

The promised diamond ring



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The broken promise

Jane scolded her boyfriend Jack angrily, “Give that diamond ring back to me!”

The day before, Jack had showed Jane a lovely diamond ring and promised to give it to her. Jane was delighted. But when she saw the ring on Jill’s finger at the dinner table the next day, she realized that Jack had broken his promise and had given the ring to Jill instead. Jane was furious.

So, can Jane claim back the ring from Jill?

Is this a contract?

According to contract law, if it can be shown that Jack and Jane had made a contract under which Jack promised to give Jane the diamond ring, then Jane could claim the ring back. Otherwise, she cannot.

So, what is a contract?

A contract will only take place if the following elements are present:

- Offer
- Acceptance
- Consideration

An **offer** is a promise made by a party to do something for the other party. For example, if I promise to sell you a book for \$100, that is an offer. Usually, advertisements are not considered as offer. For example, if an advertisement claims “ABC Shop’s diamonds will keep you forever young!” this is seen as advertising “puff”, but is not an offer.

But if the advertisement is a unilateral promise, which is a promise for everyone, then it can be an offer. In the case of *Carlill v Carbonic Smoke Ball* (1893), the Carbonic Smoke Ball Company took out an advertisement in the newspaper claiming that its medicines were effective in curing influenza; if someone caught influenza after taking its medicine, the company promised to pay the victim £100. Since this was a unilateral promise to all newspaper readers, it was considered to be an offer. Accordingly, anyone who caught influenza after taking the medicine could claim £100 from the company.

An **acceptance** is an agreement by the other party to accept the offer. The other party must inform the person making the offer about his acceptance. For example, if I offer to sell you my book for \$100, you need to tell me you accept my offer; otherwise, I could sell my book to another person.



While accepting an offer, the other party cannot impose conditions that differ from the original offer. If they do, this is not an acceptance, but a counter-offer. For example, if I promise to sell my book to you for \$100 and you tell me you will buy the book, but for \$80 only, that is not an acceptance, but a counter-offer. I can always ignore your counter-offer and sell the book to someone else.

Consideration is the price paid by the other party when accepting a contract. Consideration must be present in a contract. If there is no consideration, there is no contract. For example, if I promise to sell you my book free of charge and you agree to my promise, no contract exists between you and me, as no consideration is present. If later on, I refuse to give you my book, you cannot force me to carry out my promise and give my book to you.

However, consideration need not be adequate. That means, so far as the price paid by the other party is of value, no matter how small the value is, it can be a good consideration. A mere penny may be enough to be valid consideration.

So, what should Jane do?

Under the current contract law, Jane can only claim the diamond ring if she can demonstrate that offer, acceptance and consideration are all present. Here, the most important question seems to be whether Jane has contributed any consideration to Jack's offer. If she hasn't, there is no hope Jane can claim the diamond ring. So, it might be a good advice for Jane to give a penny in exchange to her boyfriend every time he makes her a promise, as consideration marking acceptance of his offer.