



## International Journal of Applied Business and Economic Research

ISSN : 0972-7302

available at <http://www.serialsjournal.com>

© Serials Publications Pvt. Ltd.

Volume 15 • Number 20 • 2017

### Formation of Contract: Comparison Among Malaysia, Myanmar and Vietnam<sup>§</sup>

Habib Alam,<sup>\*</sup> Anowar Zahid<sup>\*\*</sup>, Kamal Halili<sup>\*\*\*</sup> and Rohimi Shapiee<sup>\*\*\*\*</sup>

<sup>\*</sup> *PhD candidate and Graduate Research Assistant, Faculty of Law, Universiti Kebangsaan Malaysia. Correspondent author.*

<sup>\*\*</sup> *Associate Professor, Faculty of Law, Universiti Kebangsaan Malaysia.*

<sup>\*\*\*</sup> *Professor, Faculty of Law, Universiti Kebangsaan Malaysia.*

<sup>\*\*\*\*</sup> *Professor, Faculty of Law, Universiti Kebangsaan Malaysia.*

#### 1. INTRODUCTION

The contract is a key element of trade. Contracts need to form to perform different daily deeds, i.e. for buying and selling goods and may involve trade terms<sup>1</sup> (CIF, FOB, FAS, C & F etc), taking loan from bank, hire vessels, etc. The main aim of contract is to provide “protection and enforcement of promise”. Legally enforcement of promise is called contract. Contract law does not state rights and duties which law will compel, rather it consists of limiting principles subject to upholding of law. Once parties enter into valid contract, they become subject to legal limitation and prohibitions<sup>2</sup>.

Contract is an essential part for business transaction both in national and international jurisdictions (i.e. transnational commercial transactions). “Valid formation of contract” is a prima facie evidence for validating any contract through “gateway approach”. Lack of formation of contract may lead to invalid, illegal or void contract unless operation of law of particular competent jurisdictional permits validation. Problems may arise when applicable law of different jurisdictions may involve (i.e. common law jurisdiction and civil law jurisdiction) in a particular contract. Conflicts of formation of contract arise including “battle of form” against “mirror image rule”. To solve this problem, courts/ competent forum may take consideration of “curification approach” or “repair approach” by taking consideration of circumstantial evidences (i.e. elements of formation of contracts) of the contract, right applicable law, and right interpretation by concerned competent forum. Common law approach follows English law for validating

<sup>§</sup> *This paper is written under the research project- GUP-2014-080 (UKM).*

formation of contract and Civil law approach follows French law (i.e. other state like China may be taken into consideration) for validating formation. This research paper deals with differences of formation of contract among ASEAN states. ASEAN states consist of both common law and civil law jurisdictions. In this research, it will be scrutinized the differences of formation of contract among Malaysia (i.e. Common law jurisdiction) with Myanmar (i.e. Common Law jurisdiction) and Vietnam (i.e. Civil Law Jurisdiction).

## **2. A GENERAL OVERVIEW OF CONTRACT FORMATION UNDER THE LAWS OF MALAYSIA, MYANMAR AND VIETNAM**

### **2.1. Malaysia**

In 18<sup>th</sup> Century, Adam Smith thought every person should allow himself performing his interest according to his own will. This self will turns into “Freedom of contract” subject to some reasonable restrictions. “Freedom of contract” means free choice including free agreement. Tough competition among traders, the scope of “Freedom of contract” became narrow with eliminating “Freedom of choice”. In absence of “Freedom of choice” it was hard for party to express their real intention in forming contract. Any curtail of freedom of choice should be expressed through statute itself rather than taking approach by legislature, i.e. Sections 25-31 of Malaysian Contract Act 1950 provide details about “Void Agreements”<sup>3</sup>.

Current Malaysian Contract Act 1950 is revised in 1974. Before this Act, Malaysia had two kinds of legal system (common law of England and Contracts Ordinance 1950). English common law of contract law was enforceable among Malacca, Penang, Sabah and Sarawak. Contracts (Malay States) Ordinance 1950 was applicable to Pahang, Perak, Sabaj, Negeri Sembilan, Johore, Trengganu, Kelantan, Kedah and perils<sup>4</sup>.

Before the British arrival in Malaysia, Malay Legal Codes were consisted of personal laws, customary laws and Islamic laws. Most of the disputes were settled by Sultans or Their chiefs. Due to lack of specific law of contract, all contractual transactions were done based on customary or Islamic laws. Cases were solved based on circumstantial evidences and case-to-case basis without any taking consideration of precedent of earlier cases which were not kept in record. After arrival of the British to Malaysia, British commercial Law came into enforcement. Different laws were enforceable to different states of Malaysia<sup>5</sup>.

Island of Penang became the jurisdiction of British in 1786. English law was introduced by first Charter of Justice in 1807 and power was exercised by Court of Judicature. There was ambiguity as to applicable law during 1786-1807 in Penang. In **Ong Cheng Neo v Yeap Cheah Neo**<sup>6</sup>, Privy Council in 1872 stated English law would be applicable law when Penang became subject to British rule. In 1819, Singapore became subject to British rule. Straits Settlements were formed both in Penang and Malacca. Second Charter of Justice was formed similar to First Charter of Justice. English law became applicable law to both Malacca and Singapore. Third Charter of Justice was introduced in 1855 similar to earlier charters. English commercial law was formed through forming Straits Settlements<sup>7</sup> by section 6 of the Civil Law Ordinance 1878. This ordinance provided that English would be applicable to Penang, Malacca and Singapore until 1974, Malaysian Contract Act 1950 was applicable to both Penang and Malacca<sup>8</sup>.

Before 1946, West (or Peninsular) Malaysia was consisted of “Federated Malay states”<sup>9</sup> and “Unfederated Malay states”<sup>10</sup>. Malaysian Contract Act 1950 started to apply in the Federated Malay States.

In 1899, modeled contract law was introduced similar to Indian Contract Act 1872 with little modifications. This modeled contract law was applicable to Pahang, Perak, Selangor and Negeri Sembilan through separate Contract Enactments. However, Judges were applying English laws into Federated Malay States by disregarding Contracts Enactments. These Contracts Enactments were applicable till the Contracts (Malay States) Ordinance 1950<sup>11</sup>.

There was no definite contract law in unfederated Malay States and English law was applicable law. Contract Enactments were applicable to Johore and Kedah states. English commercial law was applicable to other three Malay States till the enforcement of Contracts (Malay States) Ordinance 1950 was effective<sup>12</sup>.

In 1946 the Malayan Union was formed consisting of both federated and unfederated Malay states including Penang and Malacca. Federation of Malaya was formed in 1948 by an agreement between British Government and rulers of each of the Malay states. Each state had its own constitution after separation from British rule. The Contracts (Malay States) Ordinance 1950 was introduced in 1950 and was applicable to both Federated and unfederated states excluding Penang and Malacca. English law was applicable to Penang, Malacca, Sabah and Sarawak states<sup>13</sup>.

Federation of Malaya reached full independence in 1957 and became member of Commonwealth. To bring uniformity of contract law among states of Federation of Malaya, The Contracts (Malay States) Ordinance 1950 was revised in 1974 and introduced The Revision Laws Act 1968 without going through Parliamentary procedures. It extended the application to Malacca, Penang, Sabah and Sarawak from July 1, 1974 through the Contracts (Malay States) (Amendment and Extension) Act 1974 (Act A239). The Contract Act 1950 was amended again in 1976 by Contracts (Amendment) Act 1976 (Act A329)<sup>14</sup>.

Malaysian Contract Act 1950 was originated from Indian Contract Act 1872 which was applicable in 1899 in the Federated Malay States. The Indian cases have great influence while interpreting Malaysian Contract Act 1950 in relation to same subject matter or common matter. Malaysian Courts are not bound by the decisions of Indian cases but may take as references. The decisions provided by Judicial committee of Privy Council on provisions of Indian Contract Act which have similar subject matters or common matters with Malaysian Contracts Act may have binding force in Malaysian jurisdiction. In **Khalid Panjang & Ors. v. Public Prosecutor (No. 2)**<sup>15</sup>, The Federal court stated the decision of Privy Council (i.e. their Lordships) on Indian statute is binding on every High Court of Malaysia and can not disregard by any Malaysian courts. The right to appeal in Privy Council against any Malaysian Courts' decision had been abolished on January 1, 1985. The decisions of Privy Council before 1985 regarding contractual disputes are binding on Malaysian courts. After 1985, the decisions of Privy Council are not binding but may have substantial influential authority for Malaysian Courts<sup>16</sup>.

English law may be applied to Malaysian Contract law. Sections 3 and 5 of Civil Law Act 1950 (Revised 1972) provides English Law may be applied to Malaysian Laws unless "other provision" make it otherwise by written law. English law is applicable to Malaysian law unless it conflicts with written law of Malaysia. In **Tan Mooi Liang v Lim Soon Song & Ors**<sup>17</sup>, The Federal court stated English law of partnership will not be applied because contract (Malay States) Ordinance 1950 is considered as "other provisions relating to partnership". Thus, English law may be applied to Malaysian law as "curification procedure" or "repair procedure". In **Wrigglesworth v Wilson Anthony**<sup>18</sup>, the court stated, English cases of Contracts (Malay States) Ordinance 1950 are not based on English Law of contract<sup>19</sup>.

