

# Contract law assignment

Law



Issue “ The mere existence of the core elements of offer, acceptance, and consideration will not guarantee a legally enforceable contract”. Discuss. A contract is an agreement which normally consists of an ‘ offer’ and an ‘ acceptance’ and involves the ‘ meeting of the minds’ or consensus between two or more parties with the intention to create a legally enforceable binding contract. Therefore in this essay, the four core elements needed for the formation of a contract such as offer, acceptance, and consideration and intention to create legal relations will be discussed briefly. Offer

An offer is a proposal whereby the parties are willing to contract on a specific set of terms, made by the offeror with the intention that, if the offer is accepted, the parties will be bound by a contract. An offer may be made to an individual, group, or even to the world at large as seen in the case of *Carlill v. Carbolic Smoke Ball Co.* [1893]. However, offer is distinguished from an invitation to treat which is not an offer but an offer to consider offers. Acceptance of an invitation to treat does not lead to a contract and therefore in *Pharmaceutical Society of Great Britain v.*

*Boots cash Chemists (Southern) Ltd* [1953], the defendant had made an invitation to treat by having his goods display on the shelves and this is not an offer. When the customer picks up goods from the shelf, to the cash register, he makes an offer to buy the goods. Only when the cashier accepts the offer by taking the payment from the customer is when a contract is formed. Offers may be terminated in a number of ways such as Revocation, Rejection, Lapse of time, Failure of a condition or Death.

Acceptance An acceptance converts promise by offeror into an agreement in either oral or writing which must exactly reflect the original offer made. The offeree must intend to accept the offer, else no agreement is made by parties. To be effective, acceptance must be communicated. A mental decision to accept is not sufficient. The general rule is that an agreement is concluded when and where communication of acceptance is received and it has to be absolute and unconditional.

In relation to instantaneous modes of communication such as by telephone, fax or email, and the Electronic Transactions Act 2000, acceptance is deemed to be received when it is given to the offeror even if they do not read it. This applies in relation to where post is used a special rule called the ‘postal rule’ applies. Under this rule, provided the post is contemplated by the parties both expressly or by implication, acceptance occurs, when and where the letter is posted as in the case of *Adams v. Lindsell* [1818].

However when doing business, the ‘Silence’ rule is generally not considered an acceptance, even if the offeror states that it is, unless both parties agreed as in *Felthouse v. Bindley* [1862]. For cross-offers, contract law states that no acceptance is made as it implies a lack of consensus between the parties at the time of making the offers like in the case of, *Tinn v. Hoffman & Co* [1873]. Acceptance in the case of unilateral agreements generally takes the form of performing an act. If an agreement is uncertain in a material respect it cannot constitute a binding contract.

This might occur if the agreement is ‘vague or ambiguous’ or incomplete.

Consideration Consideration is the price that is asked by the promisor in

exchange for their promise. In many jurisdictions consideration is not an essential element of a contract and it is sufficient that parties have reached a binding agreement. However, the common law requires that, for an agreement to be binding, the promisee must provide consideration for the promise they have received. Thus, gratuitous promises are generally not enforceable.

It is for the promisor to stipulate the consideration for his promise either directly or indirectly and is not for the promisee to proffer something and call it consideration. However, provided the consideration stipulated is legal, it can take virtually any form and, importantly, must have value but need not be adequate. The case regarding the nature of such consideration is *Chappell v Nestle* which expressed the view that a ‘peppercorn’ could constitute valuable consideration if stipulated by the promisor, even if the promisor was not fond of peppers and would discard the corn.

Past consideration is not good consideration as consideration must come into existence either with or after the promise. Where the stipulated consideration predates the promise, it will not be considered good consideration. Therefore in, *Roscola v Thomas* [1842], the promise was not binding because the only “consideration” provided for a promise about the soundness of a horse was entering into the original contract which had occurred before the promise was made. Existing Public Duty’ is one situation where no consideration occurs when the promisee is already under a public duty to perform an act and the same act is purported consideration. In *Glassbrook Bros Ltd v. Glamorgan County Council* [1925], the police were providing protection over and above what is considered legally effective and <https://assignbuster.com/contract-law-assignment-essay-samples/>

therefore due to the sufficient consideration the mine owners should honour their promise of payments. The next situation for insufficient consideration where there is no detriment would be ‘Repeating an existing duty owed to the promisor’.

