

DIPLOMA IN BUSINESS

BUSINESS AND COMPANY LAW

LAW 1013

INDIVIDUAL ASSIGNMENT

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Introduction

The law of contract is mainly about the enforcement of promises. Not all promises are enforced by courts. To enforce a set of promises, or an agreement, courts look for the presence of certain elements. When these elements are present a courts look for the presence of certain elements. When these elements are present a court will find that the agreement is a contract. This is a somewhat artificial process. To a certain extent, courts will find that some agreements simply look like contracts and they then reason backward and the find the element necessary to form a contract.

As a student you need to be aware if the element required to constitute an enforceable contract. To say that we have a contract means that the parties have voluntarily assumed liabilities with regard to each other.

If these elements are not present, a court will not find that a contract exists between the parties. In the absence of a contract, neither party will be bound to the tentative promises or agreements they have made. It is thus of critical importance to determine whether or not a contract has been formed.

Assignment Task-Question (1)

A contract is a legally binding or valid agreement between two parties. According to **s.2(h) Contract Act 1950** an agreement enforceable by law is a contract. The law will consider a contract to be valid if the agreement contains of the following elements included by proposal (offer) and acceptance. An agreement would only be enforceable by law if the agreement is supported by consideration, intention to create legal relationship, certainty, capacity and free consent.

A contract is formed when an offer by one party is accepted by the other party. An offer must be distinguished from mere willingness to deal or negotiate. For example, X offers to make and sell to Y calendars featuring Australian paintings. Before any agreement is reached on size, quality, style or price, Y decides not to continue. At this stage, there is no legally binding contract between X and Y because there is no definite offer for Y to accept until the essential terms of the bargain has been decided. In point of **s.2(c) CA 1950** 'X' is called 'promisor and offeror', 'B' is called 'promisee and also oferee'. A proposal can be made expressly by oral or written and impliedly by conduct. A proposal must be distinguished from an invitation to treat. An invitation to treat cannot be accepted but only a stage of negotiation. It is include display of good, advertisement, auction inviting tenders.

An offer need not be made to a specific person. It may be made to a person, a class of people, or to the whole world. An offer is a definite promise to be bound, provided the terms of the offer are accepted. This means that there must be acceptance of precisely what has been offered. For example, a used car dealer offers to sell B a Holden panel van for $1,000, without a roadworthy certificate. If B decides to buy the Holden panel van, but insists on a roadworthy certificate being provided, then B is not accepting the used car dealer's offer. Rather, B is making a counter offer. It is then up to the used car dealer to accept or reject the counter offer.

A person can withdraw the offer that has been proposed before that offer is accepted. For withdrawal to be effective, the person who has proposed the offer must communicate to the other party that the offer has been withdrawn. To continue the example above, the used car dealer may say to B that he'll check with his supervisor and maybe a roadworthy certificate can be provided. If, while waiting for a reply, B decides he does not want to buy the Holden panel van and he tells the used car dealer of his change of mind, then there is no binding contract.

The second essential requirement to constitute a contract is that the proposal (offer) must be unconditionally accepted by the person to whom the proposal is made. According to **s.2(b) CA 1950,** the proposal is said to have been accepted when 'the person to whom the proposal is made signifies his assent thereto'. In point of **s.7(a) CA 1950.** A valid acceptance will only arise if the promisee (offeree) accepts the terms of the offer without any conditions or modifications to the proposal (offer). In case of **Lau brother &Co. v China Pacific Navigation Co. Ltd**, If the parties are still negotiating, an agreement is not yet formed. A proposal, when accepted becomes a promise. In s.2(c) CA 1950, calls the person accepting the proposal the 'promise'.

Acceptance occurs when the party answering the offer agrees to the offer by way of a statement or an act. Acceptance must be unequivocal and communicated to the offer or: the law will not deem a person to have accepted an offer merely because they have not expressly rejected it.

Third is consideration. In **s.26 CA 1950,** an agreement must be supported with consideration and agreement without consideration is void. According **to s.2 (d) CA 1950** consideration is define in when at the desire of the promisor, the promisor or any other person has done or abstained from doing or promises to do or abstain from doing something, such cat of abstinence or promise is called consideration of the promise.

There are three tyle of consideration such as executory, executed and past consideration.

Consideration is the price paid for the promise of the other party. The price must be something of value, although it need not be money. In case of **Osmain v United** , It can be in form doing or even abstinence from doing something. Consideration may be some right, interest or benefit going to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other party. So long as consideration exists, the court will not question its adequacy, provided that it is of some value. For example, the promise to pay a peppercorn rent in return for the lease of a house would be good consideration. Of course, the consideration must not be illegal or impossible to perform.

