



# MARTIN GEORGE & CO.

## (M.A.G.C.O)

### Attorneys-at-Law

E Mail: [mag4law@hotmail.com](mailto:mag4law@hotmail.com)  
Website:  
<http://martingeorge.net/>

**PORT -OF SPAIN OFFICE:**  
#43 Dundonald Street,  
Cor. Gordon & Dundonald  
Streets Port of Spain,  
Trinidad, West Indies.  
Tel: (868) 624-7257  
Tel / Fax: (868) 623-5187

**TOBAGO OFFICE:**  
33 Bacolet Park  
Scarborough,  
Tobago, West Indies.  
Tel: (868) 639-1809  
Tel/Fax: (868) 639-1579

**US MAILING ADDRESS:**  
11158 Highland Circle,  
Boca Raton  
Boca Woods  
Florida,  
33428 USA

#### MAGCO LEGAL LESSONS

#### LEGAL TOPIC: BASIC ELEMENTS OF A CONTRACT

By: Janelle Ramsaroop  
Attorney-at-Law  
Martin George and Co.  
Attorneys-at-Law

#### INTRODUCTION

A contract is a written or oral agreement that creates mutual obligations between the parties that have arrived at that agreement. It can be described, in simple terms, as a set of promises made between the parties to the contract. In order for a contract to be formed, four elements must be present, these are:

- That an **OFFER** was made
- That the offer was **ACCEPTED**
- That there was some sort of **CONSIDERATION**
- That the parties had an **INTENTION TO CREATE**

#### LEGAL RELATIONS

Let's now discuss these elements.



Martin George LL.B. AMABE

Associates: Sherisse S. Walker LL.B (Hons) LEC, Keshavi Koorban LL.B (Hons) LEC  
anelle Ramsaroop LL.B (Hons) LEC, Sarah Lawrence LL.B (Hons) LEC and Sara Martinez  
LL.B (Hons) LEC

Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant

## OFFER

An offer is a definite promise or proposal made by one person (let's call this person the offeror) to another person (let's call this person the offeree). This offer, however, must be capable of being accepted by the offeree, this means that the offer must be definite. Provided the offer is accepted by the offeree, the offeror is bound by the initial promise or proposal.

In *Harvey v Facey* [1893] AC 552, the claimant wanted to purchase a property in Jamaica from the defendant. A series of telegrams evidences their correspondence:

Harvey: *"Will you sell us Bumper Hall Pen? Telegraph lowest cash price - answer paid".*

Facey: *"Lowest price for Bumper Hall Pen, £900."*

Harvey: *"We agree to buy Bumper Hall Pen for the sum of nine hundred pounds asked by you. Please send us your title deed in order that we may get early possession."*

After this the correspondence ended, the Defendant refused to sell the property for £900. The Privy Council held that no legally binding agreement was reached. The first telegram was merely a request for information. The second telegram was merely an indication of the lowest price, *if* the defendants decided to sell. Thus, no offer capable of acceptance had ever been made.

Facey had not directly answered the first "yes or no" question as to whether they would even sell to Harvey and the lowest price stated was merely responding to a request for information on price, not on willingness to sell and definitely not an offer. Therefore, there was no evidence of an **intention** that the telegram sent by Facey was any sort of **offer** that was capable of creating acceptance.

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**Martin George LL.B. AMABE**

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Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara  
Martinez LL.B (Hons) LEC  
Gayatri Badri Maharaj LL.B. (Hons.) (UWI) L.E.C.; M.B.A. (Dist) – Legal Consultant**

In the case of **Gibson v Manchester City Council [1979] 1 WLR 294**, The claimant received a letter from the defendant stating that they may be prepared to sell his rented Council flat to him and that he should hand in a formal application. Before the claimant's application was processed, an intervening election meant that the Council's membership changed. The new Council stopped the sale of flats. The claimant's claim that there was a valid contract for him to buy the flat was rejected by the court. It was held that the Council's letter was not an **offer**, but the Claimant's application form would have been an offer that would had to have been accepted by the Council and it had never been accepted. Thus there was no Contract.

Both of these cases highlight that an offer has to be definite and clear to the point that the offeror must have that expectation of being bound by the said offer in the event that it is accepted. This therefore means that any alleged offer cannot be vague or uncertain. A definite offer should be able to identify the parties, the item(s) and quantities concerned, what the other party has to do in return and also a time frame for performance of these obligations.

### **ACCEPTANCE**

Acceptance means acceptance by the offeree, of an offer, agreeing to all the terms set out by that offer. This acceptance must be effectively communicated, final and unequivocal. This means that there must be a perfect reflection between what has been offered and what is being accepted. It must be noted that only the person to whom the initial offer was made in the first place can accept it.

