

Dear Mr. Smith,

Based on our interactions concerning the lease of your flat to me for the 25/26 academic year, we made a legally binding contract that you have broken by leasing the apartment to another person. I will explain why this is true, evidencing how all necessary components for a valid contract are present within our dealings, beginning with your online listing for the flat and ending with me transferring the deposit payment into your bank account.

I would like to start by addressing your online listing for the apartment in question. This advertisement is considered an invitation to treat, which comes before the acceptance of an offer (Fenwick, 2019). An invitation to treat is defined as “a mere declaration of willingness to enter into negotiations; it is not an offer, and cannot be accepted so as to form a binding contract,” (Fenwick, 2019). ‘Partridge v Crittenden’ (1968) demonstrates how the distinction between invitation to treat and offer is an important one. It held that as long as there has only been an invitation to treat with no follow up offer, you as the seller are not yet at a point where you could be held responsible for beginning an agreement with me. The idea that having an invitation to treat but without an offer means that you are excluded from a valid agreement is further supported in ‘Fisher v Bell’ (1960). Although these cases respectively deal with the sale of a bird and a flick knife, the principles derived from them easily apply to our situation. Your advertisement counted as an invitation to treat, not an offer.

This advertisement did eventually move from invitation to treat to an offer, the first key component of forming a contract. Fafinski and Finch define offer as “an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed,” (Fafinski and Finch, 2023). You first verbally made me an offer after I viewed the apartment. You said you could rent the flat to me for £500 per month, starting from September 1st. Though this was just a conversation after my viewing the apartment, this is considered an offer under ‘MacInnes v Gross’ (2017). Here it was decided that “[a] contract can be made anywhere, in any circumstance,” MacInnes v Gross’ (2017). This exchange was clear and without counteroffer. With that said, it bares mentioning that if you had posed the

£500 per month as a minimum or maximum price, you could argue under 'Harvey v Facey' (1893) that it was '[t]he mere statement of the lowest price... contained no implied contract to sell."

If I had accepted this offer at the time, it would have been a valid agreement according to (*Financial Instruments and Transactions*, 2021). Before I gave you my acceptance, however, you gave another offer in an email exchange. In this exchange, you clearly restated the rent and move in-date. This conversation had similarities to the case of 'Clifton v Palumbo' (1944), especially because we were discussing the sale of property. Where it differs from this case, however, in that you stated the rent of £500 per month was not a preliminary statement to price, but the declared price itself.

Following your offer, I communicated my acceptance. I did so by agreeing to your terms exactly, thus satisfying the mirror image rule of acceptance according to Murray, Hogue, and Lannis (2017). I also communicated my acceptance via email, reciprocating how the second offer was given to me. Our agreement was finalised the moment you received and read my email. This idea of acceptance via instantaneous modes of communication, such as email, was established in 'Brinkibon Ltd v Staghad Stahl GmbH' (1983). This case supported that the formation of agreement occurs when the seller receives acceptance via instantaneous method of communication.

After communicating my acceptance via email, I upheld my end of the agreement by depositing the money for the flat into your account. 'Errington v Errington and Woods' (1952) supports that upholding my end of the agreement can lead to a valid contract being formed between us. Also like in 'Errington v Errington and Woods' (1952), my acceptance is considered acceptance by conduct. The principle of acceptance via conduct established in 'Brogden v Metropolitan Railway' (1877). This case concluded that a valid contract can be formed via conduct, even if the written contract is not finalised. So even if we did not have the valid agreement as I have outlined above in our email exchange, my transferring the deposit into your account was me acting out my acceptance, creating that valid agreement. There was no further information needed to conclude our dealings, since the price, location, and duration of my let was already established in our past communications. The more minute details behind the lease are not integral to this agreement and therefore do not alter our contract. This is backed up

in 'Nicolene Ltd v Simmonds' (1953), which decided that the non-essential details lacking from agreement did not impede its validity.

The next key element in the formation of our contract is consideration. Consideration is outlined in 'Currie v Misa' (1875) as being "...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." I am classifying the consideration in our contract as executory because we exchanged promises to perform acts in the future, which is outlined in the definition of executory consideration by Fafinski and Finch (Fafinski and Finch, 2023). The executory consideration in our agreement is you renting me the flat for £500 per month for the 25/26 academic year.

