

Area the proof of a
valid offer



**ASSIGN
BUSTER**

AREA OF LAW The first part of the scenario is related to the formation and element of contracts.

e. invitation to treat, offer, acceptance, consideration, counter offer, revocation of an offer, agreement, legal capacity etc. ISSUE The following principle issues are being considered to analyze that whether Will has formed the contract with BIMSoft (hereafter 'BS') or AutoBIM

(hereafter 'AB') BS issues: · Whether Sean quote is an offer? · Whether Will have the legal capacity to enter into a contract with BS or AB and conduct the misrepresentation if does not have legal capacity in the company? · Whether Will Telephone to BS and place and record the order over the machine is the acceptance and resultantly Contract is concluded?

· Will Telephone to Secretary and withdraw the order is revoked of acceptance? · Whether acceptance is revoked as Sean has not yet listened to the phone recording? AB issues: · Whether AB advert by email to Will is constitutes an offer, 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 whether Will formed the contract with AB? · Is there any counter claim can be raised from AB against Will? RULES; Contract formation, A Contract will come into existence if an agreement has been reached.

The test whether an agreement has been reached is depends on external evidence, the court will consider the circumstances of case when a reasonable man would think that an agreement has been reached and a contract was created. A Contract is an exchange of the promises that constitutes a legally binding agreement between individuals or corporate

entities or a mixture of both. The contract will 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 a contract on certain terms without further negotiations. There must be the meeting of minds (consensus in idem) on all relevant points in each contract. In the formation of contract, the basic principle is that there must be an offer, followed by an acceptance meeting the terms of the offer.

A Contract can be made verbally, in writing or by conduct but in all cases, the proof of a valid offer and acceptance must exist, generally, the England, Wales and Scotland courts do not require contracts to be in writing. Offer: An offer must be communicated to the other party. An offer is a proposal from one party with the intention to legally bind with definite terms like if it is accepted a legally binding contract will be concluded³. An offer must be distinguished from an invitation to treat⁴ which is mainly an expression of willingness to negotiate. An invitation to treat is not an offer and cannot be accepted in law as the invitation to treat can be described as an invitation to enter into negotiations. The offer can be accepted or rejected⁵. An advertisement in website, newspaper, a magazine or on TV also comprise an invitation to Treat⁶ Acceptance; Acceptance of the offer must be communicated and is only valid if it is communicated by a person who has the authority to do so⁷.

The offeree is responsible for ensuring that acceptance is communicated to the offeror⁸. The acceptance must be unconditional and to be relevant to the strict terms of the offer. An acceptance will be effective only when it has been communicated to the offeror. The general rule of acceptance is offer will be

accepted when received by the offeror means when acceptance is intimated⁹ A telephone is clearly instantaneous communication when you get to reply to your telephone calls, most probably voice mail message is the message that I am accepting the offer, communication the person phone they have blinking red light but some time voice not listen to for a day or two, this kind to be effective communication. Revocation: The offer can be revoked at any time before acceptance to be made.

The rule applies even when offeror has promised to keep the offer after open for a particular period of time¹⁰. The renovation of an offer must be communicated to the offeree¹¹. Counteroffer: The counteroffer will occur when the offeree attempts to vary the terms of the offer¹². counter offer will destroy the original offer Information of Request (inquiry): Some request are required some further information, the offer will not be rejected and also will not be treated counter offer, in case an offer will be remain open until will be accepted. APPLICATION: Ø Whether Sean quote was offer? In one aspect Sean, quoted price £10, 500 can be considered as an offer however, as per given scenario Sean price is including the installation and appropriate training, therefore, court may consider that appropriate training is covering the aspects of certainty, therefore, Sean quote may be proved invitation to treat not the offer. This can be happen when Sean will raise the counter claim against Will and claimed that Will has concluded the contract with BS as he has accepted his offer and placed the order over the recording machine. Will can defend such statement in the court that as the offer condition for the appropriate training was not clearly demonstrated by Sean therefore, he again raised the inquiry at the same time whether appropriate

staff training means training of site staff up to six months is included in the price £10, 500, hence contract is not yet reached.

Ø Whether Will have the legal capacity to enter into Contract with BS or AB and conduct the misrepresentation if does not have legal capacity in company In lieu of given scenario legal capacity of Will is also one of the questions here, the legal authority of Will to enter into contract on behalf of the company is not clearly outlined which court may also consider and declared the contract set aside the contract if formed. So, in this case BS and AB may be in the position to raise the counter claim that Will has made the misrepresentation as Will is not legally enter into contract on behalf of the company as his name was not in articles of association; and ' memorandum of association. Ø Whether AB advert by email to Will is constitutes an offer, advertisement or invitation to treat. Advertisement email can be an offer¹³ or invitation to treat¹⁴ as well, Court will look into facts that either AB advertisement was the invitation to treat or AB invite Will to make them offer, considering the given scenario, AB has given the invitation to treat to the potential contractors rather than offer, and it was up to the contractor who wants to offer the AB for acceptance Ø Whether Will telephone to AB and places an order was offer or acceptance or revoked of offer and if acceptance was made then whether Contract formed with AB? Initially, Will has given the offer to AB for the amount of £9, 000 which converted to rejection after the discussion with the technical staff as price is reached £12000 (most probably due to training of staff) as offer is rejected resultantly, Will has not concluded the contract with AB. However, AB can make the counter claim that Will has accepted our offer and placed the order at a price £9, 000, therefore, a

