

INSTRUCTIONS FOR CASE STUDY:

Objective: Analyze the case to identify legal issues, challenges, and solutions, and demonstrate the ability to develop counterarguments through creative applications of the law.

Chapters covered: Contract law - Specific contracts - Business organizations - Employment law.

Materials Allowed:

1. One A4 paper (double-sided) with any notes or summaries.
2. A copy of the Civil and Commercial Code.
3. No other materials or resources are permitted.

Steps:

1. Case Summary:

- Begin by reading the case carefully.
- Summarize the case in your own words, ensuring to capture the essential facts, parties involved, and main contentions.

2. Identification of Legal Issues:

- List down the primary legal issues raised in the case.
- Reference specific provisions or sections from the Civil and Commercial Code that might be relevant to each issue.

3. Legal Challenges:

- Detail any challenges or complexities in interpreting or applying the law to the case.

4. Legal Solutions:

- Provide potential solutions or outcomes based on your understanding of the law and its application to the facts.
- Make sure to justify each solution with reasoning and reference to specific provisions or sections from the Civil and Commercial Code.

5. Creative Applications & Counterarguments:

- Think outside the box: Can you apply the law in a novel way that hasn't been traditionally considered? This is your chance to showcase creative legal thinking.
- Develop counterarguments that the opposing side might use, and think of ways to rebut those counterarguments.

- Remember to ensure that any creative application is still grounded in legal principles, even if it's a stretch from traditional interpretations.

Submission & Evaluation:

- After completing your analysis, prepare a brief report or presentation (based on instructor's preference) covering all the above points in 15 minutes.

- Your submission will be evaluated on the following criteria:

1. Clarity & Organization: Your summary and arguments should be structured logically and presented clearly.

2. Accuracy: Your identification of legal issues and reference to the Civil and Commercial Code should be accurate.

3. Depth of Analysis: The depth to which you explore legal challenges, solutions, and creative applications.

4. Originality: Your ability to think creatively and present unique perspectives or interpretations of the law.

Note: Remember, the goal of this activity is not just to find the "right" answer, but to demonstrate a deep understanding of the law, its nuances, and its application to varied situations. Think critically, argue passionately, and defend your position rigorously!

EXAMPLE ON CONTRACT LAW

Arm, seeking business for his garden maintenance firm, posted the following notice in the meeting room of the Royal Gems, a local golf club: “To the members of the Royal Gems—Special this month. I will repair your garden for twenty baht per square foot using Fairway brand sod. This offer expires July 15.” The notice also included Arm's name, address, and signature and specified that the acceptance was to be in writing.

Boris, a member of the Royal Gems, and David, the janitor, read the notice and became interested. Boris wrote a letter to Arm saying he would accept the offer if Arm would use Putting Green brand sod. Arm received this letter July 14 and wrote to Boris saying he would not use Putting Green sod. Boris received Arm's letter on July 16 and promptly wrote Arm that he would accept Fairway sod. David wrote to Arm on July 10, saying he accepted Arm's offer.

By July 15, Arm had found more profitable ventures and refused to repair either garden at the specified price. Boris and David brought an appropriate action against Arm for breach of contract. Who will prevail? Explain.

Under the Thai Civil and Commercial Code (TCCC), the formation and enforcement of contracts are guided by specific principles. Based on the provided scenario, we can identify the following legal issues:

Five Legal Issues:

1. **Formation of Contract:** Under the TCCC, a contract is formed when one party makes an offer and the other party accepts it. Here, it needs to be determined if Arm's notice constitutes a valid offer and if Boris's and David's letters fulfill the requirements of a valid acceptance.
2. **Invitation to Negotiate vs. Offer:** Can an advertisement or a general notice be considered as an invitation to negotiate and not a binding offer? Was Arm's notice a genuine offer or just an invitation to negotiate?
3. **Counteroffer:** Boris's request for a different type of sod might be seen as a counteroffer under the TCCC. A counteroffer effectively rejects the original offer and proposes a new one.
4. **Timeliness of Acceptance:** Under the TCCC, the timeliness of the acceptance is crucial for the formation of a contract. Boris's final acceptance might have come after the expiration of the offer.
5. **Scope of the Offer:** Who was the offer open to? If it was specifically directed towards members of the Royal Gems, then David, as a janitor, might not have been eligible to accept it.