Furthermore, Intention to create a legal relationship is also supported by an agreement. Intention that the contract should have legal consequences. The mere fact of an agreement supported with consideration does not of itself create a binding legal contract. The law requires evidence that it be legal enforceable, such intention may either express or implied from circumstances. Sometime, the contracting parties do not clearly indicate their intention. In such situation, the courts developed two presumptions to assist in developing whether such intention existed between the parties included commercial and business agreement and social and domestic agreement.

Commercially and business based agreements are seen as including a rebuttable intention to create a legally binding agreement. In point of **Edwards v Skyways,** the plaintiff's employer had promised him an ex-gratia payment. As this is a business and commercial agreement, the court held that there was necessary intention to create legal relations. However, the law presumes that domestic or social agreements are not intended to create legal relations. In case of **Balfour v Balfour**, the husband who was stationed in Sri Lanka had promised to pay his wife a monthly allowance as she could not accompany him to Sri Lanka due to poor health. The court held that she could not enforce the agreement as

the parties had not intended that it should have legal consequences. Another case of **Meritt v Meritt**, This presumption is a rebuttable one. The social domestic agreement will be binding where the circumstances do in fact show such intention. In this case, the agreement was recorded in writing and signed by the husband. The court held that there was an intention for the agreement to be legally binding.For example, an arrangement between siblings will not be presumed to be a legally binding contract. A person who wants to enforce a domestic or social agreement needs to prove that the parties *did* intend to create a legally binding agreement.

Besides, capacity is one of the element constituting a contract. Not all people are completely free to enter into a valid contract. The contracts of the groups of people listed below involve problematic consent, and are dealt with separately, as follows Mental Capacity and young people (minors).Minors is a person who has not reached the age of majority. In **Age of Majority Act 1971,** age of majority for purposes of contractual capacity is 18 years. In case of **Tan Hee Juan v The Boon Keat, Mohri v Dhurmados Ghose,** the contract entered into by minor are void, in this case, a minor (plaintiff) executed transfers of land in favour of the defendant. Transfer is void. In exception there are five exceptions to the general rule such as marriage contracts, contact for necessaries, scholarship agreement, contract for insurance and contracts of service.

Mental capacity generally speaking, people are free to enter into contracts even though they may have a mental impairment, or are temporarily disabled by drugs or alcohol. They are, however, sometimes vulnerable to being bound by contracts they do not fully understand. The question of capacity to make the contract often arises only after the contract is in place. People with disabilities and their advocates will find some protection in the rule that a contract is not valid and enforceable unless there was genuine consent to its making. Capacity to give consent involves a general understanding of the nature of the contract (not

necessarily its fine details). A person with a mental impairment, for example, may have the capacity to understand some contracts such as buying a loaf of bread, but not to understand other, more complicated contracts such as buying a car on credit. In point of **Imperial Loan Co v Stone,** Malaysia law is unclear. Following English Law, 'when mental disorder can be proved, contract is voidable at the option of person unsound mind provided the other party knows of his condition.'

The term of an agreement must be certain. If the agreement meaning is unclear but capable of being made certain, the contract is valid. The parties to contract must express themselves so that their meaning can be determined with a reasonable degree of certainty. There would be no contract if the agreement entered into between the parties is vague, indefinite or uncertain. In other words, it is uncertain as to what they actually agreed upon. There are two aspects to the issue of uncertainty include the language used may be too vague (uncertain) and failure to reach an agreement on a vital or fundamental term of an agreement. In **S.30 Ca 1950**, this section states that "agreements, the meaning of which is not certain or not capable of being made certain, are void." Meaning unclear but capable of being made certain, the agreement is valid.

Last of the term of an agreement must be certain. Terms of a contract are those matters which have been agreed between the parties to a contract as incorporated into the contract. A term is express if it has been specifically agreed upon by parties to a contract, it may be either oral or in writing or of both. There are 3 classification of term such as conditions, warranty and intermediate terms. Entering into a contract must involve the elements of free will and proper understanding of what each of the parties is doing. In other words, the consent of each of the parties to a contract must be genuine. Only where the essential element of proper consent has been given is there a contract that is binding upon the parties. The ultimate consequences of establishing that no proper

consent was given to enter the contract are matters dealt with when considering remedies for breach of contract.

