
CASE STUDY 27

FACTS Hak and Machara were on a boat on the Tonle Sap. The boat capsized, and Hak fell out. Unfortunately, Hak could not swim. So he shouted to Machara in a very agitated voice, "I can't swim! I will give you my new house if you save me!" Machara risked his own life to save Hak.

Later, Hak thanked Machara and offered him a substantial sum of money. But Machara said he wanted the house, and asked a court for help.

QUESTION OF LAW Was Hak's offer to Machara seriously intended?

DECISION No. In this situation, there is no valid offer, because Hak's emotional state suggested that he did not seriously intend his offer to create a contract, and Machara had a reason to know that.

An offer is not valid where the offeror's emotional state suggested that she did not seriously intend her offer to create a contract, and the offeree had a reason to know that. In this case, Hak shouted an agitated offer to Machara as he was about to drown, offering to give Machara his house if Machara saved him. In this extreme emotional state of fear, Hak probably did not seriously intend to bind himself to give up his house. And Machara certainly had a reason to know that, based on the circumstances of the parties. So there is no valid offer, and no contract.

It might be argued that parties like Hak in Case Study 27 do have a serious intent to make a contract. Hak was obviously serious about wanting Machara to save him! However, the above rule may be based on the idea that what parties like Hak are really serious about is being saved--not making an enforceable agreement. Of course, in a situation like this, Machara might be able to recover under the doctrine of quasi-contract, as explained in Chapter 1 ("Basic Aspects of Contract Law"), Section 1.5.

On the other hand, sometimes an offeror makes an offer that she does not seriously intend--in her mind--but the offeree has no reason to know that. That is, a reasonable person would think that the offer was seriously intended. In that situation, the offer actually is "seriously intended" for the purpose of creating a valid offer! And so a contract can result. What the offeror really thought--in her own mind--does not matter.

CASE STUDY 28

FACTS Yuon offered to sell Kileng a painting for \$10, in a very serious voice. The painting was very unusual, and most people might say it was ugly and not worth much. In fact, the painting was worth \$250, and Yuon was just trying to find out if Kileng knew the value of the painting, as a joke. Kileng did not know much about painting. But he did know about contracts, and he promptly accepted Yuon's offer.

or provide a remedy for any damage which Prosperity suffers as a result of Central's failure to do the work (here, at least \$20,000).

Case Study 55 above is a good example of how common law jurisdictions may use promissory estoppel to protect the rights of general contractors (like Prosperity) who need to rely on bids from sub-contractors (like Central) in order to make their own bids. Specifically, promissory estoppel may say that sub-contractors like Central do not have the right to revoke their offers to general contractors like Prosperity which they might otherwise have, where general contractors have justifiably relied on the bids. In this way, the doctrine of promissory estoppel protects the important process of commercial bidding.

Of course, as explained in Section 2.4c above, special statutes may also protect public agencies from this kind of situation in some jurisdictions. These statutes often limit the rights to revoke of those who submit bids to such agencies.

*** **ADDITIONAL REFERENCE:** Chapter 1 ("Basic Aspects of Contract Law"), Section 1.4f contains a concise discussion of promissory estoppel; Chapter 3 ("Consideration"), Section 3.8g discusses how promissory estoppel might be used to enforce promises even where there is no consideration; and Chapter 7 ("Other Contract Formation Problems"), Section 7.8 contains a detailed discussion of promissory estoppel.

2.5 The Offeree Can Terminate the Offer

An offer can also be ended by the offeree. This Section explains how that can happen. In particular, it discusses:

- (1) how the offeree can terminate the offer by rejecting it (Section 2.5a);
- (2) how the offeree can terminate the offer by making a counter-offer (Section 2.5b); and
- (3) potential offeree responses to the offer that are neither rejections nor counter-offers (Section 2.5c).

Sandy Summers 5/16/10 11:01 AM
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2.5a The Offeree Terminates the Offer If She Rejects It

The most obvious way an offeree can end an offer is to reject it.

*** **DEFINITION:** A **rejection** is a refusal to accept an offer.

A rejection is basically a negative response which shows the offeree will not accept or further consider the offer. A rejection terminates the offer. So after an offeree rejects, the offer can no longer be accepted to form a contract. Rejections end offers even if the period which the offeror agreed to keep