

# The proposal by the offeror to the

Business



The formation of a contract is an agreement of individual, business or any other entity that has been made between two parties and there is an exchange of something given or done by one party. There are 2 types of contracts, unilateral contract and bilateral contract. First is unilateral contract which involves an action undertaken by one person or group alone and it allows only one person to make a promise or agreement. Second is bilateral contract which is an agreement between at least two people or groups.

An effective contract should include 4 components which are offer, acceptance, consideration, and intention to enter into a legal commitment. When the offer and acceptance did match up so therefore the contract is binding. The first element is an offer which is a proposal by the offeror to the offeree to give or do something.

When an offer is accepted, there is said to be an agreement. The proposal usually made on certain terms and follows a process of negotiation. Moreover, It must be clear and be communicated in writing, orally or by conduct.

An offer may be made to a particular person, a group or to the entire world. An offer comes to an end and is not capable of acceptance when there is a revocation or withdrawal by the offeror, rejection by the offeree, lapse of time or death. After having the offer, second element is an acceptance which is defined as an unqualified and unconditional assent to all terms of the offer. It can be expressed in writing, orally or implied by conduct. If there is a change in the offer, it will become counter offer. An acceptance indicates the

communication of both parties and once the final acceptance has reached, it will become enforceable contract. The third essential element of contract formation is consideration which refers to whatever is exchanged in return between the parties because the court will not question its adequacy, therefore one party must be responsible by giving something value to the other party, although it need not be money. The last element is intention to create legal relations which is defined as an intention to enter a legally binding contract.

Thus, the parties signing a contract must know, understand that they are entering a legal agreement that cannot be broken. If there is no intention, the contract would not be enforceable and the parties cannot sue each other. A void agreement will happen if both parties are not agree with the contract. Therefore, both of contracting parties mind must be clear to enter serious contract. b.) Discuss the relevant LEGAL PRINCIPLES in relations to the above case study.

APPLY the legal principles to the facts and advise Henry on his legal position with regards to the following:(i)Advertisement in the online site, CanSellAllOn 2nd May, Henry advertised in the online site, named CanSellAll “ Smartphone will be sold to the first buyer who offers me \$388. Sale price is valid for one week only. Whatsapp: 12345678”.

An advertisement can either be an offer or an invitation to treat. However, it will be based on intention of parties. Henry was just invite people with statements placed in the online site. Moreover, he only sells one smartphone and this indicates he is not a distributor of smartphones and therefore no

promise existed. Hence, it is considered an invitation to treat as mentioned in the case *Partridge v Crittenden* (1968).

*Partridge* placed his advertisement to sell his birds but the advertisement itself did not make any offer for the sale of birds. Courts held that advertisements in newspaper are invitation to treat. Invitation to treat is not an offer. An invitation to treat means inviting the public to make an offer. Besides that, an invitation to treat does not have any promise exist. For example in the case of *Pharmaceutical Society of Great Britain v Boots Cash Chemists* (1953). The Courts stated it doesn't make an offense. Those display goods is an invitation to treat, not an offer to sell. Customers make an offer to purchase and there is acceptance when the cashier accepts the money.

In the case above, Steven is inviting others to make an offer to him. Therefore, it can be concluded as an invitation to treat. (ii) The Whatsapp messages on 6th May and 13th May. On 6th May, Henry had received an offer of \$300 but would not sell it for anything less than \$368. In this case Henry made an offer to sell his smartphone.

Offer is the 1st essential elements of a valid contract. Offer is defined when one person signifies to another his willingness to do anything with a view to obtaining the assent of that other to the act to make a proposal". Offer must be clear, definite, certain, precise and complete. Example of the case is *Carlill v Carbolic Smoke Ball* (1873) states that Carlill saw the advertisement placed by Carbolic showing that their smoke ball would cure all sorts of illnesses but when he bought it, it is not like what his advertisement

mentioned. Therefore, it would be treated as an invitation to treat not an offer. An offer is made when one party makes it clear, by words or actions, that he is prepared to be bound as soon as the offer is accepted by the person to whom it is made.

On the same day, Jason offered \$350 to buy the smartphone and this would be considered an offer. Henry invited Jason to see the smartphone. It does not mean that Henry is accepting the offer but it was just a mere invitation. Henry said “ I would not sell it below \$368 ” The new price offered is considered counter-offer. A counter-offer is not an acceptance, and actually kills the original offer.

This can be seen through the case Hyde v Wrench (1840). Mr. Wrench offered to sell his farm to Mr. Hyde for \$1, 000 but Mr. Hyde offered for \$950. Mr.

Wrench refused to accept his counter offer. Mr. Hyde made the new offer to Mr. Wrench, however, Mr. Wrench refused the offer. This was a breach of contract and there was no binding between Mr. Hyde and Mr.

Wrench. On 13th May, Jason agreed that he would buy to Henry’s price of \$368 then he called Henry but Henry did not reply the call. So Jason left the message for Henry on Whatsapp. Therefore, this is a new offer made by her. However, it is not an acceptance because no communication takes place. Henry received an offer from another customer who would like to buy his smartphone based on his original price of \$388. Like in the case Adams v Lindsell (1818).

Jason is able to sue Henry for breach contract. Postal rule does not apply here. According to the postal rule, acceptance by post is considered to take effect when the letter which is correctly addressed and stamped, is actually placed in the post box. Acceptance is said to be completed as soon as it is posted. Jason is actually making an offer and in which it is a bilateral offer.

Bilateral offer is offer made between two people only where the identity of offeree here is known. I would advise Jason to approach a solicitor or arbitrator with the following information I have provided.