

Notes

Law of Contract

Introductory Lecture 1

Elements of a Contract

Elements of a Contract	
A. OFFER	} AGREEMENT
B. ACCEPTANCE	
C. INTENTION TO CREATE LEGAL RELATIONS	
D. CONSIDERATION	

All four elements must be present in order for a contract to be valid.

The basis of a contract is an agreement. To have an agreement, there must be a meeting of minds. Thus, if one party has one thing in mind and the other party has something else in mind, there is no agreement.

An agreement is usually found to exist when one party makes an offer which the other party accepts. The use of 'Offer' and 'Acceptance' is essentially for determining whether there is agreement between two parties for a contract to exist.



Offer

Learning Objectives

1. To understand the following rules on “Offer”:
 - (a) An offer can be Oral or in writing
 - (b) Who an Offer can be made to
 - (c) Must the Offer be communicated?
2. To distinguish an offer from
 - (a) Invitation to treat.
 - (b) Supply of Information
 - (c) Declaration of Intent
3. To understand how offers can be terminated by:
 - (a) Revocation of the Offer
 - (b) Rejection by the Offeree
 - (c) Lapse of Time

Introduction

The Law of Contract is a very important part of the business world. The law and rules in this area touch every one of us almost daily, particularly at the workplace. Knowledge of the law and the rules would help you to plan and manage your business activities better and also to protect your personal interests.

These materials are designed to give you a general overview of the laws which govern contractual relationship.

You are strongly urged to read at least one of the RECOMMENDED textbooks listed in your ‘Contract General Instructions’.

In ADDITION, you may also refer to one of the following texts as a very basic and INTRODUCTORY reference:

- Contract law: 'A Layman's Guide' by Catherine Tay Swee Kian
- Basic Business Law in Singapore by Walter Woon.
- Singapore Business Law by Benny S Tabalujan.

What is an offer?

A person is said to make an offer when he indicates to another his willingness to enter into a contract on the terms which he sets out in the offer.

Terminology

OFFEROR: The party who makes the offer.

OFFEREE: The party to whom the offer is made.

Once the offeree accepts the offer, an AGREEMENT or contract comes into being.

1. Rules on Offer

(a) An offer may be:

oral or

in writing or

it may be partly oral and partly in writing.

Examples:

i) Offer made orally:

A makes a phone call to B and asks B if he would like to buy A's car.

ii) Offer made in writing:

X sends an email to Y and says that he would like to buy Y's latest 3G mobile phone.

- iii) Offer made partly orally and partly in writing

S asks J if she would like to buy S's used law text books. S then sends an SMS to J stating that the books can be bought at an 80% discount.

- (b) An offer may be made to:

- i. a single, definite person - if so, only that person can accept the offer;
- ii a group of persons - if so, someone from the group can accept; or
- iii the world at large - if so, anyone may accept by complying with the terms:

Examples:

- i) *Offer to a single person:*

Tan asks Lim if he is interested in buying Tan's ticket to the concert by the 'Ed Sheeran'.

- ii) *Ram sends an SMS to his project group mates to ask if any one of them is interested in buying his classic limited edition DVD album by the rock group 'Metallica'.*

- iii) *Siti posts a notice on her website offering to sell her collection of Pokemon Plushy Toys and accessories to the first person who answers her all if her 'Pokemon' quiz questions correctly.*

Carlill v Carbolic Smoke Ball Co.

In their advertisement, the defendants promised to pay 100 pounds to any person who contracted influenza after using their product - "the Carbolic Smoke Ball" and that 1,000 pounds had been deposited in a bank to prove their sincerity. Carlill used the smoke ball as prescribed but still contracted influenza. She sued the defendants for 100 pounds.

Held: The advertisement was an offer to the world and is a valid offer even though the contract was made with a limited portion of the public who came forward and accepted the offer.

2(c) An offer must be communicated

An offer must be communicated or made known to the offeree before it can be accepted. The offeree cannot accept an offer unless he knows of its existence.

