

Letter of advice on formation of a contract

Dear Mr. Smith,

I am writing this letter to formally address the recent situation regarding the rent of your flat which was discussed and agreed upon via email between us for the academic year 2025/26. A week after you received the deposit payment, I was under the impression that my accommodation for the new academic year was secure. However, you still followed through with the decision to rent the flat to another party who offered a higher amount of rent. I am under the impression that a legally binding contract was formed between us and your decision to revoke and rent to another party constitutes a breach of contract. I wish to outline the legal position and implications of your decision.

As it states in Elliott and Quinn (2011), communication is treated as an offer if there are straightforward terms showing that the offeror is willing to enter into a contract becoming legally bound following acceptance. Richards (2011) asserts that an offer can be delivered verbally, in writing, or by behavior. In this instance the offer was expressed verbally through our initial meeting when you proposed the rental of the flat for £500 a month, with the start date of September 1st. This was also later confirmed via email when you wrote: "Sure, the rent is £500 per month, and you can move in on September 1st, 2025. Please confirm if you agree." According to Finch and Fafinski (2023), an offer is void if the parties do not communicate clearly. This idea is illustrated in the case of *Taylor v Laird* [1856], in which Taylor resigned while on a voyage as captain of a ship. He tried to retrieve wages for the tasks he had done and kept working as a crew member on board. It was held that Taylor was not entitled to a salary because his new position was not confirmed by a contract. In contrast to this instance, a valid offer was in place between you and I due to the clear verbal and written communication. According to Richards (2009) an example of an offer is shown in the case *Carlill v Carbolic Smoke Ball Co* [1893] with an advertisement of the smoke ball expressing that £100 would be given to customers if they contracted influenza after using their product. The advertisement was held to be a legally binding offer under contract law because the terms were sufficiently certain, and the offer was accepted by consumers who used the product as directed. Similar to this example, your offer was made with explicit terms during our initial meeting and was subsequently verified in writing later via email.

According to Applebey (2001), an invitation to treat is the collection of different conditions that can lead to an offer. An example of an invitation to treat is shown in the case *Fisher v Bell* [1961] with the display of a flick knife which was displayed in a shop window. Similarly to the rental of your flat it was an invitation to treat when the flat was listed online without a valid offer in place. It would have been beneficial to keep this invitation to treat online until you received an offer that fit your requirements instead of entering a contract with me if you were open to higher offers after becoming contractually bound.

As it states in Poole (2010), acceptance is mandatory when turning an offer into an agreement and it must be communicated with the offeror to make a legally binding contract. According to (Applebey, 2001), acceptance must match the exact terms of the offer. This is known as the “mirror image rule.” According to Stone (2011), the case which outlines this principle is *Hyde v Wrench* [1840], when Mr. Wrench attempted to sell his farm but was presented with a counteroffer which did not constitute acceptance of Mr. Hyde's original offer. However, regarding the rental of your flat my response to your email was equivalent to acceptance when I agreed to the full terms of the offer you had put in place. Poole (2010) also states that acceptance must be unconditional and correspond to the exact terms which are proposed by the offeror. In the case of our rental agreement I (the offeree) agreed to the terms of the rental agreement which included the rental amount and the start date with the intention to be legally bound.

According to Elliot and Quinn (2011), consideration refers to the exchange of something of value for the promise made between the parties. According to Taylor (2015), consideration must be legally sufficient. This is shown in the case *White v Bluett* [1852] when a father expressed that he would dismiss his son's debt if he stopped complaining. The court held that this was not sufficient enough to be consideration. In contrast our rental agreement contained sufficient consideration which was present when I transferred the deposit to your bank account to secure my future occupancy of your flat, which further strengthened our agreement. This reflects my intention to follow through with the contract. According to Richards (2019) consideration was defined in the case *Currie v Misa* [1875] as the gain or advantage for one party and an obligation assumed by the other. According to Finch and Fafinski (2015) the rules surrounding consideration are that it must not be past and that it must move from the Promisee. This principle was established in the key case *Tweddle v Atkinson* [1861]. This case was a written agreement stating a sum of money would be paid to William Tweddle once he was married. One of the parties passed before the money was paid to William. William then sued the executors when they refused to pay him, however the claim failed as William had not contributed consideration to the agreement. William also failed to claim due to the privity of contract rule which governs the fact that only parties involved in the contract can enforce it.

According to Merkin and Saintier (2021), contractual capacity is mandatory when it comes to individuals entering legally binding contracts. This principle is governed under the ‘Mental Capacity Act 2005’. In accordance with this Act, a person lacks capacity if they are incapable of making their own decisions at the time of the formation of the contract. Whether the mental impairment is temporary or permanent makes no difference. You, as the owner of a property, have the authority to rent it out to individuals, and I, as a student attending university, can enter contracts such as rental agreements. As a result of this there was nothing preventing our contract from being enforceable.

