

Business law – 4  
steps process  
assignment essay  
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## Step 1

The legal issue is whether the element of agreement can be established to form a contract between Jordan and Will.

## Step 2

Making a contract requires three elements, which are agreement, intention to be legally bound and consideration (Do and Duperouzel, 2014). However, the element of agreement will be discussed here. An agreement is a meeting of the minds of both parties in which they comprehend what essential terms for the contract are. It is made of offer and acceptance. Offer is made by offeror to express the willingness to contract on certain terms, whereas acceptance is the assent to these terms of offeror (Do and Duperouzel, 2014). An offer requires several rules to contract.

Firstly, it must be sufficiently complete and promissory (Do and Duperouzel, 2014). For instant, in *Harvey v Facey* [1893] AC 552 case, Harvey and Facey discussed about a possible trade of the Bumper Hall Pen using telegram. Harvey asked Facey to sell him a Bumper Hall Pen and would pay for the lowest cash price. Facey then replied the lowest cash price which was £900, also by telegram. Harvey agreed to that price but Facey refused to sell, which led to him being sued by Harvey, thought that they had agreed on a contract with that price as an offer. However, the court held that it was not a legally enforceable promise, as it was merely a statement providing information on what Harvey had asked, not a promise to sell him the pen. Secondly, an offer must be intended to form a contract if accepted, so an advertisement are not generally considered as an offer (Do and Duperouzel, 2014).

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In *Partridge v Crittenden* [1968] 2 All ER 421 case, Partridge put an advertisement in a magazine stated “ Bramblefinch cocks and hens, 25/- each”. He then was charged with unlawfully offering wild birds for sale. Nevertheless, the court held that it was not an offer, but merely an “ invitation to treat”, where people who are interested are the one to make an offer to buy. Next, an offer can be addressed to a specific person or the whole world (Do and Duperouzel, 2014). For example, in *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256 case, the company published an advertisement offering 100 pounds for any person who used the smoke ball three times per day as instructed and caught influenza or any other disease afterward. Carlill, after getting influenza for using smoke balls as instructed in the advertisement, asked the company to pay him 100 pounds as promised. However, the company refused to pay and the issue was brought to court. The court said that this advertisement is indeed an offer because it is addressed to a particular person capable of accepting this offer. Therefore, it was intended to be legally binding. Finally, an offer must be open for a reasonable time.

It can be lapsed by expiration, withdrawal of the offeror before acceptance or if a counter-offer is made (Do and Duperouzel, 2014). On the other hand, acceptance is unconditional and absolute agreement on the terms of an offer. It must be identical with the offer and communicated to the offeror by the person to whom the offer was made (Do and Duperouzel, 2014). The timing is very important to decide whether an acceptance is effective.

Generally, an acceptance occurs when it is communicated to the offeror and the contract is reached at that time and that place where the offeree

receives the acceptance. However, there is exception, which is when the acceptance is made by post (The postal acceptance rule).

It is, when the parties intend to have the acceptance communicated by post, the offer will be accepted at the time a properly addressed and stamped letter is given to the post office, and a binding contract will be formed at the time when and the place where the letter of acceptance is posted. Such as, in *Adams v Lindsell* (1818) 106 ER 250 case, Lindsell offered Adams some wool and asked for a reply by post. Unfortunately, the offering letter was delayed. After Adams had posted a letter of acceptance on the same day he received Lindsell's letter, but before Lindsell had received it, Lindsell had already sold it to another party. Adams sued Lindsell for breach of contract. The court agreed with Adams in accordance with the postal acceptance rule, an agreement was reached the moment Adam posted the letter.

### Step 3

The question asks about whether the requirements of an agreement are fulfilled to be able to form a legally enforceable contract between Jordan and Will in this case study. The email sent by Will regarding the three-weeks trip to West Indies including flight ticket to West Indies and accommodation in Antigua, Barbuda and Dominica for \$12200 is considered promissory and sufficiently complete because it clearly stated the services that Will's company can provide for a specific price. It is not an invitation to treat as it is made for a particular person, in this case it is Jordan. The offer sent at 11am Monday was also open for a specified period of time, as Will asked Jordan to confirm by post before 12 noon Thursday that same week. Therefore, this

email is considered as a valid offer. Jordan was happy with the offer and posted an acceptance letter to Will on that Monday afternoon.

It had the same terms with Will's offer and was made in applicable time of the offer. Therefore that letter is considered an acceptance. Generally, an agreement will be reached when Will receives the acceptance letter of Jordan. Unfortunately, there was an unexpected event that led to the delay of the acceptance letter. By the time Will received the letter, it has already passed the expiration date of the offer and Will could no longer provide the package at original price. However, as Will himself chose to use post as the method of communication, the postal acceptance rule will be applied. It is similar to Adams v Lindsell case. Consequently, an agreement was reached at the time Jordan posted his acceptance letter.

#### Step 4

In conclusion, there is a legally enforceable agreement between Jordan and Will because Will made a valid offer and Jordan legally accepted it. A contract was formed at the time when and the place where Jordan posted his acceptance letter.

#### Question 2

##### Step 1

The legal issue is whether the element of intention and consideration are satisfied in the case of Jordan and Will.

##### Step 2

A legally binding contract requires the intention to enter a contract and it must be proved by every parties. The court will take an objective test and <https://assignbuster.com/business-law-4-steps-process-assignment-essay-sample/>

also check for surrounding circumstances to decide whether there is the intention to be legally bound (Do and Duperouzel, 2014). The question for an objective test is, would a reasonable person, after consider all the circumstances of the case, think that the agreement is intended to be bound? The court can also make a presumption that the parties in a commercial relationship have intention for their agreement to be legally bound, whereas the parties in a domestic or social relationship do not intend to create a legally binding contract (Do and Duperouzel, 2014). For example, in *Woodward v Johnston* [1992] 2 Qd R 214 case, Mrs Woodward agreed to help her husband with a gravel supply business for 10% of the business. She worked hard for 18 months but received nothing from her husband as promised. However, the court decided that they did not intend to be legally bound as it was merely a family arrangement.