Example:

The police offer \$10,000 to anyone in the public who can give information on a wanted criminal. A, who is not aware of the reward but who knows of the criminal's whereabouts, cannot collect the reward because he cannot accept an offer he did not know of.

2. Distinguishing an Offer from other transactions

An offer is the last step before acceptance by the offeree. Once accepted, you have an agreement. Therefore there is a difference between an offer and the following situations:

- (a). invitations to treat
- (b). supply of information
- (c). declaration of intent

In these instances, the courts have ruled that these are not "offers" but only a step in the negotiations which may or may not lead to an offer being made.

(a) Invitation to Treat

An invitation to treat is an invitation to others to enter into negotiations which may lead to the making of an offer:

Example: The display of goods in a self-service shop or in a shop window is an invitation to treat, not an offer.

Pharmaceutical Society of Great Britain v Boots Cash Chemists (Southern) Ltd

It was an offence to effect any sale of prescriptive drugs in a pharmacy without consulting a registered pharmacist. In the defendant's pharmacy, customers could select any of the products (including prescriptive drugs) and bring them to the counter for payment where the pharmacist could remove any prescriptive drugs. Whether the pharmacy committed an offence depended on whether a sale (contract) was concluded when the customer brought the drugs to the counter.

Held: The display of goods on the shelves was merely an invitation to treat. Hence, when the customer selects a prescriptive drug from a shelf and brings it to the counter, it is an offer from the customer to buy the drug. There is therefore no sale (no contract) until the customer's offer to buy the product is accepted by the Pharmacist.

(b) Supply of Information

The supply of information or a statement of selling prices given in reply to a request is not an offer.

Example:

A asks B: "What is the lowest price for your car?"

B replies: "\$30,000."

A says: "I agree to buy your car for \$30,000."

Is there a contract between A and B?

No contract as B is merely stating the lowest price. It is not an offer. B never stated that he wanted to sell the car to A.

Harvey v Facey

Harvey telegraphed Facey in relation to a piece of property known as "Bumper Hall Pen" : "What is the lowest price for Bumper Hall pen?"

Facey replied "Lowest price for Bumper Hall Pen is 900 pounds"

Harvey replied "We agree to buy Bumper Hall Pen for 900 pounds asked by you".

Held: No contract. Facey was merely stating the lowest price (supplying information) as requested by Harvey. He was not offering to sell the property to Harvey.

(c) Declaration of Intent

A statement expressing an intention to do something is not an offer capable of being accepted:

Example:

Robinson's Department Store announces that there will be a big mid-year sale but it was later cancelled. If you had gone to Robinson's believing there to be a sale, can you sue Robinson's for breach of contract? NO.

Why? The reason is that Robinson's did not make an offer, they were merely declaring their intention of holding a sale.

3. Termination of Offers

An offer may be terminated in three ways:

- a. revocation of the offer
- b. rejection by the offeree
- c. lapse of time

(a) Revocation of the offer

An offer can be revoked at any time before it is accepted but the revocation must be communicated to the offeree. This means that the offeree must actually know of the revocation of the offer by the offeror:

Byrne v Van Tienhoven

Oct 1st: A of UK sends a letter offering to sell goods to B in New York

Oct 11th: B receives the letter and immediately telegraphs his acceptance

Oct 8th: A writes another letter revoking his earlier offer

Oct 20th: B receives the letter of revocation

Held: Applying the postal rule, the offer was accepted on Oct 11. The revocation is therefore ineffective as it was received after the offer was accepted.

(b) Rejection by offeree

Rejection of an offer can take place when:

- i the offeree communicates his rejection of the offer to the offeror or
- ii the offeree makes a counter offer. A counter offer is a new offer made by the offeree by modifying the original terms of the offeror's offer.

The party who made the original offer may accept the counter offer which then becomes a binding contract but the offeree who makes the counter offer cannot change his mind and revive the original offer unless the offeror agrees to do so.

