

# [Area the proof of a valid offer](https://assignbuster.com/area-the-proof-of-a-valid-offer/)

AREAOF LAW Thefirst part of the scenario is related to the formation and element of contractsi.

e. invitation to treat, offer, acceptance, consideration, counter offer, revocation of an offer, agreement, legal capacity etc. ISSUESThefollowing principle issues are being considered to analyze that whether Will hasformed the contract with BIMSoft (hereafter ‘ BS’) or AutoBIM (hereafter’AB’)BSissues:·        Whether Sean quote is an offer?·        Whether Will have the legal capacity to enter into a contractwith BS or AB and conduct the misrepresentation if does not have legal capacityin the company?·        Whether Will Telephone to BS and place and record theorder over the machine is the acceptance and resultantly Contract is concluded?·        Will Telephone to Secretory and withdraw the order is revokedof acceptance?·        Whether acceptance is revoked as Sean has not yet listenedto the phone recording? ABissues:·        Whether AB advert by email to Will is constitutes anoffer, advertisement or invitation to treat?·        Whether Will telephone to AB and places an order is the offeror acceptance or rejection of the offer and if acceptance was made then whetherWill formed the contract with AB?·        Is there any counter claim can be raised from AB against Will? RULES; Contract formation, AContract will come into existence if an agreement has been reached.

The testwhether an agreement has been reached is depends on external evidence, thecourt will consider the circumstances of case when a reasonable man would thinkthat an agreement has been reached and a contract was created1 AContract is an exchange of the promises that constitutes a legally bindingagreement between individuals or corporate entities or a mixture of both. The contractwill be concluded when an offer made by one party (the offeror2) and accepted by another(the offeree), it will indicate that offeror willingness to enter into acontract on certain terms without further negotiations. There must be the meetingof minds (consensus in idem) on all relevant points in each contract. Inthe formation of contract, the basic principal is that there must be an offer, followed by an acceptance meeting the terms of the offer.

A Contract can bemade verbally, In writing or by conduct but in all cases, the proof of a validoffer and acceptance must exist, generally, the England, Wales and Scotlandcourts does not require contracts to be in writing. Offer: Anoffer must be communicated to the other party. An offer is a proposal from oneparty with the intention to legally bond with definite terms like if it isaccepted legally binding contract will be concluded3. Anoffer must be illustrious from an invitation to treat4 which is mainly anexpression of willingness to negotiate. An invitation to treat is not an offerand cannot be accepted in law as the invitation to treat can be described as aninvitation to enter into negotiations. The offer can be accepted or rejected5. An advertisement inwebsite, newspaper, a magazine or on TV also comprise an invitation to Treat6     Acceptance; Acceptance of theoffer must be communicated and is only valid if it is communicated by a personwho has the authority to do so7.

The offeree isresponsible for ensuring that acceptance is communicated to the offeror8.  The acceptance must be unconditional and tobe relevant to the strict terms of the offer. An acceptance will be effectiveonly when it has been communicated to the offeror. The general rule ofacceptance is offer will be accepted when received by the offeror means whenacceptance is intimated9Atelephone is clearly instantaneous communication when you get to reply to yourtelephone calls, most probably voice mail message is the message that i amaccepting the offer, communication the person phone they have blinking redlight but some time voice not listen to for a day or two, this kind to beeffective communication. Revocation: The offer can berevoked at any time before acceptance to be made.

The rule applies even whenofferor has promised to keep the offer after open for a particular period oftime10. The renovation of anoffer must be communicated to the offeree11. Counteroffer: The counteroffer will occur when the offeree attempts to vary the terms of the offer12. counter offer willdestroy the original offer  Informationof Request (inquiry): Somerequest are required some further information, the offer will not be rejectedand also will not be treated counter offer, in case an offer will be remainopen until will be accepted. APPLICATION:  Ø Whether Sean quote was offer? In oneaspect Sean, quoted price £10, 500 can be considered as an offer however, as pergiven scenario Sean price is including the installation and appropriatetraining, therefore, court may consider that appropriate training is coveringthe aspects of certainty, therefore, Sean quote may be proved invitation totreat not the offer. Thiscan be happen when Sean will raise the counter claim against Will and claimedthat Will has concluded the contract with BS as he has accepted his offer and placedthe order over the recording machine. Willcan defend such statement in the court that as the offer condition for theappropriate training was not clearly demonstrated by Sean therefore, he again raisedthe inquiry at the same time whether appropriate staff training means trainingof site staff up to six months is included in the price £10, 500, hence contractis not yet reached.

