

Enforcement of Verbal Contracts and Evidential Issues*

I. Introduction

1 Suppose Adam agrees verbally to purchase oranges from a supplier, Ben, for Adam's business. Adam finds out the very next day that another supplier, Cindy, can provide those oranges at a lower cost. Being a shrewd businessman, Adam no longer wishes to purchase them from Ben. He calls up Ben to inform him of the bad news. Ben threatens to sue. Can Ben now enforce that verbal agreement with Adam? And if Ben had secretly recorded down the conversation, can it be used as evidence of the verbal agreement? These questions will all be addressed in this article. For present purposes however, our present analysis with a basic discussion of contracts.

II. What are Contracts?

2 Generally speaking, a validly formed contract consists of four basic requirements: (a) an offer, (b) acceptance of that offer, (c) consideration and (d) the intention to create legal relations.¹ An offer is a promise by someone (the offeror) to be bound to certain terms.² The offer then has to be accepted by another (the offeree). Thus, for example, Adam makes an offer when he tells Ben that he is willing to purchase 5kg of oranges from Ben at \$20 per kg. If Ben says yes, and agrees on the timing and location given, he can be said to have accepted the offer.

3 The "consideration" then, in our scenario, refers to the price paid by Adam, and also the goods and services provided by Ben. In essence, "consideration" can be thought of in the following manner – Ben, in *consideration* of Adam's payment, agrees to supply Adam with oranges. Similarly, Adam, in *consideration* of Ben's supply of oranges, agrees to pay Ben a certain fixed sum. That is not all, however. The parties must also intend to be bound by the contract. In the business setting, this intention to be bound is usually presumed since commercial businessmen can be presumed to want contracts to be performed. Thus, when parties orally agree on the material terms of a contract, a verbal contract can be said to have been formed.

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¹ *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332.

² Singapore Law Watch Website, <https://www.singaporelawwatch.sg/About-Singapore-Law/Commercial-Law/ch-08-the-law-of-contract> (accessed 13 October 2019).

III. Enforcement of Verbal Contracts

A. *Are Verbal Contracts Enforceable?*

4 Such verbal contracts, *i.e.*, contracts concluded orally, are common in business settings among businessmen and with consumers. Just like written contracts, verbal contracts are, in general, enforceable. This means that they can be sued upon if a party fails to perform his or her side of the bargain. In our scenario, if Adam decides to purchase oranges from Cindy instead of Ben, Ben could possibly sue Adam for the breach of a verbal contract. That being said, there are exceptions. For certain types of contracts, the law requires the contract to be in writing, and a verbal contract will not suffice. These contracts include, among other things: (a) a contract for the sale of immovable property (*e.g.*, housing), or (b) an agreement to pay for another person's debt.³

B. *Evidentiary Difficulties in Enforcing Verbal Contracts*

5 However, even where verbal contracts are enforceable, it is more difficult to establish the existence and terms of the contract given the lack of any written document. For example, in *Low Kin Kok v Lee Chiow Seng*,⁴ the court noted that if the parties had documented their agreement in writing, it was likely that the "considerable heartache" involved in "painstakingly setting out the evidence through oral accounts could have been avoided".⁵ Such evidentiary difficulties can have serious consequences, especially for high-value contracts in business settings.

6 How does one then prove the existence and terms of a verbal contract? Generally, the answer is to be found in the surrounding circumstances of the case - the court will look at all the facts to determine if the four requirements for forming a contract are present.⁶ These include the parties' conduct, correspondence, relationship and witness testimony. We will address these factors in turn.

³ Civil Law Act (Cap 43, 1999 Rev Ed) s 5B.

⁴ [2014] SGHC 208.

⁵ *Ibid*, at [41].

⁶ *Cooperative Centrale Raiffesien-Boerenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 at [50].

