# CONTRACT LAW MOOT PROBLEM

## FACTS

Mr Chitty is a manufacturer of spanners. Mr Treitel is a seller of spanners. In 2018 Mr Chitty and Mr Treitel entered into a contract under which Mr Treitel agreed to use "*best endeavours*" to sell as many spanners for Mr Chitty as he was able and to be paid a commission of 10% from the profits of any sales (the ***Agreement***).

Clause 3.1 of the Agreement states that "*All variations to this Agreement must be agreed, set out in writing and signed by or on behalf of both parties before they take effect*".

After a year in which spanner sales dramatically fell, Mr Chitty and Mr Treitel met up in the Forks and Beer Public House on New Year's Eve to drown their sorrows and discuss their trading relationship. Mr Chitty told Mr Treitel that he was thinking of leaving the spanner business to manufacture other tools because "*the money just isn't in spanners anymore*".

Mr Chitty explained to Mr Treitel that business would only be economical in the next calendar year if he could sell 100,000 spanners. He told Mr Treitel that if he could sell 100,000 of his spanners, he would give him a bonus of £1,000,000. Mr Treitel reminded Mr Chitty of Clause 3.1 of their Agreement to which Mr Chitty replied, "*That's not a problem, let's not worry about that sort of thing now*".

Mr Treitel was eager to earn this bonus. Over the course of 2022 he broke off relations with a number of other suppliers and invested all his energies into promoting Mr Chitty's business. He also hired a large team of salespersons to assist in selling spanners for Mr Chitty. In June of 2022, when Mr Treitel appeared to be on track to meet the sales target, he sent Mr Chitty the following email:

> *"Hi Mr Chitty, just wanted to let you know that sales are on track as per our agreement. I'm doing my very best and putting all my resources behind you and have got a whole new team flogging your stuff.*
>
> *All the best*
>
> *GT"*

Mr Treitel received no response from Mr Chitty to this message.

At the close of 2022, Mr Treitel had sold 105,000 spanners for Mr Chitty. After finalising his accounts, Mr Treitel submitted a demand for a £1,000,000 from Mr Chitty referencing their discussion on New Year's Eve 2021.

Mr Chitty declined to pay the bonus and his lawyers wrote back to Mr Treitel stating that his "*discussion*" with Mr Treitel on New Year's Eve 2021 did not constitute a variation to the Agreement and, in any event, was not supported by consideration and that the parties had agreed that any variation to their Agreement was to be in writing.

## PROCEDURAL BACKGROUND

The High Court found as a matter of fact that the parties had agreed to vary their contract on New Year's Eve 2021. However, this variation was not enforceable for two reasons:

1. No consideration was provided by the promisee to the promisor and that this case is distinguishable from *Williams v Roffey Bros* because, on these facts, there was no practical benefit to Mr Chitty as Mr Treitel had already agreed to use "*best endeavours*" to sell Mr Chitty's spanners;

2. Even if consideration had been provided by the promisee, Clause 3.1 of the Agreement meant that the variation was unenforceable.

The Court of Appeal agreed with the High Court. Mr Treitel now appeals to the Supreme Court on the basis that both the High Court and Court of Appeal erred in law.

**GROUNDS**

Did the Court of appeal err in finding:

1. That Mr Treitel had not provided any consideration in exchange for Mr Chitty's promise to pay him £1m if he sold 100,000 spanners?

2. That Mr Chitty was not estopped from relying on Clause 3.1 in order to assert that the variation to the Agreement was unenforceable?