

Requirements of an offer law contract essay

Law



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The legal issue is whether the element of agreement has been satisfied for parties to enter into an enforceable contract.

Principles of Law

A contract is a legally enforceable agreement; there are three requirements for a legally enforceable contract, intention, agreement and consideration (lecture 4). The element that requires discussion in this case is 'agreement' by which the parties enter into a legally binding contract. Agreement is basically meeting of minds and there has to be a promise from both the sides (Lambiris 2013 p.). The general process of an agreement is offer and acceptance (Lecture 4) we will analyse whether these factors were satisfied in the case study.

Requirements of an Offer

Offers can be revoked. The person who has made the offer can withdraw it at any time before it is accepted (Lambiris 2013 p. 89). This was seen in the case of *Dickinson v. Dodds* (1876) 2 Ch D 463. Dodds was offering to sell his house to Dickinson and promised to keep the offer open till Friday. On Thursday the defendant accepted an offer from a second party to purchase the house. Dickinson went to Dodds house Friday morning asking him to accept his offer. The Court held that the offer had been effectively been withdrawn (e-lawresource). Therefore no contract existed between the parties. The offeror is free to withdraw the offer at any time before acceptance takes place unless a deposit has been paid (e-lawresource). Offers can expire after reasonable time. An offer will terminate after a reasonable lapse of time (Lambiris 2013 pg. 89). The courts judge what a reasonable time period is depending on the circumstances (Lambiris 2013 pg. <https://assignbuster.com/requirements-of-an-offer-law-contract-essay/>

89). As seen in *Ramsgate Victoria Hotel v Montefiore* (1866) (e-lawresource). Montefiore offered to purchase shares in the Ramsgate Victoria Hotel Company. Montefiore accepted this offer six months later when the value of the shares had fallen. Montefiore refused to go through with the offer. The claimant brought action against the defendant. The court held that the offer had expired due to the nature of the circumstance reasonable time has passed since the offer was made therefore the offer had lapsed. There was no contract between the parties (e-lawresource). Counter offers, in *Hyde v Wrench* (1840) Wrench offered to sell a farm to Hyde for £1, 000. Hyde in reply offered £950 which was refused by the Wrench. Hyde then went back to the original offer of £1, 000 (e-lawresource). The issue concerned counter offers and the court held that there was no contract. Where a counter offer is made this destroys the original offer (e-lawresource). An offer must be promissory which was seen in the case of *Placer Development Ltd V Cth* (1969) (lambris 2013 pg. 84), in which the commonwealth government said that it would pay a subsidy to companies that import timber products. The government made initial payments and then stopped. Placer had imported timber and wanted the commonwealth government the subsidy they promised. The issue was had what the government said about paying a subsidy to companies a contractually binding agreement. The court held that what the government had said about subsidy payments was not legally enforceable promise (lambris 2013 pg. 84).

Requirements of acceptance

Once valid acceptance takes place a legally binding contract is formed.

There are three main rules relating to acceptance(lecture 4) : 1. Acceptance

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must be in the same terms of the offer². Made while offer is still in existence³. Made by the person to whom the offer is addressed to.

Acceptance made or by fax or telex is considered instantaneous as long as the message is actually received at the offeror's end (lecture 4). This is seen the case of *Brinkibon Ltd v Stalwharenhandelsgesellschaft* (1983) (Lambris 2013 pg. 90) in which during the course of negotiation a number of telexes were exchanged between the parties. The issue for the court was where and when did acceptance on the contract take effect. The court held that acceptance took place when the telex was received in Vienna (Lambris 2013 pg. 90). Acceptance is normally only effective when the acceptance is communicated. Acceptance by post is an exception (Lambris 2013 pg. 89). Acceptance by post takes effect when the letter of acceptance is posted, not when received (Lambris 2013 pg. 89), this can be seen in the case of *Henthorn v Fraser* [1892] (Lambris 2013 pg. 90), in which Fraser offered to sell certain houses to Henthorn, giving Henthorn 14 days to accept the offer. Henthorn sent an acceptance letter to Fraser a day after receiving Fraser offer. Fraser was offered a higher price for the house by a third party and attempted to withdraw his offer to Henthorn. The court held that acceptance of the offer was effective as soon as the letter of acceptance was posted and this took his place before the attempt to withdraw the offer (Lambris 2013 pg. 90) Acceptance with email has special rules to determine when receipt of the electronic communication took place (Lambris 2013 pg. 91). If the person to whom the communication was sent has designated information system for the purpose of communication then the acceptance takes place when the email reaches the system. If the person doesn't have information system designated then the communication takes place only when it comes to the

