

Free essay on contract law

[Business](#), [Customers](#)



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Essentials of a contract

A valid contract consists of a number of key elements without which a contract so formed is not a contract properly so called in the eyes of the law. The basic elements of a valid contract include the offer, acceptance, consideration, and intention to create legal relations, capacity of parties and legality of the subject matter of the contract.

An examination of the facts as outlined in this case reveals that the case turns on the basic elements of offer and acceptance. It must be proved that an offer was made which was subsequently accepted for a consideration in order to constitute a valid contract. The rules governing the formation of contracts are to the effect that an acceptance of an offer must be unequivocal and should not vary with the terms of the offer. In order to decide as to whether Tom is under any obligation to sell the rooms to Dodd, it is critical to examine the facts as they were in the particular case.

Legal obligation of Tom

It is the case that Tom is in charge of selling rooms at Heelton Resort. Tom consequently wrote to Dodd who is a travel agent on the 1st December offering to sell 10 rooms at the Resort from the 1st to the 15th of February. The terms of the offer were to the effect that the rooms would be sold for \$200 per room to be paid up front. From a strict legal point of view, it may well be said that this was the initial offer by Tim on these terms, an offer of which could be accepted or rejected by Dodd. More so, Dodd is bound to give an answer of the offer by the 10th December. Consequently, Dodd writes back to Tom on the 3rd December accepting the offer but wanting to pay for the rooms after the Chinese Year and not upfront as enshrined in the terms of the offer. The reply by Dodd is received by Tom on the 5th December to which he gives no reply to Dodd. At this point, it is imperative to explore whether there has been any acceptance of the offer. It is clear that Dodd wrote accepting the offer by Tom on 3rd December but proposing to pay in the Chinese Year but not as defined in the offer by Tim. To this end, Dodd cannot be said to have accepted the offer by Tom as to constitute a valid contract since he introduced other terms that were not in the offer. To this extent, the purported acceptance by Dodd is a counteroffer to Tom which he is bound to either accept or reject. This was the case in *Hyde v Wrench* where Wrench offered to sell his piece of land to Hyde for 1000 pounds to which Hyde declined and offered 950 pounds over the same which Wrench refused to accept. Hyde subsequently sent a letter of acceptance of the initial offer by Wrench who had then sold the land to another. Hyde then sued Wrench claiming a breach of contract. Lord Langdale was emphatic that

there existed no binding contract between the parties since Hyde did not unconditionally accept the offer as initially offered by Wrench and the offer of 950 pounds offered in return by Hyde amounted to a counteroffer which effectively revoked the initial offer. As such, there was no binding contract as to elicit a suit for breach of contract.

Further, it is instructive to note that the counteroffer by Dodd was met with silence by Tom though the letter purporting to accept the original offer was sent in good time. It is the legal position that silence does not amount to acceptance. The fact that Tom did not bother to respond or reply to the offer by Dodd is no acceptance of the same offer. This position is consistent with the one taken by the court in the case of *Felthouse v Bindley*. In the case of *Felthouse v Bindley*, the judges were of the opinion that acceptance to be properly regarded so, as an element of the contract, it must be communicated clearly and that such cannot be imposed upon a party who keeps silent. To this extent, the silence by Tom amounted to non-acceptance of the counteroffer by Dodd. In view of this, it is clear that no binding contract exists between Tom and Dodd and thereby Tom is under no legal obligation to sell his rooms to Dodd.

Action by Manager of the Restaurant

Peter, a waiter who feels aggrieved by his dismissal from employment and refuses to leave the premises opting rather to shout at the top of his voice to the discomfort of the customers in the restaurant is committing the tort of nuisance. It may well be the case that he feels he was unfairly dismissed by the management but this does not warrant him to cause discomfort to the customers to the detriment of the business and such acts amount to

nuisance actionable in law.

Indeed, since the restaurant premises fall under private premises and as such the acts by Peter amount to private nuisance which avail the restaurant a remedy in law by way of damages or injunction. It is without doubt that the shouting by Peter is embarrassing to the management of the restaurant. The law defines private nuisance as any act or omission that causes injury or is inconveniencing to a private person. In the case of *Crump v Lambert*, Lord Romilly was of the opinion that the question to be asked in instances of nuisance is whether the annoyance caused materially interferes with the ordinary human existence. In this particular setting, the shouting by Peter has surely been to the discomfort to the customers.

Consequently, as a manager, I would seek the help of the law enforcers in removing Peter from the premises in case he refuses to oblige by the orders to leave the premises in peace. More so, I would move to court to obtain a court order in the form of an injunction restraining him from causing nuisance at the premises.

