**Mid-term Assignment T3 2021**

1. The question is whether any contract law issues can arise between Mary and Klaus Petersen. Any potential contract law issues depend on whether there is an enforceable contract between the parties.

An agreement that is capable of enforcement by law results in a contract. An agreement is a coin with two sides i.e., offer and acceptance. An offer is made when one communicates his willingness to another for an act or abstinence to obtain that person's assent. The communication of an offer is complete when it comes to the notice of the offeree. An offer remains open for acceptance for the time period prescribed by the offeror himself or for a reasonable period of time[[1]](#footnote-1).

An offer becomes a promise when another person communicates his acceptance of the concerned offer. The communication of acceptance is deemed to be complete when it comes to the notice of the offeror.

The Postal Rule of Acceptance governs the communication of acceptance. According to the postal acceptance rule, the communication of an acceptance is deemed to be complete when it is put into the course of transmission for the offeror[[2]](#footnote-2). In *Adams* v. *Lindsell* of 1818[[3]](#footnote-3) and *Henthorn* v. *Fraser* of 1892[[4]](#footnote-4), it was observed that when the circumstances are of such nature, the parties can consider the post as a method of communication of acceptance of an offer, the Court shall consider the communication of acceptance to be complete. However, the evolution of information technology made the communication of offer and acceptance an instantaneous task.

In the present case, Klaus communicated his acceptance on 29 August 2021 via email, which was a reasonable time as Mary herself asked Klaus to communicate his acceptance before 31 August 2021. It was Mary's omission of not checking her email and hiring another painter before 31 August 2021. Further, in *Bressan* v. *Squires* of 1974[[5]](#footnote-5), it was held that the communication of acceptance could be deemed to be complete when it is posted i.e., put in the course of transmission.

In this case, the offer made by Mary subsisted till 31 August 2021 and the acceptance, being communicated before 31 August 2021, leads to the formation of an agreement between Mary and Klaus. Further, Mary’s omission of not reading the acceptance email sent by Klaus shall not be considered a valid defence because the postal rule of acceptance and email, being an instantaneous method of communication, it is deemed to be communicated when it was posted.

1. The question is whether any contract law issues can arise between Mary and Luna Liu. The same can be answered by examining whether the parties entered into a contract or agreement enforceable by law.

An agreement consists of an offer and acceptance. The issue of offer and acceptance does not arise in the case of Luna as there was an express offer from Mary and an express acceptance of the same by Luna. Further, the enforceability of the contract depends here on whether there was consideration and parties intended to create legal relations.

**Consideration:** Consideration is something that must be given in order to make a promise binding. Anson defined Consideration as a benefit or detriment to be conferred on the promisor by the promisee in return of the promise made. If the promise does not furnish any consideration, the agreement will not be enforceable i.e., nudum pactum (naked agreement). However, the principle of ‘*quid pro quo*’ meaning ‘something for something’[[6]](#footnote-6) should be applied in order to decide whether the consideration was valid or not. The requirement of the principle of ‘*quid pro quo*’ has been recognized in *Australian Wollen Mills* v. *Commonwealth*, 1954[[7]](#footnote-7).

However, the existing legal duty rule says that a promise to perform a legal duty cannot be considered enough unless it confers a practical benefit on the modifying party[[8]](#footnote-8).

In the present case, Mary offered Luna to perform at the restaurant, to which Luna communicated her acceptance to Mary. Mary paid her $1000 as a deposit and promised to pay the rest $800 after performances. It is to be noted that consideration may be past, present, or future. Here, the payment of $1000 was past consideration and the remaining $800 was future consideration for Luna’s promise to perform at Mary’s restaurant.

Luna had a legal duty to perform at Mary’s restaurant however, the same did confer a benefit on Mary as well. Therefore, a valid contract existed between Mary and Luna. Hence, the promise of Luna to perform at her restaurant fits well within the rule laid down in Williams v. Roffey Bros & Nicholls (Contractors), 1991.

Another question is whether the revocation of the offer by Mary would be valid after she has furnished consideration. Here, the rule of equitable estoppel will play its role. Equitable estoppel is a condition where an offer cannot be revoked. Equitable estoppel comes into play when the representor induces the relying party to believe that a contract will be signed in the future[[9]](#footnote-9). Here, an oral contract was already made by Mary and Luna. Mary, at this stage, cannot revoke the offer made by her for the following reasons:

a) The offer is accepted already by Luna.

b) Luna relied on the representation made by Mary.

c) Mary’s conduct of revoking the offer would be detrimental to Luna.

