertisement placed by Ada does not imply there is unlimited supply of the product and unlike the case of *Carlill v Carbolic Smoke Ball Co* [1892] where it constitutes a definite promise, Ada's advertisement can only be regarded as an invitation to treat only.

For Eric, having inquired the availability of these masks, he made a definite promise

as the offeror to the offeree, Ada - with the intention to be bound by the terms to purchase three packs of masks at \$990 without further negotiation. Ada, then gave a final and unqualified acceptance of the terms of an offer by informing Eric to make a bank transfer to her account by the following Friday, 24 January 2020 before 9:00pm. A contract is said to be made at this stage because acceptance was effectively communicated. Moreover, valuable consideration was provided by both parties. In the case of *Currie v Misa* (1875), Lush J said “*a valuable consideration must constitute either a benefit accruing to one party, or a burden suffered or undertaken by the other*”. That the exchange of the masks for money constitute valuable consideration. There is intention to form legal relations in this case, so Ada is in breach of contract by not performing her side of the obligation.

For Kevin, although he called Ada with the view to buy the masks, but he did not place the order on Friday. On Saturday, he decided to negotiate the price of ten packs of mask with Ada, Ada missed the call and he left a message and said “...*Since I am buying 10 packs of KF94 masks, would you be willing to accept \$3000 instead of \$3300? I will transfer \$3000 to your account on Monday 20 January 2020 if I do not hear further from you*”. At that moment, although it appears Kevin is making an offer because he proposed the sale of the masks at \$3000 for 10 packs, but there must be effective communication. In this case, Ada did not hear the voicemail till 21 January 2020, and she informed him that she cannot sell these masks at \$3000. Once there is an offer, it is up to Ada (the offeree) to accept, reject or even make a counter-offer. In this case, it was a clear rejection when Ada sent him a message by SMS.

Kevin wanted to insist on his right in the contract, but silence does not amount to acceptance. The general rule is that acceptance must be communicated to the offeror, Kevin. In the case of *Felthouse v Bindley* (1862) uncle and nephew discussed buying a horse from his uncle. He offered to purchase the horse and said “*If I hear no more about him, I consider the horse is mine for £30 15 s*”. It was held that silence does not amount to acceptance. If the case is applied to the current issue, Kevin as the offeror cannot impose a contract on Ada against her wishes.

In conclusion, as Eric had already made the bank transfer to Ada on 17 January 2020 - the contract had already been formed and Ada is in breach of contract if she fails to deliver the masks to Eric. As to Kevin, the contract never came into existence, and there is no contract between Kevin and Ada.