In **Song Bok Yoong v Ho Kim Pou**<sup>20</sup>, the court held some provisions in Contracts (Malay States) Ordinance 1950 are different with principle of the common law. In **J.M. Wotherspoon & Co. Ltd. V. Henry Agency House**<sup>21</sup> and **Royal Insurance Group v David**<sup>22</sup>, the Court stated English law may be applied to Malaysian law where Malaysian law is silent or makes no provision on the subject<sup>23</sup>. This is called as “mischief rule of statutory interpretation” to minimize lacuna or loopholes of Malaysian Laws<sup>24</sup>.

The Contracts Act 1950 is consisted of X parts. The law of partnership and Sale of Goods are separated by Partnership Act 1961 (Act 135) and the Sale of Goods Act 1957 (Act 382) respectively. Malaysian Contract Act 1950 is not a complete code for dealing with contract. This may be extracted from Indian Contract Act 1872 where preamble provides “whereas it is expedient to define and amend certain parts of the law relating to contract...”. Privy Council confirmed this notion in different cases, i.e. **Irrawaddy Flotilla Co. Ltd. V Bugwandas**<sup>25</sup> and **Jwaladut R Pillaani v. Bansilal Motilal**<sup>26</sup>. Malaysian Contract Act 1950 contains long title which provides “An Act relating to contracts” and it did not express to be amending statute. The scope of application of Principles of English law is varying unless lacuna exists or gap-filling rule applies. Malaysian Courts may take consideration of English cases as persuasive authority for interpretation of Contract law<sup>27</sup>. To what extend the Malaysian court will take consideration of English courts’ decisions or cases may depend on different factors, i.e.

- “Substantial necessary” to interpretation of Malaysian contract law;
- “Substantial Link” with Malaysian contract Law;
- “Balancing yardstick” falls more to English Court decisions or cases to deal with any particular Malaysian contractual disputes;
- Malaysian courts Permit to such kind of persuasive authority (i.e. English court’s decision or cases) to consider in Malaysian Contract Law. It may be termed as “Malaysian Courts’ discretion” or “Freedom of choice” for Malaysian Courts.

Part I deals with Short title and interpretation. Part II deals with Formation of contract, i.e. communication, acceptance and revocation of proposals. Part III deals when agreements crystallize into contracts through essential elements, i.e. Void and voidable contracts. Part IV provides when Contingent contract may be enforced, may be deemed impossible, may be void. Part V deals with performance of contracts, i.e. obligations of parties, effect of refusal to accept offer or to perform promise, third party performance, joint liabilities, joint promisor, joint rights, Time and place for performance, performance of reciprocal promises, appropriation of payments, contracts which need not be performed. Part VI deals with certain relations resembling those created by contract. Part VII lays down with consequences of breach of contract. Part VIII covers indemnity and guarantee. Part IX deals with Bailment, i.e. bailments of pledges, suits by bailees or bailor against wrongdoers. Part X covers laws of agency, i.e. appointment and authority of agents, sub-agents, ratification, revocation of authority, agent’s duty to principal, principal duty to agent, effect of agency on contract with third persons, presumption of contract to contrary<sup>28</sup>.

## 2.2. Myanmar

The Myanmar contract law is similar to English contract law. Myanmar Contract Act 1872 is contained in Part XI of the Burma Code. Myanmar Contract Act 1872 consists of similar provisions subject to some changes in illustration<sup>29</sup>.

Indian Contract Act 1872 had gone through three steps filtration<sup>30</sup>, i.e.

- A draft was made by Indian Law Society in England to form uniform and merit based contract law consisting of effect of common law and equity doctrine;
- The draft then revised and extended by Legislative Department in India and borrowed from the New York Draft Civil Code;
- Finally, Sir James Stephen revised the final draft and included introductory definitions which are different from the whole of the body of the work.

According to Pallock and Mulla “*Evidently this process could not satisfy the conditions of a model code. It is much to the credit of the workmen that the result, after allowing for all drawbacks, was generally sound and useful*”<sup>31</sup>. Myanmar may consider English law decisions to interpret contract law. Myanmar may consider English law decisions as persuasive authority to deal contractual disputed before Myanmar courts. Myanmar courts may disregard any decision of English courts if such decisions are modified, enlarged and construed narrowly the provisions of Myanmar contract Act 1872<sup>32</sup>.

Myanmar courts may not refer to any English courts’ decisions when dealing with statutory specific provisions. In **Ramanandi Kuer v Kalawati Kuer**<sup>33</sup>, Lord Sinha stated “*it has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of the statute and to ascertain its proper meaning uninfluenced by any consideration derived from the previous state of the law or of the English law upon which it may be founded*”<sup>34</sup>.

Myanmar courts may take references for any particular subject from English laws which do not cover under Myanmar laws. If any provision of Myanmar Contract Act 1872 is inconsistent with Myanmar constitution, it may be declared void for particular contractual disputes<sup>35</sup>.

Preamble of Myanmar Contract Act 1872 provides “Whereas it is expedient to define and amend certain parts of the law relating to contracts”<sup>36</sup>. Thus, this Act is not a code as confirmed by different cases of Privy Council<sup>37</sup>, i.e. **Irrawaddy Flotilla Co. Ltd v Bugwandas**<sup>38</sup> and **Jwaladutt R. Pillani v Bansilal Motilal**<sup>39</sup>.

In Extent Commencement Provides “It extends to the Whole of **Bangladesh**; and it shall come into force on the first day of September, 1872”<sup>40</sup>. Myanmar Contract Act 1872 is replica of Bangladesh Contract Act 1872. It provides, the Myanmar Contract is not developed like other states. Professor Andrew Burrows QC<sup>41</sup> stated “*Yet, as far as I am aware and with the exception of a helpful but basic outline of the 1872 Act produced by the Yangon University of Distance Education (and first prepared by Professor Daw then New), there are no books on the Myanmar law of contract, where as a commentary on the 1872 Act as it applies in Myanmar or as a guide to the common law of contract that falls outside that, and any other, statute. In the modern world, this is very unusual. Indeed, I am not aware of any other jurisdiction where there is such uncertainty as to what the law of contract is and allied to that, such a dearth of books on the domestic law of contract*”<sup>42</sup>.

Chapter I deals with formation of contract (sections 3-8), i.e. communication, acceptance and revocation of proposal. Chapter II covers void agreements and voidable contracts (Sections 10-30C). Chapter III lays down laws of contingent contracts (Sections 31-36). Chapter IV covers performance of contracts (sections 37-67), i.e. contract which must be performed, by whom contracts must be performed, time and place of performance, performance of reciprocal promises, appropriation of payments, contracts which need not

be performed. Chapter V provides certain relations resembling those created by contract (Sections 68-72). Chapter VI deals with consequences of breach of contract (Sections 73-75). Chapter VII cover Sale of Goods which had been repealed by Sale of Goods Act, 1930 (Act No. III of 1930). Chapter VIII lays down laws down indemnity and guarantee (sections 124-147). Chapter IX cover laws of bailment (sections 148-181), i.e. bailment's of pledges, suits by bailees or bailers against wrong-doers. Chapter X covers laws of agency (Sections 182-238), i.e. appointment and authority of agents, sub-agents, ratification, revocation of authority, agent's duty to principal, principal's duty to agent, effect of agency on contract with third persons. Chapter XI deals with partnership which had been repealed by Section 73 and Schedule 11 of the Partnership Act, 1932 (Act No. IX of 1932)<sup>43</sup>.

### **2.3. Vietnam**

Contract law of Vietnam and Legal system of Vietnam are divided into two marks, i.e. pre-Doi moi and post-Doi moi. Pre-Doi-Moi relates to year 1986<sup>44</sup>. In 1986, Sixth Communist Party Congress declared to disregard "virtually" centralized economy to form free market opportunity which would provide opportunity for foreign investment. This movement is termed as "Doi Moi" (or "renovation"). After 5 years, Seventh Communist Party Congress included legal reforms. The Central Committee of the Communist Party recommended amending 1980 constitution and providing skill based education to lawmakers to improve rule of law in Vietnam. Doi Moi did not go with our problems, i.e. lack of proper guidelines, ineffective dispute resolution procedure, lack of competition in economic sector, Dominating nature by officials in courts, lack of check and balance between judiciary and executive. After fall of Soviet Union and Eastern Europe, Vietnamese communist Party was in trouble. Success of Doi Moi cannot be termed as "substantial success" (i.e. 80), rather it may be termed as "mixed success" (i.e. 50%)<sup>45</sup>.

After 10 years of reunification, Vietnam wanted to innovate (Doi moi) to connect with world trade. Before 1986, contractual parties did not have freedom of contract and all contractual matters were strictly controlled by Government. It affected values of society and living standard of people. It also lacks equity and freedom in legal system of Vietnam. Vietnam did not have right to contract freely and open business in open place. Contracts and sale of goods were dealt within Governmental bodies and departments excluding ordinary citizen<sup>46</sup>.