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attention of the addressee (lambris 2013 pg. 91). The legislation for email communication is under Electronic Transactions Act 2000 (SA) (lambris 2013 pg. 91).

Application of the law

The question is whether, in the following circumstances, have Peter and Billy reached 'agreement' in relation to the publishing contract. To answer this we have to analyze if the element of agreement has been satisfied for an enforceable contract. Firstly when a contract is made the offeree must be in clear mind state when making one. Billy was drunk at the time when he sent the contract electronically via email to Peter. Therefore Billy did not have the capacity to enter into a legally binding contract at the time. Secondly offers can be revoked before acceptance takes place. The person who has made the offer can withdraw it at any time before it is accepted (Lambris 2013 p. 89). In the case study Billy sends an email to Peter Friday morning now having clarity of mind reserved for geniuses, communicating that offer for a publishing contract has been revoked. Because Raymond had provided Billy with Peter's email address for the purpose of communication it can be inferred under Electronic Transactions Act 2000 (SA) that receipts takes place when the communication reaches the system (Lambris 2013 p. 89).

Possible Conclusion

In these circumstances the element of agreement is not satisfied because Billy revoked the offer via email before Peter accepted the offer. It didn't matter if Billy signed and sent the contract before reading the revoked email because the revoked email had been sent before acceptance took place.

Question (b)

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Legal Issue

The legal issue is whether the elements required for an enforceable contract are present in the case study.

Principles of Law

A contract is a legally enforceable agreement; there are three requirements for a legally enforceable contract, intention, agreement and consideration (lecture 4). 'Intention' and 'consideration' are the elements that require discuss in this case study.

Intention

Agreement can only legally enforceable if the parties intended to be legally bound, courts judge parties intention objectively (lecture 4). The court asks whether, in the circumstances, a reasonable person would regard the agreement as intended to be binding (lecture 4). Agreements that are reached in commercial context are usually inferred by the courts as legally binding. " If the party to an agreement reached in a commercial context wishes to argue that it was not intended to be legally binding, they must provide facts to the court to establish this claim" (lambris 2013pg. 71) . In the case *Esso Petroleum Ltd V Commissioners of Customs and Excise* (1976) 1 All ER 117 (lambris 2013pg. 71), Esso Petroleum produced commemorative coins, to promote petrol sales. Esso promised to give motorists a free coin when they purchased 4 gallons of Esso petrol. The Commissioner of Customs and Excise claimed that the free coins were subject to purchase tax because they were produced for general sale. The issue for the court was did Esso have the intention to be legally bound by the offer to motorist. The court inferred the situation from a commercial perspective and held that the <https://assignbuster.com/requirements-of-an-offer-law-contract-essay/>

promotion was intended to be a legally binding promise therefore the coins were subject to purchase tax (lambris 2013pg. 71). In the case of *Ermogenous v Greek Orthodox Community of SA Inc* (2002) 209 CLR 95(lambris 2013pg. 70), a religious minister employed by the Greek Orthodox Community brought action against the Community for breach of the employment contract when the Community refused to pay him for accumulated leave entitlements. The community argued that their agreement with Ermogenous was not intended to be legally binding. The court held that the agreement was intended to be legally binding and Ermogenous was entitled to payment for accumulated leave (lambris 2013pg. 70).

