**THE LAW OF CONTRACT**

A contract may be defined as a legally binding agreement made by 2 or more parties. It has also been defined as a promise or set of promises a breach of which the law provides a remedy and the performance of which the law recognizes as an obligation.

The most important characteristic of a contract is that it is enforceable. The genesis of a contract is an agreement between the parties hence a contract is an enforceable agreement. However, whereas all contracts are agreements, all agreements are not contracts.

**TYPES**

**Contracts may be classified as:**

1. Written / specialty contracts

2. Contracts requiring written evidence

3. Simple contracts

4. Contracts under seal

**WRITTEN CONTRACTS**

These are contracts which under the law must be written, that is embodied in a formal document e.g. hire purchase agreement, contract of marine insurance, contract of sale of land.

**Contracts under sea**l

 this is a contract drawn by one party, sealed and sent to the party/parties for signature. Such a contract requires no consideration e.g. a lease agreement, mortgage, and charge.

**CONTACTS REQUIRING WRITTEN EVIDENCE**

These are contracts which must be evidenced by some notes or memorandum.

Contents of the note / memorandum:

1) A description of the parties sufficient to identify them.

2) A description of the subject matter of the contract

3) The consideration (value)

4) Signature of the parties

Examples include; contracts of insurance other than marine, contract of guarantee.

**SIMPLE CONTRACTS**

These are contracts whose formation is not subject to any legal formalities. The contract may be:

Oral, Written, Partly oral and written, implied form conduct of the parties Examples include; contract of sale of goods, partnership agreement, and construction contracts.

**ELEMENTS OF A CONTRACT**

These are the constituents or ingredients of a contract. They make an agreement legally enforceable. These elements are:

1. Offer
2. Acceptance
3. Capacity
4. Intention
5. Consideration
6. Legality
7. Formalities, if any

**SOURCES OF LAW OF CONTRACT**

CREATION / FORMATION OF CONTRACTS

CREN / FORMATI

A contract comes into existence when an offer by one party is unequivocally accepted by another and both parties have the requisite capacity. Some consideration must pass and the parties must have intended their dealings to give rise to a legally binding agreement. The purpose of the agreement must be legal and any necessary formalities must have been complied with.

1. **THE OFFER**

This is an unequivocal manifestation by one party of its intention to contract with another. The party manifesting the intention is the **offeror** and the party to whom it is manifested is the **offeree**.

**RULES / CHARACTERISTICS OF AN OFFER:**

1. An offer may be oral, written or implied from the conduct of the offeror.
2. An offer must be communicated to the intended offeree or offerees. An offer remains ineffective until it is received by the offeree.
3. An offer must be clear and definite i.e. it must be certain and free from vagueness and ambiguity. In *Sands v. Mutual Benefits* as well as in *Scammell and Nephew Ltd v. Ouston***,** it was held that words used were too vague and uncertain to amount to an offer.
4. An offer may be conditional or absolute. The offeror may prescribe conditions to be fulfilled by the offerer for an agreement to arise between them.
5. The offeror may prescribe the duration the offer is to remain open for acceptance.

However, the offeror is free to revoke or withdraw his offer at any time before such duration lapses e.g. in *Dickinson v. Dodds*, the defendant offered to sell a house to the plaintiff on Wednesday 10/06/1874 and the offer was to remain open up to Friday 12th at 9.00 am. However on the 11th of June, the defendant sold the house to a 3rd party. The plaintiff purported to accept the offer of Friday morning before 9.00 am. It was held that there was no agreement between the parties as the defendant had revoked his offer by selling the house to a 3rd party on June 11th.

 A similar holding was made in *Ruoutledge v. Grant,* where the defendant’s offer was to remain open for 6 weeks but he revoked or withdrew it after 4 weeks. It was held that there was no agreement between the parties.

1. The offeror may prescribe the method of communication of acceptance by the offeree. If he insists on a particular method, it becomes a condition.
2. An offer may be general or specific i.e. it may be directed to a particular person, a class of persons or the public at large.

In *Carlill v. Carbolic Smoke Ball Co*, the defendant company manufactured and owned a drug name the “Carbolic Smoke Ball” which the company thought was the best cure for influenza, cold and other diseases associated with taking cold water. The company put an advertisement in a newspaper to the effect that a £100 reward would be given to any person who contracted influenza or related diseases after taking the smoke ball as prescribed i.e. 2 tablets, 3 times a day for 2 weeks. The advertisement further stated that the company had deposited £1000 with the Alliance Bank on Reagent Street as a sign of their sincerity in the matter. Mrs. Carlill who had read the advertisement bought and took the Smoke balls as prescribed but contracted influenza. The company rejected her claim and she sued. The company argued that the advertisement;

a. Was nothing but mere salestalk

b. Was not an offer to the whole world

c. Was not intended to create legal relations

The Court of Appeal held that though the wording of the advertisement was unclear, it amounted to an offer to the whole world and the person who fulfilled its conditions, contracted with the company hence Mrs. Carlill was entitled to the £100 reward.