After 1986, Vietnam people were allowed to form contract and open businesses. Vietnam passed Ordinance on Economic Contract in year 1989 and Ordinance on civil Contract in 1991. This improvement in contract matter provided opportunity of freedom of business and freedom of contract. After some years, Vietnam enacted Civil Code in 1995 and commercial Law in 1997. Civil Code 1995 dealt with contractual matters and Commercial Law 1997 dealt with provisions of law in relation to commercial dealings. Both laws were limited usages in practice. Vietnam wanted to improve connection with international trade world and wanted to connect with WTO. In 2005, Vietnam again enacted Civil Code 2005 and Commercial Code 2005. These two laws played a vital role in legal system of Vietnam. Transaction of Civil contracts should be without concentrating on profit and benefit. Transaction of Commercial contracts should be concentrating on profit and benefit. Civil Code deals with formation of contract and contractual rights of parties. Commercial Code deals with sale and service of goods. Civil contracts are dealt under Civil Code 2005 and Commercial contracts are dealt under Commercial Code 2005. These distinctions may provide conflict and overlapping between Civil Code 2005 and Commercial Code 2005<sup>47</sup>. To overcome

this problem, New Civil Code 2015 is introduced and taken effect from 1 January 2017. New Civil Code 2015 applies to individuals and/or artificial person based on equity, freedom of choice, civil relations etc<sup>48</sup>.

Vietnam legal system is greatly influenced by French Civil Code. Article 117 of Civil Code 2015 provides, a civil transaction to be valid when four conditions need to be fulfilled, they are

- “Participants in the transaction have legal personality and/or legal capacity in conformity with such transaction;
- Participants in the transaction act entirely voluntary;
- The purpose and contents of the transaction are not contrary to the law and/or social ethics;
- The forms of civil transaction shall be conditions for its effectiveness in cases where it is so provided for by law<sup>49</sup>.”

Failure to satisfy any requirement under Article 117 will invalid that particular civil transaction under Article 122 of Civil Code 2015<sup>50</sup>. Similar provision may be found in French Civil Code 1804, where Article 1108 provides “Four requisites are essential for the validity of an agreement:

- The consent of the Party who binds him;
- His capacity to contract;
- A definite object which forms the subject-matter of the undertaking;
- A lawful cause in the obligation.”<sup>51</sup>

First condition provides for valid civil transaction, legal personality and/or legal capacity must be present. Legal personality means natural person or artificial person. Legal capacity means person incapable due to mental health problem or disabilities and under the age of 18. Person at the age of 6-18 may enter into small contracts unless it is not unreasonable and barred by law. Adults are important for civil transactions and they are taken as great consideration for making contract in civil society<sup>52</sup>.

Second condition deals with voluntariness of parties in contract. Contract provides freedom of contract to parties by depending on their willingness unless it does not deal with falsity, mistake and deception<sup>53</sup> (related to Article 124, 126 and 127 of Civil Code 2015<sup>54</sup>).

Third condition deals with prohibitory provisions and social ethics. If a contract does not violate prohibitory provisions and are not against social ethics<sup>55</sup>. It is difficult task for Courts to decide

- What actually means prohibitory provisions and social ethics;
- What are the criteria should be involved with prohibitory provisions and social ethics;
- To what extend any provision will be treated as prohibitory provision and to what extent any deed will be against social ethics.

It may be argued 2<sup>nd</sup> condition may be rewrite like **“The purpose and contents of the transaction are barred by French Court and/or contrary to Public policy/ public order”**<sup>56</sup>.

Fourth Condition provides contract should be formed according to prescribed form. Article 119 provides “A civil transaction shall be expressed verbally, in writing, or through specific acts. Civil transactions by way of electronic means in form of data messages prescribed in law on electronic transactions shall be deemed to be written civil transactions. In cases where it is provided for by law that a civil transaction must

be expressed in writing, notarized, authenticated, registered or permitted, such provisions must be complied with<sup>57</sup>". Again Article 129 provides "A civil transaction violating conditions for validity pertaining to form shall be invalid, except for any of the following cases:

- If the form of civil transaction, required to be established in writing, does not comply with regulations of law, but a party or the parties has/have fulfilled at least two third of the obligations in the transaction, a court, at his/her/their request(s) shall issue a decision on recognition of the validity of such transaction.
- If the form of a civil transaction, required to be established in writing, violates against regulations on notarizing or authorization, but a party or the parties has/have fulfilled at least two third of the obligations in the transaction, a court, at his/her/their request(s), shall issue a decision on recognition of the validity of such transaction. In this case, the parties need not perform the notarizing or authorization<sup>58</sup>. It is also difficult and debatable issue for court to interpret the provision of contract form under Civil Code 2015<sup>59</sup>.

Parties have "Freedom of contract" which allows parties to bind each other according to their wiliness unless it is not barred by French Court<sup>60</sup>. Article 398 of Civil Code 2015 provides "a contract may have contents,

- subject matter of the contract;
- quality and quality;
- price and method of payment;
- Time-limit, place and method of performing the contract;
- Rights and obligations of the parties;
- Liability for breach of contract;
- Methods of settlement of disputes.<sup>61</sup>"

The above 7 points are basic factors to establish for forming contract. Scholars argued Vietnam contract may consist of compulsory, general and optional factors<sup>62</sup>.

Article 404 of Civil Code 2015 provides if any ambiguity or conflict arises for any particular contractual dispute, then court should interpret according to mutual intention of the parties, to provide best benefit to parties, take consideration of customary practice of the place, favouring weak position<sup>63</sup>.

## **5. COMPARISONS OF CONTRACT FORMATION LAWS OF MALAYSIA, MYANMAR AND VIETNAM**

### **5.1. In General**

English Law did not provide any definition of contract due to lack of such kind of code. Different scholars tried to define contract in different ways in different books and scholarly articles which are not considered as part of law itself. Such definitions are not definitive or comprehensive, but indicative and illustrative. *Anson's Law Contract*<sup>64</sup> defined "The law of contract may be provisionally described as that branch of the law which



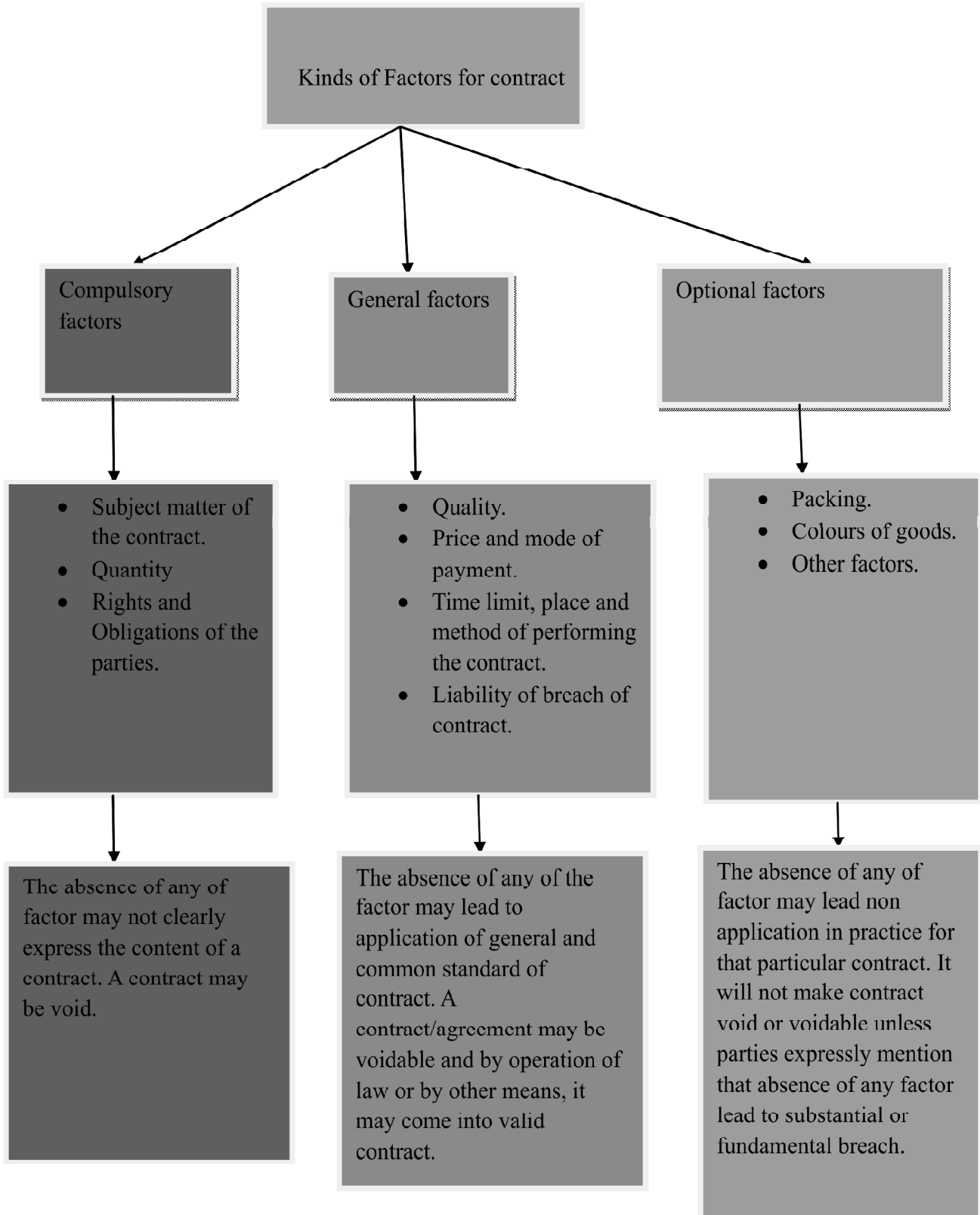


Figure: Vietnamese Scholars' have 3 kinds of factors of contracts

determines the circumstances in which a promise shall be legally binding on the person making it". In this definition the word "Provisionally" expressed in expressly. It did not explain rather than a particular promise, why other promises will not be legally binding<sup>65</sup>.