Hyde v Wrench

Facts:

W offered to sell a farm to H for 1000L. H rejected the offer and made a counter offer to W to buy the farm at 950L. W rejected it. H then said he would pay 1000L after all. W by now had decided that he did not want to sell to H for 1000L. H sued for breach of contract.

Held:

H failed in his suit because his offer of 950L was a counter offer which terminated W's original offer of 1000L which could not be revived after the rejection by H.

(c) Lapse of offer

Where the offer has not been accepted within the prescribed time. If there is no time limit set, it lapses after a reasonable time:

Death of either offeror or offeree before acceptance. Death after acceptance does not affect the contract unless personal service of contracting party is crucial to the contract.

Acceptance

Learning Objectives

1. To understand what is meant by acceptance.
2. To understand the following rules on Acceptance:
 - (a) Acceptance can be oral, written or by conduct
 - (b) Acceptance must be absolute and unconditional
 - (c) Methods of acceptance
 - (d) Acceptance must be communicated
3. To understand the following exceptions to the general rule that acceptance must be communicated:
 - (a) The Postal Rule
 - (b) Waiver of communication.

1. What is Acceptance?

It is the **unconditional** consent by the offeree to all the terms of the offer.

2. Rules on Acceptance

(a) Acceptance may be oral, in writing or by conduct (for e.g. sending a cheque by post for some goods) to indicate that you have accepted the offer to buy those goods at the stated price.

(b) Acceptance must be absolute and unconditional ie. the offeree must accept all the terms of the offer without modification.

(c) The acceptance must conform to the prescribed method. If a particular method of acceptance is prescribed by the offeror, then that method should be followed.

If, however, if no particular method of acceptance has been indicated, whatever mode of acceptance which is deemed to be reasonable in that trade would be acceptance.

EXAMPLE

A offers to sell his Reebok shoes for \$30 and indicates that acceptance should be by phone. B sends his acceptance by leaving a note on A's table. Has there been effective acceptance? Why?

No. Not accepted by the method specified.

(d) Acceptance must be communicated.

Therefore, silence is not acceptance.

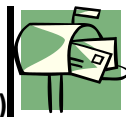


Felthouse v Bindley

Felthouse wrote to his nephew offering to buy his horse for 30 pounds and added "If I do not hear from you, I will consider the horse mine at that price". The nephew did not reply and subsequently sold his horse to a third party 2 weeks later.

Held: No contract since the nephew's silence in this situation could not be taken as acceptance.

3 Two **exceptions** to the rule, that acceptance must be communicated, are:



(a) Acceptance by post (The Postal Rule)

Acceptance by letter or telegram is complete **when the letter is posted**, even if it arrives late or never arrives. This is known as the "Postal Rule".

Exception to the Postal Rule: But in all other types of communication, eg. telephone, telex and fax, the Postal Rule DOES NOT APPLY and acceptance of the offer must be actually communicated to the offeror.

Entores Ltd v Miles Far East Corporation

The plaintiffs, a London company, offered to sell goods to the defendants who were in Amsterdam. The defendants communicated their acceptance of offer to the plaintiffs in London by Telex. The defendants breached the contract and the plaintiffs sought to establish that the contract was formed in London (where the acceptance telex was received) and not in Amsterdam (where the acceptance telex was sent).

Held: For instantaneous communications, the contract is formed when the acceptance is received. Hence, the contract was formed in London.

(b) Waiver of communication

If the offeror expressly or impliedly waives the need for communication, then acceptance need not be communicated.

Intention to Create Legal Relations

Learning Objectives

1. Explain what is 'intention to create legal relations' and why it is necessary.
2. Discuss the use of presumptions in determining an intention to create legal relations.

1. What is Intention to Create Legal Relations and why is it necessary?

Before a contract can be legally enforceable, it must be shown that the parties had intended the contract to be legally binding. If they expressly state that intention, the courts will respect it.

