Contract law assignment

Law

Chapter 1 INTRODUCTION Objectives of Report * To get an idea about the law structure of Sri Lanka * To study about contract law * To get an idea about the low governing offerer and acceptance in Sri Lankan Law. Methodology * Library and Internet research Colonial History and the Law Sri Lanka, formally known as Ceylon, is a multi-ethnic and multi-religion island nation in the Indian Ocean, near the southern coast of India. The ethnic and religious diversity of the nation, and also its colonial history, have a direct bearing on aspects of the legal system of Sri Lanka.

The country’s largest ethnic group is the Sinhalese whose native tongue is the Sinhala language. European control of what is now Sri Lanka began a few years after 1505 when inclement weather drove a Portuguese fleet of ships, commanded by Lourenco de Almeida, into what is now the Colombo harbor. Almeida, who also realized the strategic value of the island-nation in the context of trade routes, established cordial relations with the King in Kotte. The Portuguese did not introduce their laws in the coastal regions they controlled. The Portuguese were ousted by the Dutch during the 1600s.

With the Dutch gaining control of Sri Lanka, primarily in the coastal regions, Roman-Dutch law gained a presence in the country. This “ Roman-Dutch law has withstood many a tide of legal and political change to remain as the foundation of Sri Lanka’s general and common law. ” The Dutch judicial system was well organized. Three major courts of justice were established: one each in Colombo (west), Galle (south), and Jaffna (north). The customary and personal laws are based on ancient customs of the Sinhalese and Tamils whose ancestors hailed from specific regions in the country, as well as the customs of the Muslims.

In 1815, when the Kandyan Kingdom in central Ceylon fell to the British, for the first time in history, the entire country of Ceylon came under the rule of a foreign power. At this point, the application of Roman-Dutch law was extended to the whole country. The British established a modern system of judicial and civil administration. They respected the prevailing laws, namely the Roman-Dutch laws, and the customary laws that applied to the different ethnic groups. British rule lasted through 1948, when Sri Lanka gained its independence. Legal System of Sri Lanka: British Low- Kandiayan Law – Muslim Law- Thesawalamai Law – Roman-Dutch law English Law has worked its way into Sri Lanka; partly through statutes which themselves enacted rules of English law, partly by tacit adoption by judicial decisions and partly by tacit use of English legal concepts. Among the statutes directly introducing English law into Sri Lanka is the Civil Law Ordinance No. 5 of 1852 (Cap. 79), which, by sections 2 and 3, introduced the law of English and in maritime and commercial matters (unless there is a contrary provision in a statute of Sri Lanka).

Roman-Dutch Law now generally applies in Sri Lanka when statutes and indigenous laws do not regulate the issue in question. Roman-Dutch Law represents in Sri Lanka an inherited legal tradition. It has co-existed with several systems of indigenous laws, and the English common law, creating a “ distinct legal culture that is described today as a ‘ mixed’ civil and common law system. In fact, when the British themselves declared Roman-Dutch law as the common law of Ceylon, Roman-Dutch law assumed even greater importance under the British than it had enjoyed under Dutch rule of Ceylon.

Today, Roman-Dutch law exists only in Sri Lanka and South Africa. Kandyan Law applies to ethnic Sinhalese whose can trace their lineage back to the Kandyan provinces during the period of the Kandyan monarchy in central Sri Lanka. The Kandyan monarchy ceased to exist with the British takeover of central Sri Lanka in 1815. Kandyan Law does not apply to all Sinhalese who are now resident in the Kandyan provinces. However, Kandyan Law does apply to Kandyan Sinhalese who now do not reside in the Kandyan provinces in central Sri Lanka.

Kandyan Law that remains applicable to Kandyan Sinhalese in present day Sri Lanka relates to marriage, divorce, and interstate succession. Theswalamai Law is based on ancient customs of Jaffna Tamils in Sri Lanka. It applies to Tamil inhabitants of the Jaffna Peninsula in Northern Sri Lanka. This customary and personal law also applies to numerous Jaffna Tamils who no longer live in the Jaffna Peninsula. LAW STURCTURE OF SRI LANKA * Banking law * Company law * Contract law * Equity law * Family law * Property law * Succession law * Tort law * Trust law Administrative law * Company law * Constitutional law * Criminal law * Industrial law * Taxation and revenue law * Trade practices law Criminal Law Private Law Public Law Civil Law * Corporations law * Trade practices law * Administrative law * Family law * Contract law * Tort law * Offences against the person * Offences against property Muslim Special Laws apply to all Muslims in Sri Lanka. When a Muslim marries another Muslim, the bride and the groom do not have the option of getting married under the General Law, unlike in the case of Kandyan Sinhalese.