Action by manager on customer who refuses to pay for a meal

A customer who finishes a meal and then refuses to pay for the meal claiming that the meal is of poor quality fails to discharge his obligation in the contract which gives rise to a contract dispute. Just like any other business contract, the fact that the customer asked for a meal to which he was given and ate essentially makes him liable for payment of the same as it constitutes a valid and binding contract.

As a restaurant manager, I would take the name and address of the

customer who refuses to pay and initiate a civil action against him for non-payment in a county court by filling a “ Small Claims Track” form since the amount in question would not be quite high. However, before doing this, I would first of all satisfy myself that the amount I would be seeking would be reasonably high so as to offset the cost I would incur in instituting the legal proceeding.

After making the decision as to suing the customer, the mere fact that the customer ate all the meal is conclusive evidence that the meal was not of poor quality as alleged by the customer and as such his refusal to pay is tantamount to a breach of contract on his part. The breach avails a legal remedy as this is a sale of goods contract to which the seller has a right to be paid for the goods in line with section 42 of the Sale of Goods Act 1979. In addition, before instituting the suit, I would inform the customer of the intention to sue him for the price in the event that he persists in his refusal to pay his bill.

Legal liability of Whiz Hotel and Jaya Travel Agency

It is trite that Francis has suffered pain, distress and inconvenience at the turn of the events. The relevant question here is whether he is entitled to any remedy in law and whether Whiz Hotel, Jaya Travel Agency is liable. The answer to this will surely turn on the terms of the contract and the facts in the particular case.

Whiz Hotel has refused to pay for the hospital expenses and the loss of his expensive jacket pointing out an exemption clause in the contract signed in the agreement. The exemption seeks to exclude any liability to the hotel, Transport Company for whatever injury occasioned through the negligent

acts of any of the persons. Of importance in this issue, is the question as to whether the same exclusion clause applies to the particular case, and if so, to what extent. It is evident in the facts of the case that the driver of the bus contracted by Whiz Hotel for the tour was negligent in driving too fast thus occasioning an accident. As such, without having recourse to the exemption clause, Whiz Hotel would have been vicariously liable for the acts of its servant as was the case in *Lloyd v Grace, Smith and Co* since the accident occurred in the course of employment.

As things appear in this case, the exclusion clause exempting the hotel from liability was incorporated by way of signature to which both Francis and the hotel appended their signature in the contract. In the case of *L'Estrange v Graucob*, it was held that if a clause has been written on a document that is signed by all parties, then it is part of the contract. It is only in the event that the document is not signed that the exemption clause will only be admitted if it is shown that reasonable steps had been taken to make the other party aware of the clause in the contract. In this instance, it appears that the signature of Francis on the contractual document is enough and it is immaterial whether he had understood it or not as highlighted by Scrutton LJ in *L'Estrange v Graucob*.

Further, the exemption clause seeks to exclude the hotel from liability for negligence of any one. It is the legal position that extreme care must be taken while drafting a clause that seeks to exclude liability for negligence as evident in the words of Lord Morton of Henryton in the case of *Canadian Steamship Line v The King*. The rules outlined by Lord Morton are to the effect that such clause must be explicit and unambiguous for it to have

effect otherwise the clause would be construed contra proferentes. It would appear from the clause in this instance that the clause is clear cut and that it means what it says. The fulfillment of the first rule essentially renders the other rules superfluous.

In addition, the Unfair Contract Terms Act of 1977(UCTA) is to the effect that a person cannot by reference to any contractual term given to persons exclude or restrict his liability for death or personal injury arising out of his negligence. This would seem to nullify the effect of the exemption clause and it may depend on the construction offered by the courts. In view of the foregoing, it seems that Whiz Hotel is exempt from any legal liability arising from the accident by virtue of the exemption clause phrased in clear terms and which was signed by Francis.

Husin's dismissal

It is also the case that Whiz Hotel terminated the employment of Husin immediately upon the occurrence of the accident. Though Husin was negligent in the conduct of his job by driving too fast, it is also essential to follow due process as to termination of the contract as the same could amount to a breach of contract which he signed with the hotel at the start of employment and which would form a basis of a civil suit against Whiz Hotel. To this extent, Whiz Hotel is liable to Husin for the unfair dismissal. Francis made a booking with Jaya Travel Agency but the agency failed to confirm the booking thus eliciting the situation of overbooking and causing him not to travel as scheduled. The agency is liable to Francis in damages for breach of contract.

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