

Of business law assignment

Business, Management



There are 5 essential elements to prove the validity of a contract. It would not be a contract if any one of the element is absent. Section 2(a) requires the presence of an offer in a contract. The offer can be made to an individual or to a large number of people. Every offer must have acceptance to form a contract as stipulated in Section 2(b). It is not an acceptance if there are conditions to acceptance. A contract must be a legal agreement between both parties. Therefore, there must be an intention to create legal relations.

An agreement without legal consequences is not a contract but merely a social agreement. Section 26 states that an agreement without consideration is void. A consideration must be in monetary value for it to be valid as stated in Section 2(d). Capacity is the ability to be part of the contract physically, mentally and legally. According to Section 11, any person can be in a contract as long as the person is not a minor which is at the age of 18 and above, sound mind and not disqualified to be in a contract by any laws. Contracts Act 1950 is the main Act. It applies to all kinds of contracts.

Each type of contract has its own specific Act. If any of the contracts is not covered by its own specific Act, it will be governed by the Contracts Act 1950. There are a few types of contracts such as sale of goods contracts governed by Sale of Goods Act 1957, hire- purchase contracts governed by Hire-Purchase Act 1967 and insurance contracts governed by Insurance Act 1996. If a particular subject concerning the law of contract is not covered by the Contracts act or Malaysian decided cases, the English can be applied as long as it suits the local circumstances.

In this case, it is concerning about whether it is an invitation to treat or an offer. An offer is a legal binding between two parties; an offer must be complete, specific and capable of being accepted. An offer must have the term which is agreed by two parties and could not be changed or negotiated in the future unless it is a condition contract. Section 2(a) of the Contracts Acts states: “ when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal. On the other hand, an invitation to treat is just an invitation to a party to make an offer. It is not an offer. When someone wants to accept the invitation, it is an offer from the promissory. On the 14th of February, Lily went to ‘ The Runaway’ to buy a dress. When she was walking to the cashier’s desk to make payment, she wants to change to another cocktail dress worn by a mannequin. She immediately changed her mind for buying the evening gown before making the payment. The manager of The Runaway confronted Lily and told her that she could not buy cocktail dress as she had chosen the evening gown first.

The manager also argued that when Lily picked up the evening gown, it means that she already accepted the offer made by the boutique. Lily refused to pay the evening gown and left the shop. On 18th February, Lily received a letter of demand from ‘ The Runaway’ asking her to pay for the evening gown. In this case, Lily does not need to pay for the evening gown. As when she visited ‘ The Runaway’, the goods displayed is just an invitation of treat and not an offer. After Lily chose the evening gown and wanted to make a payment, it is just an offer from Lily.

Before the cashier accepted the payment, Sara can revoke the offer. In general, an offer can be terminated before the acceptance. It was Lily's authority to choose another better one before the cashier made an acceptance. For this case, it was an invitation to treat unlike an offer assumed by the manager. When the offer is not satisfied with the offer, he or she can reject the offer. Refer to the case law, *Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd. (1953)* the law requires that the sale of certain pharmaceuticals must be carried out under the supervision of a qualified pharmacist.

Boots operated a store where the drugs were displayed on a self-service basis and the customers paid at a cash desk for the good they have selected. A pharmacist was present at the cash desk but not at the shelves where the goods were displayed with a price tag. The Pharmaceutical Society claimed that the law was contravened. The court held that the display of goods in the store was not an offer but an invitation of treat. It was the customer who made the offer and Boots could either accept or reject this offer at the cash desk (in the presence of the qualified pharmacist).

The act of constituting the acceptance is the ringing up of the price on the till by the cashier and at that moment a binding contract of sale is made. This case is likely same with the Lily case. It was an invitation to Lily but when she went to the cashier's desk, it was an offer. For the case *Fisher v Bell (1961)* it is a case concerning the requirements of offer and acceptance on the formation of a contract. The case established that, where goods are displayed is treated as an invitation to treat by the seller, and not an offer.