Treitel on *The Law of Contract*<sup>66</sup> defined "A contract is an agreement giving rise to obligations which are enforced or recognized by law. The factor which distinguished contractual from other legal obligations is that they are based on the agreement of the contracting parties". Treitel definition is subject to different important qualifications, they are<sup>67</sup>:

- Law is concerned with objective appearance rather than the actual fact, of agreement.
- Contractual obligations should be qualified based on expected standard of behavior of contracting parties.
- Contractual obligations should be qualified based on principle of freedom of choice.

English Contract is developed from action of assumption. There is no universally definition of contract. To be valid contract, three elements must be present, i.e. parties must reach agreement, parties must provide consideration and parties must intend to create legal relations<sup>68</sup>.

Easy definition of contract may be "A contract is an agreement giving arise from legal obligations between contractual parties unless barred by competent forum and/or parties agreed in other means. Any ambiguity and uncertainty must be solved by competent forum".

Vietnam has Civil Code 2015 where definition of contract may be found. Article 385 of Civil Code 2015 provides "Civil contract means an agreement between parties in relation to the established, modification or termination of civil rights and obligations". Article 385 of Civil Code 2015 provides "freedom of contract". Parties are allowed to vary or amend their rights and obligations in contract before signing contract. After they have signed the contract, they can modify with their mutual consent. Concerned party or default party may take responsibility (i.e. any incidental cost or other arising issues) for modification of contract after signing contract. The question may be asked to what extend parties are allowed to deal with "freedom of contract". Their freedom of contract must be according to Vietnam law (i.e. Civil Code 2015). Vietnam courts must act as "watchdog" to maintain "check and balance" between contractual parties and "freedom of contract".

Vietnam Courts may apply subjective test like French courts for interpreting contractual disputes under Civil Code 2015<sup>69</sup>. Contractual intention is party's very own, i.e. *volonte psychologique* (Psychological will). French Civil Code provides, when interpreting contracts "one must seek to ascertain the actual intention of the contracting parties, rather than stop at the literal meaning of the terms<sup>70</sup>".

Different Civil Jurisdictions defined Contract in different ways; Article 2 of Contract Law of People's Republic of China provides "a contract means an agreement on the establishment, alteration or termination of a civil right-obligation relationship between natural persons, legal persons or other organizations as subjects with equal status<sup>71</sup>". This Articles provides both living person and artificial person can enter into contract and may bind themselves with civil right obligations relationship by proving equal footing.

Section 2(h) of both Malaysia Contract Act 1950 and Myanmar Contract Act 1872 provide "an agreement enforceable by law is contract". In this section "Freedom of Contract" did not provide to contractual parties expressly like Vietnam Civil Code 2015. Agreement plus enforceable by law constitute a valid contract. Agreement and Contract are different. Agreements may be two types, i.e. Agreements

enforceable by law and agreements not enforceable by law. “Enforceable by law” acts as catalyst for crystallization of agreement into contract. For example, purchasing 2-Kg heroine may not be enforceable by law but purchasing a laptop may be enforceable by law and may be termed as “valid contract”. It may be argued “all contracts are agreements, but all agreements are not contract”<sup>72</sup>. This was confirmed by *Abdul Gani Skeikh v Jagadish Chandra Mridha and others*<sup>73</sup>. Article 385 of Vietnam Civil Code 2015 provides, agreements mean contracts as long as civil contractual relationship exists between contractual parties.

Section 2(e) of Malaysia Contract Act 1950 and Myanmar Contract Act 1872 provides “every promise and every set of promises forming the consideration for each other are an agreement”. In *Bangladesh Muktijoddha Kalyan Trust v Kamal Trading Agency and others*<sup>74</sup>, the court held *consensus ad idem* or meeting of minds of the parties is essential ingredient to form an agreement<sup>75</sup>.

## 5.2. Offer

It may be difficult to ascertain whether a contract has been made due to uncertainty of different stages. Primarily, Parties go for negotiations and many outstanding matters remain unsolved. It is difficult at what point or/and time, negation of agreement turns into contract. Court will first look into whether valid offer has been made to provide opportunity to other party to form contract by accepting the offer. An offer may be defined as “An offer can be defined as a statement, whether written or oral, of a willingness to be bound by the terms of the statement”<sup>76</sup>.

Again offer may be defined “An Offer is an indication of one party’s willingness to enter into a contract with the party to whom it is addressed as soon as the latter accepts its terms”. For example: If I want to sell my computer and say “will you buy my computer for £200”, I am willing to sell my computer to buyer and it’s an offer. Now a day there may be implied offer. In *Eurymedon* (1976), Lord Wilberforce stated “It is difficult to break down a simple purchase of goods in a supermarket into offer and an acceptance, principally because we do not pay much regard to such legal concepts when doing the shopping”. In *Satamita* (1897), the court held by entering yacht race, defendant made a contract with other competitors and to be bound by the rules of yacht club. In this situation, it will be difficult to find when offer and acceptance. Now a day’s commercial contracts are made face to face without regard to offer and acceptance. If terms and conditions of offer do not match with acceptance then “Battle of Forms” may arise<sup>77</sup>.

Article 386 (1) of Vietnam Civil Code 2015 provides “offer to enter into contract means a clear expression by the offeror of its intention to enter into contract and to be bound by such offer made to another specific party or the Public (hereinafter referred to as the offeree)”<sup>78</sup>. Firstly, a party will express willingness to contract and will send an offer to offeree. The offer expresses clear intention of their intention to form contract and must be bound by that offer. Article 386 (2) of Vietnam Civil code 2015 provides “Where an offer to enter into a contract has specified the time for reply and the offeror enters into a contract with a third person during the time-limit for reply by the offeree, if the offeror fails to enter into the contract with the offeree and the offeree suffers damage, the offeror must compensate the offeree for such damage”<sup>79</sup>. This provides binding on offeror. Once offeror expresses willingness to release his offer, he binds himself by that legal responsibility. The Article 386(2) of Vietnam Civil Code 2015 is silent as to whether offeror may contract with third party<sup>80</sup>. However, Third party may be included in a contract if he has “interest or benefit” on contract. Similar approach may be found in Section 4 of New Zealand Contracts (Privity) Act 1982:

“Where a promise contained in a deed or contract confers, or purports to confer, a benefit on a person, designated by name, description, or reference to a class, who is not a party to the deed or contract (whether or not the person is in existence at the time when the deed or contract is made), the promisor shall be under an obligation, enforceable at the suit of that person, to perform that promise: provided that this section shall not apply to a promise which, on the proper construction of the deed or contract, is not intended to create, in respect of the benefit, an obligation enforceable at the suit of that person”<sup>81</sup>.

Article 388 of Vietnam Civil Code 2015 provides what time may be taken into consideration for validating offer. Under Article 388, offer may take into validation when offere fixes the validity and offeree receives the offer. Though it is easy to determine time for validity of contract but it is difficult to find “suitable time” for validating offer. There is implied term that time should be reasonable and suitable for the offeree to reply. For Commercial transaction, suitable time may be extracted from *lex-mercatoria*<sup>82</sup>.

In *Zheng Zhengfan v Cai songliang*<sup>83</sup>, Defendant wanted to borrow money from plaintiff. Defendant asked Mr Cai to provide his three saving to Plaintiff for security for the defendants loan. There was no direct link between Plaintiff and Mr. Cai. The Chinese court decided, delivery of saving by Mr Cai formed offer and plaintiff accepted the offer by receiving those saving. Thus, there was a binding security contract existed between Plaintiff and Mr. Cai<sup>84</sup>. Vietnam Civil Code 2015 provides, parties should have clear intention for offer and acceptance. This rule is link with “Will Theory” which developed in 19<sup>th</sup> Century. This theory was adopted by French Jurist Robert-Joseph Pothier and German Jurist Freidrich von Savigny. They concentrated on mutual agreement or mutual assent of the parties. This theory is now applying in English contract law. According to Professor Simpson<sup>85</sup> stated “*In 16th Century breach of verbal or parol agreement may lead to promise broken. Today, breach of terms of offer and acceptance may lead to contract broken. Today we have moved from promise broken to contract broken*”. Professor Ibbetson<sup>86</sup> stated,

the great merit of the Will Theory that it had a measure of intellectual coherence that the traditional Common law wholly lacked, though this coherence had been to some extent bough at the expense of practical common sense. Its greatest demerit was that it was imposed on the Common law from the outside rather than generated from within. It embodied a model of contract law significantly different from the traditional English exchange model, and there was considerable friction between the two theories. The Common law did not-of course- simply discard elements did not fit neatly into the theory but strained to squeeze them into it. The result was a mess.<sup>87</sup>.

