

# Contract and hire purchase act

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## **What are the principles under the doctrine of binding precedent?**

When it comes to deciding on case, judges do not decide solely on their own. They are bound to follow certain accepted principles which are commonly known as “ the doctrine of binding precedent”. The doctrine of binding precedent required that “ like cases decided alike”. If a case now before the court has facts and raises issues similar to those of a previously decided case, then the present case will be decided in the same way as the earlier one.

In this way, the earlier case, referred to as ‘ a precedent’ will have provided a legal basis on which the latter case and subsequent cases could be decided. Generally, lower courts are bound to follow the decisions of courts higher than them in the same hierarchy. If the judge fails to follow a binding precedent, the decision of the said judge will be legally wrong and it may be reversed on appeal or overruled in a later case. Below is how The Doctrine operates in Malaysia. The court system in Malaysia, was last restructured by the Constitution (Amendment) Act 1994.

The present court structure, which has been in force since then, is as follows :

- The Federal Court stands at the apex of the Malaysian court system. It is headed by the Chief Justice.
- Below the Federal Court is the Court of Appeal. This court is headed by the President of the Court of Appeal.

- Below the Court of Appeal are two High Courts with co-ordinate jurisdiction. One is the High Court of Malaya which serves Peninsula Malaysia, while the other is the High Court of Sabah and Sarawak, which serves East Malaysia, i. e. Sabah and Sarawak. Each of the High Courts is headed by a Chief Judge.
- Below the High Courts are the Subordinate Courts, the highest of which are the Sessions Courts, each of which is headed by a Sessions Court Judge.
- Below the Sessions Courts are the Magistrates' Courts, each of which is presided over by a magistrate. Parallel to the Magistrates' Court is the Juvenile Court (Court For Children) which is also presided over by a magistrate.
- In Peninsular Malaysia (West Malaysia) there are provisions for Penghulu's Courts below the Magistrates' Courts.
- These are headed by a penghulu or village headman. He has very limited jurisdiction and usually deals with local disputes in an informal manner. However, in practice, these courts hardly function.
- There are also the Native Courts and the Syariah Courts. These courts operate only at the State level.
- The Native Courts exist only in Sabah and Sarawak and they deal with native rights while the Syariah Courts deal with matters pertaining to Islamic law in the respective states.

**Does silence amount to acceptance? Kindly support your answer with evidence.**

Silence does not necessarily indicate that there is acceptance. However, there are exceptional instances where silence may amount to acceptance itself. The rationale behind this general rule is based on the idea that acceptance must take some form of objective manifestation of the offeree's intention through some form of positive action. This is to ensure that no one should be able to enforce a contract upon an unwilling party. Based on Section 3 of the Contract Act 1950 provides that acceptance must be made in the manner prescribed by the offer.

However, based on Section 7(b) of the Contract Act 1950 states that when the acceptor deviates from the prescribed manner, the offeror must not keep silent. If he does so and fails to insist upon prescribed manner, he is considered as having accepted the modified manner.

For instance, refer to the below case of *Felthouse v. Bindley* (1826) Case : *Felthouse v. Bindley* (1826) 11 CB (NS) 869; 142 ER 1037

- The plaintiff had discussed with his nephew, John, on the purchase of a horse belonging to John, and wrote to him, offering to buy his horse and added, " If I hear no more from him, I consider his horse is mine at 0 15s". However, John did not reply.
- Six weeks later, John, whilst selling his farming stock, told the auctioneer to keep the horse out of the sale as he planned to reserve the horse for his uncle. But the auctioneer sold it by mistake. The plaintiff then sued the auctioneer.

- Held : There was no acceptance of the plaintiff's proposal by John. Therefore, the plaintiff had no right to impose upon his nephew a sale of his horse by silence.

However, there are exceptions to this, and a strong case to find for silence mounting to acceptance is when the offeree explicitly states that he wants his silence to be regarded as an acceptance. Using the above case of *Felthouse v. Bindley* (1826), if the fact is twist by saying that Plaintiff and John have communicated with each other about the sale of the horse, and John told Plaintiff that he should write him a note about the sale of the horse, and if Plaintiff does not receive any reply from him, Plaintiff can assume that John has agreed to the sales. In such an instance, should John not replying to Plaintiff, acceptance may be found and a binding, enforceable contract may be found.

