

Assignment
for
HUM 4741: Business Communication and Law
on
Law of Contract

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1 Define the concept of *consideration* in the law of contract

Consideration is what each party gives up or promises to give up in exchange for the other's promise or performance. It's a value that is given in return for a promise or performance by another party. The key point of consideration is the exchange of something of value, which can be an act, abstinence, or a promise. Without consideration, a contract cannot be formed. It reflects the terms and conditions of a contract.

In this scenario, *consideration* is present as Mr. Smith's agreement to pay \$2,000 in exchange for Ms. Davis's vase. This is the core element that differentiates a legally binding contract from a mere agreement and legitimizes contracts by ensuring that each party offers something of value, whether goods, services, or a promise.

2 Evaluate Ms. Davis's claim regarding the additional \$500 and its legal enforceability

For a contract to be enforceable, it needs the following:

- **Lawful Consideration:** The agreement must involve each party giving and receiving something of value, termed as '*consideration*'. An agreement where one party agrees to do something for nothing is usually not enforceable by law.
- **Certainty:** The agreement must be clear and not vague. It should be possible to ascertain its meaning for it to be enforceable.

Ms. Davis needs to prove that the additional \$500 was part of the original agreement. Oral agreements are legally binding but harder to enforce due to the difficulty in proving their existence and terms. The burden of proof lies with Ms. Davis to provide sufficient evidence, such as witnesses or any other form of acknowledgment, that confirms the additional payment agreement. Since Ms. Davis does not have a proper contract, she **cannot enforce it legally**.

3 Discuss whether the promise of additional payment forms a *valid consideration* in this context

Consideration is a value that is given in return for a promise or performance by another party. It reflects the terms and conditions of a contract. The promise of an additional \$500 can be valid consideration if it was part of the contract, potentially as a future promise contingent on a specific outcome. The challenge lies in establishing that such a term was mutually agreed upon and understood as part of the contract, particularly in the absence of written evidence. Thus the promise of additional payment is not a valid argument.

4 Explain the principle of intention to create legal relations in contract law

The parties involved must intend for the agreement to create legal relations. Casual social arrangements, like an agreement to dine at a friend's house, do not qualify. However, agreements to buy and sell goods or agreements to marry are intended to create legal relationships. In commercial dealings, there's a legal presumption that parties intend to create binding agreements. Mr. Smith needs to provide substantial evidence that both parties understood the agreement as casual and non-binding, which is difficult in a commercial context.

5 Analyze Mr. Smith's argument that the agreement was not intended to create legal relations

Mr. Smith argues that the agreement was informal and not intended to be legally enforceable. He must demonstrate that there was a mutual understanding of the agreement's informal nature, which might include any verbal statements or conduct that indicates a lack of serious intent.

6 Assess the factors that determine whether an agreement is legally binding

The enforceability of an agreement depends on clear offer and acceptance, mutual consideration, legal capacity of parties, legality, intention to create legal relations, and formalities, if necessary. Most of these elements are seemingly present, suggesting that the agreement between Mr. Smith and Ms. Davis could be legally binding.

7 Discuss the general requirements for the formation of a valid contract

These include a clear offer and acceptance, valuable consideration, legal capacity of parties, a lawful purpose, mutual intention to create legal relations, and sufficient clarity in the terms. While these elements appear to be met in Mr. Smith and Ms. Davis's case, the ambiguity regarding the additional \$500 creates uncertainty about the contract's scope.

8 Examine the impact of the absence of a written contract on the enforceability of the agreement between Mr. Smith and Ms. Davis

Proving the terms of an oral agreement, especially when disputed, is inherently difficult due to the lack of tangible evidence. Oral contracts can be legally binding, but demonstrating the exact terms and intentions of the parties without written documentation is challenging.

9 Consider any exceptions or circumstances where an agreement must be written to be legally binding

- I **Natural Love and Affection:** Agreements made out of natural love and affection between close relatives (like blood relatives or spouses) can be enforceable without consideration, provided they are in writing and registered.
 - Example: A father promises to give his son a certain sum out of natural love and affection, puts it in writing, and registers it. This can be considered a valid contract despite the lack of traditional consideration.
- II **Agency Theory:** This involves decisions taken by management that benefit them financially but might harm shareholders. If such actions violate the principles of agency theory, shareholders can take legal actions. This is more about duties and responsibilities in a representative capacity rather than traditional contract consideration.

The primary agreement for the sale of the vase *seems enforceable* based on contract law principles. However, the claim for the additional \$500 *lacks robustness* without clear evidence and documentation. The absence of written evidence complicates the proof of specific terms, particularly regarding any additional payment agreements.