(1) *Parties' Conduct*

7 First, both the existence of and the terms of the contract can be inferred from the parties' course of conduct.⁷ Thus, if Ben happens to deliver oranges to Adam at the agreed time and location, such conduct (as part performance) may be evidence that is sufficiently indicative of the existence of a contract.⁸ The terms of the contract can also be similarly inferred – for instance, in *Colyer Fehr Tallow v KNZ Australia*, the court found that an alleged oral agreement between Colyer and KNZA for the supply of tallow was not an exclusive contract that prevented Colyer from supplying tallow to other customers. This was implied from the parties' conduct - Colyer had provided tallow to other customers many times during the contract with KNZA's knowledge. Thus, the parties did not intend for the contract to be an exclusive one.⁹

(2) *Correspondence*

8 Second, correspondence between the parties, such as emails, draft agreements, and even WhatsApp messages¹⁰ may be used to show the existence of negotiations between parties and the terms of the verbal contract.¹¹ For instance, in *Low Kin Kok v Lee Chiow Seng*, the emails between the parties stated that the buyer could choose which plot he wanted as long as the price was “fair and safe” for the sellers.¹² This was taken into consideration by the court in finding that the parties had entered into a verbal agreement and also for determining the terms of the agreement.¹³

(3) *Parties' Relationship*

9 Third, the parties' relationship is also a relevant factor. In *Williams v Jones*, the parties had drafted an unsigned written agreement. One of the parties, Mr Batters, passed away before signing it. The other party, Mr Williams, claimed that the written agreement was a record of their verbal contract. The court found that there was a valid verbal contract because the parties “were very good friends who trusted each other entirely”. Thus, a written agreement was not necessary to enforce their agreement.

⁷ *Cooperative Centrale Raiffesien-Boerenleenbank BA, Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63, [49]-[50].

⁸ See, in the context of property law, *Cheong Kok Leong v Cheong Woon Weng* [2017] SGCA 47, [8], [13].

⁹ *Colyer Fehr Tallow Pty Ltd v KNZ Australia Pty Ltd* [2011] NSWSC 457, [36]-[39].

¹⁰ Che Wei Chien, “Can Whatsapp Messages be Used in Court in Singapore?”, *Asia Law Network* (6 November 2017).

¹¹ *Supra* n 8.

¹² *Supra* n 4, [53].

¹³ *Ibid.*

(4) *Testimony*

10 Finally, the court may also consider the testimony of third-party witnesses.¹⁴ In *Hadley v Kemp*,¹⁵ witnesses testified that they were present in informal meetings that did not lead to the conclusion of any verbal agreement. This was taken into account by the court in finding that there was no verbal contract.¹⁶

C. *Surreptitious Recordings of Conversations*

11 Now if Ben had secretly recorded the conversation between him and Adam, can this then be used to prove the existence of a contract and its terms? The answer is: yes, it can. The court cannot exclude evidence where it is relevant to the case.¹⁷ Thus, in *Tan Wee Fong v Denieru Tatsu F&B Holdings Pte Ltd*,¹⁸ secretly recorded telephone conversations were admissible to show a breach of the written contracts entered into between the parties. There, one of the contracting parties, Daniel, had secretly recorded conversations to show that the other party had tried to poach Daniel's employees in breach of their written agreements. While this was not a case involving verbal contracts, the general principle that relevant evidence is admissible is still applicable to verbal contract cases. Thus, if Ben had secretly recorded the conversation, the recording is admissible in court to prove that Adam had agreed to purchase oranges from him.

IV. Conclusion

12 In conclusion, entering into a verbal contract may be convenient when the relationship between the parties is good. However, although such verbal contracts are enforceable in a court of law, they may cause great uncertainty when conflicts arise as there may be difficulties in proving the terms and/or the existence of the contract. In determining the existence of a verbal contract, the court will have regard to circumstances such as the parties' relationship and conduct. A secretly recorded conversation and even third-party evidence is admissible if it is relevant to the case. Nevertheless, it is still advisable for parties to document their contract and terms in writing wherever possible, especially in business settings. This minimizes the potential for future disputes.

¹⁴ *Hadley v Kemp* [1999] EMLR 589.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, at 612.

¹⁷ *Law Society of Singapore v Tan Guat Neo Phyllis* [2008] 2 SLR(R) 239, [126] and [150]. See also Evidence Act (Cap 97, 1997 Rev Ed) s 5.

¹⁸ [2010] 2 SLR 298.

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