Hence, communication becomes effective when it has been communicated.

### **“ A consideration must be adequate”. Do you agree with the statement?**

For example, we may refer to the below case of *Chappell & Co v. Nestle* (1960) had a special offer involving if customer sent in 1s6d and three chocolate bars wrappers, they would get a record of a song called ' Rockin Shoes'. Chappell & Co who owned the copyright of the song has brought an action for breaches of copyright and claimed royalties. Nestle willing to pay the royalties at 6. 25% of 1s6d however Chappell and Co argued that it should be include the chocolate wrappers although Nestle thrown it away after they received it.

The court held that consideration must be sufficient but need to be adequate; hence, the chocolate wrappers were part of consideration as it was part to increase sales and provided value. Therefore, Chappell & Co granted the injunction and Nestle could not sell the records. Under the Malaysian Law, explanation 2 to Section 26 of Contract Act 1950 provides that an agreement to which the consent of the promisor is not void merely because the consideration is inadequate; but the inadequacy will be question by the court whether the consent of the promisor is freely given.

The illustration (f) to Section 26 of Contracts Act 1950 clearly states the application of the rule: “ A agrees to sell a horse worth RM1, 000 for Rm10. A’s consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration”. This was illustrated in the case of Phang Swee Kim v. Beh I Hock (1964), the respondent’s solicitor notified the appellant that she had trespassed on the said land and claimed for vacant possession and for an account of all income received by her from the land. In May 1963, the respondent instituted an action against her claiming the relief stated.

The appellant counter-claimed for a declaration that she was entitled to the said land. At the hearing, the appellant contented that there was an oral agreement made between her and the respondent in which the respondent agreed to transfer the land to her on payment of \$500 in 1958. The learned trial judge accepted her evidence, but held that the agreement is void due to inadequacy of consideration. However, on appeal the Federal Court held that by virtue explanation 2 to Section 26 of Contracts Act 1950, there was adequate consideration as being no evidence of misrepresentation or fraud.

The appellant was therefore entitled to the declaration sought by her. 4. Is an invitation to treat an offer? Support your answer with cases, whenever necessary. An 'invitation to treat' is not the same as an 'offer'. In order for a binding contract to be formed, there must be an 'offer' and an 'acceptance' of that offer. An invitation to treat is sometimes mistaken for an offer. There are many similarities between an invitation to treat and offer, making the distinction can be difficult.

A good way of looking at the difference between the two terms is that an offer is a definite promise to be bound on specific terms, whereas an invitation to treat is only an indication that someone is prepared to receive offers with the view of forming a binding contract. Thus, the distinction turns on the specificity of the offer and the degree of vagueness or conditionality attached to it. The main situation where an invitation is mistaken for an offer is in advertising. Advertising is not an offer, but rather an attempt to induce offers. Advertising is therefore classed under contract law as an invitation to treat.

Only when the customer offers to pay for the goods at the advertised price has an offer been made. Similarly, the 'exhibition of goods for sale' can be confused as an offer when really it is an invitation to treat. When goods are displayed in a store this constitutes an invitation to customers to make offers to purchase the items. Another situation is in auction sales. At an auction the bid itself is an offer then the auctioneer can either accept or reject the offer.

**Refer below list of cases of invitation to treat :**

**An auctioneer inviting bids offers an invitation to treat when a bidder makes a bid.**

Case : Payne v. Cave (1789)

In this case, the defendant made the highest bid for the plaintiff's goods at an auction sale, but he withdrew his bid before the fall of the auctioneer's hammer. It was held that the defendant was not bound to purchase the goods. His bid amounted to an offer, which he was entitled to withdraw at any time before the auctioneer signified acceptance by knocking down the hammer.

**When a customer puts goods in basket, he or she makes an offer.**

Case : Pharmaceutical Society of Great Britain v. Boots Cash Chemists Lts (1952)

Certain brand name medicines were displayed for sale in a self service store. The issue arose as to when and where the sale of the medicines took place. The reason this was an important issue was because the Pharmacy and Poisons Act 1933 S 18(1) provided that it was unlawful to sell such medicines unless the ' sale is effected by, or under the supervision of, a registered pharmacist'. If the sale took place when the customer put the medicines in her shopping basket the sale would not take place ' under the supervision of, a registered pharmacist' because a pharmacist was present at the checkout desk.

