

Business law assignment



**ASSIGN
BUSTER**

There are eight basic elements necessary to form a valid contract to be enforced by the law and they are Offer, Acceptance, Consideration, Capacity, Intention, Free Consent, Certainty and Valid object. L. OFFER In other words offer is a proposal. Under the section 2(a) of Contracts Act 1950, Offer is defined as “ 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 person to the act or abstinence, he is said to make a proposal. When the proposal is accepted it comes a promise and the person making the proposal is called the “ promises” and Business Law By unfazed communicated, so that the promise may accept or reject it, and it can be communicated in writing, orally, or by conduct. An offer can be made to an individual, a class of persons or the public at large. In Cargill v Carbolic Smoke Ball Co Ltd (1893) case, the defendants issued an advertisement in which they offered to pay OHIO to any person who use their smoke balls and then caught influenza.

Mrs.. Cargill saw the advertisement and used the small ball as prescribed. But she caught the flu and dude for the OHIO. The defendants argued that it was not possible to make an offer to the whole world. The court held that plaintiff was entitled to the OHIO because she had made an acceptance to the defendant’s offer to the whole world by performing all the conditions stated in the advertisement. It is difficult to differentiate between an offer and an invitation to treat.

An invitation to treat is an indication that the inviter is willing to enter into negotiations but is not prepared to be bound immediately. In other words invitation to treat is willingness to negotiate a contract. Newspaper

advertisement to the public at large, Product display at self-service shop and Public Auction are considered as invitation to treat. Newspaper

advertisement: In the case of *Cello v. Public Service Commission* (1964), a post of an Assistant Passport Officer was advertised in a Newspaper.

Cello applied for the post and was accepted. The commission dismissed him from the post while he was a probationary officer. Cello claimed that the dismissal was invalid. The court held that there was a binding contract when the Public Service Commission accepted Cello's offer of application to fill up the vacancy. Product display at self-service shop: In self-service shops the displayed goods are an invitation for the customers to make an offer. A contract is made when the cashier accepts the payment. In *Pharmaceutical Society of Great Britain v.*

Boots Cash Chemists Ltd (1953), the court held that the display of goods is deemed as only an invitation to treat. An offer is said to be made when a customer puts the item into the basket and the contract is made at the cash counter. Public Auction: In a public auction, the auctioneer invites the public to make an offer. When those who attend make an offer, it is up to the auctioneer whether to accept it or not. An acceptance is considered made at the fall of the hammer. An auctioneer's request for bids in *Payne v. Cave* (1789), was held to be an invitation to treat.

The offer was made by the bidder. A notice of an auction is also not an offer but a statement of intention. This was decided in the case of *Harris v.*

Nickering (1873). It was held that a notice that an auction would be held on a certain date was not an offer which then could be accepted by turning up at

the stated date. Section 5(1) and section 6(a) of the Contracts Act 1950 provide that an offer may revoke an offer before it has been accepted, but the revocation must be communicated to the offered. In the case of *Fitch v. Sneaker* (1868) the court held that the reward cannot be claimed by the person of he is not aware of the reward for such an act before he did the said act because there is no consensus of mind between the propose and the promises. It is stated in the Contracts Act 1950, that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. By virtue of section 5(1) of the Contracts Act 1950, a proposal may be revoked at any time before the communication of its acceptance is complete as against the propose, but not afterwards.

Hence if a propose wishes to withdraw his proposal, so before an acceptance is made, his revocation of the proposal is then ineffective. II. ACCEPTANCE

Acceptance is the second element which constitutes to a contract. The Contracts Act 1950 defines acceptance in section 2(b). “ When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. ” There are two notations required by the acceptance to convert a proposal into a promise. Absolute and unqualified: If all the terms in the proposal are not accepted in absolute, it will not constitute a contract.

It was decided in the case of *Hyde v. Wrench* (1840) that a proposal which is not accepted in absolute will become a counter-offer which will eliminate the original proposal and the promises is not able to reenact it. Be expressed in some usual and reasonable manner: means that if a proposal dictates how an acceptance should be made, the acceptance should be done in that

stated manner. Section 4(1) of the Contracts Act 1950 provides that the communication of acceptance is complete when it is communicated to the offer.