Under Malaysian Contract Act 1950 and Myanmar Contract Act 1871, “offer” is termed as “proposal”. Section 2(a) of both Malaysian Contract Act 1950 and Myanmar Contract Act 1871 provide “when one person signified to another, his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal”. Article 386 of Vietnam civil Code, though impliedly states about word “willingness” which may be extracted from the word “a clear expression ...to enter into a contract” of the Article 386. Article 386 of Vietnam Civil Code did not state word “to abstinence” from doing anything like Section 2(a) of both Malaysian contract Act 1950 and Myanmar Contract Act. Proposal must be definite and certain with clear intention. For Example, “I will give you something, if you deliver my letter”. The word “something” is uncertain and does not form offer. If the word “something” is replaced by “£59”, then it is definite proposal. Proposal may be made by express<sup>88</sup> (i.e. made by words) or implied<sup>89</sup> (i.e. by conduct). For example, hiring taxi means there is an implied promise to pay fare<sup>90</sup>. Similar approach may be found in Article 119(1) of Vietnam Civil Code 2015 which provides “a civil transaction shall be expressed verbally, in writing, or through specific acts”<sup>91</sup>.

In *Harvey v Facey*<sup>92</sup>, claimants asked defendant the lowest price for selling Bumper Hall Pen. Defendant telegraphed “lowest price for Bumper Hall Pen £900”. Claimants replied “we agree to buy Bumper Hall Pen for £900 asked for by you”. Defendant did not reply. The court held that first telegraph by Claimants was an inquiry to know the lowest price of goods. Second telegraph by Defendant was reply to first inquiry. Third telegraph did not constitute an offer because defendant did not take it as offer and did not reply as acceptance. No contract was formed<sup>93</sup>.

In *Gibson v Manchester City Council*<sup>94</sup>, claimant wanted to purchase a house from defendant city council. They exchange brochures and forms between them. Claimant argued that contract was made and defendant was obliged to sell house to him. The House of Lords stated defendant letter dated 10 February 1971 emphasized on words (“may be prepared to sell”) and also in final sentence Defendant asked claimant to make formal application for buying house. The House of Lords stated the letter sent on 10 February 1971 was not offer but invitation to treat<sup>95</sup>.

In *Preston Corporation Sdn Bhd v Edward Leong & Ors*<sup>96</sup>, Claimants were a company dealing with publishing of books. Respondents were a printing firm. The Parties wanted to enter into agreement for printing school text books. Exchange of letters was done between parties and responded provided quotations for printing books. Claimants placed printing order. The question rose as to whether quotations for printing orders may be deemed to be a binding offer. The court held, the quotation was a mere supply of information rather than binding offer<sup>97</sup>. The meaning of offer was also illustrated in *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui*<sup>98</sup>.

### **5.3. Invitation to treat**

Under Article 386 of Vietnam Civil Code 2015, if offeror did not have clear intention to be bound by his offer or offer lacks its qualification(s)/requirement(s), then it may be termed as “Invitation to treat”. Again under Section 2(a) of Both Malaysian Contract Act 1950 and Myanmar Contract Act 1871, if offeror does not have willingness to be bound by his proposal or proposal lacks its qualification(s)/requirement(s), then it may be termed as “invitation to treat”. Article 15 of Contract Law of People’s Republic of China provides “An invitation to offer is a party’s manifestation of intention to invite the other party to make an offer thereto. A delivered price list, announcement of auction, call for tender, prospectus, or commercial advertisement, etc. is an invitation to offer. A commercial advertisement is deemed an offer if its contents meet the requirements of an offer”<sup>99</sup>. When declaration is intended to induce other party to make offer, it must have legal effect as invitations to treat/offer. The court should look into circumstances of each case (terms of the statement) to make distinction between offer/proposal and invitation to treat/offer<sup>100</sup>.

#### **5.3.1. Delivered price list**

When a party provides price lists with kind and price of goods to another party is not an offer but invitation to treat. It induces other party to make offer to original party who provides price lists<sup>101</sup>.

#### **5.3.2. Display of merchandise in shops**

This option did not expressly mention by contract law. In most of the civil law jurisdictions, it is a tradition that all supplied merchandise by shops should be marked with the price. The display of merchandise with

selling price is deemed to be an offer<sup>102</sup>. However, it will depend on customary law of particular jurisdiction. If price is listed on display of merchandise in shop rather than sending price list to concern buyer, it will presumably deem to be offer<sup>103</sup>.

Under Common law jurisdiction, “Display of merchandise in shops” is known as “Display of goods for sale”. Display of goods in shop window<sup>104</sup> or on a shelf inside shop may be considered as invitation to treat. The customer/consumer has choice to make offer to buy the goods and shop may accept the offer or reject the offer subject to anti-discrimination legislation<sup>105</sup>. Technically, if a shopkeeper shows a customer particular goods (i.e.a burger) by pointing out by finger and say “we have two burgers left, would you like to buy one of the burger with price £5”, this constitutes a clear offer.

In *Pharmaceutical Society of Great Britain v Boots Cash Chemists (southern) Ltd*<sup>106</sup>. Section 18(1)(a) (iii) of the Pharmacy and Poisons Act 1933 provides, poisons should be sold under supervision of a registered pharmacist. Claimant argued displaying drug on the shelf in the self-service shop would be regarded as offer because when purchaser put drugs it deemed to be acceptance and thus it violates the Pharmacy and Poisons Act 1933. The Court of Appeal stated, when purchaser took the drugs to cash counter, it deemed to be invitation to treat and did not violate Pharmacy and Poisons Act 1933<sup>107</sup>. Similar approach was followed in *Fisher v Bell*<sup>108</sup>, where goods (i.e. Flick Knife) were displayed in a shop window. The shopkeeper was arrested for offering sale which was against the rule of Offensive Weapons Act 1959. The court held, displaying flick knife was an invitation to treat rather than offer<sup>109</sup>.

Many argue, if shop provides open offer for goods, then customer may purchase the goods as long as stock of goods stock. Under open offer by shopkeeper, when customers take goods and put them in baskets are deemed to be acceptances<sup>110</sup>. But, this notion is not correct. Putting goods in basket provides customers for reserving the right to change his mind. When customers go to cash desk for purchasing goods, then it deems to be offer. Winfield (1939) stated “a shop is a place for bargaining, not for compulsory sales”. This notion is now out of date. In Atiyah and Smith (2006) stated, shopkeeper is not bound to sell goods to consumer at market price. In Boots decision, judges provide precedent by passing a statutory prohibition. Somervell LJ stated “it is right that I should emphasize, as did the Lord Chief Justice, that these are not dangerous drugs”. Finally, it may be possible to divert from main rule, if display of goods provides intention for offer and customer takes the goods in basket and proceeds to cash desk as acceptance. For example, “Grab new Dell Laptop until stock finish and it will be yours once you pay £500 at cash desk”<sup>111</sup>.

### 5.3.3. Auction

Auction announcement is invitation to treat. Auction announcement encourages public for participating bids. During Auction, Bidder’s bid is offer and auctioneer knocking the gavel or other confirmation is considered as acceptance<sup>112</sup>. It applies in most of the Civil Law Jurisdictions.

Under Common law jurisdiction, there are two types of Auctions, i.e. “with reserve” and “without reserve”. If auction is with reserved price, then inviting bids may be deemed to be invitation to treat. In *British Car Auctions v Wright*<sup>113</sup>, Bidders make offer and Auction accepts the offer. In *Warlow v Harrison*<sup>114</sup>, auction was made without reserve; the goods were sold to highest bidder. The offer was accepted as soon as highest bid was made<sup>115</sup>.

### 5.3.4. Tender

Tender announcement is an invitation to treat. Submissions of bidder's bids are offers. Bidding documents must be submitted before deadline provided by inviter and no modification or withdrawn may be made after submission of documents. Once notice of selection is provided which is deemed to be acceptance and binding on both parties. Within reasonable time contract may be signed. This approach is followed in Civil law jurisdictions (i.e. Vietnam, China etc)<sup>116</sup>.

Under Common law jurisdictions (i.e. Malaysia, Myanmar etc), the traditional rule is that someone (A) will invite parties (B,C,D etc) for tender of bid for particular project which deems to be offer from parties (B,C,D). A's statement is invitation to treat rather than offer. In *Spencer V Harding*<sup>117</sup>, The court stated, circular saying "we are instructed to offer to the wholesale trade for sale by tender the stock in trade of Messrs. G. Eilbeck & Co." was an invitation to treat. It could have been offer, if circular went further by saying "and we undertake to sell to the highest bidder"<sup>118</sup>.

In *Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd*<sup>119</sup>, the court held that First defendant invitation formed an offer to constitute a contract with highest bidder<sup>120</sup>. In *Blackpool and Flyde Club V Blackpool Borough Council*<sup>121</sup>, Blackpool BC invited for tenders. Aero Club submitted the tender within deadline. Council refused to consider Aero Club's submission as they believed mistakenly that tender by Aero Club was submitted outside deadline. The court held, council was required to consider all tenders (acceptances) including Aero Club tender<sup>122</sup>.