In conclusion, there are 7 essential components of a valid contract such as proposal, acceptance, consideration, intention to create a legal relations, capacity, certainty and free consent. It is important to have main elements to make a valid contract.

Assignment Task-Question (2a)

In the case, the plaintiff is Jessica and the defendant is the Shoes shop. They bare in a dispute about the plaintiff (Jessica) insist on buying the shoes at half price.

According to **s.2(h)Contract Act 1950**, an agreement enforceable by law is a contract. An agreement consists of a proposal (offer) and acceptance. A proposal is a definite promise to be bound if the specified terms proposed is accepted and must be distinguished from an invitation to treat (ITT). An invitation to treat is not an offer but an invitation to others to make a proposal, cannot be accepted but only a stage of negotiation.

On the fact, the shoes department store places an advertisement in a newspaper and put a large notice which stated 'Special Offer. Half Price. For Today.' in the shop window. This kind of act is an advertisement, is an invitation to treat. It is an invitation to applicants to make a proposal, the department store was selling high heel shoes made an advertisement and display of goods. Display of goods is an invitation to treat. In the point of **Coelho v The Public Services Commissions** advertisement is an invitation to treat. It is only an invitation to applicants to make a proposal. This behavior is a display of good for sale is an invitation to treat, In the case of **Pharmaceutical Society of Great Britain v Boots Cash Chemist Ltd**, a proposal to purchase was made when the customer attempt to pay at the cashier. The cashier can choose to accept or rejects the proposal.

In conclusion, the cashier can reject the offer from Jessica. There is not a contract.

Assignment Task-Question 2(b)

In the case, the plaintiff is Darren and the defendant is Rayne. They are in a dispute about that the enforce sale of drum set.

According to **s.2 (h) Contract Act 1950**, an agreement enforceable by law is a contract. An agreement consists of a proposal (offer) and acceptance. Offer is accepted when "the offeree signifies his assent thereto" **s.2 (b) CA**. The acceptance must be absolute and unqualified and made on exactly the same term as proposed without modifications or variations.

On the fact, Rayne is the offeror and Darren is the offeree. To enforce the sale of drum set, there must be a valid contract **s.2 (h) Contract Act 1950**.On the fact, Rayne has made an offer to sell drum set at RM5000. The next issue is to determine whether a valid acceptance has been made by Rayne. Therefore, Daren replied with an offer of RM4000. By the law in **s.7 (a) Contract Act 1950**, acceptance must be "absolute and unqualified". According to the case of **Hyde v Wrench,** a counter-offer has the effect of rejecting the original proposal. Hence, a party who making a counter-offer cannot later accepts the original proposal as it was rejected. Counter-offer must be distinguishing for a mere request for further information. By the case of **Stevenson v Mclean,** merely asking for more information is not a counter-offer. Thus, the offer is not rejected. The offeree can later choose to accept it.

In conclusion, there is not agreement because Daren modified the offer instead of accepting it.

Assignment Task-Question 3(a)

In this case, Ronnie is the plaintiff who wishes to sue the defendant is William. It is because William did not repay the money of RM5k that he was borrowed from Ronnie.

According to **s.2 (h) Contract Act 1950**, an agreement enforceable by law is a contract. According to **S.26 Contract Act 1950**, it provides several exceptions, one of it is an agreement to pay a statute-barred debt. A statute barred debt is one that is not recoverable through legal action because of lapse of time stipulated by statute. In general rule, an agreement must be supported with consideration, an agreement without consideration is void. Besides that, there are some exceptions to general rule that is not all agreements without consideration are void.

On the fact, the debt of RM5000 is a statute barred. In **Limitation Act 1953**, the actions to enforce a debt must commence within 6 years from the date of breach. So, William borrowed the money of RM5000 from Ronnie on the April 2015 and promise to pay the debt by the end of May 2015 but he did not repay. After that, he promised that he would settle the debt by January 2016 and he also did not repay. The debt that borrowed to William is concerned within 6 years from the date of breach. In **S.26(c) Contract Act 1950**, provides that a promise to pay a debt barred by law is valid even though there was no consideration.

In conclusion, Ronnie will be successful in his claim against William. William is in breach of contract.

Assignment Task-Question 3(b)

In this case, plaintiff is Jason and the defendant is Simon. They are in a dispute about the enforce the promise to sell the car of, a 2013 Honda Accord, for a special price of RM 25,000.

