

# Intention to create legal relations law commercial essay

Law



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## **1. 0 Introduction**

Law is defined as " the body of enacted or customary rules recognized by a community as binding.' Therefore, contract is an agreement enforceable by law. Therefore, a contract is an agreement and there is binding between the parties by legally. In the laws of contracts includes 6 elements which are offer, acceptance of the offer, intention to create legal relations, consideration, certainty and capacity. Terms of contracts defined as

## **2. 0 Laws of contracts**

The basic elements of a contract have included offer, acceptance of the offer, intention to create legal relations, consideration, certainty and capacity.

### **2. 1 Offer**

An offer is a proposal. For the contract exist, there must have both elements which is an offer and acceptance. Offer and invitation to treat have different. Section 2(a) of the Contracts Act 1950 provides that ' when the person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a proposal. Besides that, an offer must be contrasted with an advertisement and option. An advertisement usually is an invitation to treat. In contrast, an option is merely an undertaking to keep the offer opens for a limited time only. Based on the statement above, it is an advertisement rather than an option. In the case of *CARLILL v CARBOLIC SMOKE BALL CO. LTD* [1893], the court held an advertisement is not an offer, but rather is an offer to consider offers. Instance which are generally regarded as invitation

to treat include goods displayed in shop windows and shelves. In this case, human resources manager is making an offer to Landlord because he saw it advertisement.

## **2. 2 Acceptance of the offer**

In this case, landlord receives and accepts an offer from human resources manager. Section 2(b) of the Contracts Act 1950 provides that " when the person to whom the proposal is made signifies his assent thereto, the proposal has been accepted. A proposal, when accepted, it would becomes a promise. In the case *LOW KAR YIT & ORS v MOHAMED ISA & ANOR* [1963], the court held that on the construction of the document sued upon, the option was conditional upon and subject to a formal contract, to be drawn up and agreed upon between the parties. In this case, Landlord accepted an offer from Human Resources Manager. Therefore, if Human Resources Manager broke the promise, Landlord can sue Human Resources Manager.

## **2. 3 Intention to create legal relations**

In this case, Landlord accepted offer given by Human Resources Manger. That means both willing create legal relations. Although the Contracts Act 1950 is silent on the intention to create legal relations as one of the requirement of a valid contract, case-law clearly dictates the necessity of this requirement. Therefore, before create legal relations must be intention first. In the case *Yap Eng Thong & Anor v. Faber Union Ltd* [1973], the court held that there is a lack of intention to create legal relations and therefore was no legal binding among the parties involves. So, cases did have

intention, it was held that there were not valid contract. Therefore, they would start their business negotiation after intention.

## **2. 4 Consideration**

In this case, Human Resources Manager and Landlord would start to discuss about their business negotiations and develop their promise such as rental monthly payment, electrical and water bill payment and others. Section 2 (d) of the said act as follows: when, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. Therefore, consideration is concerned on the contract with bargain. In the case of *HERCULES MOTORS PTY LTD v SCHUBERT [1953]*, the court held there was a genuine dispute between the parties. The agreement to repaint the car was a compromise of that dispute. The compromise was a good consideration for a new contract. So, a contract is based on an exchange of promises by each other and both parties would receive benefits and suffer a detriment. Therefore, Landlord and Human Resources Manager finished the discussion and they would make a legally binding agreement with their consideration for the promises.

## **2. 5 Certainty**

In this case, Landlord and Human Resources Manager must be confirmed everything before make a legally binding the agreement for their promises such as how much the rental monthly payment must pay and only can 5 employees stay in the house. So, both parties must be certain everything by

exchange their promises. The terms of an agreement cannot be vague but must be certain, it is because an agreement which is uncertain or is not capable of being made certain is void. In the case *Karuppan Chetty v Suah Thian* [1916], the requirement of certainty was not met when the parties agreed upon the granting of a lease 'at RM35. 00 per month for as long as he likes'. Therefore, in the term of contract must be certain, it is because the term of agreement uncertain, the parties cannot have reached an agreement in law.

## **2. 6 Capacity**

Capacity refers to the ability of both parties to a contract to fully understand its terms and obligation. For example, they need to understand the languages of the agreements and rules & regulation. In Section 11 of the Contracts Act 1950 reads: " Who are competent to contract. 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 case of *Mohori Bibee v Dharmodas Ghose* [1903], the court held that an infant cannot make any valid contracts. So, Human Resource Manager and Landlord must have the knowledge ability to understand and conform to sign about the agreement before binding the agreement.

## **3. 0 Term of contract**

Terms of contract have been traditionally classified into conditions and warranties.

### **3. 1 Conditions**

Condition is a major term of contract which goes to the root of the contract.

If a condition is breached the innocent party is entitled end the contract and claim the damages. In the case of *Poussard v Spiers* [1876], the court held that Madame Poussard was in breach of condition and Spiers were entitled to end the contract. She missed the opening night which was the most important performance as all the critics and publicity would be based on this night. According to *lawhandbook* (2010), conditions are very important that without them one or other of parties would not enter to the contract.

Therefore, if a party fails to perform a condition, the other party will be entitled to end the contract.

### **3. 2 Warranties**

Warranties are minor terms of a contract which are not central to the existence of the contract. Warranties also can be defined as a promise. If a warranty is breached the innocent party may claim damages but cannot end the contract. In this case *Bettini v Gye* [1986], the court held Bettini was in breach of warranty and therefore employer was not entitled to end the contract. Missing the rehearsals did not go to the root of the contract.

According to *wordpress* (2011), warranties are used to create and increase consumer confidence. Therefore, the terms of contract must be clear and fair.

### **3. 3 Exemption Clauses**

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