Consideration is key to a contract, because it is the actual thing or service being exchanged. This is made clear in the definition of consideration as given in 'Dunlop v Selfridge' (1915): "[a]n act of forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable." Another key aspect of consideration is knowing that it needs to be sufficient but not necessarily adequate. The need for sufficient consideration is demonstrated in 'Thomas v Thomas' (1842). This specifically means something "which is of some value in the eye of the law," 'Thomas v Thomas' (1842). Because of this, the exchange of my £500 per month rent for the apartment is sufficient. It would also be difficult for you to argue that my consideration is inadequate, as 'Chappel and Co v Nestle Co Ltd' (1960) stated that "very trivial acts can amount to consideration." In this specific case, the consideration was chocolate wrappers. This differs from the consideration in our agreement, but the principle applies all the same.

I will now take a moment to reiterate and clarify the points I just made on consideration. First, I can prove I supplied sufficient consideration when I deposited money into your account. The consideration in our agreement is executory, and therefore valid. The idea of laissez-faire can also be applied in the context of consideration. Laissez-faire is a French phrase literally meaning: "allow to do," with the idea being "let people do as they choose," (Merriam-Webster). Applying this to contracts means that people are free to enter into whatever contract we want, in our case me leasing your flat. Lastly, I would like to once again reiterate the point made in 'Thomas v

Thomas' (1842) that "consideration means something which is of some value in the eye of the law".

I would also like to take a moment to mention capacity when it comes to making a valid contract. If we entered into a contract with either one or both of us lacking capacity, the contract will be voidable (*Capacity – Overview*). Capacity is important when applied to those who are lacking mental capacity, are minors, or are companies. The Mental Capacity Act 2005 defines someone who is lacking mental capacity as "a person [who] lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain," (*Mental Capacity Act 2005*). Minors also lack capacity to make contracts, unless the contract is for necessities, as proven in 'Proactive Sports Management Ltd v Rooney' (2006). Lastly, companies do not have the capacity to make contracts that go against their constitutions, as found in 'Salomon v Salomon & Co, Ltd v Salomon' (1895-99). Because lacking capacity due to any of these characteristics or descriptions did not apply to you or me while making this contract, it cannot be said that our contract is voidable.

The final element needed to create a valid contract is the intention to create legal relations. 'Edmonds v Lawson' (2000) explains that this intention is integral because it supplies certainty in business transactions and the importance of a trader being able to rely on a promise. This case is referring specifically to a business transaction, where intent to create legal obligation is always understood. Because you and I only met in the context of me renting your flat, I would argue that we made our agreement with the intent for legal relations. 'RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG' (2010) supports this by saying "[w]hether there is a binding contract between the parties...depends not upon their subjective state of mind, but upon a consideration of what was communicated between them by words or conduct, and whether that leads objectively to a conclusion that they intended to create legal relations." Furthermore, the ruling held by 'Esso Petroleum Ltd v Customs and Excise Commissioners' (1976) would say that not holding promises made in advertisements is an undesirable way to conduct business. In this case, Esso Petroleum Ltd was advertising coins bearing the likeness of football players faces on them in exchange for the purchase of a certain amount of

petrol. Again, this case is different from our situation, but the principles are the same nonetheless.

For the reasons given above, it is evident that we entered a valid contract for me to lease the apartment you advertised online for the 25/26 academic year. By giving this apartment to another person, you broke this contract. Evidence of offer, agreement, consideration, intent to create legal relations, and capacity were all present in our communication in person and over email. You verbally offered your apartment to me upon my viewing the location. You offered the same apartment, under the same terms, again over email. This allowed us to clarify and put down in writing the consideration of our agreement. I then accepted this offer, following the mirror image rule, over email. Following this, I completed my end of the agreement by transferring the deposit into your bank account. This was not only me upholding my end of the agreement, but also gives an additional form of acceptance, acceptance via conduct. As I briefly explained, our contract is not voidable due to us having the capacity to enter a valid contract. Lastly, our agreement had the intent to create legal relations, since we only ever met in the context of me letting your apartment.