According to **s.2 (h)Contract Act 1950**, an agreement enforceable by law is a contract. An agreement consists of a proposal (offer) and acceptance. An agreement must be supported by consideration, without consideration is void. Consideration need not be adequate. In general rule, consideration must be sufficient. Count do not ask whether adequate (satisfactory) value has been given in return for the promise. So if a house worth RM 160,000 is sold RM 1, that is sufficient consideration. It is sufficient that something of value is given in return for the promise. In point of **Explanation 2 s.26 CA 1950.** An agreement freely entered into is not void merely because the consideration is inadequate unless consent is not freely given. The case in point of **Phang Swee Kim v Beh I Hock (1964)**, an agreement to transfer a parcel of land for a much lower price that its market value was valid.

On the fact, Jason accepted the offer to buy Simon ’s car for RM 25k but the market price of the car was about RM 50K. RM 25k is a lower price but still a sufficient consideration. Overall, the consideration is valid, contract is also valid.

In conclusion, Jason will be successful in his claim against Simon. Simon is in breach of contract.

Assignment Task-Question 4(a)

In the case, the plaintiff is Zara and the defendant is Wayne. They are in a dispute about the enforce the promise of the car.

According to **s.2 (h) Contract Act 1950,** an agreement enforceable by law is a contract. An agreement consist the proposal (offer) and acceptance. Agreement must be supported with intention to create legal relationship. On the fact, Wayne and Zara are husband and wife. This is a domestic agreement.

In such an agreement, the courts presume that there is no intention to create legal relationship. By general rule, Agreement is presumed to lack intention to create legal relationship. In the case of **Balfour v Balfour,** the husband who was stationed in Sri Lanka had promised to pay his wife a monthly allowance as she could not accompany him to Sri Lanka due to poor health. The court held that she could not enforce the agreement as the parties had not intended that it should have legal consequences.

The general rule does not apply unless there is exception where presumption can be rebuttable. In the case of **Meritt v Meritt,** the social agreement will be binding where the circumstances do in fact show such intention. In this case, the agreement was recorded in writing and signed by the husband. The court held that there was an intention for the agreement to be legally binding.

In conclusion, exception is applicable because Zara resigned and stayed home for eight months.

Assignment Task-Question 4(b)

In the case, the plaintiff is Andy and the defendant is Michael. This case is about Andy challenge the validity of the lease.

According to **s.2 (h) Contract Act 1950,** an agreement enforceable by law is a contract. The term of an agreement must be certain. The parties to contract must express themselves so that their meaning can be determined with a reasonable degree of certainty. There would be no contract if the agreement entered into between the parties is vague, indefinite or uncertain.. In general rule of **S.30 CA 1950**, the contract must be certain so the meanings of the parties can be determined with a reasonable degree of certainty. If the meaning of the agreement which is not certain or not capable of being made certain, are void.

On the fact, Andy agreed to rent RM 50k to Michael for the statement 'lease for as long as Michael wishes'. This means that the contract is uncertain. According to the case of **Karupan Chetty v Suah Thian,** the parties agreed to a lease at a rent of RM35 a month 'for as long as you likes'. The lease was void for uncertainty because there was no limit to the length of the lease. In the case of **illustration(c) of s.30**, Party A who is dealer in coconut oil only, agree to sell to Party B 'one hundred tons of oil'. Party A's nature of trade affords an indication of the meaning of the words. Therefore, Party A has entered into a contract for the sale of one hundred tons of coconut oil.

In conclusion, there is a contract between Andy and Michael is void for uncertainty. Andy will be successful in challenging the validity of contract.

Assignment Task-Question 5(a)

Terms of a contract are those matters which been agreed between the parties and incorporated in the contract. Classification of terms include by condition, warranty and intermediate term.

Condition is a stipulation essential to the main purpose of the contract, the breach of condition will treat the contract as terminated in **Sales of Good Act 1957**. In the case of **Associated Metal Smelters v Tham Cheow Toh**, it must be noted that a party who is entitled to terminate the contract for breach of a condition, may choose to continue the contract and treat the breach as a breach of warranty only. In such cases, he will only be entitled to damages.

Warranty is a stipulation that no so important to the main purpose of the contact , the breach of warranty will treat to claim for damages only but not right to reject the goods and cannot terminated the contract in **Sales of Good Act 1957**.