Therefore, it can be concluded that Luna is in a position to sue Mary for specific performance with respect to the remaining $800 and performance in her restaurant as there is a valid contract between her and Mary.

1. The issue is whether any contract law issues can arise between Mary and Faulkner Locations Pty Ltd. Mary and Faulkner Locations Pty Ltd entered into a contract as Mary accepted the payment from Faulkner Locations Pty Ltd and Faulkner Locations Pty Ltd performed its obligations stated in terms of the contract.

The contract law issue here is whose terms of the transaction will operate in the contract. Mary hands her terms of the transaction to Trent through the document titled ‘Riverview Hire Terms’. Later, Trent also handed Mary his terms by way of the document titled ‘Location Agreement’.

Therefore, both parties exchanged inconsistent standard forms during the negotiation, and an agreement was reached between the parties without deciding whose terms shall prevail. Therefore, this is an issue of the ‘battle of forms’[[10]](#footnote-10).

The potential recourse that the Courts may take in a case of ‘battle of forms’ is suggested by the decision of the English Court of Appeal in *Butler Machine Tool Co*. v. *Ex-Cell O Corp*, 1977[[11]](#footnote-11).

In this case, there was inconsistency between the terms stated by the buyer and the terms stated by the seller for the sale of a machine. The seller was the first to set out his terms and the buyer set out his terms after the seller. The seller signed the acknowledgment form with the direction that the transaction will proceed according to his terms.

After that, the Court of Appeal evolved the ‘Last shot’ rule, which states that a counter-offer invalidates an offer that existed previously[[12]](#footnote-12). It was observed that the buyer’s terms should prevail as the buyer exchanged the ‘last shot’. This was the ‘conflict approach’ that the Courts may resort to. In the ‘synthesis approach’, a synthesis contract contains consistent terms and those accepted by other parties and the disputed areas are filled with the terms implied by the courts.

Relying on the ‘last shot’ rule evolved in the case of *Butler Machine Tool Co*. v. *Ex-Cell O Corp*, 1977[[13]](#footnote-13), it can be interpreted that Trent exchanged the last shot in the present. Trent handed his terms to Mary after Mary handed her terms to Trent. Therefore, the act of Trent offering his terms of the contract was a counter-offer which Mary accepted and the terms stated by Mary expired on her acceptance of the terms stated by Trent. Therefore, in the present case, the terms stated by Trent in the ‘Location Agreement’ shall prevail and Mary is liable to pay $420 for COVID cleaning.

1. Eisenberg, Melvin Aron. "Expression Rules in Contract Law and Problems of Offer and Acceptance." Cal L. Rev. 82 (1994): 1127. [↑](#footnote-ref-1)
2. O'shea, Kathryn, and Kylie Skeahan. "Acceptance of Offers by E-Mail-How Far Should the Postal Acceptance Rule Extend." Queensland U. Tech. LJ 13 (1997): 247. [↑](#footnote-ref-2)
3. [1818] EWHC KB J59 [↑](#footnote-ref-3)
4. [1892] 2 Ch 27 [↑](#footnote-ref-4)
5. [1974] 2 NSWLR 460 [↑](#footnote-ref-5)
6. Lewinsohn, Jed. "Paid on Both Sides: Quid Pro Quo Exchange and the Doctrine of Consideration." (2019) 129 Yale LJ, 690. [↑](#footnote-ref-6)
7. *Australian Wollen Mills* v. *Commonwealth*, [1954] HCA 20 [↑](#footnote-ref-7)
8. *Williams* v. *Roffey Bros & Nicholls (Contractors)*, [1991] 1 QB 1 [↑](#footnote-ref-8)
9. Anensom, T. Leigh. "From Theory to Practice: Analyzing Equitable Estoppel Under a Pluralistic Model of Law." (2007) 11 Lewis & Clark L. Rev., 633. [↑](#footnote-ref-9)
10. Rawlings, Rick. "The Battle of Forms." (1979) 42.6 The Modern Law Review, 715-721 [↑](#footnote-ref-10)
11. *Butler Machine Tool Co*. v. *Ex-Cell O Corp*, [1977] EWCA Civ 9 [↑](#footnote-ref-11)
12. Rawlings, Rick. "The Battle of Forms." (1979) 42.6 The Modern Law Review, 715-721. [↑](#footnote-ref-12)
13. *Butler Machine Tool Co*. v. *Ex-Cell O Corp*, [1977] EWCA Civ 9 [↑](#footnote-ref-13)