### 5.3.5. Share

Offering shares by prospectuses to public are invitation to treat. Promoter of Joint Stock Company must get permission from authorized government authority before selling shares to public. Filling in and signing subscription form by subscriber is an offer. By accepting payment by subscribers which forms conditional contract. Subscriber may claim refund of payment and interest, if promoter fails to transfer shares within reasonable time according to share Prospectuses<sup>123</sup>. It may be applied to both common law and civil law jurisdictions.

### 5.3.6. Advertisements

In Civil Law Jurisdiction (i.e. Vietnam), Commercial advertisements are invitation to offer/treat unless meet the conditions of offer to become offer under<sup>124</sup>. Definition of commercial advertisement may be found under Article 2 of Chinese Advertisement Law which provides "advertisements" as used in this law referred to commercial advertisements, for which a commodity producer or dealer or service provider pays, and by which the same, through certain media or forms, directly or indirectly introduces his commodities to be sold or services to be provided<sup>125</sup>". Again, in scope of ordinance on advertisement under advertisement law in Vietnam provides definition of commercial advertisement or advertisement business, i.e. "Organizations and individuals undertaking one, a number, or all of the work stages of the process of advertising activities for profit-making purposes ("advertising businesses")<sup>126</sup>". Under Advertisement law of Vietnam, Advertisement includes advertisements of goods.<sup>127</sup>

Under Common Law Jurisdictions (i.e. Malaysia, Myanmar) advertisement is regarded as invitation to treat<sup>128</sup> unless there is indication of willingness to be bound by offer<sup>129</sup>. In *Carlhill v Carbolic Smoke Ball Co.*

*Ltd*<sup>130</sup>, the defendant put advertisement by providing offer to pay who used their smoke ball and affected by influenza. Mrs Carlill bought the smoke ball and used it and caught influenza. Mrs Carlill sued defendant and defendant argued it was not an offer, but an invitation to treat. The Court held there was valid contract rather than invitation to treat<sup>131</sup>.

### 5.3.7. Advertisements for reward

In many civil Law jurisdictions, a person who promises to provide reward for performing a specific act is bound to provide that reward as soon as that specific act has been performed by particular person (i.e. Offeree). Many civil law jurisdiction laws are silent in this context. In *Li Min V Zhu Jimhua*<sup>132</sup>, Defendant promises to pay 15,000 yuan who will find his lost briefcase within one week. Plaintiff found briefcase and returns to defendant. The Court held that there was valid contract and defendant had to pay 15,000 to plaintiff<sup>133</sup>. In *Zhang Guozhen v Shanghai No. 1 Department Store Ltd*<sup>134</sup>, The court held that defendant advertises for lottery draws who bought merchandise over 80 yuan's was an offer<sup>135</sup>.

Under Common law jurisdiction (Malaysia, Myanmar), the advertisement for offering reward for performing specific act (i.e. finding a dog) may constitute offer. This view was confirmed by case *Gibbons v Proctor*(1891)<sup>136</sup>.

### 5.4. Counter offer

Article 392 of Vietnam Civil Code 2015 provides “when an offeree accepts the offer to enter into a contract but specifies conditions or amendments to the offer, the offeree shall be deemed to have made a new offer and it is called counter-offer. The offeree must accept the exact terms of the offer made by offeror (i.e. mirror image rule). If offeree changes the terms of the offer and gives rise to new offer, then it is called counter-offer which rejects the original offer. Thus, no contract will be made. In **Hyde v Wrench**<sup>137</sup>, A offered to sell his estate to B for £1000. B said he would pay £900 and refused by A. B then agreed to pay £1000. But no contract was made. When A refused B's offer of £900 which killed original offer and provided a fresh or original offer made by B. As A did not agree on B's offer of £900, so contract was formed<sup>138</sup>.

### 5.5. Acceptance

Article 393(1) of Vietnam Civil Code 2015 provides “acceptance of an offer to enter into a contract means a reply by the offeree to the offeror accepting the entire contents of the offer”<sup>139</sup>. Offeree must reply and accept terms of the offer to become a valid acceptance to form a valid contract. Silence does not amount to acceptance unless parties agreed in other means under Article 393(2) of Vietnam Civil Code 2015<sup>140</sup>.

Under Common Law jurisdiction, Acceptance may be defined as “an acceptance is a clear indication of the offeree's unqualified agreement to the terms of the offer in the manner set out in the offer”<sup>141</sup>. Section 2(b) of Malaysian Contract Act and Myanmar Contract Act 1872 provide “When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted, becomes a promise”. In *Bhagwandas v Girdhari Lal & Co.*<sup>142</sup>, the court held, mere state of mind may not constitute acceptance to form contract. In *Weatherby v Banham*<sup>143</sup>, The Court held, silence does not amount to acceptance unless conduct of the offeree indicates acceptance. Acceptance may be



either express (words, written) or implied (conduct) under Section 9 of Malaysian Contract Act 1950 and Myanmar Contract Act 1872.

## **5.6. Communication**

Offer and acceptance must be communicated by different options, i.e. postal rule, instantaneous communication rule and any other rules. In *Brinkibon Ltd v Stabag Stahl*<sup>144</sup>, Lord Wilberforce stated “the general rule, it is hardly necessary to state, is that a contract is formed when acceptance of an offer is communicated by the offeree to the offeror”<sup>145</sup>.

A proposal comes into effect when it is communicated to the offeree. Section 3 of the Malaysian Contract Act 1950 and Myanmar Contract Act 1872 provides “The Communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting, or revoking, by which he intends to communicate the proposal, acceptance, or revocation, or which has the effect of communicating it”. Again Section 4 of Malaysian Contract Act 1950 and Myanmar Contract Act 1872 provide “the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made”. In *Lalman Shukla v Gauri Dutt*<sup>146</sup>, G sent his servant to find his absconded nephew. G also made hand-bills offered to pay Rs 501 to anyone who might inform G about his nephew. Servant found nephew and claimed Rs 501. The Court held as servant did not have knowledge about reward so there was no acceptance made by servant and no contract was formed<sup>147</sup>.

### **5.6.1. Postal rule**

Article 388(2)(a) of Vietnam Civil Code 2015 provides “the offer is delivered to the place of residence if the offeree is a natural person, or the offer is delivered to the head office if the offeree is a juridical person.”. This relates to postal rule which applied to most of Civil law jurisdiction.

Postal rule is more illustrated under Common Law; the tradition postal rule is that the offer will be accepted when the letter is posted rather than reaching offeror<sup>148</sup>. Postal rule will be applied, if both parties agreed on use it as medium of communication of offer and acceptance. Once letter is posted in letter box, the acceptance is done. It is duty of offeree to ensure that his reply or acceptance must reach offeror. Offeror is master to control postal rule, i.e. by informing offeree to sent acceptance by postal. In *Henthorn v Fraser*<sup>149</sup>, Lord Herschell stated “Where the circumstances are such that it must have been within the contemplation of the parties that, according to the ordinary usages of mankind, the post might be used as a means of communicating the acceptance of an offer, the acceptance is complete as soon as it is posted”. Even if offer is made by orally, acceptance may be done through postal rule. In *Holwell Securities Ltd v Hughes*<sup>150</sup>, the court held, postal rule might be applied even parties contemplated that postal acceptance might be used. If letter is posted to proper address, but it has not reached its destination or delayed, then also postal rule will be applied<sup>151</sup>. For improper or wrong address, postal rule may not apply<sup>152</sup>. Same postal rule may be applied to Civil Law jurisdictions<sup>153</sup>.

### **5.6.2. Instantaneous form of communication**

Article 388(2)(b) of Vietnam Civil Code 2015 provides “the offer is placed into the official information system of the offeree<sup>154</sup>”. 388(2)(c) of Vietnam Civil Code 2015 provides “when the offeree knows about

the offer to enter into a contract by way of other means<sup>155</sup>". Both Articles indicate instantaneous methods of communication.

Postal rule does not apply in case of prescribed method of communication which is instantaneous forms of communication<sup>156</sup>. During telephone conversation, offer is accepted when offeree understands and accepts the offer, thus contract form unless telephone goes dead in the middle of acceptance or parties agreed in other methods of communication. For answering machine, if acceptance reaches offeror during business hour, acceptance is made. No universal rule is there to resolve "answering machine" this problem, the court needs to consider intention of parties, business practice and risk factors<sup>157</sup>. Concerning Telex, acceptance will be valid unless offeree knows that it has not gone properly and may try to resend<sup>158</sup>. Acceptance sent by email will be valid unless offeree realizes that the acceptance has not been reached the offeror or "bounced back" to him<sup>159</sup>.

## **6. TERMINATION OF CONTRACT**

Article 372 of Vietnam Civil Code 2015 provides, civil obligations may be terminated when "

- a) The obligation is fulfilled;
- b) The parties so agree;
- c) The obligee waives performance of the obligation;
- d) The obligation is substituted by another civil obligation;
- e) The obligation is offset;
- f) The obligee and the obligor merge;
- g) The limited period for release from the civil obligation has expired;
- h) The obligor being a natural person dies, or the obligor being a juridical person ceases to exist and the obligation must be performed by that particular natural person or juridical person;
- i) The obligee being a natural person dies and the right to demand does not form part of the bequeathed estate, or the obligee being a juridical person ceases to exist and the right to demand is not able to be transferred to another juridical person;
- j) A distinctive object which is the subject matter of the civil obligation no longer exists and is substituted by another civil obligation;
- k) Other cases as provided by law.<sup>160</sup>

Under Malaysian Contract Act 1950 and Myanmar Contract Act 1872, offer may be terminated in following ways,

- Termination by the offeror<sup>161</sup>.
- Rejection by the offeree<sup>162</sup>.
- For lapse or passage of time<sup>163</sup>.
- Death of either party<sup>164</sup>.