2 Use of legal presumptions about intention to create legal relations

Where it is unclear what the intention of the parties' is, the courts may then make presumptions either of the following presumptions:

- a) for commercial and business agreements – 'parties' intention to be bound' will be presumed by court.

The court presumes that the parties want their contract to be legally binding. But the parties to a business agreement can easily get out of this by expressly indicating that the contract is to be binding "in honour only", i.e. not enforceable.

b) for domestic and social agreements - 'no intention to be bound' will be presumed.

The court presumes that the parties **do not** intend their agreement to have legal effect. Again, this can be rebutted if the parties indicate expressly that they want to have a legally binding contract.

Mr and Mrs Tan agree that Mr Tan's salary will be used to pay for all of Mrs Tan's personal expenses if she stopped working to look after the children. Can Mrs Tan sue Mr Tan for the money if he stops paying? NO.

EXAMPLE B

But if Mr Tan had made the promise at a time when the couple was planning to separate and especially if the couple had written down this agreement, then would Mrs Tan be able to sue? YES.

Consideration

Learning Objectives

1. Explain what is "Consideration".
2. List the rules on Consideration.

Every agreement involves a promise, either to do something or not to do something. A promise is only legally binding if it is made in return for another promise or an act. This requirement for "something for something" is called consideration. The party making the promise must gain some benefit for the promise while the party receiving the promise must suffer some detriment.

Terminology

PROMISOR:

The party who makes the promise to do something or not to do something.

PROMISEE:

The party to whom the promise is made.

1. Rules on Consideration

All contracts must be supported by consideration to be legally binding. An important exception is **contracts under seal**, or **deeds**. These are very formal contracts which are clearly and carefully worded to be legally binding, where the parties sign their consent and their signatures are witnessed by a third party, usually a lawyer.

(a) Rule 1: Consideration must be real.

This means that there must be some value, however small.

Examples of acts which are NOT consideration:

- i. *acts of love and affection, eg. between parent and child or husband and wife*
- ii. *acts done out of a moral or social duty, eg. the act of a lifeguard saving a drowning child is not valuable consideration because he is employed to do it.*

(b) Rule 2: Consideration need not be adequate but it must be sufficient.

The general rule is that the parties are free to decide on the terms of their contract. As long as some value is given, it does not matter whether it is proportionate in value to the thing given in return (*i.e. it need not be adequate*). However, the value that was agreed upon must be provided (not more, not less or something else *i.e. it must be sufficient*).

See the write up on the 'Rule in Pinnel's Case'.

(c) Rule 3: Consideration must move from the promisee (Privity of Contract).

Privity of contract means that only a party to a contract can sue or be sued on that contract. This means that the person to whom the promise is made must furnish the consideration. No third party can derive any benefit or incur any liability on a contract to which he is not a party to. If a person has given nothing, he cannot enforce the promise if it is not kept.

Price v Easton

X owed some money to Price. Price therefore worked out a scheme whereby X would work for one Easton and in return Easton would pay Price. X did the work as agreed but Easton did not pay the money to Price. Price sued Easton.

Held:

Price was not a party to the contract between X and Easton. Since there was no contract between Price and Easton, Price is not entitled to sue Easton for the debt.

See the write up on 'Contracts (Rights of Third Parties) Act.'

- (d) Rule 4: Consideration must be legal.

Example

David agrees to pay Philip \$50,000 if Philip poisons Charlie's coffee. Philip's act of poisoning Charlie is illegal. He cannot therefore sue David for the money even if Charlie is poisoned.

- (e) Rule 5: Consideration must not be past.

When a promise is made in exchange for an act which has already taken place in the past, then there is no value for the promise.

Example

*A saves B's child from drowning in a pool. B then promises to pay A \$500 for the act of saving. A's act of saving the child is **past** consideration and he cannot sue B for the \$500 because past consideration is no consideration.*

