# Law of offer and acceptance

OfferandAcceptanceare the process by which a buyer and a seller create a legal contract. This process begins when a potential buyer makes an offer. Then, the seller can accept it, reject it, or reject it and makes a counter offer. Then the buyer has the same options. When one party accepts the other party's offer or counter offer, and communicates that acceptance to the offering party, a contract is created. In my assignment, I'm going to explain the rules of offer and acceptance in the formation of a valid contract.

When two parties' choses to get in a contract, the first thing that comes is the offer. The offer can be money or anything of value in exchange for performance by the other party. An offer is defined as " an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed". An offer is a declaration of the terms on which the offeror is willing to be bound. The offer can come in forms of a letter, a newspaper, a website, a fax, an email, or a behavior. The offer is not really an offer until the offeree receives it, it is the communication of offers. This means that no one can be bound by an offer of which they are not aware (Taylor v Laird, 1856).

An important distinction must be made between an offer and an invitation to treat. An invitation to treat is a " preliminary statement expressing a willingness to receive offers". It's a pre-offer communication. In Harvey v Facey, an invitation by the owner of property that he or she might be interested in selling at a certain price, so this is an invitation to treat. Statements of invitation are only intended to solicit offers from people and are not intended to result in any immediate binding obligation. The display of

goods for sale, auctions, or adverts is ordinarily treated as an invitation to treat and not an offer. When goods are on display in a self-service shop or in a shop window, it is an invitation to treat. For example, Pharmaceutical society of Great Britain v Boots Cash Chemists Ltd where the offer to purchase is made at the cash desk by the purchaser and the shop is free to accept or reject this offer. However, auctions are an invitation to treat, each bid is an offer to purchase the lot at the price offered and acceptance occurs at the fall of the auctioneer's hammer. British Car Auctions v Wright where they were indicted for offering an unroadworthy car for sale but there were only an invitation to treat as the car was not offered for sale. And in most cases advertisements are an invitation to treat (Partridge v Crittenden, 1968). However, if the advertisement includes a unilateral offer, it is considered as an offer. Unilateral offer is " made when one party promises to pay the other a sum money (or to do some other act) if the other will do something (or forbear from doing so) without making any promises to that effect". For example, Carlil v Carbolic Smoke Ball Company Ltdwhich was a unilateral offer to the world at large. On the other hand, bilateral offer is made when at least two people or groups exchange a promise for a promise.

Acceptance is a final and unqualified expression of assent to the terms of an offer. Acceptance must be communicated by the offeree to the offeror in the manner requested by or implied in the offer. Second, the acceptance must be clear, unequivocal, and unconditional. As acceptance, must meet the same terms of the offer to be valid, the following answer that suggest new terms in the offer is defined as a counter offer.

Acceptance has no effect until it is communicated to the offeror, silence can never establish an acceptance (Felthouse v Bindley, 1863). It can be completed from conduct without being purposely communicated (Brogden v Metropolitan Railway Co, 1877). Generally, acceptance can be in any form as long as it is transmitted to the offeree, if the offer specifies a method of acceptance (such as “ by return of post”, “ by fax” or “ by telegram”) and the offeree uses a different method there is no contract (Eliason v Henshaw, 1819). And if the offer doesn’t stipulate any specific method of acceptance that means the communication of acceptance should made by an equally speedy method. Acceptance by post is an exception to the general rule that acceptance must come to the attention of the offeror before it is valid (Adams v Lindsell, 1818). For the postal rule to apply, first the offeror requests an acceptance by post or acceptance by post can be a normal, reasonable or anticipated means of acceptance (Henthorn v Fraser, 1892). Secondly, the letter of acceptance should be properly stamped and addressed (Re London & Northern Bank, 1990). Thirdly, the letter of acceptance must be posted in the control of the Post Office (Brinkibon v Stahag Stahl, 1983); and in the last place, the use of postal rule must not create any factors of inconvenience and absurdity (Holwell Securities v Hughes, 1974). Comes to the instantaneous communication of acceptance which are virtually methods such as telephone conversations, they are considered in the same way as face to face personal conversations. So, the acceptance is confirmed when and where it is received (Entores v Miles Far East Corporation, 1955).