Marriage, divorce and other related issues involving Muslims are governed by the Marriage and Divorce (Muslim) Act, no. 13 of 1951, and any subsequent amendments. Chapter 2 CONTRACT LAW OF SRI LANKA “ A contract is an agreement between two parties that creates an obligation to perform (or not perform) a particular duty. A legally enforceable contract requires” Contract law is to govern all type of contracts in Sri Lanka. In here we discuss only one character which needs to form a valid contract. There are 8 main characters of an valid contract. 1. There must be an offer and acceptance. . Illegality. 2. Legal intention. 6. Same mind. 3. Considerations. 7. There must be a form. 4. Capacity of the parties. OFFER “ Offer is an expression of willingness to contract on a specific set of terms, made by the offeror with the intention that, if the offer is accepted, he or she will be bound by a contract. A genuine offer is different from what is known as an “ invitation to treat”, i. e. where a party is merely inviting offers, which he is then free to accept or reject. The following are examples of invitations to treat. ” Essentials of valid offer: 1.

Offer must be capable to create legal relations. The offeror must intend the creation of legal relations. He must intend that if his offer is accepted a legally binding agreement shall result. The leading case on the point is Balfour v Belfour case (1919) The plaintiff wife and defendant husband were married in 1900. The parties lived together in Ceylon until 1915 when, the defendant on leave from his government post, they moved to England. When, in 1916, the defendant’s leave was up, he returned to Ceylon. On her doctor’s advice not to travel, the plaintiff remained in England.

Before the defendant returned to Ceylon, the parties orally agreed that the defendant would pay the plaintiff 30 pounds a month until she was able to return to Ceylon. The parties expected that the plaintiff would return within a few months. However, their marriage soon deteriorated and the defendant refused to continue to make the monthly payments. In addition to receiving an order for alimony, the plaintiff brought this action to enforce their oral agreement. The trial judge found the parties' agreement to be a binding contract and ordered the defendant to pay the plaintiff 30 pounds per month.

The defendant appealed. The agreement in this case was held to be unenforceable on the grounds that agreements between spouses are presumed to not have been intended to create legal relations 2. Offer must be certain, definite and not vague. No contract can come into existence if the terms of the offer are vague and indefinite. To constitute a valid agreement, it is essential that the proposal must be so certain, that the rights and obligations of the parties arising out of the contract can be exactly fixed. The leading case on the point is Taylor v.

Portington case (1855) In Taylor v. Portington (1855) E. R 128 a contract for the lease of a house for three years at ? 85 per annum if the house was put into thorough repairs and the drawing rooms handsomely decorated according to the present style, the court refused specific performance on the ground that the terms were indefinite. 3. Offer must be communicated to the offeree. There can be no offer by a person to himself. It must always be communicated to the offeree. If there is no communication of an offer, there is on acceptance resulting in the contract.

The leading case on the point is Lalman Shukla vs. Gauri Dutt?? (1913) In this case, G (defendant) sent his servant l (plaintiff) in search of his missing nephew. G afterwards announced a reward for information concerning the missing boy. It traced the boy in ignorance of any such announcement. Subsequently when?? he came to know of this reward, he claimed it. It was held that since the plaintiff was ignorant of the offer of reward, his Act of bringing the lost boy didn’t amount to the acceptance of offer and therefore he was not entitled to claim the reward. 4.

Offer must be made with a view to obtaining the assent of the other party. An offer must distinguish from mere expression of intention. An offer or proposal to do or to abstain from doing anything must be made with a view to obtaining the assent of the other party to whom the offer is made. Mere enquiry is not an offer. 5. An offer may be conditional. An offer can be made subject to a condition. In that case it can be accepted only subject to that condition. It is open to a person to whom a conditional offer is addressed to accept or no to accept condition.

A conditional offer lapses when the condition is not accepted. 6. Offer should not contain a term the non-compliance of which would amount to acceptance. One cannot say while making the offer that if the offer is not accepted before a certain date it will be presumed to have been accepted. 7. Lapse of an offer. An offer lapses. a. If either offeror or offeree dies before acceptance. b. If it is not accepted within i. The specific time ii. A reasonable time, if no time is prescribed, iii. If the offeree does not make a valid acceptance. iv. An offer can also lapse by revocation.