Main Legal Issues for Boris' case:

1. **Validity of Counteroffer:** Did Boris's request to use the Putting Green brand sod nullify his ability to later accept the original offer?
2. **Rejection of Counteroffer:** When Arm refused to use the Putting Green brand sod, did he effectively close the door on any subsequent acceptance by Boris?
3. **Late Acceptance:** Was Boris's acceptance, which might have been received after the offer's expiration date, still valid?

To summarize, Boris initially tried to modify the terms of Arm's offer by suggesting a different brand of sod, which constitutes a counteroffer. When Arm declined to use the

"Putting Green" sod, Boris then attempted to accept the original offer. However, the acceptance letter was received by Arm after the expiration date of the offer (July 15). Consequently, there was no valid acceptance before the offer expired, so no contract was formed between Boris and Arm. Therefore, Arm should prevail in the action brought by Boris.

In summary:

Boris will not prevail against Arm.

Based on a more creative approach, Boris could argue a modification of contract terms: Can Boris argue that his initial letter was merely a query or suggestion for modification, rather than a counteroffer, preserving the original offer? (creative approach in favor of Boris)

Boris could contend that his initial letter to Arm, suggesting the use of Putting Green brand sod, was not a counteroffer but rather a simple inquiry into the possibility of a modification of terms. More precisely, Boris could argue that his letter was phrased as a question or suggestion rather than a definitive counteroffer. He might point to the specific language or tone used in the letter to support this. If the letter was noncommittal or if Boris used language that indicated uncertainty or a mere preference (e.g., "Would it be possible to use Putting Green brand sod instead?"), it can be interpreted as a mere inquiry rather than a rejection of the original offer.

By framing his letter as an inquiry, Boris can argue that the original offer from Arm remained open and valid. Boris's subsequent acceptance of the Fairway sod, after Arm clarified that he would not use Putting Green sod, was then a clear acceptance of the initial offer, leading to a binding contract.

Main Legal Issues for David's case:

1. Eligibility to Accept: Was David, as a janitor and presumably not a member of the Royal Gems, eligible to accept the offer?
2. Clear Acceptance: David's acceptance was clear and without modification. Does this mean a contract was definitely formed between him and Arm?
3. Public Offer: If the offer was publicly displayed in a communal area, does it become a public offer open to anyone, including David?

4. Intent to Contract: Did David, based on the notice, have a legitimate reason to believe that he was entering into a binding contract with Arm?

5. Breach of Contract: If a valid contract was formed, is Arm in clear breach of that contract by refusing to provide the service?

David vs. Arm:

David, as a janitor, is not a member of the Royal Gems. Arm's offer was specifically addressed "To the members of the Royal Gems," and as such, only members of the club could accept the offer. Even though David accepted the offer in writing and before the expiration date, his acceptance was not valid since he was not a member. Therefore, no contract was formed between David and Arm. Arm should prevail in the action brought by David.

In summary

David will not prevail against Arm.

Based on a more creative approach, David could argue that the term "member" as used in the offer is ambiguous. Using a broader interpretation of the term, drawn from certain dictionary definitions, "member" can be understood not only as a formal subscriber or enrollee of a specific institution but also as a participant or part of a community or group.

Given that the notice was posted in a meeting room of the Royal Gems, it was accessible not just to formal club members but to anyone participating in the activities or operations of the club, including employees such as janitors. In this light, David could contend that he is a "member" of the Royal Gems community, if not in a formal club membership sense, then as an integral part of its day-to-day operations.

Furthermore, the fact that Arm did not specifically indicate "club member" but simply "member" can lend weight to David's argument. Had Arm intended to restrict the offer to only those who are enrolled as club members, he could have made this clear in the notice. Ambiguities in an offer can be construed against the party making the offer.