The offer is instead made when the customer presents the item to the cashier together with payment. For Lily, she had not made the payment, so it was not an offer. In conclusion, the dress was just an invitation of treat, not an offer. Lily did not receive any offer from 'The Runaway'. When the cashier had not received the payment, the cashier could not say that the offer had already been made. Lily can revoke the offer before acceptance. Walking to the cashier's able does not mean that Lily has no right to change to other goods.

Therefore, Lily does not need to pay for the evening gown as both parties have no legal agreement as displayed of goods is just an invitation of treat. Marshall had bought a bouquet of lilies from Ted, the owner of florist. Marshall paid the money to Ted but Ted had no exact change for Marshall. He suggested that Marshall bought the lilies with barter trading, goods for service. Ted asked Marshall to pray for her unhealthy Wife, Zoe for a month and Marshall accepted the barter trade. In this case, it is concerned about whether it is an offer and acceptance in barter trade.

Bartering is when two people trade or exchange one thing for another without using money. Bartering is probably the oldest form of economic activity and has been done even before the invention of money currency. It can involve the exchange of good or services, or both. Usually, no money is exchanged between the parties. But sometimes one party may offer money if there is a significant difference in the value of the items exchanged. Goods or services obtained through bartering must be reported in tax statements. Sometimes the bartering agreement will function as a binding gal contract.

Most of the time a barter deal meets all the legal requirements of a binding contract, including offer and acceptance, consideration, etc. This is especially true if the agreement creates obligations or legal duties for both parties. In order to create a contract, usually each party is required to render something of value in exchange for another item of value. A promise or act on the part of an offeror indicating a willingness to be bound by the terms and conditions contained in an offer. Also, the acknowledgment of the drawer that binds the drawer to the terms of a draft.

For the acceptance, the essential requirement is that the parties had each from a subjective perspective engaged in conduct manifesting their assent. Under this meeting of the minds theory of contract, a party could resist a claim of breach by proving that he had not intended to be bound by the agreement, only if it appeared subjectively that he had so intended. This is unsatisfactory, as one party has no way to know another's undisclosed intentions. One party can only act upon what the other party reveals objectively to be his intent.

Hence, an actual meeting of the minds is not required. Indeed, it has been argued that the "meeting of the minds" idea is entirely a modern error: 19th century judges spoke of "consensus ad idem" which modern teachers have wrongly translated as "meeting of minds" but actually mean "agreement to the same thing". Refer to the case law of offer, *Smith v Hughes* (1871) 10 Q.B. 597. The claimant had purchased a quantity of what he thought was old oats having been shown a sample. In fact the oats

were new oats. The claimant wanted the oats for horse feed and new oats were of no use to him.

The seller was aware of the mistake of the claimant but said nothing. The claimant brought an action against the seller based on mistake and serialization. The court held that both actions failed. The action based on misrepresentation failed as you cannot have silence as a misrepresentation. The defendant had not misled the claimant to believe they were old oats. The action based on mistake failed as the mistake was not as to the fundamental terms of the contract but only a mistake as to quality. Refer to the case law of acceptance, *Lucy v. Khmer*, 196 Va. 493, 84 S. E. 2d 516 (1954). One evening in December 1952 after several drinks, Khmer (D) wrote a contract on a restaurant bill in which he agreed to sell his farm to Lucy (P) for \$50, 000. Khmer later insisted that he had been intoxicated and thought the matter was a joke, not realizing that Lucy had been serious. Lucy claimed that he was not intoxicated and believed that Khmer was also sober. Khmer testified that he was already “ high as a Georgia pine” when he began drinking with Lucy. He claimed that he was merely bluffing to try to get Lucy to admit that he did not actually have \$50, 000.

Lucy brought suit for specific performance when Khmer refused to complete the transaction. The trial court ruled for Khmer holding that Lucy had not established a right to specific performance. In determining whether a party has made a valid offer, the words and actions of the party are interpreted according to a reasonable person standard. If the words or other acts of one of the parties have but one reasonable meaning, his undisclosed intention is

immaterial except when an unreasonable meaning which he attaches to his manifestations is known to the other party.