According to Poole (2014) for a valid contract to be successfully formed both parties must have the intention to create legal relations with each other following acceptance. For social and domestic agreements, the presumed intention is that there is no aim to create legal relations between the parties. This is displayed in the key case *Balfour v Balfour* [1919] where the parties involved were husband and wife. Due to health conditions the wife had to return to England while her husband was at work overseas. They agreed that he would pay her living expenses of £30 a month. The marriage broke down and the wife sued to uphold the promise of financial help. It was held that the promise made between them was not legally binding as there was no intention to create legal relations. Since we do not have a connection, unlike this instance, the intention to set up legal relations is legitimate. As stated by Richards (2011), with commercial agreements the presumption is strong that there is an intention to be legally bound by contract. The case *Rose and Frank Co. v J R Crompton and Bros* [1925] illustrates this principle. Through a New York firm, an English company agreed to sell carbon copy materials in the UK. Through the deal, the parties were able to sell in the USA and Canada for three years, with the possibility of extending that time. However, the document for the arrangement contained a clause which stated that the deal was not entered into as a legal agreement and that it could not fall under United States or English jurisdiction. Similarly to this case part of our agreement was made in writing regarding the exchange of emails, however, there was no existing clause removing the fact that our contract was legally binding.

In conclusion I am of the belief that a legally binding contract was formed between us for the academic year of 2025/26. Our contract contained all the key elements required to form a legally binding contract which are offer, acceptance, consideration, capacity, and the intention to create legal relations. In our case the offer was made during our initial meeting when I viewed the flat. Acceptance was then confirmed later in writing through our email exchange when you finalized the details, and I responded expressing that I agreed to the terms you had provided. Consideration was present within our contract when I transferred the deposit for the flat to your bank account which declared my dedication to our contract. Your decision to rent the flat to another party despite our existing agreement constitutes a breach of contract. According to Poole (2010), you can be sued for reliance loss damages because not only did you decide to rent the flat to another party, but you did so a week after receiving my deposit for the flat. Reliance loss occurs when money spent by the claimant to prepare for the contract is wasted due to the breach. In this case, with acceptance already having occurred and consideration given in return for the tenancy, with a week having passed I could have covered the costs to get ready to move into your flat such as moving costs or furniture. I request that you promptly return the deposit I paid as consideration for the flat as you are required to under the law. Failure to do so will leave me with no choice but to claim restitution. Richards (2019) states that claims in restitution aim to place both parties back into the

same position they were both in before the contract had been entered into. The aim of these damages is to prevent the defendant from profiting due to the breach of contract.

I have the right to pursue legal action due to the breach of this contract as well as receiving back the deposit I paid and reimbursement for monetary losses because of your conduct. I'm hoping this matter will be resolved quickly and that you take the appropriate steps to resolve this situation. I look forward to hearing from you.

Yours sincerely,

Jane

Reference list

Applebey, G. (2001) *Contract Law*. London: Sweet & Maxwell.

Elliott, C. and Quinn, F. (2011) *Contract Law*. Eighth Edition. Great Britain: Pearson Education Limited.

Finch, E. and Fafinski, S. (2015) *Contract law*. 4th ed. Place of publication not identified: Pearson.

Finch, E. and Fafinski, S. (2023) *Contract law*. 8th edition. Harlow, United Kingdom; Pearson Education.

Merkin, R.M., Saintier, S. and Poole, J. (2021) *Poole's textbook on contract law*. 15th edition. Oxford: Oxford University Press.

Poole, J. (2010) *Textbook on contract law*. 10th edition. Oxford: Oxford University Press.

Poole, J. (2014) *Textbook on contract law*. 12th edition / Jill Poole. Oxford: Oxford University Press.

Richards, P. (2009) *Law of contract*. Ninth edition. United Kingdom: Pearson Education Limited.

Richards, P. (2011) *Law of Contract*. Tenth Edition. United Kingdom: Pearson Education Limited.

Richards, P. (2019) *Law of contract*. Fourteenth edition. Harlow, England: Pearson.

Stone, R. (2013) *The modern law of contract*. Routledge.

Taylor, R and Taylor, D. (2015) *Contract Law: directions*. Oxford: Oxford University Press.

Case Law

Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256

Hyde v Wrench [1840] 49 ER

Taylor v Laird [1856] 25 LJ

Fisher v Bell [1961] 1 QB 394

Currie v Misa [1875] LR 10

White v Bluett [1852] 23 LJ

Balfour v Balfour [1919] 2 KB

Tweddle v Atkinson [1861] 121 ER

Rose and Frank Co. v J R Crompton and Bros [1925] AC 445