There are several rules dealing with the communication of acceptance. Firstly the acceptance must be communicated. Depending on the construction of the contract, the acceptance may not have to come until the notification of the performance of the conditions in the offer as in Caracal's case, but nonetheless the acceptance must be communicated. Second, an offer can only be accepted by the propose/offered, that is, the person to whom the offer is made. Third, an offered/propose is not bound if another person accepts the offer on his behalf without his authorization.

Fourth, if the offer specifies a method of acceptance for example post/fax, it must be accepted using a method that is no less effective than the method specified. Lastly, silence cannot be taken as acceptance. As in Flophouse v. Bindle, the offer cannot write the words, " If I hear no more from you, it means that you have accepted the offer. " There is a time limit for an acceptance. In Ramset Victoria Hotel Co. V. Interiors (1866), the defendant applied for shares in the plaintiff company on the 8th of June. He did not receive any news till 23rd November. When he was informed of the shares allotted to him, he refused to accept them.

The court held that the plaintiff had allowed too long a time to lapse before accepting the defendant's offer. The principle of " reasonable time" is also applicable to contracts involving perishable goods. Section 5(2) of Contracts Act 1950 provides that an acceptance may be revoked any time before the

communication of acceptance is complete. It is possible for an offer made by the post to be revoked by the offer. However, revocation will be ineffective unless it is communicated to the offeror before the acceptance is posted. Any acceptance of an offer outside the time stipulated in the offer will be ineffective.

If an offer, for example, specifies that acceptance is required within three days, then any attempt at offering an acceptance after five days will be invalid. If no time is prescribed, then the offer may be accepted within a reasonable time. III. CONSIDERATION Section 2(d) of Contracts Act 1950 states, “ When, at the desire of the promisor, the promisee or any other person has done or obtained from doing, or does or obtains from doing, or promises to do or to obtain from doing, something, such act or abstinence or promise is called a consideration for the promise. As the definition clearly indicates, the consideration is necessary in forming a contract and it can be held that a valuable consideration in the sense of the law may consist either in some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. In *Macon Works & Trading Sad. Bad v. Pang Hon. Chin & Manor* (1976), the court held that the option to purchase a piece of land was not valid due to lack of consideration. There are three types of consideration.

Consideration that is still to be performed is termed executory and the consideration that has already been performed is said to be executed. And the other is past consideration. There are rules pertaining to sufficiency and adequacy of consideration. Sufficiency of consideration means satisfying the legal rules necessary to provide good consideration at law. If the

consideration is too vague there will be no contract. In *Shields v. Drywall*, daughter promised to look after her elderly mother and father for as long as they lives.

In consideration for the daughter's promise, the father promised to transfer her, his interest in 'some' of his property. The court held that this agreement was void because the consideration was not definite and therefore cannot be legally be enforced. Other than that, consideration must be capable of being performed, and it cannot be illegal or unlawful. ' V. CAPACITY TO CONSIDERATION Every party in a contract must have the capacity under the law of contract, as capacity is a necessary element in forming a valid contract.

Section 10 of the Contracts Act 1950 provides that All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Further in section 11 provides explanation on whom are competent to contract. The provision states that every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

In Malaysia the age of majority is noninsured to be 18 years. This was seen in the case of *Tan He Juan v. The Boon Seat* (1934). A minor executed a transfer of land. The plaintiff applied for a court order to revoke the said transfer. The court held that a contract made by an infant is not only avoidable but void. Hence the property was restored to the minor. However

there are five exceptions to this general rule. A child who has not yet attained the age of majority can enter into a Marriage Contract, Contract of Necessaries, Insurance Contract, Apprenticeship or Contract of Service and Scholarship Agreements.

Section 2 of the Contracts Act 1950 states “ A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational Judgment as to its effect upon his interests. ” V. INTENTION TO CREATE LEGAL RELATIONS Each party which enters into a contract must have the intention to create legal relations – that is that they are bound by the obligations under the contract. Before deciding on the existence of a binding contract, the court must decide the intention exists or not.