The issue here is before the court was when did the sale take place? Was it when the customer put the medicines in her shopping basket or was it when the customer presented the goods to the cashier? The court held that the <https://assignbuster.com/contract-and-hire-purchase-act/>



sale took place when the customer presented the goods to the cashier. The placing of the medicines in the shopping basket has no contractual significance. It was not even an invitation to treat since there had been no communication between the shopper and the shop.

**The contract would only be made at the cashier's desk. The display of goods in a shop by shopkeeper is an invitation to treat.**

Case : Fisher v. Bell (1961)

A shopkeeper was convicted of offering for sale a flick knife contrary to the Restriction of Offensive Weapons Act 1959 S 1(1); he had displayed the knife in his shop window. The shopkeeper appealed. The issue here is, before the court was whether the shopkeeper was offering a flick knife for sale. On the appeal the shopkeeper was acquitted of ' offering' a flick knife for sale. Before the magistrates court he was actually convicted of ' offering' the knife for sale.

This case shows that goods on display are inviting customers to make an offer to buy them from the shopkeeper. In other words ' goods on display in a shop' are an invitation to treat not an offer to buy.

**Supply of information is an invitation to treat. It is considered to be in the process of negotiation and not a definite offer to sell.**

Case : Harvey v. Facey (1893)

The prospective buyer, Harvey, sent a telegram to the seller Facey, asking: " Will you sell us Bumper Hall Pen? Telegraph lowest cash price." Facey responded by telegram: " Lowest price for Bumper Hall Pen ? 900. " Harvey later replied: " We agree to buy Bumper Hall Pen for the sum of nine hundred  
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pounds asked by you. Please send us your title deed in order that we may get early possession,” but received no response. Harvey brought an action to enforce the contract. The court held a contract for the sale of the property could only have been concluded if Facey accepted Harvey’s final telegram. Facey had not said that he would sell the property and had merely stated the lowest price he was willing to sell at. Harvey could not imply Facey’s telegram was an offer to sell as this must be expressly given.

In essence, a price quotation of itself does not amount to an offer but is merely an invitation to treat. An invitation to treat is quite literally an invitation to another party to negotiate, which does not suggest an intention of being bound. Hence, an invitation to treat is a tool to get negotiations going and show the terms which one party may be willing to accept, as opposed to an offer in which one party is prepared to be legally bound by upon acceptance.

**What is the definition of ‘ contract of sale of goods’ under the law?**

A contract of sale of goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price, consisting wholly or partly of money. Where, by virtue of one or more contracts, a person has agreed for value to bail goods to a bailee on such terms that the property in the goods will or may at the option of the bailee pass to the bailee then, for the purposes of this Act, that person is deemed to have agreed to transfer the property in goods to the bailee, and the bailor shall be deemed to be the seller and the bailee shall be deemed to be the buyer.

There may be contract of sale between one part owner and another. Thus, a contract of sale may be absolute or conditional.

**Does the Hire Purchase Act cover all hire purchase transaction?**

The Hire Purchase Act does not in actuality cover all hire-purchase transaction. Hire Purchase agreement is used by Financial Institutions to fund the purchase of consumer goods (goods purchased for personal, family and household purposes), vehicles and other business equipment and industrial machinery.

In Malaysia, the legislation governing hire purchase transaction is the Hire Purchase Act 1976, which came into force on 11 April 1968 after hire purchase became popular in the acquisition of expensive consumer goods such as cars, business equipment and industrial machinery. In respect of goods not specified in the First Schedule of the Hire Purchase Act, the parties are free to contract outside the provision of the Act or agree to be bound by the provisions. However, the First Schedule may be amended by the Minister concerned from time to time.

**What is the main legislation governing partnership in Malaysia?**

In Malaysia the governing law that addresses partnership matters is provided in the Partnership Act 1961 (Act 135) (ii) What is the statutory definition of partnership as provided under the Malaysian Law? Partnership is defined by Section 3(1) of the Partnership Act 1961 as 'the relation, which subsists between persons carrying on a business in common with a view of profit'. No person may be a partner with himself. There must be at least two or more persons to form a partnership.