Ø Whether Will have the legal capacity to enter intoContract with BS or AB and conduct the misrepresentation if does not have legalcapacity in company  In lieuof given scenario legal capacity of Will is also one of the questions here, thelegal authority of Will to enter into contract on behalf of the company is notclearly outlined which court may can also consider and declared the contract setaside the contract if formed. So, in this case BS and AB may be in the positionto raise the counter claim that Will has made the misrepresentation as Will is notlegally enter into contract on behalf of the company as his name was not’articles of association; and ‘ memorandum of association.  Ø  Whether ABadvert by email to Will is constitutes an offer, advertisement or invitation totreat.  Advertisementemail can be an offer13 or invitation to treat14 as well, Court will lookinto facts that either AB advertisement was the invitation to treat or ABinvite Will to make them offer, considering the given scenario, AB has giventhe invitation to treat to the potential contractors rather than offer, and itwas up to the contractor who wants to offer the AB for acceptance  Ø Whether Will telephone to AB and places an order was offeror acceptance or revoked of offer and if acceptance was made then whetherContract formed with AB? Initially, Will has given the offer to AB for the amount of £9, 000 which converted to rejectionafter the discussion with the technical staff as price is reached £12000 (mostprobably due to training of staff) as offer is rejected resultantly, Will hasnot concluded the contract with AB.  However, AB can make the counter claim that Will has accepted our offer and placed theorder at a price £9, 000, therefore, a contract is concluded. Willmaybe defend his position in the court that terms of offer were not certainly outlinedtherefore, I have changed my mind and rejected the offer, therefore the contractis not concluded and obviously court will look carefully the evidence andclarity of intention of both parties and distinguish whether AB advert wasoffer or invitation to treat15and if it was offer of AB(apparent here) then either Will has made the acceptance or not and this isbecause16:·        Will reserve his position or have the option of rejecting any offer following invitation to treatof AB·        It is commercially not justified that AB under anobligation to supply the software all those contractors who replied.

Ø Whether Will Telephone to BS and place and record theorder over the machine was the acceptance and resultantly Contract wasconcluded? It isappears that Will telephone to BS is instantaneous communication of acceptance, the general principle that instantaneous communication is being effective uponreceipt17, but considering thescenario Will called to BM is not the valid acceptance although it is also notrejection as Will raised the inquiry nor rejection or the counter offer, as perthe circumstances it is still open offer which still to be accepted after theclarification of inquiry.  Ø Will Telephone to Secretory and withdraw the order wasrevoked of acceptance? Will acceptance with the inquiry hasnot yet reached to offeror (Sean) and before listen the recording Will haswithdrawn the acceptance which was given with the inquiry, therefore, acceptanceis revoked and contract has not yet reached with BM. Ø Is there counter claim from BS to Will keeping in mindacceptance was made by Will after recording the message on machine. Court may apply the case18 however BS can make thecounter claim and may defend that in their case acceptance has been madetherefore, contract has been concluded. Will may defend his case that offer isstill open however court will distinguish either it was counter offer orinquiry     CONCLUSION: As regards the scenario at hand, it is demonstrated thatWill placing order over to recording machine is an inquiry nor the acceptanceof offer, and offer was still open for acceptance. It is also rule that offer, accepted should be reached to offeror as it is not yet listened by the Sean therefore, offer acceptance was not made and resultantly contract is not concluded, however as aforementioned BM can make the counter claim that as Will hasacceptance the offer, as he has recorded the audio message within the workinghours and upon received contract has been reached. In the second scenario of AB, it’s straightforward that AB was invitation to treat and did not made offer whichwas rejected by Will therefore, no contract is formed as there is no validoffer. So, in conclusion if no acceptance established mean no contract wasreached which can be legally enforceable.

However court will look the evidence of both parties and will distinguewhether offer is still open or acceptance as been made.   Advise Quotation 2Area of Law: Vicarious liability (Due to negligence one employee) , Contributory negligence, Tortious remedies  IssueØ  Sara Claim against VishnuEmployer. Ø  Whether Vishu is theemployee of BSØ  Whether Sara is eligible toclaim the liability against BSØ  Whether Sara can claim theliability against the hospital due to negligence or special care as she wasalready injured. Ø  The Doctor advises Sara isunfit for the three months, in this case either Sara liability will exceed morethan three months. Therefore, how much and what is way of compensation forSara, especially when both parties will be committed to tort.