Innominate terms (intermediate term) are terms which are too complex to be classified either as a condition or a warranty. They lie somewhere between a condition and warranty. In such cases, the court will determine the seriousness of the breach and determine whether such breach should entitle the plaintiff to the right to terminate the contract or merely to claim damages. By the case of **Hong Kong Fir Shipping v Kawasaki Kisen Kaisha**, Kawasaki Hired a ship 'In every way fitted for ordinary cargo service' (Condition), Engine room crew was inadequate and they lost 57 days sailing. Kawasaki did not loss their whole benefit contracted for, but suffered delays which were not so serious. Therefore, they were not entitled to terminate.

Assignment Task-Question 5(b)

In the case, the plaintiff is Andrew and the defendant is the supplier of grain. They are in a dispute about low grade of grain which is a breach of contract.

The problem of this case is the supplier denies liability relaying on exclusion clause. In general rule, courts will not interfere with the terms that parties to a contract agreed upon. Where the exclusion clause is clear and unambiguous, the courts will hold that the exclusion clause is valid. The case in point is **Playing Cards v China Navigation**, the carrier shall not be liable for any loss or damage arising or resulting from delayed or early arrival of the goods and that any under or over carriage shall not be considered a deviation or vitiates any term of the bill of lading (i.e. the contract). Exclusion clause is clear and effective.

There is an exception if the terms of exclusion clause are not clear, ambiguous or capable of more than one meaning then the exclusion clause is not valid. In such case, the courts will apply a rule of construction known as the **contra proferentum rule (CPR)**. According to the case of **Wallis Son v Pratt &Haynes**, a contract for the sale of a variety of seeds described as 'common English sinfonia' contained a clause that the seller gave 'no warranty express or implied as to growth, description, or any other matters'. It was later found that they were of an inferior variety. It was held that the clause did not protect the seller because it related only to warranties, the descriptive term constituted a condition that had not been excluded by the clause. In effect, the court determined that an exclusion of liability for breach of warranty would not be applied to a breach of condition. On the fact, exclusion clause by the

supplier excludes warranty but the low grade of grain is a breach of condition.

In conclusion, exclusion clause is not applicable. Therefore, Andrew can sue grain supplier.

Conclusion

It is important to have the main elements such as proposal, acceptance, consideration, intention to create legal relationship, certainty, capacity and free consent in a contract. Only if there are all the main elements in a contract then it would be legally valid to make a contract. People should take precaution in making a contract to make sure that the parties would be in agreement with the terms made in a contract.

Reference List

- Law Teacher. Law contract '*Main Elements Constituting A Valid Contract Contract Law Essay*'. [Oline].Available at: http://www.lawteacher.net/free-law-essays/contract-law/main-elements-constituting-a-valid-contract-contract-law-essay.php [Accessed 12 November 2016].

- UK Essays. November 2013. Essential Elements Of A Valid Contract Contract Law Essay. [Online]. Available from: http://www.lawteacher.net/free-law-essays/contract-law/essential-elements-of-a-valid-contract-contract-law-essay.php?cref=1 [Accessed 8 November 2016].

- *CLIC - business and commerce - setting up a small or medium-sized business in Hong Kong - making a business contract - what are the basic requirements for making a valid contract?* (2004) Available at :http://www.hkclic.org/en/topics/businessAndCommerce/setting_up_business_in_Hong_Kong/making_a_business_contract/q1.shtml (Accessed: 4 November 2016).

- Hussain, S. (2011) *What is free consent?* Available at: http://rulesofbusinesslaw.blogspot.my/2011/12/what-is-free-consent.html (Accessed: 3 November 2016).

- ACCA F4, 2.2 *Corporate and Business Law Malaysia*: (Main Source) Examiner's Marketing scheme.

- Lee Mei Pheng *General Principle of Malaysia Law* 5th edition Oxford Fajar .

Appendices

Section 2(a) When one 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.

Section 2(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise.

Section 2(e) Every promises and every set of promises, forming the consideration for each other, is an agreement.

Section 2(h) An agreement enforceable by law is a contract.

Section 4(1) The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Section 4(2)(a) As against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor.

Section 4(2)(b) As against the acceptor, when it comes to the knowledge of the proposer.

Section 7 In order to convert a proposal into a promise the acceptance must

Section 7(a) Be absolute and unqualified.

Section 7(b) Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which is to be accepted, and the acceptance is not made in that manner, the proposal may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but, if he fails to do so, he accepts the acceptance.

Section 10(1) All agreements are contracts if they are made by the free consent of parties competent to contract for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Section 10(2) Nothing herein contained shall affect any law by which any contract’s required to be made in writing or in the presence of witness, or any law relating to the registration of documents.