In *Stilk v Myrick* [1809], the remaining crew of sailors did what they were contractually required to do and therefore there was no consideration for the captain’s promise but for *Hartley v. Ponsonby* [1857], there was sufficient consideration since the ship became unseaworthy and Hartley was required to do more than what he was initially expected to do. Part-payment of a debt is not good consideration for the creditor’s promise to forgo the balance. In paying part of the debt the promisee is doing no more than performing an existing contractual duty owed to the promisor.

This rule, that payment of a lesser sum on the day cannot be satisfaction for the whole is known as the rule in *Pinnels case* which was later re-affirmed by the House of Lords in *Foakes v. Beer* [1884]. Promissory Estoppel will allow a promise to be enforced although the promisee has not provided consideration for that promise. This may provide relief to an innocent party. The modern doctrine developed in *Central London Property Trust v. High Trees House Ltd* [1947], Denning J, expressed an obiter dictum that the plaintiff was estopped from going back on his promise to reduce the rental.

There were, however, two important limitations to the doctrine such as, it applied only where the parties were already in an existing contractual relationship and it provided only a defence to a claim made by the promisor in violation of the promise but it could not found a claim. Intention For a

contract to exist, the parties to an agreement must intend to create legal relations. Usually, the presence of consideration will provide evidence of this, but not always, so that this requirement must be separately proved in each case.

The onus is on the party seeking to prove the contract to demonstrate intention and the nature of the relationship between the parties, while relevant, no longer carries with it any presumption about the contractual intention of the parties involved. When assessing each case the courts used to apply certain presumptions to different types of contract, thus, typically, domestic or social contracts were presumed not to have been created with an intention to create legal relations, even though the ‘agreements’ contain promises made by parties and commercial agreements were presumed to have such intention.

However, under the domestic and social agreements, unlike *Balfour v, Balfour* [1912], whose marriage was not broken down at the time of the agreement, in *Merritt v. Merritt* [1970], the couples were having a broken marriage and were not living together at the time they made the agreement. Therefore court agreed that it was an intended legally enforceable agreement and Mr. Merritt was ordered to honour the agreement. These two cases show that the courts look at the seriousness of the consequences to the plaintiff to say that there was an intention to create legal relations.

For Voluntary Agreement, parties do not normally intend legal relations and therefore, in *Teen Ranch Pty Ltd v. Brown* (1995), since Brown volunteered to work with no legal contract of employment signed, the courts held that

there was no evidence of intention to create legal relations and therefore he was not able to claim for any worker's compensation for his injury from the defendant. For Business/Commercial agreements, the parties will normally intend it to be legally binding. In such a case, showing otherwise will be difficult.

But, the test of intention is objective. Where the parties to a commercial agreement do not intend it to be binding they may use what are known as “Honour clauses” to indicate that the agreement is binding in honour only but not legally. For instance in *Rose and Frank Co v. Crompton and Bros Ltd* [1925], although the business agreement between these parties had all the indicators of being a legally binding agreement, due to the honour clause it contained, the courts held that this business agreement was not legally enforceable. Vitiating Factors

In addition to these core elements, there are also vitiating factors such as Formalities, Incapacity, Mistakes, Misrepresentation, Illegality, Duress and Undue influence which may hinder a contract from being legally enforceable. This essay will therefore be concentrating only on six such factors which vitiate a contract by depriving it of its efficacy. First, Incapacity is made up of parties who have limited contractual capacity entitlement such as minors, corporations, bankrupts, mentally unsound and intoxicated. Common law has restricted the capacity of minors to contract. However, there are a number of exceptions to these restrictions.