An offer may be revoked by the offferor at any time as long as it has not been accepted by the acceptance 8. An invitation to offer is not an offer. An offer must be distinguished from an invitation to treat or as it is sometimes called an invitation to offer. In the case of an “ invitation to offer” there is no intention on the part of the person sending out the invitation to obtain the assent of the other person to such invitation. The display of goods in a shop with price tags attached is an invitation to offer. Comparison between offer and invitation to offer 1. Not capable of being accepted. . Objective is to seek offer. 3. May or may not generate offer. 4. If offer is generated the offeree has the available options under the law. 1. Capable of being accepted. 2. Objective is to seek acceptance. 3. May or may not generate acceptance. 4. If acceptance is generated the contract formation takes place. Offer Invitation to offer The leading case on the point is Harvey v. Facey, 1893 AC 552 The case involved negotiations over a property in Jamaica. Defendant Facey had been carrying on negotiations with the Mayor and Council of Kingston to sell a piece of property to Kingston City.

On 7 October 1891, Facey was traveling on a train, and Appellant Harvey (who wanted the property to be sold to him rather than to the City) sent Facey a telegram which said: “ Will you sell us Bumper Hall Pen? Telegraph lowest cash price-answer paid” Facey replied on the same day:” Lowest price for Bumper Hall Pen ? 900. ” Harvey then replied in the following words:” We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession. “ Facey, however refused to sell at that price, at which Harvey sued.

Facey successfully defended his action at trial, but Harvey appealed to the Supreme Court, which reversed the trial court decision. Facey appealed the Supreme Court decision to the Privy Council. The Privy Council reversed the Supreme Court's opinion, reinstating the trial court's decision and stating the reason for its action. No contract existed between the two parties. The first telegram was simply a request for information, so at no stage did the defendant make a definite offer that could be accepted ACCEPTANCE " When the person to whom the proposal is made signifies his assent, it is an acceptance of the proposal.

An accepted proposal called Agreement. Acceptance may be express or implied. When acceptance is made by word, spoken or written, it is an express acceptance. " Essentials of valid acceptance: 1. Acceptance must be absolute and unconditional. In order that an acceptance of a proposal is valid, it must be unconditional and unqualified. The accepter must comply with the terms of the offer. 2. Acceptance must be communicated to the offeror. If the offeree remains silent and does nothing to show that he has accepted the offer, no contract is formed; the accepter should do something to signify his intention to accept.

Thus, where a person accepts an offer but fails to post the letter of acceptance, it is on acceptance. Acceptance must be communicated to the offeror himself, a communication to any other person is as ineffectual as no communication has been made. The leading case on the point is Felthouse v Bindley (1862) Facts Uncle Paul Felthouse was a builder who lived in London. He wanted to buy the horse of his nephew, John Felthouse. After a letter from the nephew about a previous discussion in buying the horse, the uncle

replied saying, “ If I hear no more about him, I consider the horse mine at ? 30 and 15s. ” The nephew did not reply.

He was busy at auctions on his farm in Tamworth. He told the man running the auctions, William Bindley, to not sell the horse. But by accident, Bindley did. Uncle Felthouse then sued Bindley in the tort of conversion – using someone else’s property inconsistently with their rights. But for the Uncle to show the horse was his property, he had to show there was a valid contract. Bindley argued there was not, since the nephew had never communicated his acceptance of the uncle’s offer. Judgment The court ruled that Felthouse did not have ownership of the horse as there was no acceptance of the contract.

Acceptance must be communicated clearly and cannot be imposed due to silence of one of the parties. The uncle had no right to impose a sale through silence whereby the contract would only fail by repudiation. Though the nephew expressed interest in completing the sale there was no communication of that intention. 3. Acceptance must be made within a reasonable time. Acceptance to be valid must be made within the time allowed by the offer and if no time is specified, it must be made within a reasonable time. What is reasonable time is a question of fact depending of the particular circumstances.

Acceptance may be made at any time till the offer is alive. Acceptance made after the offer has been withdrawn is invalid. The leading case on the point is Ramsgate Victoria Hotel v Montefoire (1866) LR 1 Ex 109. The defendant offered to purchase shares in the claimant company at a certain price. Six

months later the claimant accepted this offer by which time the value of the shares had fallen. The defendant had not withdrawn the offer but refused to go through with the sale. The claimant brought an action for specific performance of the contract.

The offer was no longer open as due to the nature of the subject matter of the contract the offer lapsed after a reasonable period of time. Therefore there was no contract and the claimant’s action for specific performance was unsuccessful. 4. It must be according to the mode prescribed or usual or reasonable mode. Acceptance has to be made in the manner prescribed or indicated by the offeror. An acceptance given in the other manner may not be effective, particularly where the offeror clearly insist that the acceptance shall be made in the prescribed manner.

Thus where the proposer chooses to require the goods to be delivered at a particular place, he is not bound to accept delivery tendered at any other place. It may be noted that law does not allow an offeror to prescribe ‘ silence’ as the mode of acceptance. Thus a person cannot say that if within a certain time acceptance is not communicated, the offer would be considered as accepted. Where no mode of acceptance is prescribed, acceptance must be expressed in some usual and reasonable manner. Acceptance by mail is a very reasonable manner in such cases. 5. The accepter must be aware of the proposal at the time of the offer.