## 7. CONCLUSION

Uniformity of contract law among Malaysia, Myanmar and Vietnam may be achieved, if each party chooses any option among three options, they are:

- i) Joining or forming uniform Contract law for ASEAN States like European Contract Law (PECL);
- ii) Forming bilateral contract law between two states like Bilateral Investment Treaty (BIT);
- iii) Each state's court should provide uniform and international interpretation standard while dealing with contractual disputes among Malaysia, Myanmar and Vietnam (i.e. like Article 7 of CISG<sup>165</sup>).

## NOTES

1. Indira Carr and Peter Stone, *International Trade Law*, 5th Edn, Routledge Publication, UK, 2014, p 6.
2. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 1.
3. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 1-2.
4. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 2
5. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 2-3.
6. (1872) 1 Ky 326.
7. Comprising of Penang, Malacca and Singapore.
8. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 2-3.
9. Consist of Pahang, Perak, Selangor and Negeri Sembilan.
10. Johore, Trengganu, Kelantan, Kedah and Perils.
11. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 3-4.
12. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 4.
13. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 4-5
14. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 5.
15. (1964) MLJ 108.
16. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 7.
17. [1974] 2 MLJ 60 (FC).
18. (1964) MLJ 269.
19. Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1st Edition, International Law Book Services, Malaysia, 2008, p 7-8.
20. [1968] 1 MLJ 56.

21. (1962) 28 MLJ 86.
22. [1976] 1 MLJ 128.
23. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 8-9.
24. See the website: <http://e-lawresources.co.uk/Mischief-rule.php> (accessed on 21 March, 2017).
25. (1891) 18 IA 121.
26. (1929) JA 174.
27. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 9-10
28. See: <http://world.moleg.go.kr/fl/download/37531/3TEGI5UZ5BGLA045KP3L> (access on 21 March, 2017).
29. Professor Andrew Burrows QC, Understanding the Law of Contract in Myanmar, website: <https://www.law.ox.ac.uk/sites/files/oxlaw/myanmarcontractlaw-burrows-feb15.pdf> (accessed on 22 March 2017).
30. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 5.
31. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 5.
32. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 6.
33. AIR 1928 PC 2.
34. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 6.
35. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 6-7.
36. See : [http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar\\_code/2015/07/9-1872%20Contract%20Act.pdf](http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/07/9-1872%20Contract%20Act.pdf) (accessed on 22 March 2017).
37. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 10.
38. (1891) 18 IA 121.
39. (1929) JA 174.
40. See : [http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar\\_code/2015/07/9-1872%20Contract%20Act.pdf](http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/07/9-1872%20Contract%20Act.pdf) (accessed on 22 March 2017).
41. Professor of the Law of England, University of Oxford, Fellow of All Souls College.
42. Professor Andrew Burrows QC, Understanding the Law of Contract in Myanmar, website: <https://www.law.ox.ac.uk/sites/files/oxlaw/myanmarcontractlaw-burrows-feb15.pdf> (accessed on 22 March 2017).
43. See : [http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar\\_code/2015/07/9-1872%20Contract%20Act.pdf](http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/07/9-1872%20Contract%20Act.pdf) (accessed on 22 March 2017).
44. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
45. Vietnam in Nutshell: An Historical, Political and Commercial Overview, website: [https://www.duanemorris.com/articles/static/odell\\_inpr\\_aut08.pdf](https://www.duanemorris.com/articles/static/odell_inpr_aut08.pdf) (accessed on 22 March, 2017).
46. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).

47. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
48. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
49. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
50. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
51. See: <http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Frances-French-Civil-Code-english-version.pdf> (accessed on 22 March, 2017).
52. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
53. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
54. See: <http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Frances-French-Civil-Code-english-version.pdf> (accessed on 22 March, 2017).
55. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
56. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
57. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
58. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
59. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
60. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
61. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
62. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
63. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
64. 29th edn.Oxford University Press, 2010, J Beatson, A Burrows, and J Cartwright (eds), P 1
65. Ewan McKendrick, Contract Law text, cases and materials,7th Edn, Oxford University Press, UK,2016, p 3-4.

66. Edited by Edwin Peel, 14th Edn, Sweet & Maxwell, 2015
67. Ewan McKendrick, Contract Law text, cases and materials, 7th Edn, Oxford University Press, UK, 2016, p 4.
68. Ewan McKendrick, Contract Law text, cases and materials, 7th Edn, Oxford University Press, UK, 2016, p 3-4.
69. Anne De Moor, Contract and Agreement in English and French Law, website: <http://beinonline.org.www.ezplib.ukm.my> (accessed on 19 March, 2017).
70. Catherine Valcke, On Comparing French and English contract Law: Insights from Social Contract Theory, website: <http://beinonline.org.www.ezplib.ukm.my> (accessed on 19 March, 2017).
71. See: [http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content\\_21908031.htm](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908031.htm) (accessed on 23 March, 2017).
72. Dr. Muhammad Ekramul Haque, Law of Contract, 2nd Edn, Law Lyceum, Bangladesh, 2012, p 28-29.
73. 2 BLC 121.
74. (1998) 50 DLR (AD) 171.
75. Dr. Muhammad Ekramul Haque, Law of Contract, 2nd Edn, Law Lyceum, Bangladesh, 2012, p 30.
76. Ewan McKendrick, Contract Law text, cases and materials, 7th Edn, Oxford University Press, UK, 2016, p 44-45.
77. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p11-13.
78. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
79. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
80. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
81. See: <http://www.legislation.govt.nz/act/public/1982/0132/latest/whole.html> (accessed on 23 March, 2017).
82. Le Nguyen Gia Thien, Short Introduction of Contract law in Vietnam, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
83. Zhejiang Dongyang City People's Court, 1992, RJDC, 1993.
84. Bing Ling, Contract Law in China, 1st Edn, Sweet & Maxwell Asia, Hong Kong, 2002, p 65.
85. 'innovation in Nineteenth Century Contract Law' (1975) 91 LQR 247, 257.
86. A Historical Introduction to the Law Obligations (Oxford University Press, 1999) pp.221-222.
87. Ewan McKendrick, Contract Law text, cases and materials, 7th Edn, Oxford University Press, UK, 2016, p 52-53.
88. Section 9 of Malaysian contract Act 1950 and Myanmar Contract Act 1950 provide "So far as the proposal or acceptance of any promise is made in words, the promise is said to be express".
89. Section 9 of Malaysian contract Act 1950 and Myanmar Contract Act 1950 provide "so far as the proposal or acceptance is made otherwise than in words, the promise is said to be implied".
90. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 31-32.
91. See <http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
92. [1893] AC 552.
93. Ewan McKendrick, Contract Law text, cases and materials, 7th Edn, Oxford University Press, UK, 2016, p 55.

94. [1979] 1 WLR 294.
95. Ewan McKendrick, *Contract Law text, cases and materials*, 7th Edn, Oxford University Press, UK, 2016, p 55-56.
96. [1982] 2 MLJ 22, FC.
97. Dr. Sheela Jayabalan, *Understanding the Malaysian Law of Contract*, 1st Edn, LexisNexis, Malaysia, 2015, p 8
98. [1984] 1 MLJ 169, FC.
99. See <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn137en.pdf> (accessed on 24 March, 2017).
100. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 67
101. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 67
102. According to the customary practice in China, merchandise displayed on the stacks should be treated as offer whereas merchandise displayed in the shop windows should be treated as invitation to offer/treat.
103. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 66-67.
104. *Timothy v Simpson* (1834).
105. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p18.
106. [1953] 2 WLR 427. [1953] 1 QB 401.
107. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p18.
108. [1961].
109. *Contract Law Lawcards*, 4th Edn, Routledge, UK, 2010, p-5.
110. This was viewed by Lord Goddard CJ at first instance in *Boots* and a similar argument by Somervell LJ in the Court of Appeal.
111. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p18-19.
112. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 67.
113. (1972).
114. (1859).
115. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p22.
116. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 67
117. (1870).
118. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p21
119. (1986)
120. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p21.
121. [1990]
122. *Contract Law Lawcards*, 4th Edn, Routledge, UK, 2010, p-7.
123. Bing Ling, *Contract Law in china*, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 67-68.
124. Article 15 of Chinese Contract law provides such definition. Website: <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn137en.pdf> (accessed on 24 March, 2017).
125. See <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn101en.pdf> (accessed on 24 March, 2017).
126. See: <http://www.usvtc.org/updates/legal/PhillipsFox/AdvertisingLawUpdate-April2003.pdf> (accessed on 24 March 2017).
127. See: <http://www.usvtc.org/updates/legal/PhillipsFox/AdvertisingLawUpdate-April2003.pdf> (accessed on 24 March 2017).
128. *Partridge v Crittended* (1968).
129. Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7th Edn, Oxford University Press, UK, 2016, p19.