Best,

Jane

References:

'Alexander Brogden and Others Appellants v the Directors, &C., of the Metropolitan Railway Company Respondents' (1877) 2 App.Cas., 666, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/b9251c89-d3ef-491e-bfe4-c9c2afac46c9/?context=1001073>. (Accessed: 19 February 2025).

'Brinkibon Ltd v Staghad Stahl GmbH' (1983) 2 AC, 34, 1037, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/b4416551-1ec4-4006-91b8-0c7072d7061d/?context=1001073>.

(Accessed: 25 February 2025).

Capacity – Overview. LexisPSL Private Client Overviews. Available at: [https://plus-lexis-com.ezproxy.uwtsd.ac.uk/uk/search/?pdmfid=1001073&crid=6be8ce99-de1d-4011-bb24-](https://plus-lexis-com.ezproxy.uwtsd.ac.uk/uk/search/?pdmfid=1001073&crid=6be8ce99-de1d-4011-bb24-c8bfb6637b84&pdsearchterms=mental%20capacity%20act&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=hlct:1:0&pdpsf=&pdqtype=and&pdquerytemplateid=&comp=f5hg&earg=pdsf&prid=710fe4fd-daa3-4fa4-b306-4a1c405b1ccd)

[c8bfb6637b84&pdsearchterms=mental%20capacity%20act&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=hlct:1:0&pdpsf=&pdqtype=and&pdquerytemplateid=&comp=f5hg&earg=pdsf&prid=710fe4fd-daa3-4fa4-b306-4a1c405b1ccd](https://plus-lexis-com.ezproxy.uwtsd.ac.uk/uk/search/?pdmfid=1001073&crid=6be8ce99-de1d-4011-bb24-c8bfb6637b84&pdsearchterms=mental%20capacity%20act&pdtypeofsearch=searchboxclick&pdsearchtype=SearchBox&pdstartin=hlct:1:0&pdpsf=&pdqtype=and&pdquerytemplateid=&comp=f5hg&earg=pdsf&prid=710fe4fd-daa3-4fa4-b306-4a1c405b1ccd)

'Chappel and Co v Nestle Co Ltd (1960) A.C., 87, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/b98c39c6-d724-4f90-82a3-9cfa6260fce2/?context=1001073>. (Accessed: 25 February 2025).

'Clifton v Palumbo' (1944) 2 All ER, 497, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/5df9ed72-a575-42ab-a633-2eba533d0be4/?context=1001073> (Accessed: 25 February 2025).

'Currie v Misa' (1875) All ER Rep, 333, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/579ff85f-d01b-4116-af7f-dd8052ffef6e/?context=1001073> (Accessed: 25 February 2025).

'Dunlop Pneumatic Tyre Co, Ltd v Selfridge & Co, Ltd' (1915) All ER Rep, 333, *Lexis Plus UK*. Available at: [https://librarysearch.uwtsd.https://plus-lexis-](https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/b9251c89-d3ef-491e-bfe4-c9c2afac46c9/?context=1001073)

[com.ezproxy.uwtsd.ac.uk/api/permalink/579ff85f-d01b-4116-af7f-dd8052ffef6e/?context=1001073](https://librarysearch.uwtsd.ac.uk/api/permalink/579ff85f-d01b-4116-af7f-dd8052ffef6e/?context=1001073) (Accessed: 25 February 2025).

'Edmonds v Lawson' (2000) Q.B., 501, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/b1e2b635-32a5-42a7-b80c-2babc4716544/?context=1001073>. (Accessed: 6 March 2025).

'Errington v Errington and Woods' (1952) 1 All ER, 149, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/44c2be29-f76b-4eba-bfc2-71b671a1847e/?context=1001073>. (Accessed: 19 February 2025).

'Esso Petroleum Ltd v Commissioners of Customs and Excise' (1976) 1 WLR, 1, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/bfe6882d-1a7a-444b-937a-dc4f6731607b/?context=1001073>. (Accessed: 6 March 2025).