Ø  Whether Sara also gettingsome benefit from the football team as a professional member, can Sara claimsuch charges from the hospital and BS Ø  Sara Also school studentwhen she has paid the school semester fee whether Sara is also liable to getsuch charges. Rule: With regard to ‘ vicarious liability’ in practice, aperson is liable for his wrongdoing acts but in certain cases, a person couldbe liable for wrongful acts of another. Mostly it is happening in employmentsituations where an employer is vicariously liable for wrongdoing acts of hisemployees if proved that he cause the injury to another person. The otherperson can be another employee of the same employer or it can be an also differentperson. In order to determine either employer is vicarious liable it isessential to establish that employee was committed in tort, and elements ofvicarious liability are found at the time of wrongful acts of employee, thereis no need to reflect that employer itself was at fault to be vicariouslyliable. Mostly employee tort found in the negligence’s cases but employer is liablefor another kind of tort as well, for example an employee harassment by another19. The UK Supreme Court has established the close connectiontest in the case20 and the traditional tests of vicarious liability havebeen further modified through further cases21.

In case22 Supreme Court has adopted two stages approached todetermine the vicarious liability In current scenario, Sara has to prove the following testto succeed in his claim which ware established by the court in case23  APPLICATION: Stage 1 – Essential Elements of the RelationshipIn order to determine whether a case match the first stage of thetest the Supreme Court applied the five policy criteria(i)           the employer is more likely to have the means tocompensate the victim than the employee and can be expected to have insuredagainst that liability; (ii)          the tort will have been committed as a result of an activitybeing taken by the employee on behalf of the employer;(iii)         the employees activity is likely to be part of thebusiness activity of the employer; (iv) the employer, by employing the employeeto carry on the activity will have created the risk of the tort committed bythe employee; (iv)        the employer, by employing the employee tocarry on theactivity will have created the risk of the tort committed by the employee(v)the employee will, to a greater or lesser degree, have been under thecontrol of the employerStage 2 – Connection between the tort and the relationship betweenthe defendant and the tortfeasor The claimant must establish that the employee was acting duringthe course of employment when committed to tort as established in VariousClaimant. Whether Sara can claim the vicariousliability against Vishnu or his Employer (BS)? In accordance of scenario in hand, the employer and employeerelationship has been established as Vishnu is the employee of BS and visitedthe premises of W for the installation of software on behalf of employerbusiness activity and create the risk and committed the tort and albeit underthe control of Employer and cause the injury to Sara rise to vicariousliability.  BS can also make the counter claim and can defend the case byinvolving the Novus Actus Interveniens and resultantly can be liable only forthe injury caused due to negligence of his employee nor further damages causedby the hospital staff.   Whether Sara can claim the vicariousliability against Will? It is not definite that Sara in position to claim against will asWill does not know the following 1.   A contract has been reached with BS and 2.   BS engineering team is coming to visit hispremises. Whether Sara can claim the vicarious liability against Hospital? In regard of scenario, Sara may also claim against the hospital, against the ambulance negligence of duty of care but in case Hospital may alsomake the counter claim that test for the remoteness of damage are notfulfilled.

i. e reasonable foreseeability test24  CONCLUSION Following are the advice to Sara to establish his legal claim 1.   Sara can claim the liability against Vishnuand his employer but Court will not compensate the full liability as BS canmake the counter claim due to broken the injuries claim. 2.   Sara can also claim against hospital due tonegligence of ambulance driver but beware for counter claim by the hospitalwhen remoteness of damages test to be applied.

Tort Remedies, It is seems that Sara will be able to prove that she is liable forthe compensation for her injury and loss in shape of money25, thegeneral principal that the victim to be returned prior to loss or injury whichis called restitution in integrum26 . Sarapecuniary loss27will include for the loss of earning covering the gross income which she willearned when she was not injured28 for theduration of three month or may be more subject to final declaration of courtdepending on evidence which may include the following loss of earning29  1.   Earning from the football team.

