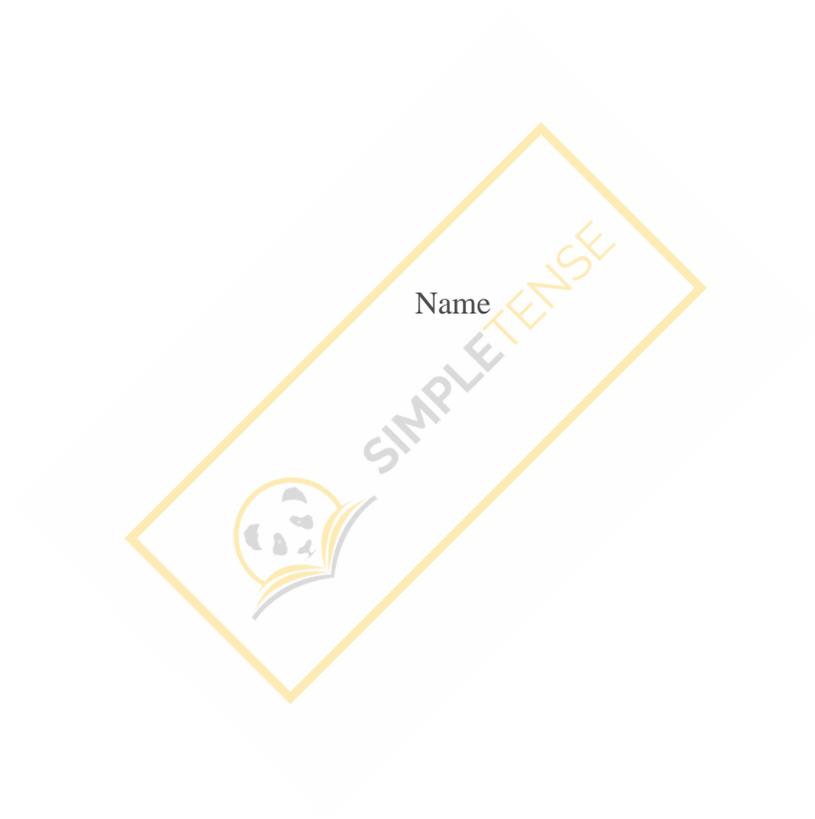


Malaysian Contract Law



Class

Professor

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Nearly a year ago, a man named Ray approached an individual by the name of Jack with a proposition. The date was 15 February 2015. Ray offered to sell Jack a number of machines at RM30,000. Naturally Jack wanted time to mull over the offer given both the amount of money Ray was asking for combined with a need to determine how practical the decision to purchase the decision would be combined with how much use he would have for it. In response, Ray allowed for a ten day period during which Jack would have time to evaluate the offer.

Three days later, on 18th February Jack wrote Ray a letter questioning whether he would be open to the offer under the condition that Jack complete the payment in full with six weeks of the delivery. Given the amount Ray requested, this request was not unreasonable. Ray offered no response. Two days later on the 20th, a woman named Marina emailed Ray offering him 35,000RM for the same machinery. Ray accepted this offer and wrote back to Jack withdrawing his initial offer. Since Jack had not heard from Ray, wanting to move forward with the deal he wrote to him the same day accepting the offer. Naturally, given the series of offers and acceptances raised, the scenario raises an array of legal issues regarding exactly whether Ray's actions were legally acceptable.

In short, Jack does not have any claim to the machinery. To understand why, it is important to review the details of Malaysian contract law. In Malaysia an offer of this caliber is referred to legally as a proposal. "An offer or proposal is one of the essential elements for the formation of a contract. The contracts cannot be entered without one of the parties offering or proposing," (Trakic 2012, p.1). In this case, Ray made an offer to Jack of a certain product (the series of machinery) to be sold to Jack under specified conditions (in exchange for RM30,000). This was the initial offer made by Ray.

By the clearly stated standards of Malaysia Law, there are a series of specifications that detail exactly what constitutes an offer. The rules governing what falls under the classification of an offer are “communication of an offer to the offeree, correspondence of an offer and acceptance which would lead to an agreement, distinguishing an offer from an invitation to treat and revocation of an offer,” (Trakic 2012, p.1). In Malaysian law these definitions of what constitutes an offer are often used interchangeably with a proposal. While the two are essentially synonymous with each other, they are slightly different in the sense that is used in rather general terms while an offer outlines the exact details and conditions of what it is that is being proposed. By definition however, the two are virtually interchangeable.