The case of **R v Clarke (1927) 40 CLR 227** holds that an offer cannot be accepted unless it has been communicated to the offeree. In other words, the offeree must be aware of the offer at the time of his or her acceptance. Usually, this is not an issue of contention but in certain circumstances, lack of awareness of an offer has meant that acceptance was not valid.

As pursuant to the case of **Hyde v Wrench (1840) 49 ER 132**, where an offer is accepted with modifications, this cannot amount to a valid acceptance but instead this will be deemed a counter-offer or another offer in itself.

The case of **Carlill v Carbolic Smoke Ball Co [1893] QB 256** holds that acceptance must be communicated clearly. In most circumstances, silence does not amount to acceptance. However, sometimes acting on the terms of the offer *may* be a course of dealings which can amount to acceptance.

## **CONSIDERATION**

We discussed that a contract is essentially a promise between the parties but what binds this promise? The principle of consideration requires something of value in the eyes of the law to move from the offeree to the offeror in order to make the promise enforceable (**Thomas v Thomas (1842) 2 QB 851**). It must be noted that consideration must be sufficient and any consideration from the past will not amount to consideration in the present. Consideration must also move from the offeree to the offeror.

## What can be deemed “something of value”?

“Something of value” may be in the form of a benefit to the offeror or a detriment to the offeree. For example, an offeree might confer a benefit to the offeror by paying a sum of money before receiving goods/services that were offered.

An often cited definition of consideration can be found in the case of **Currie v Misa (1875) LR 10 Ex 153**; *“a valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. ... It is enough that something is promised, done, forborne, or suffered by the party to whom the promise is made as consideration for the promise made to him.”*

In the case of **Bainbridge v Firmstone (1838) 1 Per & Dav 2 (QB)**, the claimant allowed the defendant to weigh the claimant’s boilers, provided that the boilers were returned in the same condition within a reasonable time. The defendant took the boilers apart and returned them without putting them together again. The claimant sued the defendant to have the boilers returned in the same condition as they had been before. The defendant argued that no consideration moved from the claimant in exchange for the defendant’s promise to return the boilers in the same condition. The court held: *“The consideration is, that the claimant, at the defendant’s request consented to allow the defendant to weigh the boilers. I suppose the defendant thought he had some benefit; at any rate, there is a detriment to the claimant from his parting with the possession for even so short a time.”*

Therefore, from this case, we can also see that as long as the offeror has requested something from the offeree in exchange for the promise, a very strong presumption is raised that the

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**Martin George LL.B. AMABE**

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Janelle Ramsaroop LL.B (Hons) LEC Sarah Lawrence LL.B (Hons) LEC and Sara  
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thing requested is of benefit to the offeror even if it possesses little or no intrinsic, commercial or market value.

### **INTENTION TO CREATE LEGAL RELATIONS**

The aim of this requirement is to test whether the parties to a contract intended for their agreement to have legal consequences, meaning that parties can sue each other in court if promises are not fulfilled.

The test for intention to create legal relations is an objective one. The question must therefore be asked whether a reasonable third party would have concluded that the parties intended to have created legal relations. Therefore, if a party contends that they did not mean to be legally bound, a court will objectively examine that party's conduct in assessing whether they intended to be legally bound by their promise.

Where an agreement is made in a commercial context, the law raises a presumption that the parties do intend to create legal relations by the agreement: **(Edwards v Skyways [1964] 1 WLR 349)**

Conversely, in social and domestic and Family situations, there is usually a presumption that the parties did not intend to create legal relations, for example, if a father promised his son \$100.00 to do household chores and the son accepts this offer, there was obviously no intention to create legal relations so even if the son does the Household chores, he really has little or no chance of bringing a successful claim against his father for the \$100.00. This is particularly useful for Parents and Children to note during this time of Home Confinement

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**Martin George LL.B. AMABE**  
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where inducements may be offered amongst Family members to do or refrain from doing certain things. These are generally NOT legally binding, so children should not get overly excited if their parents promise them \$10,000.00 to do the dishes.

In the case of ***Balfour v Balfour*** [1919] 2 KB 571 Lord Atkin stated: “*In respect of these promises each house is a domain into which the King's writ does not seek to run, and to which his officers do not seek to be admitted.*”

This means that the court will generally not interfere with domestic agreements, so in this time of Home Quarantine let's remember with fondness and not with any great degree of legal seriousness, the many promises which may be made amongst family members or persons in a domestic setting, as they will usually NOT be Legally enforceable afterwards.

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