2.   Potential Loss of future earing capacity ifwill be unfit for football playing in the future.   3.   Loss of School semester fees4.   Hospital expenses if she treated in privatehospital 5.   Job earning if school semester is not missedAndunder the non-pecuniary loss, she may deserve the claim damages for the pain30 and suffering, amenity loss31. However, Sara cannot recover the loss from the all the parties, like BS, hospital and any other parties which may contributory32 (effecton quantum) after the applicable deduction33 likeinsurance34and other social benefits.

35 But It isfinally depand on court as not pecuniary may be declined by the court36and willbe limited to physical and financial losses which may further extended to rangeof exception37. BibliographyBooksTaylorR & Taylor D, Contract Law Direction (6th edn, Oxford 2017)StoneR, The Modern Law of Contract (12th edn, Routledge 2017)McKendrickE, Contract Law (11th edn, Palgrave Macmillan 2015)ArvindT, Contract Law (1st  edn, Oxford 2017)ElliottC, Quinn F, Contract Law (11th edn, Pearson 2017)RichardsP, Law of Contract (13th edn, Pearson 2017)HougT & Fitchen K, Optimize Contract Law (2nd edn, Routledge 2017)StoneR & Devenney J, Text, cases and materials on Contract Law (4th edn, Routledge 2017)FafinskiS&Finch Emily, Contract Law ( 4th edn, Pearson 2015)TurnerC, Key cases Contract Law (2nd edn, Hodder Education, 2011)GilikerP, Tort (5th edn, Sweet& Maxwell, 2014)FafunskiS, Finch E, Tort Law (6th edn, Pearson 2017)HarpwoodV, Principal of Tort Law(4th edn, Cavendish Publishing 2000)BerminghamV & Brennan C, Tort Law Direction (5th edn, Oxford 2016)OoleJ, Casebook on Contract Law (12th edn, Oxford 2014)Strong& Williams, Complete Tort Law: Text, Cases, and Materials (2ndedn, Oxford 2011)QuinnF, Tort Law ( 1st edn, Pearson 2017)TurnerC, Key Facts Key Cases Tort Law (1st edn, Pearson 2014)OxfordDictionary of law (5th edn, Oxford 2003)TurnerC, Unlocking contract law (4th edn, Hodder Education)ARTICLESNolan, D, offer and acceptance in the electronic age in Contractformation and parties(Burrows & Peels eds, oxford, 2010) 61. 1Smith V Hughes 1871 LR 6 QB 597 , Forddell Estates LTD v Delitte 2014 CSOH55 (Scotland); Bieber V Teathers Ltd 2014 EWHC 4205 (England and Wales) 2 CatherineElliott and Frances Quinn, Contract Law (11th edn, Pearson 2017) 49.  The person making an offer is called theofferor, and the person to whom the offer. G.

H. Treitel, The Law of Contract(Sweet & Maxwell, London, 2003) 8.), See Cambridge dictionary definition ofOfferor (‘ a person, company, or organization that offers to buy something fromanother person, company, or organization’), Offeree (a person or anorganization that is offered something, especially the opportunity to buy orsell shares’).

3 BiggvBoyd-Gibbins Ltd 1971 1 WLR 913; 1971 2 All ER 183, Richard Taylor & DamianTaylor, Contract Law Direction (6th edn, Oxford 2017) 23, , Catherine Elliottand Frances Quinn, Contract Law ( 11th edn, Pearson 2017) 124 Graingerv Gough 1896 AC 325; Carlill v Carbolic Smoke Ball Company 1892 2 QB 484; Partridge v Crittenden 1968 1 WLR 1204; 1968 2 All ER 421; Clifton vPalumbo 1944 2 All ER 497; Harvey v Facey1893 AC 552; Spencer v Harding(1870) LR 5 CP 561;  Richard Taylor Taylor, Contract Law Direction (6th edn, Oxford 2017) 23, Richard Stoneand James Devenney, The Modern Law of Contract (12th edn, Routledge 2017) 35, KathrinKuhnel-Fitchen and Tracey Hough, Optimize Contract Law (2nd edn, Routledge 2017)6, Catherine Elliott and Frances Quinn, Contract Law ( 11th edn, Pearson 2017) 49, TT Arvind, Contract Law (1st edn, Oxford 2017) 54, 574, Paul Richards, Law of Contract (13th edn, Pearson 2017) 19,  Richard Stone & JamesDevenney J, Text, cases and materials on Contract Law (4th edn, Routledge 2017), Ewan McKendrick, Contract Law (11th edn, Palgrave  Macmillan 2015) 26. Fafinski SEmily, Contract Law ( 4th edn, Pearson 2015) 5. 5  Harvey v Facey 1853 AC 552 ( Harvey(H) senta telegraph to Facey(F) saying; ‘ will you sell me bumper Hall pen (BHP)telegraph lowest cash price, F replied’ lowest price for BHP is £900′ H replied’ we agree to pay £900 for BHP’. F would not go ahead Hbrought an action against him, H action failed. The court held that F reply wasresponse to a request for information and not an offer. He was simplystipulating the price he would sell at if he decided to sell. 6See the case Let us consider Partridge v Crittenden 1968 1 WLR 1204 (Anadvertisement was placed in a magazine advertising bramble finches for sale at25 shillings each.