Moreover, the intention is rarely expressed, but usually implied. There are several factors to consider whether a contract can be formed in a social or domestic agreement. There is more likely to be a contract if all the alleged rights and obligations are clearly spelled out; or one party suffer considerable expense, inconvenient or substantial detriment (Do and Duperouzel, 2014). An example of a contract formed in a social agreement is in the matter of *Todd v Nicol* [1957] SASR 72 case. In this case, Mrs. Nicol, who lived in South Australia, invited her sister-in-law and niece (the Todds) to move from Scotland to her house. She promised them free accommodation and that she would give them the house after she died. Mrs. Todd then quit her job and moved to Australia with her daughter. Later on, they argued and the Todds were asked to leave the house.

The court decided that the Todds's decision to move to Australia heavily relied on Mrs. Nicol's promise, and it will cause significant inconvenience and detriment to the Todds if it is not carried out. Therefore this can be considered as a legally enforceable contract. On the other hand, the *Esso Petroleum Ltd v Commissioners of Customs and Excise* [1976] 1 All ER 117 case demonstrates the presumption of intention to be legally bound of parties in commercial agreement. In this case, Esso produced a set of commemorative "coin" to promote their petrol sales. They promised to give motorists a "free coin" for every four gallons bought. However, the Commissioner of Customs and Excise disputed that the coins were "produced in quantity for general sale" and therefore must be subject to tax. The court held that even though the coin was described as "free", it still was a commercial promise made with an intention to be legally bound. In order for a contract to be legally enforceable binding, it must contain valuable consideration.

Consideration is the exchange of promises by the parties, or it can be deemed as the price paid for other's promise. Consideration must be given by the promisee, which is the role assumed by both parties. Only informal contract need to be provided with consideration (Do and Duperouzel, 2014). Consideration could be anything that valuable to the promisor, even for a small amount. It is not necessarily be adequate, but must be sufficient (Do and Duperouzel, 2014). In *Thomas v Thomas* (1842) QB 851 case, Mr John Thomas orally expressed his will to let his wife have either the house or 100 pounds on the morning of his death. After his death, the executors of Thomas's estate entered into an agreement with his wife whereby she would

get the house and in return pay one pound per year for the “ ground rent”. After some time, one of the executors died. Thomas; the remaining one; refused to complete the conveyance as he accused that there was no consideration. However, the court judged in favour of the wife.

The court said that the consideration need not to be in equivalent value, even if relatively small it is still enough to form a legally binding contract. In order for the consideration to be valid, it must be provided in response to the current promise of promisor (Do and Duperouzel, 2014). This requirement also is illustrated by Carlill v Carbolic Smoke Ball Co case. Furthermore, a consideration is not valid if it is a promise to complete an existing obligation to promisor. To illustrate further, the *Styck v Myrick* (1809) 2 Camp 317; 170 ER 1168 case could be used. Styck was hired to do the necessary voyage works on a ship owned by Myrick. After the ship docked at Cronstadt, two sailor men left and Myrick could not find any replacement. He then promised to pay these two men’s salaries to the rest of the crew if they do both of their work as well as these missing crews’. After arriving at the port, Myrick refused to pay. Therefore Styck sued him. However, the court held that the original contract bound them to perform all duties on the ship and therefore the additional works were not sufficient to be a consideration.

### Step 3

The question here is whether a reasonable person, in the circumstance, would think of the offer to provide services including flight ticket and accommodation as intended to be legally bound. It is clearly that Jordan wants to travel to West Indies to watch cricket matches and purchase memorabilia, and he has sufficient money to do so. Even though Jordan and <https://assignbuster.com/business-law-4-steps-process-assignment-essay-sample/>



Will have family relationship, this agreement could not be presumed as not intended to be legally bound. It is because there are a large amount of money involved and Jordan would suffer substantial detriment and inconvenience if Will's promise was not carried out. It is notable that Jordan has already booked two tours online which cannot be rescheduled.

Therefore, similar to Todd v Nicol case, the agreement is considered as intended to be legally bound. Moreover, Will runs a travel agency, which in this case is the partner of Jordan in a commercial relationship. Therefore they are both have intention to be legally bound in a contract. The considerations can also be found in this case. To illustrate further, Will promise to provide flight ticket to West Indies and accommodation for three weeks in Antigua, Barbuda and Dominica in return for Jordan's promise to pay \$12200. It is sufficiently provided in response to the current obligations of both parties. Therefore the consideration needed to form a legally enforceable contract is fulfilled.

#### Step 4

In conclusion, both intention to be legally bound and consideration were fulfilled in this case, therefore the contract was legally formed between Jordan and Will.

#### Reference

List of cases referred to:

Adams v Lindsell (1818) 106 ER 250

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

Esso Petroleum Ltd v Commissioners of Customs and Excise [1976] 1 All ER

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117 Harvey v Facey [1893] AC 552

Partridge v Crittenden [1968] 2 All ER 421

Stylk v Myrick (1809) 2 Camp 317; 170 ER 1168

Todd v Nicol [1957] SASR 72

Thomas v Thomas (1842) QB 851

Woodward v Johnston [1992] 2 Qd R 214

List of other sources:

Do, Christina, and Christian Duperouzel. Understanding Business Law (Curtin Custom Publication). Chatswood: LexisNexis Butterworths, 2014. Pearce, James. 2014. "Lecture 3: Making a contract." PowerPoint lecture notes. <http://lms.curtin.edu.au>