Contracts are used mainly in business situations, but also for personal situations. While both parties must receive a fair value for a contract to be valid, they may not receive the same benefits. Law of contract is the law governing people’s agreements and obligations. To run a society smoothly an active operating system is necessary. If there is no value in a promise made by person to another person, the ongoing nature of a society will be terminated. Therefore, if there is no way to enforce a promise or recover damages occurred by believing such promise people will be afraid of such promises and the development will be blocked. Law of contract is important because it gives an importance and enforceability to a promise.

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Consideration is a fundamental element for the formation of a contract. It is either a promise to perform a desired act or a promise to refrain from doing an act that one is legally entitled to do. Consideration is something of value given by both parties to contract that includes them to enter the agreement to exchange mutual performances. In a bilateral contract, an agreement by which both parties exchange mutual promises, each promise is regarded as sufficient consideration for the other. In unilateral contract, an agreement by which one party makes a promise in exchange for the other’s performance, the performance is consideration for the promise, while the promise is consideration for the performance (Currie v Misa, 1875). There are two different rules of consideration; first consideration must move from the promisee means that a person to whom a promise was made can enforce that promise only if they have themselves provided the consideration for it. The promise cannot be enforced if the consideration moved from a third

party (Tweddle v Atkinson, 1861). And the second rule, consideration must not be past, have three different types of consideration: executory, executed and past consideration. Executory consideration begins where promises are exchanged to perform acts in the future, this is a bilateral contract and is enforceable. Executed consideration begins where one person performs an act in order to accomplish a promise made by the other, this is a unilateral contract. Past consideration is the consideration for a promise must be given in return for that promise (Re Mc Ardle, 1951).

As we know that consideration is exchange of mutual performances, in this scenario we know that James repaired his neighbour's car on Sundays or Mondays. We can't apply considerations rules as we don't know what James is getting in return of his performance. We only know what James promises to act for Simone but we don't know if Simone promises anything back. So, for me, there is no consideration because there is only one person performing the act and we don't know about the other one.

Intention to create legal relations is an agreement which is not destined to be legally binding; there are some agreements that should be legally enforceable and those which should not. They are divided into three categories, social and domestic agreements, commercial agreements, and advertisement. In social and domestic agreements, there is no intention to create legal relations, such as agreements between husband and wife are presumed not to create legal relations expect if the agreement itself states that it does (Balfour v Balfour, 1919) or agreements between parents and children are not supposed to create legal relations (Jones v Padavatton, 1969). When it comes to agreements made between parties who share a

dwelling but are not related, then the court considers all the circumstances of the agreement. They are more likely to find the intention to be legally bound where money has changed hands (Simpkins v Pays, 1955). Commercial agreements are presumed to create legal relations, but they can be rebutted only by stating clearly in the contract (Rose & Franck Co v Crompton Bros Ltd, 1925). Agreements which appears to be gratuitous in nature such as ex gratia payment (Edwards v Skyways, 1969). It does not apply to ‘ comfort letters’ which are considered as a statement rather than a contractual promise (Kleinwort Benson Ltd v Malaysian Mining Corporation, 1989), or to agreements which are established to be binding in honour only (Jones v Vernons Pools, 1938). Comes to the advertisements, they not create any legal relations. A statement will not be binding if the court considers that it was not seriously meant (Weeks v Tybald, 1605).

Legal relation can only be created in commercial agreement, advertisement or agreement where money is exchanged. In this scenario, there is no intention to create legal relation because this is a situation about two neighbours so it is about social relations. As social relation cannot be enforced, there is no intention to create legal relation.

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