

## Exam - JUR 5260 English Law of Contract

Please answer both of the following questions. Each of the questions will be given equal weight in the marking of the answer.

1. Steve (S) inherits an old Harley-Davidson motorcycle upon the death of his uncle. Steve quickly decides to sell it as he has never been especially interested in motorcycles. He places a sales advertisement for the Harley-Davidson in a motorcycling magazine. Bill (B), who was a close friend of S when they went to high school together 10 years earlier, sees the advertisement and rings S to enquire about the motorcycle. B has been living in the USA for the past 4 years and has just moved back to England. He is interested in buying the motorcycle as he is feeling nostalgic about his time in the USA. He and S discuss a price for the motorcycle over the telephone. S informs B that he will not accept less than £10,000. B replies that he will think about this and ring back later. When B later rings back, S is out and has switched on his telephone answering machine. B leaves a message on the answering machine stating “Hi Steve, I’ll give you £10,000 for the Harley. If you don’t call back soon, I’ll assume we’ve reached a deal”.

Before S hears B’s taped message, he is contacted by Mike (M) via email. M works for a company that specializes in buying and selling “vintage” motorcycles and he is accordingly very interested in buying the advertised object. In his email, M asks several questions about the motorcycle, one of the questions being about its age. S replies: “I’m not a Harley expert but I believe that the motorcycle is a 1960 model”. S bases this reply on his memory of what his uncle had told him about the motorcycle a few months before the uncle died. S, though, is not entirely certain that the motorcycle is a 1960 model. However, as he is fairly confident that his memory of what his uncle told him is correct and that his uncle had a good knowledge of motorcycles, S has not made any attempt himself to verify the age of the motorcycle before trying to sell it. S does not tell M about the basis for his estimate of the motorcycle’s age or about his slight uncertainty or about the fact that he has not attempted himself to verify the motorcycle’s age. M replies that he will buy the motorcycle for £13000. S is very satisfied with this price and quickly accepts.

Two hours later, S rings B and says “sorry but I have now sold the motorcycle to someone else who made an offer that was too good to refuse”. B is angry and says there was already a valid contract to sell the motorcycle to him. He threatens legal action to enforce his claim to the motorcycle.

Three days after M takes delivery of the motorcycle, he finds out that it is actually a 1970 model and worth £4000 less on current market values than a 1960 model in the same condition. The written contract of sale omits any specification of the motorcycle’s age. M contacts his lawyer with a view to claiming compensation from S for the loss he has suffered.

Advise B and M as to the validity of their respective claims under English law of contract.

2. In Chapter 4 of her Textbook on Contract Law (Oxford University Press, 2008, 9th edition), Jill Poole analyses rules on the doctrine of consideration and notes in that context that there is “an unfortunate and arbitrary distinction, in terms of applicable principle and resultant enforceability, between contractual variations involving a promise to pay more and those contractual variations involving a promise to accept less” (p. 157).

What does she mean by this statement? Discuss whether she is justified in characterizing the distinction as “unfortunate and arbitrary”? Insofar as she is justified in this characterization, what do you suggest is the most appropriate way, *de lege ferenda*, to