The court looks to the objective, outward expression of a person and not to their secret and unexpressed subjective intent. The test is whether a reasonable person would conclude that the party's words and actions constituted an offer. In this case Schemer's acts and words could be reasonably interpreted by Lucy as an offer to sell his farm. The parties discussed the matter for over forty minutes, addressed the issue of examination of title, and both Khmer and his wife signed the agreement. Judgment for Khmer reversed and remanded.

The conclusion, the contract between Marshall and Ted is valid as there is an offer and acceptance. Ted suggested the offer of barter trade which was to pray for Tee's wife as service and Marshall accepted the offer by purchasing the lilies. On the 15th February 2011, Marshall went to a pub "Mac Learns" with his best friend, Barney. On their way back home, Barney begged Marshall to loan him some money in order to secure the down payment for the vintage car, Volkswagen which was parked under the used cars centre. However, Marshall refused to lend the money to Barney because he knew that Barney was drunk at that moment.

Barney was mad that moment. In order to make Marshall agree with this contract, Barney threatens to beat Lily, wife of Marshall. Upon hearing this, Marshall felt afraid and threatened, so, he quickly agrees to loan Barney some money the down payment of the car. After that, Marshall realized that he did not have enough money to loan to Barney, so, he was hoping to cancel

the deal he had with Barney. In this case, Marshall has the right to cancel the contract which he made with Barney because this agreement was not achieved by the free consent of Marshall.

This agreement was treated as avoidable contract under Section 19 and 20 because this agreement was caused by coercion which can be defined in Section 15 of the Contracts Act 1950. Normally, coercion can be in the form of actual violence or threatened violence to the person of the contracting party. In this case, it was in the form of threatened violence to Marshall or it can be said that it was a mentally coercion because Barney did not use any weapon to force Marshall form this contract. In fact, Barney intended to cause Marshall to enter into the agreement and Marshall agreed to protect his wife.

According to the Contracts Act 1950, if the case of coercion can be shown to be true, then the contract entered into cannot be considered as a valid agreement. Therefore, Marshall must show that the contract was not a voluntary act. In the related case of *Kananga Ala v National Bank of India Ltd* (1913), the Privy Council explained that the definition of “ Coercion” in Section 15 is limited to n unlawful act done “ with the intention of causing the person to enter into an agreement”. In *Pap On v Luau You Long* (1979), Lord Cascara stated “ there must be coercion of will such that there was no true consent.

In the case of *Gibson & The Sober* (1976), the court decided that serious threats that consisted of threats to burn down a house and damaging expensive paintings should be considered as Duress. In other related case of

Barton v Armstrong (1976) AC 104, the parties (Armstrong & Barton) were the major shareholders in a company. Armstrong, the chairman of the company threatened Barton that he would have him killed if he did not agree to buy Armstrong shares in the company. Barton executed a deed on behalf of the company and carried out the agreement.

There was some evidence that the primary motive in doing so was commercial necessity rather than the threats directed against him. The trial judge held therefore that Barton could not plead duress since he had not established that he would not have entered the agreement without the threats being made. However on appeal the Privy Council held that if Armstrong's threats were one reason for Barton to enter into the contract even if it was not the only reason that he was entitled to relief in equity. The court therefore allowed Barton to avoid the contract.

The court held that the contract was void. The basic principle in this is that the courts will not enforce a contract or alter a term in an existing contract where the party, Marshall, can establish that they were forced or coerced into entering the contract. In reference to the related case, Marshall was allowed to repudiate the loan for Barney because of the reason of coercion. The contract was void because it was related to unlawful and violence behavior. Marshall does not need to feel obliged to loan out to Barney. This case is limited to an unlawful act done by

Marshall and Barney. On the other hand, Barney can sue Marshall for the breach of contract in order to claim some compensation if Barney has sufficient evidences to prove that the coercion is not true. Otherwise, the

contract will be treated as avoidable contract and it will not be a valid agreement between them. Marshall and Lily promised to buy a house in Brogan Height offered by Robin, who works with the developer of Teapot Bertha. However, it is obvious that Marshall and Lily only agreed to buy it if the house is in a condition exactly like what was assured by Robin.