contract is concluded. Will maybe defend his position in the court that terms of offer were not certainly outlined therefore, I have changed my mind and rejected the offer, therefore the contract is not concluded and obviously court will look carefully the evidence and clarity of intention of both parties and distinguish whether AB advert was offer or invitation to treat¹⁵ and if it was offer of AB (apparent here) then either Will has made the acceptance or not and this is because¹⁶: Will reserve his position or have the option of rejecting any offer following invitation to treat of AB. It is commercially not justified that AB under an obligation to supply the software all those contractors who replied.

Ø Whether Will Telephone to BS and place and record the order over the machine was the acceptance and resultantly Contract was concluded? It appears that Will telephone to BS is instantaneous communication of acceptance, the general principle that instantaneous communication is being effective upon receipt¹⁷, but considering the scenario Will called to BM is not the valid acceptance although it is also not rejection as Will raised the inquiry nor rejection or the counter offer, as per the circumstances it is still open offer which still to be accepted after the clarification of inquiry. Ø Will Telephone to Secretary and withdraw the order was revoked of acceptance? Will acceptance with the inquiry has not yet reached to offeror (Sean) and before listen the recording Will has withdrawn the acceptance which was given with the inquiry, therefore, acceptance is revoked and contract has not yet reached with BM. Ø Is there counter claim from BS to Will keeping in mind acceptance was made by Will after recording the message on machine. Court may apply the case¹⁸ however BS can make the counter claim and

may defend that in their case acceptance has been made therefore, contract has been concluded. Will may defend his case that offer is still open however court will distinguish either it was counter offer or inquiry. CONCLUSION: As regards the scenario at hand, it is demonstrated that Will placing order over to recording machine is an inquiry nor the acceptance of offer, and offer was still open for acceptance. It is also a 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 has acceptance the offer, as he has recorded the audio message within the working hours 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 make offer which was rejected by Will therefore, no contract is formed as there is no valid offer. So, in conclusion if no acceptance established mean no contract was reached which can be legally enforceable.

However court will look the evidence of both parties and will distinguish whether offer is still open or acceptance as been made. Advise Quotation 2 Area of Law: Vicarious liability (Due to negligence one employee), Contributory negligence, Tortious remedies Issue Ø Sara Claim against Vishnu Employer. Ø Whether Vishu is the employee of BS Ø Whether Sara is eligible to claim the liability against BS Ø Whether Sara can claim the liability against the hospital due to negligence or special care as she was already injured. Ø The Doctor advises Sara is unfit for the three months, in this case either Sara liability will exceed more than three months. Therefore, how

much and what is way of compensation for Sara, especially when both parties will be committed to tort.

Ø Whether Sara also getting some benefit from the football team as a professional member, can Sara claim such charges from the hospital and BS

Ø Sara Also school student when she has paid the school semester fee whether Sara is also liable to get such charges. Rule: With regard to ‘vicarious liability’ in practice, a person is liable for his wrongdoing acts but in certain cases, a person could be liable for wrongful acts of another. Mostly it is happening in employment situations where an employer is vicariously liable for wrongdoing acts of his employees if proved that he cause the injury to another person. The other person can be another employee of the same employer or it can be an also different person. In order to determine either employer is vicariously liable it is essential to establish that employee was committed in tort, and elements of vicarious liability are found at the time of wrongful acts of employee, there is no need to reflect that employer itself was at fault to be vicariously liable. Mostly employee tort found in the negligence’s cases but employer is liable for another kind of tort as well, for example an employee harassment by another¹⁹. The UK Supreme Court has established the close connection test in the case²⁰ and the traditional tests of vicarious liability have been further modified through further cases²¹.

In case²² Supreme Court has adopted two stages approached to determine the vicarious liability In current scenario, Sara has to prove the following test to succeed in his claim which were established by the court in case²³

APPLICATION: Stage 1 – Essential Elements of the Relationship In order to determine whether a case match the first stage of the test the Supreme

Court applied the five policy criteria (i) the employer is more likely to have the means to compensate the victim than the employee and can be expected to have insured against that liability; (ii) the tort will have been committed as a result of an activity being taken by the employee on behalf of the employer; (iii) the employee's activity is likely to be part of the business activity of the employer; (iv) the employer, by employing the employee to carry on the activity will have created the risk of the tort committed by the employee; (v) the employer, by employing the employee to carry on the activity 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 the control of the employer.