For corporations, under the Corporations Act, 2001 (Cth) a company is given the legal capacity and powers of an individual. As for Bankrupts, under the

Bankruptcy Act 1966 (Cth), they are still allowed to contract but with a limited contractual capacity. As for a contract with the mentally unsound or intoxicated person, it can be voidable if it can be proven to be not for their necessities or they were suffering from a degree of mental instability or were so drunk that they were incapable of understanding the matter of the contract. Second, Mistakes are categorized as Common, Mutual, Unilateral and Non est factum.

For common mistakes, parties are into an agreement but due to a common error as to some fundamental fact the contract may be void by the common law. A mutual mistake is made by both parties concerning a material fact that is important to the subject matter of the contract and so no genuine agreement is made and the contract is void. For unilateral mistake, it occurs when one party is mistaken about some aspect of the contract but the other is not and for the Non est factum, it is established where a party is mistaken about the nature of the document they are signing.

Therefore for both of these mistakes, no genuine agreement is made and the contract may be void or voidable. Third, Duress is the use of violence to induce contract and this shows lack of voluntary agreement. The types of duress present would be to a person, to goods and to the economic. Duress to a person is an actual or threatened violence to one contracting party or their immediate family or near relatives.

Duress to goods is the wrongful threats to seize, damage or destroy the goods of one contracting party and economic duress is economic pressure beyond normal acceptable commercial practices. The remedy of these types



of duress is that contract can be voidable at option of coerced party. Fourth, Undue influence, where established, will also render a contract voidable. It occurs when there is an inequality of power between the contracting parties which results in the weaker party entering into a contract with the dominant party.

Not all such transactions will result in a remedy but where the influence that exists between the parties can be classified as ‘undue’ the weaker party will have the choice of rescinding the contract. Undue influence may take two forms which is express undue influence where the dominant party acts in such a way as to effectively deprive the other of their free will and presumed undue influence which occurs where the dominant party holds a position of trust or confidence over the weaker party. Fifth, Misrepresentation would be either, Fraudulent, Innocent or Negligent.

Fraudulent misrepresentation is a false statement of fact made knowingly or without belief in its truth, or recklessly, or carelessly as to whether it is true or false, with the intention to induce a person to enter into a contract, and which did induce the contract, causing the innocent party to suffer loss. The remedy for this is in the tort of deceit. For recession and/or damages at the option of the injured party the remedy may be under Part V, Trade Practices Act. Innocent misrepresentation occurs when the maker of a statement of fact believes it to be the truth, than there is a lack of intentional deceit.

Therefore to attend the right in equity to rescind or resist an action for specific performance, the remedies may be under the Misrepresentation Acts in SA and ACT, Part V, Trade Practices Act and Fair Trading legislation. As for

Negligent misrepresentation, this occurs when the maker of the statement innocently but carelessly makes a false statement, which the innocent party relies on and suffers loss. The remedy for this may be under the tort of negligence for damages and the contract may be rescinded. Sixth, Illegality deals with both criminal conduct which is conduct prohibited by statute and conduct regarded as contrary to public policy.

Statutory illegality encompasses contracts directly prohibited by statute, contracts entered into for an illegal purpose, contracts performed illegally and contracts otherwise made void by statute. As for Common law illegality and contracts which are contrary to public policy, encompasses a broader range of conduct, including contracts prejudicial to the administration of justice, contracts promoting corruption in public life, contracts prejudicing the status of marriage, contracts promoting sexual immorality and contracts in restraint of trade.

Where conduct is classified as illegal or contrary to public policy it is generally held to be unenforceable, there are, however, some exceptions to that rule and, in some cases, it may be possible to sever the offending terms and enforce the remainder of the contract. My conclusion based on the facts of this essay, is that the presence of the four core elements with the avoidance of vitiating factors will make a contract to be legally enforceable and binding. Therefore, I am strongly agreeing with the discussion question given above. References

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