Consideration

Consideration is something given in exchange for a promise received (lecture 4). It can be a thing, money or a promise to give or do something or a promise not give or do something (Lecture 4). Consideration can be seen in *Thomas V Thomas* (1842) QB 851 (lambris 2013 pg. 76), before his death Thomas said that if his wife survived after his own death, she will be allowed to live in his house until her death. Ms Thomas was allowed to occupy her house in return for payment by her for £1 a year and a promise to keep the house in good repair. The issue for the court was, has enough consideration been provided by Ms Thomas to make the agreement legally enforceable. Ms Thomas was entitled to enforce the agreement by the court (lambris 2103 pg. 76). " There is no requirement that consideration must be of equivalent value: it is enough that it be of some value even if relatively small" (lambris 2013 pg. 76). Acts performed with intention of receiving a counter performance can be classified as an executed consideration. In the case of

Carlill v Carbolic Smoke Ball Co (1893) 1 QB 256 (lambris 2013 pg. 78), the company Carbolic Smoke Ball produced smoke balls which they marketed as an effective means of preventing influenza. The company published an advertisement in a newspaper offering to pay £100 to anyone who purchased the smoke balls, used them according to the instructions and still caught influenza. The company also deposited £1000 in a bank account to show their seriousness (lambris 2013 pg. 78). Carlill still got influenza after using the smoke balls according to the instructions provided and demanded the £100 reward (lambris 2013 pg. 78). " Issue faced by the court was whether Carlill had provided consideration in exchange for the company's promise, sufficient enough to create a legally binding agreement" (lambris 2013 pg. 78). The court held that the act of buying and using the smoke balls provided enough consideration for a legally enforceable contract to pay the award (lambris 2013 pg. 78)." Consideration can't consist of something previously promised or done , this is known as ' past' consideration" (lecture 4). In the case of *Stylk v Myrick* (1809) 2 Camp 317; 170 ER 1168 (lambris 2013 pg. 76), a captain made a promise to his remaining crew that they would get extra pay if they worked extra hard to get the ship safely back home. The Ship owner refused to pay the crew when they got back. The issue was had the crew given enough consideration for the captains' promise. The court held that the crew hadn't given anything of value in return for the captains' promise therefore no agreement for extra pay was created (lambris 2013 pg. 76).

Application of the Law

The question is whether, in the following circumstances, can the contract between Peter and Raymond be legally enforced. To answer this question we have to analyze if the element of intention and consideration has been satisfied between the parties for an enforceable contract. An objective assessment of the circumstance in which Peter and Raymond made the agreement needs to be analyzed. The question is whether, in the circumstances, a reasonable person would regard the Commission agreement as intended to be binding. The parties here are in a business agreement, such as that Raymond agrees to act as Peter's agent for a small commission of 8% of the revenue. However there is nothing in the facts to suggest that agreement is in writing. If the agreement had been in writing, it would assist Raymond in enforcing the contract on Peter. Sufficient consideration has also been made between the parties. Raymond made a promise with Peter that he would act as Peter's agent for a small commission of 8% of revenue on every book sold.

Possible Conclusion

Given that the parties are not friends and the Commission agreement appears to have been made in commercial/business context and sufficient consideration has been made by both sides of the party, the courts will rely on the presumption that in this circumstance Peter is legally bound by the contract made with Raymond and Peter must pay Raymond a sum of \$80,000. Part B Statements made during the formation of a contract are called terms of the contract. Statements can only become part of the contract if it can be inferred from the circumstances that the Statement made was

intended to be legally enforceable (lambris 2013 pg. 109). When a statement is made but not intended to be a promise this statement is called a 'representation'. Representations are not terms of the contract therefore there is no liability for a breach of contract if a representation proves untrue (lambris 2013 pg. 111). In the case of *Oscar Chess Ltd v Williams (1957) 1 all ER 325* (lambris 2013 pg. 111), Williams mother owned a Morris Minor car which was believed to be a 1948 model. At his mother's request William took the car to a used car dealer for a trade in. William showed the documents of the car which contained a statement that the car was 1948 model. In fact it was a 1939 Model. When the dealer discovered the true age of the car he claimed the statement made in the document was and intended to be contractually binding. The court held that the statement of the cars age was a mere representation rather than a contractually binding agreement (lambris 2013 pg. 111)