The defendant was charged under the protection of Birds Act1954 for offering live wild birds for sale Held: The advertisement was aninvitation to treat, so the defendant was not guilty. He had not ‘ offered’ wildbirds for sale. See other cases; Harris v Nickerson 1873 ; Carlill v CarbolicSmoke Ball Co 1893 1 QB 256 7 Powellv Lee (1908) 99 LT 2848 9Entores Lts V Miles Far East Corp 19552 All E. r. 493, Brinkibon Ltd V StahagStahl1982 1 All E. r 293          10 Payne v Cave 1789 and Routledge vGrant (1828), 11Byrne v Van Tienhoven 918800 5 CPD 344 (The defendant posted a letter inCardiff on 1 October offering to sell tinplate to the plaintiffs in New York.

The offer was received on 11 October and immediately accepted by telegram. On 8October the defendants posted a letter of revocation which arrived with theplaintiff on 20 October. HELD: he contract came into force when the telegramwas sent on 11 October. The letter of revocation could only be effective uponreceipt. The date of receipt was 20 October. This date fell after acceptancehad taken place. Byrne v Van Tienhoven(1880) 5 CPD 344, Dickenson v Dodds(1876)2 Ch D 463, Routledgev Grant (1828) 4 Bing 653, Erringtonv Errington and Woods1952 1 KB 290.

12Hyde v Wrench 1840 49 ER 132( Case precedent) 13Lefkowitz V Greatminneapolis Surplus Store 1957 86 NW 2d 689 (as advertisementfor three fur coats for $ 1 each, first come, first served was held to be anoffer. Whilst US law is obviously not binding in England and Wales, it is oftenused as an example of how a case might be decided in England and Wales)14 Partridgev Crittenden 1968 2 All ER 421, HC QBD15Gibson V MANCHESTER City Concil1979 1 WLR 29416Modern Law of Contract 17Modern law of contract18Stevenson, Jacques and Co v Mclean 19 Majrowskiv Guy’s and St Thomas’ NHS Trust 2006 UKHL 3420Lister v Hall Hesley Hall Ltd 21 FourSeasons Holdings Incorporated v Brownlie 2017 UKSC 80; MorrisonSupermarkets plc 2016 UKSC 11; Cox v Ministry of Justice 2016UKSC 10; Various Claimants v Institute of the Brothers of the ChristianSchools 2012 UKSC 56; E v EnglishProvince of Our Lady of Charity 2012 EWCA Civ 938; Viasystems(Tyneside) Ltd v Thermal Transfer (Northern) Ltd 2005 EWCA Civ 1151; 22 Cox vMinistry of Justice 2016 UKSC 1023 Cox vMinistry of Justice 2016 UKSC 1024 RePolemis & Furness, Withy & Co Ltd 1921 3 KB 56025 Livingstonev The Rawyards Coal Company (1880) HL26Livingstone v Rawyards Coal Co (1880) 5 App Cas 25, 39 (Lord Blackburn). Winfield & Jolowicz (n38) 69027 AB v South-West Water 1993 QB 50728 BritishTransport Commission v Gourley (n 120)29 Doylev Wallace (1998) CA30 Wise v Kaye 1962 1 QB 63831 H West and Son Ltd. vShepherd 1964 AC 32632 Froomv Butcher 1975 CA, Fitzgerald v Lane 1988 HL33 Donnellyv Joyce 1973 CA34 Bradburn v GW Rly (1874) LR Ex 135 Provisions of Social Security (Recovery of Benefits) 1997apply36Farley v Skinner 2001 37 RichardTaylor & Damian Taylor, Contract Law Direction (6th edn, Oxford 2017) 305