Case study
Contracts (1)

Dr Jan Halberda

Fundamentals of Anglo-American and Polish Legal Systems – Contract Law

Imagine there are two guys: Smith and Brown

- They concluded a contract.
- Smith is a creditor and Brown a debtor.
- Smith desperately needs money.
- Brown refuses to pay.
- Brown is in default.
- The debt 100 p.
- Smith knows that litigation would be expensive and time consuming.

Deal

- Smith agrees: as I have to have this money now and not after give me only 80 p. now and I will not claim the residual amount.

- Brown: I agree.

Afterwards

- What if after Brown's payment of 80 p. Smith decides to sue for 20 p. plus interest/cost?
- Who should win?

Was it a valid contract?

- Look for the premises of contract.
- Lack of form ? Where to search for needed provisions ?
- What would be the solutions in England/USA and in Poland ? Similarities or differences?

Alternative story 1

- Imagine that the parties decide the Brown will pay 80 p. sooner then it was decided before.
- Would it change anything?

Alternative story 2

- Imagine that the parties decide the Brown will pay 80 p. in a different place than it was decided before.
- Would it change anything?

Alternative story 3

- Imagine that the parties decide the Brown will pay 80 p. and give a parrot to Smith.
- Would it change anything?

Alternative story 4

- Imagine that the parties decide the Brown will pay 80 p. and parties execute a deed.
- Would it change anything?

Looking for consideration…

- I promise I will pay you 20 p. because you have already washed my car.

Looking for consideration…

- I promise I will pay you 20 p. if you perform duly your contract with a third party.

Looking for consideration…

- I promise I will pay you 20 p. if you quit smoking.

Looking for consideration…

- I promise I accept that you pay half of the agreed rent because the business conditions deteriorated.

Additional reading

- *Doktryna consideration w angielskim prawie zobowiązań kontraktowych (XVI-XX w.)*, w: Czasopismo Prawno-Historyczne 2011, t. LXIII, z.2, s. 261-281,

- *Impossibility as the factor in the total failure of consideration*, w: *Naděje právní vědy. Bykov 2010*, Plzen 2011, s. 46-57.