Stage 2 – Connection between the tort and the relationship between the defendant and the tortfeasor. The claimant must establish that the employee was acting during the course of employment when committed to tort as established in Various Claimant. Whether Sara can claim the vicarious liability against Vishnu or his Employer (BS)? In accordance of scenario in hand, the employer and employee relationship has been established as Vishnu is the employee of BS and visited the premises of W for the installation of software on behalf of employer business activity and create the risk and committed the tort and albeit under the control of Employer and cause the injury to Sara rise to vicarious liability. BS can also make the counter claim and can defend the case by involving the Novus Actus Interveniens and resultantly can be liable only for the injury caused due to negligence of his employee nor further damages caused by the hospital staff. Whether Sara can claim the vicarious liability against Will? It is not definite that Sara in position to claim against will as Will does not know the following 1. A contract has been

reached with BS and 2. BS engineering team is coming to visit his premises. 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 also make the counter claim that test for the remoteness of damage are not fulfilled.

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

Tort Remedies, It seems that Sara will be able to prove that she is liable for the compensation for her injury and loss in shape of money²⁵, the general principle that the victim to be returned prior to loss or injury which is called restitution in integrum²⁶. Sara pecuniary loss²⁷ will include for the loss of earning covering the gross income which she will earn when she was not injured²⁸ for the duration of three months or may be more subject to final declaration of court depending on evidence which may include the following loss of earning²⁹

1. Earning from the football team.
 2. Potential Loss of future earning capacity if will be unfit for football playing in the future.
 3. Loss of School semester fees
 4. Hospital expenses if she treated in private hospital
 5. Job earning if school semester is not missed
- And under 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 depend 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 , Fordell Estates LTD v Delitte 2014 CSOH55 (Scotland); Bieber V Teathers Ltd 2014 EWHC 4205 (England and Wales) 2 Catherine Elliott and Frances Quinn, Contract Law (11th edn, Pearson 2017) 49. The person making an offer is called the offeror, and the person to whom the offer. G.

H. Treitel, The Law of Contract (Sweet & Maxwell, London, 2003) 8.), See Cambridge dictionary definition of Offeror (' a person, company, or organization that offers to buy something from another person, company, or organization'), Offeree (a person or an organization that is offered something, especially the opportunity to buy or sell shares').

3 Bigg v Boyd-Gibbins Ltd 1971 1 WLR 913; 1971 2 All ER 183, Richard Taylor & Damian Taylor, Contract Law Direction (6th edn, Oxford 2017) 23, , Catherine Elliott and Frances Quinn, Contract Law (11th edn, Pearson 2017) 124 Grainger v 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 v Palumbo 1944 2 All ER 497; Harvey v Facey 1893 AC 552; Spencer v Harding (1870) LR 5 CP 561; Richard Taylor Taylor, Contract Law Direction (6th edn, Oxford 2017) 23, Richard Stone and James Devenney, The Modern Law of Contract (12th edn, Routledge 2017) 35, Kathrin Kuhnel-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 & James Devenney J, Text, cases and materials on Contract Law (4th edn, Routledge 2017), Ewan McKendrick, Contract Law (11th edn, Palgrave <https://assignbuster.com/area-the-proof-of-a-valid-offer/>

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 1952 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, Routledge v Grant (1828) 4 Bing 653, Errington v Errington and Woods 1952 1 KB 290.

12 Hyde v Wrench 1840 49 ER 132(Case precedent) 13 Lefkowitz v Great Minneapolis Surplus Store 1957 86 NW 2d 689 (as advertisement for three fur coats for \$ 1 each, first come, first served was held to be an offer. Whilst US law is obviously not binding in England and Wales, it is often used as an example of how a case might be decided in England and Wales) 14 Partridge v Crittenden 1968 2 All ER 421, HC QB 15 Gibson v MANCHESTER City Council 1979 1 WLR 294 16 Modern Law of Contract 17 Modern law of contract 18 Stevenson, Jacques and Co v Mclean 19 Majrowski v Guy's and St Thomas' NHS Trust 2006 UKHL 34 20 Lister v Hall Hesley Hall Ltd 21 Four Seasons Holdings Incorporated v Brownlie 2017 UKSC 80; Morrison Supermarkets plc 2016 UKSC 11; Cox v Ministry of Justice 2016 UKSC 10; Various Claimants v Institute of the Brothers of the Christian Schools 2012 UKSC 56; E v English Province of Our Lady of Charity 2012 EWCA Civ 938; Viasystems(Tyneside) Ltd v Thermal Transfer (Northern) Ltd 2005 EWCA Civ 1151; 22 Cox v Ministry of Justice 2016 UKSC 10 23 Cox v Ministry of Justice 2016 UKSC 10 24 Re Polemis & Furness, Withy & Co Ltd 1921 3 KB 560 25 Livingstone v The Rawyards Coal Company (1880) HL 26 Livingstone v Rawyards Coal Co (1880) 5 App Cas 25, 39 (Lord Blackburn). Winfield & Jolowicz (n38) 690 27 AB v South-West Water 1993 QB 507 28 British Transport Commission v Gourley (n 120) 29 Doyle v Wallace (1998) CA 30 Wise v Kaye 1962 1 QB 638 31 H West and Son Ltd. v Shepherd 1964 AC 326 32 From v Butcher 1975 CA, Fitzgerald v Lane 1988 HL 33 Donnelly v Joyce 1973 CA 34 Bradburn v GW Rly (1874) LR Ex 135 Provisions of Social

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