In addition to offers and proposals, Malaysian Law contains a motion referred to as an invitation to treat. An invitation to treat is an invitation bound by law designed with the intention of inspiring a party involved to make an offer. Invitations to treat are customarily presented in advertisements for a good or service. For example a personal advertisement placed by an individual looking to generate interest in their automobile may contain an invitation to treat enticing prospective buyers to make an offer on the car. People will embrace invitations to treat as a way for one party to stipulate their demands so that the other party or parties involved can assess and scrutinize before arriving at an agreement.

As made clear by their unique definitions, unlike proposals and offers, invitations to treat and offers are rather dissimilar. An offer is a proposal made out right while an invitation to treat expresses an individual’s desire for external parties to make an offer of some kind. When an individual makes an invitation to treat, they do not typically look to be immediately bound to an agreement. Alternatively, offers are made with hope of a comparatively hasty and binding agreement.

It is extraordinarily important to be able to effectively define and distinguish an invitation to treat from an offer. In many cases, an invitation to treat will appear rather similar to an offer and this similarity is both purposeful and deliberate. The primary reason for the initial and almost indistinguishable similarities between an invitation to treat and an offer is the fact that a contract does not conclude until the party that was made the offer agrees to the offer made. "Thus, if all types of statement are regarded as offers capable of acceptance, then the offeree by accepting the statement would bring the contract to its conclusion although the maker of the initial statement did not intend it to be an offer," (Trakic 2012, p.1). It is for this reason that offers are commonly mistaken for invitations to treat or vice versa so the offeror is not immediately bound to the contract. As a result of their comparability, when disputes arise, courts are often far more likely to classify ambiguous offers as invitations to treat for the sake of fairness to each of the parties involved.

The manner in which an offer is made and agreed to is of incomparable import. On the contrary to popular belief, contracts hold considerable weight if made orally. Trakic (2012, p.1) comments that:

Furthermore, a contractual relationship between contracting parties could be simply created by the conduct of the parties. There need not be formally made oral or written offer and acceptance but rather it could be inferred from the conduct of the parties.

In essence, based on this assertion, certain offers and agreements can be binding based on the very concept that both parties were well informed of the conditions of the scenario and ultimately knew what was at stake.

When it comes to contract law in Malaysia, beyond offers and invitations to treat, options are concepts of considerable import. In contract law there exists an agreement referred to as an options contract. An option contract allows for the buyer in a scenario to purchase a determined quantity of what the seller is offering within the constraints of a determined period of time (Alsagoff 2010, p. 52). Given its contractual nature, the seller is legally required to sell that agreed upon quantity of merchandise in the event that the buyer elects to move forward with the deal. As a result of the buyer's comparatively preferential treatment within the constraints of an options contract, they are required to pay an added fee. When it comes to the expiration of an option contract, it remains in tact until either when the transaction has occurred or the expiration date of the contract has passed. For example, a buyer who has agreed to purchase a home within one month will lose the power and legitimacy of their contract after thirty days in the event that they have not moved forward with the transaction.

In terms of Jack and Ray's scenario, there was certainly an offer made. It was not an invitation to treat. Ray approached Jack with an offer. He explained that the item(s) to be sold was some quantity of machinery and determined that the price at which it could be purchased (RM30,000). The one partially ambiguous detail of the offer which was left unspecified was the actual quantity and type of machinery being purchased, however that seems more or less irrelevant for the sake of determining the validity of the offer. If the details were initially omitted, then the legitimacy and binding power of the contract could be dubious. However it is more reasonable, for the sake of the argument to assume that the quantity was specified and discussed in some way between the two parties. According to the standards of what constitutes an offer in Malaysian law, an offer was certainly made between the two men.

Once an offer has been made, it must either be declined or agreed to. When an offer is agreed to or rejected, its purpose has been served and it ultimately becomes irrelevant. In the event that an offer is accepted, it is converted from an offer to a contract. In the scenario, Jack did not agree to the offer when it was presented to him. Rather he elected to defer the offer while he mull over the details. In the first stage of the interaction between Jack and Ray, there was no acceptance of an offer, however Jack expressed some degree of indisputable interest otherwise he would not have opted to evaluate the offer. If there was no interest, Jack would not have required time to reflect on the offer.