Since the Contract Act 1950 is silent on intention, Malaysian Courts refer to the English cases in determining the existence of intention. The test used to decide the existence of intention is an objective test, which sees the opinion of a reasonable man. Even if the promissory did not intend to create legal relations, the that intention existed to bind the promissory. This rule was decided in *Cargill v. Carbolic smoke balls Co.* (1893). However this presumption could be set aside if it could be proven otherwise by the contracting parties.

Presumption of intention could be based on two types of contracts. Family or other domestic agreements: Generally, the law presumes that there is no intention to create legal relations in these agreements except where evidence is shown of otherwise. This can be seen in the case of *Buffalo v.*

Buffalo (1919), the husband was stationed in Ceylon. The couple went to England on a holiday. The wife had to stay on doctor's advice and the husband returned to Ceylon orally promising his wife to give her an allowance of EYE a month till she returns to Ceylon.

He failed to pay as promised and the wife sued him. The court held that both the parties did not intend that the agreement would legally bind them. However in the case of Ferris v. Heaven (1952), the court held that the husband's promise to the wife that she can take their house when they divorced was enforceable since they had agreed on a separation when they made the promise. In Commercial agreements the court usually presumes that the parties do intend to make a legally binding contract unless they prove otherwise that there was no intention to create legal relations.

In contrast to the domestic agreements, the contracting parties in a commercial agreement cannot allege that there was no intention to bind them as the court will be deciding it based on the facts of the case. In the case of Low Kara Hit & Or's v. Mood Sis & Manor (1963), the defendant gave an option to the plaintiffs agent to buy a piece of land subject to a formal contract to be drawn up and agreed upon by the parties. Plaintiffs agent duly exercised the option but the defendant refused to sign the agreement of sale.

The court held that there was no contract as there was no formal contract agreed by both parties. VI. CERTAINTY Certainty is another element which constitutes a contract to be valid. A contract must contain conditions which are clear in meaning and not vague. It is stated in section 30 of the Contract

Act 1950, " Agreements, the meaning of which is not certain, or capable of being made certain, are void. " Parties in a contract must use words which are clear and specific in meaning, in order to make a binding contract. In the case of Grandpa Chesty v.

Shah Than (1916), it was held that the contract was void because there was no certainty as when the contracting parties agreed to lease out the land for ARM 35 a month for " as long as you like. " VI'. FREE CONSENT Consent in section 13 of Contracts Act 1950 means " Two or more persons are said to consent when they agree upon the same thing in the same sense. Section 14 of Contracts Act 1950 states that Consent is said to be free when it is not caused by; coercion, undue influence, fraud, misrepresentation and mistake.

As defined by the Contracts Act 1950, Coercion is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. In Chin Name Bee Development Sad. Bad v. ATA Kim Coho & Or's (1988), the respondents purchased certain houses to be constructed by the appellants. They signed a sales and purchase agreement for the house priced at ARM 29, 500. The appellants later instructed the respondents to pay an additional the houses.

It was held that the additional payment was not voluntarily made but under threat. Hence the court ordered the appellants to refund the respondents for the additional payments made. Section 16 of Contracts Act 1950 stipulates that " A contract is said to induced by " undue influence" where the relations

subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. ” It was decided in the case of *Chat Sings v.*

An agreement where its consideration or object is fraudulent in nature, contravenes the law. In *Giovanni v. Soon Hint Hut (1982)*, an unlicensed purchaser signed a contract to buy copra in contravention of rules made under the Federal Agricultural Marketing Authority Act 1965. The court held that the contract was void because it was done in contravention of the law.

CONCLUSION For a contract to be legally enforceable the contract must contain the above discussed elements; which are Offer, Acceptance, Consideration, Capacity, Intention, Free Consent, Certainty and Valid Object.

Each of the elements has been explained in accordance with the Malaysian Contracts Act 1950, and each element has been supported by a decided case to enhance the full meaning of each element. To further enrich this assignment and my knowledge in this subject, I surfed through web pages on internet and some of the books. In all business activities the law of contract plays a fundamental role. I have completed this task in the aim of explaining the necessary elements in forming a legally binding contract, in its simplest form.