

CHAPTER THREE: WHAT IS A CONTRACT?

INTRODUCTION

Contract is a voluntary agreement between two or more individuals to undertake certain obligation or refrain from doing it. Contract can be held between individuals, businesses, organization or governmental bodies. Contract can be written, unwritten or entirely based on verbal agreement. Any agreement in the contract is legally binding to all the parties. As thus, a breach of contract will happen if one party in the contract does not fulfil what was agreed between them.

Contract cannot be completed unless there is an offer and acceptance. If you agree with a man either by writing or just verbally that you purchase his car for RM 10,000 and he agrees, you have a valid verbal contract. Therefore, we can conclude that contract means a binding agreement between one or more parties to perform certain work or not to perform certain work. For contract to be legally valid it must be accompanied by a legal consideration. As thus contract is defined by the Online Business Dictionary as *a voluntary, deliberate, and legally binding agreement between two or more competent parties. Contracts are usually written but may be spoken or implied, and generally have to do with employment, sale or lease, or tenancy. A contractual relationship is evidenced by (1) an offer, (2) acceptance of the offer, and a (3) valid (legal and valuable) consideration.*

Today e-business is establishing itself as a formidable economic force. Information technology is booming. Online transaction is unavoidable. As such, we need a valid contract to have confidence and certainty to any e-business or online transaction. Without a valid contract, our transaction or business will not be predictable. Without a valid contract, we cannot make any business, sell, and lease or buy a product. Contract helps parties to understand and establish accurately what they going to undertake in any online business. So online contracting is a term used for exchange of goods, or services over the internet.

An example of a legal contract, Jamillah writes an e-mail to Shafiq offering to marry him. Jamilah says in her e-mail: Shafiq please send RM 5,000 cash cheque as Dawry to my father Rahim. Only then we can arrange the marriage ceremony. Shafiq does exactly what Jamillah

asked him to do. Shafiq replies her e-mail with message I accept your offer and I am sending RM 5,000 cheque as a dawry to your father Rahim. Jamillah's father receives the cheque and goes to the bank and immediately cashes the cheque. The next hour Jamillah writes second e-mail stating that I am sorry Shafiq, I cannot marry you. **Discuss and Advice Shafiq....**

Online contracting is increasingly becoming useful among business oriented people. It is different from the traditional contract law and becoming more prevalent as technology is progressing day by day. Online contracting is very useful based on its ease of arrangement and it takes advantage of the internet as a new paradigm of doing e-businesses among companies. There is no geographical distance in online contracting.

As such, technological invention making online contract easier and effective. These technological innovations also make online contracting as an international affairs around the glob. Apart from technological invention that becoming international issue, e-business also growing in a rapid pace. Today people can sell their new products any where in the world without considering any barrier and time. Online contracting becomes very useful as transactions become borderless. As thus, legal issues such as jurisdiction, import, export disputes and tax issues, inevitably arise among parties and making online contracting more important. Online contract is very crucial for electronic transferring of fund, purchase, order, retail sale from a business to a consumer and exchange of digital business documents over the internet.

BASIC REQUIREMENTS OF A CONTRACT¹

For a contract to be valid and legal in the court of law the following conditions must be present:

1. **Offer and Acceptance:** Both parties must agree in writing or verbally that they have an intention of binding themselves into a legal contract. It must be communicated and the subject of the contract must be clear and certain. When offer is made it can be revoked at anytime provided that the other party has not accepted it. If the offer is under seal and sent to a person, it takes effect when he/she receives it. An offer also expires if a specific date is mentioned for the acceptance. If let say there is no specific deadline it will expire in a reasonable

¹ Contract Act 1950: *Section 2(a) 4(1), 4 (2),(a), 3, and S. 7(a),*

time. Reasonable time means depend on the subject matter of the contract. If let say it is perishable item such as food a reasonable time would be a matter of days. If the subject matter of the contract is building a reasonable time may be much longer.

