

## The promised diamond ring (Part 2)



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### **A diamond ring and a penny**

“What? You are suing me for the diamond ring?” Jack exclaimed.  
“Sure!” Jane replied coldly.

Ever since Jack had failed to keep his promise to Jane, Jane had started to give Jack a penny whenever Jack promised her anything. Jane’s explanation was that under current contract law, the essential elements for the establishment of a contract are offer, acceptance and consideration. To Jane’s understanding, Jack’s promise would constitute an offer, her agreement to the promise would amount to an acceptance and her one-penny payment to Jack would make up the consideration, or the price, to signify her acceptance. Since all the three essential elements for the establishment of a contract were present, Jack could no longer fall back from his promise.

Yesterday evening, Jack again promised a diamond ring to Jane and Jane gave him a penny in return. Later on, when Jane asked Jack for the diamond ring, Jack just shrugged and replied, “Sorry, I have given the ring to Jill.” Jane was enraged and she threatened to sue Jack. Jack asked for help from his friend, David, who is a legal expert.

“You know I have never been serious with her. What should I do?” Jack asked.  
“Ok, ok! Let me think about it!” David replied impatiently.

The next day, Jack asked David again.

“What a troublesome guy you are! Anyway, you didn’t sign anything, did you? If so, you don’t have to worry. She won’t be successful!” David answered.

So, why is David so sure about that?

### **The Underlying Legal Principle**

Undoubtedly, under current contract law, the three essential elements for establishing a contract are offer, acceptance and consideration. However, in order for the contract to be enforceable by law when the case is taken to court, the court would look into the intention of the contracting parties. Only if the court is satisfied that the contract between the contracting parties is intended to be legally binding



would they allow the contract to be enforceable. A contract unenforceable by law is meaningless.

When making the decision, the court would presume that commercial agreements are intended to be legally binding, but domestic and social agreements are not, unless there is evidence showing otherwise. Therefore, domestic or social agreements, such as those made between parents and children, or between friends at parties, would usually be unenforceable by law.

In the case of *Balfour v Balfour* (1919), the court decided that a promise by the husband to give his wife £30 could not be enforceable by law because the court would normally not interfere in domestic affairs. In the case of *Coward v Motor Insurers Bureau* (1963), the court also decided that a casual promise by a friend to pay the transportation fee could not be enforceable by law because a social agreement is not meant to be legally binding.

In order for a domestic or social promise to be enforceable by law, the contracting parties must produce evidence to prove that they intend their agreement to be legally binding. For example, the contracting parties could put such intention in writing and sign their names against it, or they could ask friends to be their witnesses for such intention.

In the case of *Wu Chiu Kuen v Chu Shui Ching* (1992), two friends agreed to buy a Mark Six ticket together. Both of them made equal contributions to the ticket price. The ticket won the first prize. The one who kept the ticket broke his promise and kept all the prize money for himself. His friend brought the case to the court. Although this was just a social agreement, the court ordered the dishonest party to share half of the prize money with his friend as his friend was able to bring in witnesses to prove that the agreement was intended to be legally binding.

### **So, what should Jane do?**

Although Jane's one-penny "consideration" might have satisfied the condition for the establishment of a valid contract, Jane is also required to demonstrate that Jack's promise to her is meant to be legally binding, in order for their "contract" to be enforceable by law. So, it might also be advisable for Jane to put down such intention in writing and ask Jack to sign it. Alternatively, Jane might ask her friends to be their witnesses to prove that Jack's promise to her is intended to be legally binding.