130. [1893]
131. Contract Law Lawcards, 4th Edn, Routledge, UK,2010, p-3.
132. Li Min, *supra*,n.26.
133. Bing Ling, Contract Law in china, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 68.
134. Zhang Guozhen, *supra*, n.26.
135. Bing Ling, Contract Law in china, 1st Edn, Sweet & Maxwell, Hong Kong, 2002, p 69.
136. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p20.
137. [1840] 3 Beav. 334; 49 ER 132.
138. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 36.
139. See [http:// bethongphapluatvietnam.com/ law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html](http://bethongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html) (accessed on 22 March 2017).
140. See <http:// bethongphapluatvietnam.com/ law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
141. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p26.
142. AIR 1966 SC 543.
143. 172 ER 950.
144. 1983.
145. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p26.
146. (1913) 11 ALJ 489.
147. Dr. V.K. Agarwal, Law of Contracts [Principles and Practice], 1st Edition, International Law Book Services, Malaysia, 2008, p 33.
148. Adams v Lindsell (1818).
149. (1892).
150. (1974).
151. Household Fire Insurance Co Ltd v Grant (1879).
152. LJ Korbetis v Transgrain Shipping BV (2005).
153. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p29-31.
154. See <http:// bethongphapluatvietnam.com/ law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
155. See <http:// bethongphapluatvietnam.com/ law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
156. Entores Ltd v Miles Far East Corpn (1955).
157. Mondial Shipping and Chartering BV v Astarte Shipping Ltd (1995).
158. JSC Zestafoni G Nikoladze Ferralloy Plan v Ronly Holdings Ltd (2004).
159. Janet O'Sullivan, Jonathan Hilliard, The Law of Contract, 7th Edn, Oxford University Press, UK, 2016, p31-32.
160. See <http:// bethongphapluatvietnam.com/ law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).
161. Dickinson v Dodds (1875-6).
162. Grant v Bragg (2009).



163. Ramsgate Victoria Hotel Co V Montefiore (1866).
164. Coulthart V Clementson (1870).
165. See: <https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> (accessed on 24 March, 2017).

## REFERENCES

- Indira Carr and Peter Stone, *International Trade Law*, 5<sup>th</sup> Edn, Routledge Publication, UK, 2014.
- Dr. V.K. Agarwal, *Law of Contracts [Principles and Practice]*, 1<sup>st</sup> Edition, International Law Book Services, Malaysia, 2008.
- Ewan McKendrick, *Contract Law text, cases and materials*, 7<sup>th</sup> Edn, Oxford University Press, UK, 2016.
- Dr. Muhammad Ekramul Haque, *Law of Contract*, 2<sup>nd</sup> Edn, Law Lyceum, Bangladesh, 2012.
- Janet O'Sullivan, Jonathan Hilliard, *The Law of Contract*, 7<sup>th</sup> Edn, Oxford University Press, UK, 2016.
- Bing Ling, *Contract Law in China*, 1<sup>st</sup> End, Sweet & Maxwell Asia, Hong Kong, 2002.
- Dr. Sheela Jayabalan, *Understanding the Malaysian Law of Contract*, 1<sup>st</sup> Edn, LexisNexis, Malaysia, 2015.
- Contract Law Lawcards*, 4<sup>th</sup> Edn, Routledge, UK, 2010.
- Professor Andrew Burrows QC, *Understanding the Law of Contract in Myanmar*, website: <https://www.law.ox.ac.uk/sites/files/oxlaw/myanmarcontractlaw-burrows-feb15.pdf> (accessed on 22 March 2017).
- Le Nguyen Gia Thien, *Short Introduction of Contract law in Vietnam*, website: <http://download.portalgaruda.org/article.php?article=178130&val=4569&title=Short%20Introduction%20of%20Contract%20Law%20in%20Vietnam> (accessed on 22 March 2017).
- Vietnam in Nutshell: An Historical, Political and Commercial Overview*, website: [https://www.duanemorris.com/articles/static/odell\\_inpr\\_aui08.pdf](https://www.duanemorris.com/articles/static/odell_inpr_aui08.pdf) (accessed on 22 March, 2017)
- Anne De Moor, *Contract and Agreement in English and French Law*, website: <http://heinonline.org.www.ezplib.ukm.my> (accessed on 19 March, 2017).
- Catherine Valcke, *On Comparing French and English contract Law: Insights from Social Contract Theory*, website: <http://heinonline.org.www.ezplib.ukm.my> (accessed on 19 March, 2017).

## Case Laws

- Ong Cheng Neo v Yeap Cheah Neo (1872) 1 Ky 326.
- Khalid Panjang & Ors. V. Public Prosecutor (No.2) (1964) MLJ 108.
- Tan Mooi Liang v Lim Soon Song & Ors [1974] 2 MLJ 60 (FC).
- Wrigglesworth v Wilson Anthony (1964) MLJ 269.
- Song Bok Yoong v Ho Kim Poui [1968] 1 MLJ 56.
- J.M. Wotherspoon & Co. Ltd. V. Henry Agency House (1962) 28 MLJ 86.
- Royal Insurance Group v David [1976] 1 MLJ 128.
- Irrawaddy Flotilla Co. Ltd. V Bugwandas (1891) 18 IA 121.
- Jwaladut R Pillaani v. Bansilal Motilal (1929) JA 174.
- Ramanandi Kuer v Kalawati Kuer AIR 1928 PC 2.
- Abdul Gani Skeikh v Jagadish Chandra Mridha and others 2 BLC 121.
- Bangladesh Muktijoddha Kalyan Trust v Kamal Trading Agency and others (1998) 50 DLR (AD) 171.
- Eurymedon (1976)

Satanita (1897)  
Zheng Zhengfan v Cai songliang (Zhejiang Dongyang City People's Court, 1992, RJDC, 1993.)  
Harvey v Facey [1893] AC 552.  
Gibson v Manchester City Council [1979] 1 WLR 294.  
Preston Corporation Sdn Bhd v Edward Leong & Ors [1982] 2 MLJ 22,FC.  
Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui [1984] 1 MLJ 169, FC.  
Pharmaceutical Society of Great Britain v Boots Cash Chemists (southern) Ltd [1953] 2 WLR 427. [1953] 1 QB 401.  
Fisher v Bell [1961].  
Timothy v Simpson (1834).  
British Car Auctions v Wright (1972).  
Warlow v Harrison (1859).  
Spencer V Harding (1870).  
Harvela Investments Ltd v Royal Trust Co of Canada (CI) Ltd (1986)  
Blackpool and Flyde Club V Blackpool Borough Council [1990]  
Carlill v Carbolic Smoke Ball Co. Ltd [1893]  
Partridge v Crittended (1968).  
Li Min V Zhu Jinhua (Li Min, supra,n.26.)  
Zhang Guozhen v Shanghai No. 1 Department Store Ltd (Zhang Guozhen, supra, n.26.)  
Gibbons v Proctor(1891)  
Hyde v Wrench [1840] 3 Beav. 334; 49 ER 132.  
Bhagwandas v Girdhari Lal & Co. AIR 1966 SC 543.  
Weatherby v Banham (172 ER 950)  
Brinkibon Ltd v Stahag Stahl 1983.  
Lalman Shukla v Gauri Dutt (1913) 11 ALJ 489.  
Henthorn v Fraser (1892).  
Holwell Securities Ltd v Hughes (1974).  
Adams v Lindsell (1818).  
Household Fire Insurance Co Ltd v Grant (1879).  
LJ Korbetis v Transgrain Shipping BV (2005).  
Entores Ltd v Miles Far East Corp (1955).  
Mondial Shipping and Chartering BV v Astarte Shipping Ltd (1995).  
JSC Zestafoni G Nikoladze Ferralloy Plan v Ronly Holdings Ltd (2004).  
Dckinson v Dodds (1875-6).  
Grant v Bragg (2009).  
Ramsgate Victoria Hotel Co V Montefiore (1866).  
Coulthart V Clementson (1870).

**URL**

<http://e-lawresources.co.uk/Mischief-rule.php> (accessed on 21 March, 2017)

<http://world.moleg.go.kr/fl/download/37531/3TEGI5UZ5BGLA045KP3L> (access on 21 March, 2017).

[http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar\\_code/2015/07/9-1872%20Contract%20Act.pdf](http://www.myanmarconstitutionaltribunal.org.mm/lawdatabase/sites/default/files/myanmar_code/2015/07/9-1872%20Contract%20Act.pdf) (accessed on 22 March 2017).

<http://betbongphapluatvietnam.com/law-no-91-2015-qb13-dated-november-24-2015-the-civil-code.html> (accessed on 22 March 2017).

<http://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Codigo-Civil-Francia-French-Civil-Code-english-version.pdf> (accessed on 22 March, 2017).

[http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content\\_21908031.htm](http://www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21908031.htm) (accessed on 23 March, 2017).

<http://www.legislation.govt.nz/act/public/1982/0132/latest/whole.html> (accessed on 23 March, 2017).

<http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn137en.pdf> (accessed on 24 March, 2017).

<http://www.usvtc.org/updates/legal/PhillipsFox/AdvertisingLawUpdate-April2003.pdf> (accessed on 24 March 2017).

<https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf> (accessed on 24 March, 2017).