Marshall and Lily believed that the house will be a fully furnished house, ready with an automated gate and air conditioner units in every room yet Robin did not even believe in what he told to them. He knew that the information he gave to them of the property's condition is not a fact. In fact, he did it intentionally to increase his sales. Thus, Robin has committed to fraud by not revealing a fact that he has a duty to communicate as the worker with a developer of Teapot Bertha. Fraud, in definition means the intentional deception, trick or dishonesty made to deprive another party's money, property or a legal right for personal gain.

Fraud is said to only be omitted if there is any deliberate misrepresentation of the product's condition and actual monetary damages occur. It is definitely a crime and violation of civil law where the damaged party can sue the party acting fraudulently for damages. In order to prove fraud, the accuser must demonstrate that the accused had prior knowledge and voluntarily misrepresented the facts. As a general rule, the basic difference between the 'misrepresentation' and 'fraud' is that fraud is someone who makes a representation that he does not himself believe in its truth, whereas in cases of misrepresentation, he may believe that the representation WOULD be true.

Refer to the case law, Norman v. Gibber, 3 Or at 202-03: It is interesting to note the repeated references to fraud in the above quotes. An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact which deceives and is intended to deceive another so that he shall act upon it to his legal injury. It consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him injury.

It is a avoidable contract; it is still valid but can also be void. In this case, it depends on the injury party on wanting to reject the contract or receive the compensation. If Marshall and Lily refuse to buy the house, then the contract is void, so there is no any agreement between both party and for Robin, he also need to pay back the money to Marshall and Lily. If Marshall and Lily want to buy the house and receive the compensation, it means that the contract between them is valid and having legal effect. This case is believed as fraud, as Robin also do not believe in what he presented.

Another ease electrostatic v Jackson & Others [2013] unreported. A group of friends staged a road traffic accident. The perpetrators exchanged incriminating emails at work and the employer of one of the group picked up on the nature of the emails and alerted the police. The insurer investigated and repudiated the claims. All of the fraudsters pleaded guilty and three received suspended prison sentences whilst the other four received community orders. The insurer then commenced civil proceedings to recover the money already paid out.

They were awarded their outlay, investigation costs, exemplary damages, legal costs and interest. Therefore, the contract between Marshall, Lily and Robin is a avoidable contract due to fraud. The plaintiff has to demonstrate that the defendant has prior knowledge and voluntarily misrepresented the facts. With that, Marshall and Lily can either continue the contract or ask for reasonable damages or they can choose to repudiate the contract. It is better for the plaintiff to repudiate the contract unless there are special reasons and relationship between both parties.

If the Marshall and Lily repudiate the contract, then there will be no agreement between them and Robin. Question 5 Marshall entered into an agreement with Mr.. Barstools to paint all the walls inside and outside of the house with a theme of his own. However, a strong earthquake demolished Mr.. Breastwork's entire house during the final stage of work. This situation shows that the contract should be discharged due to frustration of contract. The contract should not be discharged as being performed because Marshall did not complete his work due to the earthquake.

Even though he partially performed the contract, the general rule for performance states that a party must do everything promised in the contract. Part performance is no performance. According to Section 57(2), a contract is frustrated if an event occurs between the contract being agreed and it being performed, which is the fault of neither party, but which renders the contract legally or physically incapable of performance in its originally intended form. In this case, the earthquake is a natural disaster event that could not be predicted by Marshall and Mr..