The second method beyond agreement by which to terminate an offer is to reject it. The act of rejecting an offer is self explanatory. An offer is made to an individual and for any number of reasons (e.g. disinterest, lack of funds to meet the seller's asking price) the individual will turn the offer down. Under the jurisdiction of Malaysian contract law, prior to rejecting an offer, many individuals will present a counter offer. In a counter offer, the offeree will essentially reject or modify the terms of the original offer and present their own offer to the offeror. This is what Jack did. After a few days, he returned to Ray with a newly modified offer. The vast majority of the details of Ray's original offer remained untouched. The type and quantity of the machinery were the same as originally offered, however while Ray had anticipated payment upfront, Jack was now requesting that he present payment within the six week period that followed the delivery of the machinery. This particular element of the deal is exceptionally vital, as it changes the nature of the contract.

In the original offer, Ray was the offeror and Jack was the offeree to whom the offer was presented. By making a counter offer, Jack surrendered his right as offeree and became the offeror. When presented, a counter-offer will terminate the original offer (Alsagoff 2010, p. 52).

This detail is particularly important, because it voids the original offer and potential contract that may have existed between Jack and Ray. In this sense Jack has no feasible claim to the machinery. A scenario in which he would have claim to the machinery would involve Jack writing to Ray within a few days agreeing to the original offer, rather than issuing Ray a counter offer. In Malaysian contract law, counter offers are customarily brought up in the same breath as requests for additional information. The primary similarity between the two concepts is the fact that the offeree is reaching out to the offeror with a request for more information. That being said, all similarities between the two concepts ultimately end there. A request for more information is an innocuous, non-compromising form of contact that does nothing for the contract. An example of this would be Jack reaching out to Ray a day after the initial offer was made to ask about the age of the machinery or their monthly electrical requirements and the natural impact it will have on his expenses. In spite of this, Jack did not make any noted requests for additional information, and instead made a counter offer which effectively voided the original offer.

The situation and its potential repercussions would have panned out quite differently had Jack made a down payment of sorts in exchange for the initially requested ten days he was permitted during which he would evaluate the machinery to determine its worth. The scenario questions whether the circumstance would have played out differently in the event that Jack had paid Ray RM500. This would technically be classifiable as an option contract. Jack would be paying a premium for what is arguably preferential treatment in the form of a ten day grace period during which he would have secure time to determine if he wanted the machinery. Had Jack made this payment, Ray's decision to sell to Marina would have been classifiable as a

breach of contract. Unfortunately for Jack, he did not issue any sort of premium and instead sent a counter offer voiding his original offer.

The final area of the scenario requiring attention is the relevance and applicability of postal rule. According to Malaysian contract law, an offer made by post does not carry weight until it has been delivered to and received by the offeree (Alsagoff 2010, p. 52). Alternatively, a mailed form of acceptance comes into effect the moment it is sent. Similar to an original offer, it is required that the offeree prior to their posting of their acceptance receives a letter of revocation. It is at this point of the scenario that the series of events becomes somewhat complicated, however the fact that Jack previously issued a counter offer remains unflinching.

Since Jack mailed Roy a counter offer on the 18th, it could be assumed that the counter offer letter was already in Ray's possession by the 20th. The mild problem however is the fact that Jack had not received Ray's letter revoking the original offer prior to his mailing of a second letter accepting the original offer. As stated by the postal rule, an offer of revocation must be received by the offeree prior to their posting of acceptance. While all of this is true, Jack had already sent out a counter offer, voiding the original offer made by Ray. In this sense, the original offer was no longer Jack's to accept, considering he himself had voided it through his counter offer. In this sense, Jack lays no claim to the machinery. Not only that, but he has no grounds to press charges against Ray under Malaysian contract law. Had Jack not issued a counter offer, he would have grounds for the formulation against Ray. The same outcome applies to a hypothetical situation in which Jack had paid Ray for a ten day grace period, inciting the formulation of an options contract. However, because Jack made a counter argument and offered no up front payment to Jack, he has no grounds to pursue any sort of legal action against Ray for selling the machinery to Marina.

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