Acceptance follow offer. It the acceptor is not aware of the existence of the offer and coveys his acceptance, no contract comes in to being. There must be knowledge of the offer before anyone could consent to it. An act done in

ignorance of the offer of a reward cannot be called an acceptance. The leading case on the point is Boulton v Jones (1857) 2 H. & N. 564 The defendant sent to the shop of one Brocklehurst a written order for goods. The order was addressed to Brocklehurst by name. Unknown to the defendant, Brocklehurst had earlier that day sold and transferred his business to Boulton.

Boulton fulfilled the order and delivered the goods to the defendant without notifying him that he had taken over the business. The defendant accepted the goods and consumed them in the belief that they had been supplied by Brocklehurst. When he received Boulton’s invoice he refused to pay it, claiming that he had intended to deal with Brocklehurst personally, since he had dealt with him previously and had a set-off on which he had intended to rely. The Court of Exchequer held that the defendant was not liable for the price. 6. Acceptance must be given before the offer lapse or before the offer is revoked.

It means that acceptance must be made while the offer is in force i. e. before the offer has been revoked or offer has lapsed. 7. Acceptance cannot be implied from silence. No contract is formed if the offeree remains silent and does nothing to show that he has accepted the offer. Effect of silence acceptance: Generally speaking the person to whom the proposal is made not reply. His silence cannot be regarded as an acceptance of the proposal. Proposal made to another cannot ripen into an agreement merely because the offeree makes no reply even though the proposal states that silence will be taken to amount to acceptance.

Thus mental acceptance is no acceptance. The leading case on the point is Brogden -v- Metropolitan Railway Co [1877] 2 AC 666 The claimants were the suppliers of coal to the defendant railway company. They had been dealing for some years on an informal basis with no written contract. The parties agreed that it would be wise to have a formal contract written. The defendant drew up a draft contract and sent it to the claimant. The claimant made some minor amendments and filled in some blanks and sent it back to the defendant. The defendant then simply filed the document and never communicated their acceptance to the contract.

Throughout this period the claimants continued to supply the coal. Subsequently a dispute arose and it was questioned whether in fact the written agreement was valid. The written contract was valid despite no communication of the acceptance. The acceptance took place by performing the contract without any objection as to the terms. Other than these 7 points under acceptance this bellows points also being considerable when we make contracts. When an offer or acceptance is made ‘ subject to contract’ or by the use of like words, the matter remains in negotiation until a formal contract is settled and the formal contract are exchanged.

Communication of an acceptance is complete as against the proposer when it is put in course of transmission to him, so as to be out of the power of the acceptor to withdraw the same, as against the acceptor when it comes to the knowledge of the proposer. An acceptance of a proposal may be revoked at any time before the communication of the acceptance is complete as against the acceptor but not afterword. The acceptance is binding on the acceptor when the letter of acceptance actually reaches the proposer. Where a

proposal indicates an ace to be performed for acceptance, the performance of the act amounts to acceptance.

Chapter 3 CONCLUTION We have seen how contract law permeates every section of our lives. From employment, to convincing or even to social and recreational activities such as buying a drink in the pub, contracts are created all around us. The public perception of contracts is often misleading as many have not found it necessary to enforce such terms. As we live in a capitalist society with freedom of choice, people need to enforce their rights under a contract. Standards are maintained by Government bodies and independent organizations.

The law of contract needs to change with the developments in economics, technology and social attitudes. It is usually a matter for Parliament to intervene and legislate for new situations and introduce law that will govern particular relationships and the contract that arise between them. Under these conditions in the world there must be a suitable contract act in the world and also Sri Lanka. So offerer and acceptance is only one factor for valid contract. To make a valid contract we need to consider all the other requirements of the contract formation. Chapter 4 REFFERANCE * http://www. -lawresources. co. uk/Offer-and-acceptance. php * http://www. swarb. co. uk/lisc/Cntrc18491899. php. * http://www. vakilno1. com/saarclaw/srilanka/lawofcontract/law_of_contract_in_sri_lanka. htm * http://www. nyulawglobal. org/globalex/Sri_Lanka. htm#_3. _Legal_Constructs * http://tutor2u. net/law/notes/contract-elements. html * http://www. publications. parliament. uk/pa/ld200203/ldjudgmt/jd031119/shogun-4. htm. * http://en. wikipedia.

org/wiki/Contract. * http://www. ukessays. com/essays/law/contract-law. php * R. C. Chawla, K. C Garg, Commercial Law, Kalyani Publications, New Delhi, 1999