Barstools which means it is neither both parties' fault since both have nothing to do with the cause of the earthquake. Since the earthquake occurs before Marshall wholly performed the contract, it is said to occur between the contract being agreed and it being performed. Therefore, the contract was deemed to be frustrated as a result from the earthquake. The contract was physically frustrated since Marshall could not completely perform the contract due to a natural disaster and not due to lawful circumstances. The case of *H A. Barney v Trogon Mines Ltd. 1949*) can be used as a reference. On the invasion of Malay by the Japanese forces during the Second World War, the European staff of the defendant company was evacuated from Trogon, Tanning Talking and other places, but the plaintiff elected to remain at Tanning Talking. Thereafter, the plaintiff was not paid any wages. Therefore, the plaintiff sued the defendant company for the breach of contract of service after the war. The defendant contended that due to the Japanese occupation in Opera, the contract of employment between them and plaintiff was discharged by frustration.

The court held that the invasion of Malay by the Japanese frustrated the performance of the contract and there was no breach of contract by the defendant. Another case can also be used as a reference which is the case of *Taylor v Caldwell (1863)*. The defendant agreed to let the plaintiff use the Old Surrey music hall for a concert. However, the hall was destroyed by fire before the day of the performance. The court held that the contract was frustrated. In reference to the cases above, the earthquake frustrated the performance of the contract.

The case of Marshall and Mr.. Barstools and the case of Taylor v Caldwell are similar in terms of destruction of a thing necessary for performance. Instead of music hall, it is Mr.. Breastwork's house that was destroyed. According to Section 57(2), the contract when frustrated becomes void. This also means that the contract was discharged. When a contract becomes void, both Marshall and Mr.. Barstools have no further obligations with each other and therefore they do not have any debts or liability towards one another. Both Mr..

Barstools and Marshall are no longer bound by the contract and they have no responsibilities for each other. The contract becomes void at the time the earthquake occurred. So, Mr.. Barstools had the right to refuse to pay Marshall for his partially performed work. This is because the time when Marshall demand for payment was after the earthquake occurred which was no longer valid. Just like in the case of H. A. Barney v Trogon Mines Ltd. (1949), Marshall could not sue Mr.. Barstools for the breach of contract either.

Besides, since the house was damaged due to the earthquake, the work performed by Marshall was also destroyed. Mr.. Barstools did not receive any benefits from the work performed by Marshall. Therefore, Mr.. Barstools did not have to compensate Marshall. Based on the case of Lily and ' The Runaway, the dress was just an invitation of treat, not an offer. When the cashier had not received the payment, the cashier could not say that the offer had already been made. Lily can revoke the offer before acceptance.

Walking to the cashier's table does not mean that Lily has no right to change to other goods.

Therefore, Lily does not need to pay for the evening gown as both parties have no legal agreement as displayed of goods is just an invitation of treat. The contract between Marshall and Ted is valid as there is an offer and acceptance. Ted suggested the offer of barter trade which was to pray for Tee's wife as service and Marshall accepted the offer by purchasing the lilies. Based on the case of Marshall and Barney, Marshall was allowed to repudiate the loan for Barney because of the reason of coercion. The entrant was void because it was related to unlawful and violence behavior.

Marshall does not need to feel obliged to loan out to Barney. On the other hand, Barney can sue Marshall for the breach of contract in order to claim some compensation if Barney has sufficient evidences to prove that the coercion is not true. Otherwise, the contract will be treated as avoidable contract and it will not be a valid agreement between them. The case of "Marshall and Lily v Robin" was a avoidable contract due to fraud. The plaintiff has to demonstrate that the defendant has prior knowledge and voluntarily misrepresented the facts.

With that, Marshall and Lily can either continue the contract or ask for reasonable damages or they can choose to repudiate the contract. It is better for the plaintiff to repudiate the contract unless there are special reasons and relationship between both parties. If Marshall and Lily repudiate the contract, then there will be no agreement between them and Robin. The contract between Marshall and Mr. Barstools was void. This is because the

contract was frustrated due to the earthquake. Since it was a void contract, Mr. Barstools was not liable to pay any compensation to Marshall.