Fafinski, S, and Finch, E. *Law Express Revision Guide: Contract Law*, Pearson Education, Limited, 2023. *ProQuest*. Available at <https://librarysearch.uwtsd.ac.uk/api/permalink/bfe6882d-1a7a-444b-937a-dc4f6731607b/?context=1001073>. (Accessed 6 March 2025).

Fenwick, J. (2019) 'Invitation to Treat,' in Halsbury's Laws of England, Volume 22. Available at <https://librarysearch.uwtsd.ac.uk/api/permalink/f771f27f-9365-4b29-8b1c-cd4cf69732df/?context=1001073>. (Accessed 7 March 2025).

'Fisher v Bell' (1960) 3 WLR, 919, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/6c5f46cf-d695-4f4f-b9a2-df6af0f4ac69/?context=1001073> (Accessed: 11 February 2025).

(2021) *Financial Instruments and Transactions*. Halsbury's Law of England. Available at <https://librarysearch.uwtsd.ac.uk/api/permalink/6e04df9e-7743-4a9e-b2ff-2756756ac846/?context=1001073>. (Accessed 7 March 2025).

'Harvey and Another Plaintiffs; and Facey and Others Defendants. On Appeal from the Supreme Court of Jamaica' (1893) A.C., 552, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/94ce1120-21c4-43ac-ae3d-b1c6a0967d6f/?context=1001073> (Accessed: 19 February 2025).

'Laissez-Faire', *Merriam-Webster*. <https://www.merriam-webster.com/dictionary/laissez-faire#:~:text=The%20French%20phrase%20laissez%20faire,the%20operation%20of%20natural%20economic>

'MacInnes v Gross' (2017) EWHC (QB), 46, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/dcc7e40e-65e7-4bb5-943d-df68aaf57feb/?context=1001073> (Accessed: 19 February).

Mental Capacity Act 2005, s2(1). Available at <https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/92d699a8-5a16-4929-b9e8-c519126a5af9/?context=1001073> (Accessed 7 March 2025).

Murray, Hogue, and Lannis (2017) 'Contract Drafting Advice: The "Battle of the Forms" Demystified', *Practical Guidance Journal*, (May) article. Available at:

<https://www.lexisnexis.com/community/insights/legal/practical-guidance-journal/b/pa/posts/contract-drafting-advice-the-battle-of-the-forms-demystified>.

(Accessed: 7 March 2024).

'Nicolene Ltd v Simmonds' (1953) 1 All ER, 822, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/b04279ab-be15-4cf8-91e7-60e03a2d1763/?context=1001073> (Accessed: 11 February 2025).

'Partridge v Crittenden' (1968) 2 All ER, 421, *Lexis Plus UK*. Available at:

<https://librarysearch.uwtsd.https://plus-lexis-com.ezproxy.uwtsd.ac.uk/api/permalink/6e196b7b-6be2-40a2-9a90-372de1a1d88f/?context=1001073> (Accessed: 11 February 2025).

'Proactive Sports Management Limited v Rooney and Others' (2010) EWHC, 1807 (QB) *Lexis Plus UK*. Available at: <https://plus-lexis->

[com.ezproxy.uwtsd.ac.uk/api/permalink/f8e3c9a3-678c-4ba1-91e7-f402359f6a2f/?context=1001073](https://librarysearch.uwtsd.ac.uk/api/permalink/f8e3c9a3-678c-4ba1-91e7-f402359f6a2f/?context=1001073) (Accessed: 7 March 2025).

'RTS Flexible Systems Ltd v Molkerei Alois Muller GmbH & Co KG' (2010) 2 All ER (Comm), 97, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/3c92b20a-fc43-45a3-9f02-60d729e6db13/?context=1001073> (Accessed: 25 February 2025).

'Salomon v Salomon & Co, Ltd v Salomon' (1895-99) All ER, Rep 33 *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/409268ac-906f-415a-9b74-02ee44e5a3d2/?context=1001073>. (Accessed: 7 March 2025).

'Thomas v Thomas' (1842) 114 ER, 330, *Lexis Plus UK*. Available at: <https://librarysearch.uwtsd.ac.uk/api/permalink/e39816f9-9abc-4f5e-a756-86aba026f5cc/?context=1001073>. (Accessed: 25 February 2025).