2. **Consideration:** Parties to the agreement must exchange something of value. It is a give and take situation. It can be in the form of an act or equivalent. For example: Karim offers his computer to Jamillah for RM 3,000. There is a consideration. If Karim offers his computer to Jamillah without any price, there is no consideration, because Jamillah consider nothing to Karim. It must be noted that consideration may not be adequate. As long as there is an agreement and a consideration the contract is complete.

3. **Capacity:** Both parties to the contract must be able to enter into an agreement. If a person is declared by court incompetent can not enter into a legally binding contract. The parties to the contract should not be a minor or unsound of mind. Both parties must understand what they are supposed to do. They must understand the consequences of their actions. In online agreement, the minor is asked to verify that he is an adult. A person who is intoxicated or mentally ill cannot enter into a binding contract.

4. **Legality:** The objective and purpose of the contract should not violate public policy. It should not be criminal in nature. No tort, no crime. No gambling, no restricting trade. Unfair contracts are not legal. A person uses his/her influence on the other party to enter into an agreement. A person cannot show superiority on other party. No element of surprise and force. Price fixing also not allowed. Market must dictate the pricing not the parties in advance. Tying agreements are also not valid.

5. **Intention:** Both parties must have intention to create legally bound relations. There are two types of agreements in contract. One is social and domestic agreements and second is commercial agreement. For example A and B agree to go shopping. A says I drive the car and B says I put petrol in the car. This is not a legally binding contract as none of them have intention of suing each other in case one breaches the agreement. There is neither business nor a profit among the parties. As thus, the basic assumption in this type of agreement is that there is no intention to create a legal relationship.

In a commercial agreement such as in a website where one party offers a good for sale and another purchase the good, in this case the intention is clear between the parties. In this type of commercial agreements the intention is automatically presumed. Thus a valid and enforceable contract is created.

5. **Form:** Contract must be in writing and must be signed by both parties, such as sale of land, But as a general rule contract not necessarily be in a particular form. It can be in writing, oral or even a promise.

Acceptance Continued...

WHEN ACCEPTANCE IS FORMED?

Acceptance is the life of the contract. Once the offer is communicated in a clear term to the other party and he/she says I accept, the contract is formed. This is a situation when the contract is held face to face. But how about situations that offer are sent through email, post, call or fax?. If it is by phone call, obviously when the offer is communicated to other party and he said I accepted and the other party heard it. The contract is complete.² Contract Act 1950 reads:.....

Case *Entores v Miles Far Corporation*³: The Court held that once the communication is received by the other party the contract is created. As thus, when a person reads an offer and calls the number and says to the offeror that “*I accept*” the contract is formed.

HOW ABOUT ACCEPTANCE IS SENT BY E-MAIL?

Any acceptance sent by email requires detail study and it does not fall in the category of postal or direct communication. The nature of email is unique and different. Emails are sent by telecommunication service providers and sometime it is out of control of the parties. Sometimes email keeps circulating until it is reaches its destination. Sometimes it may not even reach. In this situation based on all the probabilities, the acceptance is complete when the person receives the email.

² Contract Act 1950: s. 4 (1) and (2) a-b and 3(a-b).

³ (1955) 2 QB 327

HOW ABOUT POST OR POSTAL RULE?

When the acceptance is complete? Is it when he receives the letter of acceptance or when the letter of acceptance is just put into the post box? The case of *Adams v Lindsell* explains it well:⁴ In this case the plaintiff posted his letter of acceptance and unfortunately it was received by the defendant one week later. In this case the time limit was only one week. So the time was up and the goods were already sold. The court held that the contract was formed when the plaintiff put the letter of acceptance into the post box. Contract Act 1950:⁵

The communication of an acceptance is complete when:

- (a) As against the proposer, when it is put in a course of transmission to him, so to be out of the power of the acceptor. Meaning that once the letter of acceptance is put into the post box contract is complete.

⁴ (1818) B and ALD 631

⁵ S.4(2) (a) contract Act 1950