

LW2903 Business and Law – Answer Guide

The legal issue is whether there is a contract between Kate and Jenny.

A contract is defined as a legally binding agreement between two or more parties. Jenny may (if she wishes to do so) recover damages from Kate if there is a valid contract between them. Formation of a valid contract requires an offer that is accepted before it is revoked. In addition to an offer and acceptance - consideration and intention to create legal relations must also be present to form a legally binding contract.

From the facts, it is clear that the letter Kate sent on Friday 1 July 2022 constitutes an offer. It is possible to assume from the facts that Kate and Jenny knew each other as classmates and Jenny is aware of “the stuff” that Kate is selling. The letter can be considered as a definite promise or proposal to be bound on specific terms and it has to be definite, not vague. This can be illustrated in the case of Partridge v Crittenden (1968). 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”. The case appears to be similar to our question, but the distinction here is that Kate and Jenny knew each other beforehand and the letter serves as direct communication between Kate to Jenny. Similar to the case of Carlill v Carbolic Smoke Ball Co [1892] where an advertisement constitutes a definite promise, equally the letter sent by Kate would be regarded as a definite promise to sell her belongings at her flat. A reasonable person under these circumstances would conclude that Kate communicated a willingness to be bound by these terms.

Jenny validly accepted Kate’s offer by replying to Kate’s letter on Monday 4 July 2022. To be valid, acceptance must come before the offer has been revoked. It also requires an expression of willingness to be bound by the terms stipulated by the offeror and it must be effectively communicated. To be binding, an acceptance of the offer, as a general rule, must be actually brought to the offeror’s knowledge. Where the offeror indicates that acceptance of the offer must be made by a particular method only, the acceptance must be made by that method. Otherwise, the offeree is entitled to validly communicate his acceptance in an equally or more efficacious or faster method. In Tinn v Hoffman (1873), the offeree requested - “reply by return of post”. The court held that “that does not mean exclusively a reply by letter or return of post, but one may reply by telegram or by verbal message or by another means not later than a letter written by return of post”. So the emphasis is on the speed of communicating the acceptance rather than on the means. Here, it is reasonable to reply by post since Kate did not stipulate to exclude acceptance by post. Her acceptance, according to the “postal rule”, is deemed to be complete when the properly stamped and addressed letter of acceptance is posted, not when it is delivered to the offeror’s address, or received by Kate. This is true even though the letter of acceptance is delayed or lost. This rule, laid down in the case of Adams v Lindsell (1818). The court held there was a binding contract the moment the letter of acceptance was posted. The rationale of the postal rule is to promote certainty and expediency in commercial transactions.

Thus, the only question left is whether Jenny can still change her mind on Tuesday 5 July

2022. Based on the facts, Jenny changed her mind and informed Kate to forget the deal, but as mentioned above, acceptance is effective when posted. The judge in Adam v Lindsell stated “if the defendants were not bound by their offer when accepted by the plaintiffs till the answer was received, then the plaintiffs ought not to be bound till after they had received the notification that the defendants had received their answer and assented to it. And so, it might go on ad infinitum”. The facts indicated Kate received the letter later that week, this has little relevance because the contract was formed on Monday 4 July 2022 when Jenny posted the letter to Kate.

The agreement here was also supported by consideration on both sides. 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*”. Jenny promised to pay Kate \$13,000 by agreement to buy her stuff and Kate promised to sell “the stuff from her flat in exchange for Jenny’s promise to pay \$13000 per week. Arguably, a contract was formed between them because there’s an intention to create legal relations which would then turn the agreement into a legally binding contract. The court would consider this objectively. The fact that one party claims that it thinks that the agreement will not have any legal effect is irrelevant.

Jenny can recover damages from Kate if she wishes to do so. Kate breached the contract by selling the stuff to Ally. According to Lord Diplock in the case of Photo Production Ltd v Securicor Transport Ltd [1980], where a party breaches, the party has a secondary obligation to pay monetary damages to the nonbreaching party and she is entitled to damages that will put her into the position she would have been in had the promise been performed. Here, if Kate performed as promised, Jenny would be entitled to the stuff for \$15000. It should be noted that Jenny would not be entitled to an order of specific performance—i.e., a court order directing Kate to sell her belongings to Jenny.