David could further strengthen his argument by showcasing his long-standing affiliation with the Royal Gems, his interactions with its members, and his contribution to the club's operations and environment, thereby underlining his role as a vital "member" of the community.

While this is a more creative and expansive interpretation, it brings to light the importance of clarity and specificity in contractual language. If David can convince a court to adopt this

broader understanding of "member," he might prevail in his action against Arm for breach of contract.

OTHER EXAMPLES ON COMPANY LAW

1. Jill was a limited partner in a retail limited partnership that was sued by a customer who fell in the store. The customer claimed the business was negligent in caring for its floors. Please discuss Jill's potential liability?

2. Sam, Alfredo, and Juan want to start a small business. Juan will fund the venture but wants to limit his liability to his initial investment and has no interest in the daily operations. Sam will contribute his full efforts on a daily basis but has limited funds to invest in the business. Alfredo will be involved as an active consultant and manager and will also contribute funds. Sam and Alfredo are willing to accept liability for the firm's debts as they feel they have nothing to lose by doing so. All three individuals will share in the organization's profits and wish to keep the initial organizational costs of the business to a minimum. Which form of business entity should these individuals adopt?

3. Sally, Alicia, Holly, Mark and Lenders currently are general partners in a business located in Bangkok, Thailand. They are content with their current tax situation but are all very uncomfortable with the unlimited liability to which they are each subjected. Which form of business entity should they consider to replace their registered ordinary partnership assuming they wish to remain the only five owners of their business? Explain your answer carefully.

4. Mrs. Meadows opened a biscuit shop called The Biscuit Bakery. The business was not incorporated. Whenever she ordered supplies, she was careful to sign the contract in the name of the business, not personally: The Biscuit Bakery by Daisy Meadows. Unfortunately, she had no money to pay her flour bill. When the vendor threatened to sue her, Mrs. Meadows told him that he could only sue the business, because all the contracts were in the business's name. Please advise the vendor.

5. Alan Dershowitz, a law professor famous for his wealthy clients, joined with other lawyers to open a fine dining restaurant, Maven's Court. Dershowitz met with greater success at the bar than in the kitchen—the restaurant failed after only a year in business. One supplier sued for overdue bills. What form of organization would have been the best choice for Alan Dershowitz and his colleagues?

EXAMPLES OF QUIZZES ON CANVAS

1. The term “contract” refers to

- A) A binding agreement that always involves two or more parties over the age of twenty.
- B) A binding agreement that always involves two or more parties who are not family members.
- C) A binding agreement between two or more parties to regulate a legal relationship.
- D) A nonbinding agreement between two or more parties to regulate a legal relationship.

2. The expression “contractual freedom” means

- A) Freedom to enter into contracts.
- B) Freedom to select the contract type.
- C) Freedom to choose the contracting party.
- D) All of the above.

3. A non-reciprocal contract is a contract that

- A) Depends upon another contract.
- B) Creates certain rights or benefits for each party.
- C) Creates only obligations on one party and only rights on the other party.
- D) Is given a special designation under the Civil and Commercial Code.

4. Most of the contracts come into existence when

- A) Parties shake their hands.
- B) Parties have signed a written document.
- C) Parties have agreed on the essential provisions.
- D) Parties deliver the property which is the object of the contract.

5. In order to form a contract, an agreement must include:

- A) An offer and an acceptance.
- B) A transparent commitment of the parties.
- C) A meaningful commitment of the parties.
- D) A written document stating the price of the sale.

Answer:

6. Which of the following is not a basic element of a valid offer?

- A) Intention of the offerer.

- B) Communication of the offer.
- C) Definiteness of the offer.
- D) Morality of the offer.

Answer:

6. An offer will lapse if:

- A) It is made verbally.
- B) It is made in writing.
- C) It is rejected by the offeree.
- D) It is not accepted before the expiration of the period stated in the offer.

Answer:

7. The death of the offerer after the offer has been sent

- A) Does not terminate an offer.
- B) Terminates the offer if, before accepting, the offeree has notice of the death.
- C) Both A and B are correct.
- D) None of the above.

Answer