

**Contract Exam 2006**  
**Question 1 – 93%**

Adam, Ben and Caleb want to know if they are entitled to their promised sums of money, and how they may go about recovering it, having regard to Wilma's death.

Adam v Wilma

Wilma made a clear offer to pay \$100K to any of her sons who brought "a member of the Kelly family to justice." It is a unilateral offer in the sense that she simply wanted the act done; it was her final death wish and no further negotiations were needed. Generally unilateral contracts have been recognised as accepted when the accepting party begins work on their side of the contract (*Abbott v Lance*), though not always (*Mobil Oil Australia Ltd v Lindel Nominees Pty Ltd*). These facts are distinguishable from *Mobil* however as it is clear when acceptance occurs, and bringing someone to justice is not a prolonged effort, as was the case with the ongoing work by Mobil's franchisees. Furthermore, *Carlill v Carbolic Smoke Ball Co* provides that the required act of a unilateral contract is both the acceptance and the communication of the acceptance.

Adam, along with all the sons, must nevertheless discharge the burden that in spite of the domestic nature of the contract, legal relations were intended. They may argue that there was in fact a contrary intention expressed (*Balfour v Balfour*), which was undoubtedly getting revenge on the Kelly family. They may also argue that the promise involved a sufficiently large sum of money - \$100K and \$500K - that legal relations may be implied (*Todd v Nicol*). Thus it is reasonable to argue that they are entitled to the sums of money, should they be held to be part of a binding contract.

Adam's act, although accepting Wilma's promise, may be problematic as it is not clear that he intended to accept the terms proposed. *R v Clarke* held that the intention of obtaining a plea bargain was inconsistent with receiving the award, however the facts here are more like *Williams v Cowardine* in so far as the two motives are not inconsistent: indeed police officers' duty is to restore justice. Having regard to the fact that it was his pre-existing duty, it is necessary to note that consideration may be insufficient if the duty was not exceeded (*Stilk v Myrick*), however that is where the contract is between the same parties, so the facts are more like *the Eurymedon* which provides that the performance of an existing contractual duty to a third party is good consideration from someone new, even where the duty is not exceeded. Thus Adam can prove all the elements of a binding contract and would be entitled to Wilma's \$100k reward.

Ben v Wilma

Ben, like Adam, must argue that his intention was consistent with the terms proposed, however his case is complicated by the fact that Wilma had already died, and Adam had already received the \$500K. He must prove that the offer was not terminated by either of those events. *Prima facie*, an offer is only terminated by death when the personality of the party is important, and this is not the case: indeed it was Wilma's wish that her sons be the ones who brought justice, and the fact she made the promise on her death bed infers that she intended the offer to extend beyond her time alive. In any case, the offer can be accepted before death comes to the accepting party's attention, which was the case here.

Did Ben intend to accept the terms proposed? This fact scenario is more like *R v Clarke* in so far as Ben was clearly acting for his own best interests; indeed he didn't even know it was a member of the Kelly family he was handing over to the police, so it would be hard to establish that he intended to receive \$100K for his actions. He will most likely fail to claim the \$100K reward on the grounds of inadequate acceptance.

Nevertheless, should he succeed, he would have to prove that Wilma's offer was capable of being accepted by more than one son. This can be inferred as no doubt she wished to bring as many of the Kelly family to justice, and thus was promising a \$100K reward for each conviction. Thus Ben would be entitled to the \$100K should he prove that he had the right intention, although, as above, this is unlikely.

### Caleb v Wilma

Caleb must prove that he provided legally sufficient consideration for Wilma's promise. Although consideration must not be past (*Roccola v Thomas*), where the past act was requested by the promisor in circumstances where an agreement to pay something is implicit, the past act can be consideration for the promise to pay (*Lampleigh v Braithwait*). Nevertheless Caleb could argue that as Wilma had not yet passed away at the time of the promise, he was still caring for her, thus his consideration was executory. Also, it is a general rule that consideration is irrelevant if a promise has already been performed, as consideration only affects the enforceability of a promise not yet performed. Failing this, Caleb may argue that the court should take up the trend evinced in *Williams v Roffey Bros*, that is the trend of looking beyond the agreed consideration to see if any benefit or detriment in fact has occurred. This was also supported in *Musumeci v Winadell*, and although neither of these bind an SA Court, Caleb could most likely prove some detriment from not working.

### Remedies

As Wilma has passed away, any action must be brought against her estate, and specifically, the person named as her executor. The facts do not disclose who was named as her administrator, but Adam, Ben and Caleb would be entitled to enforce the contracts in their own capacities, as parties to the contract (or joint promises) against the administrator. They could all potentially recover the sums of money promised, which would be taken out of her estate left to the dog's home, as there is no applicable restriction on acquiring damages where a third party has acquired a valuable interest in the matter of the contract.

It is important to note that Wilma's statement "bring to justice" is somewhat uncertain, however this will only be void and thus bar any right to damages in the event that no meaning can be constructed by the court (*Whitlock v Brew*). Furthermore, having regard to the fact that her husband was killed by the Kelly's, it is possible that she intended "bring to justice" to cover similar (illegal) acts on her sons' part. Of course if this were the case, the contract would be void due to illegality, and unenforceable by either party due to the fact it was essentially an agreement to commit a crime. Nevertheless, the phrase is used in a variety of contexts, and Ben and Adam's respective behaviours showed how it could be interpreted in a lawful context, thus it is unlikely to be declared void and should be enforceable notwithstanding its uncertainty in that respect.