THE LAW OF CONTRACT

**EXAMPLES OF OFFERS**

1. Public transport: as was the case in *Wilkie v. London Passenger Transport Board.*

2. Bidding at an auction as was the case in *Harris v. Nickerson.*

3. Submission of a tender

4. Application for employment

**An offer must be distinguished from an Invitation to treat.**

**INVITATION TO TREAT**

This is a mere invitation by a party to another or others to make offer or bargain. The invitee becomes the offeror and the invitor becomes the offeree. A positive response to an invitation to treat is an offer.

**Examples of invitation to treat**

**1. Advertisement of sale by auction:** At common law, an advertisement to sell goods or other property by public auction is an invitation to treat. The prospective buyer makes the offer by bidding at the auction and the auctioneer may accept or reject the offer.

It was so held in *Harris v. Nickerson* where a commission agent had sued as auctioneer for failure to display furniture he had advertised for sale by auction. It was held that there was no contractual relationship between the parties as the advertisement was merely an invitation to treat and as such, the auctioneer was not liable.

**2. Sale by display:** At common law, the display of goods with cash price tags is an invitation to treat. The prospective buyer makes the offer to buy the items at the stated or other price which the shop owner may accept or reject. In *Fisher-v-Bell*, the defendant was sued for ‘offering for sale’ a flick knife contrary to the provision of the Offensive Weapons Act. The defendant had displayed the knife in a shop with a cash price tag. Question was whether he had offered the knife for sale. It was held that he had not violated the Act as the display of the knife was an invitation to prospective buyers to make offers.

**3. Sale by self-service:** At common law, a sale by self-service is an invitation to treat. Prospective buyers make offers by conduct by picking the goods from the shelves and the offer may be accepted or rejected at the cashier’s desk. The offeror is free to revoke his offer to buy the goods at any time before reaching the cashiers desk. In *Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd (1952)***.**

The defendant owned and operated a self-service store which stocked among other things, drugs which under the provisions of the Pharmacy and Poisons Act (1933) could only be sold with the supervision of the registered pharmacist. The defendant’s pharmacist was stationed next to the cashier’s desk. The plaintiff society argued that the defendant had violated the Act as the pharmacist was not stationed next to the shelves where the drugs were displayed. Question was at what point a sale took place. It was held that the defendant had not violated the provisions of the Act as its pharmacist was stationed next to the cashier’s desk where the actual sale took place.

This case is authority for the proposition that in a sale by self-service, a sale takes place at the cashier’s desk. A similar holding was made in *Lasky v. Economy Grocers Ltd.*

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**TERMINATION OF OFFERS**

A contractual offer may come to an end or terminated in any of the following ways:

1. **REVOCATION**

This is the withdrawal of the offer by the offeror. At common law, an offer is revocable at any time before acceptance.

U D Y T E X T

1. **REJECTION**

An offer terminates if the offeree refuses to accept the same, the refusal may be express or implied from the conduct of the offeree e.g. silence by the offeree amounts to a rejection.

1. **COUNTER OFFER**

This is a change or variation of the terms of the offer by the offeree. It is a form of rejection.

The legal effect of a counter offer is to terminate the original offer .

1. **LAPSE OF TIME**

If an offer is not accepted within the stipulated time and not revoked earlier, it lapses on expiration of such duration. Where no duration is specified, the offer lapses on expiration of reasonable time.

1. **DEATH**

The death of the offeror or offeree before acceptance terminates an offer. However, the offer only lapses when notice of death of the one is communicated to the other.

1. **INSANITY**

The unsoundness of mind of either party terminates an offer. However, the offer only lapses when notice of the insanity of the one is communicated to the other.

1. **FAILURE OF A CONDITION SUBJECT TO WHICH THE OFFER WAS MADE**

These are conditional offers. If a condition or state of affairs upon which an offer is made fails, the offer lapses.

**ACCEPTANCE**

This is the external manifestation of assent by the offeree. It gives rise to an agreement between parties.

**RULES OF ACCEPTANCE**

1. Acceptance may be oral, written or implied from the conduct of the offeree.
2. The offeree must have been aware of and intended to accept the offer: A person cannot accept an offer whose existence he is unaware of.
3. Acceptance must be unconditional and unqualified: The offeree must accept the offer in its terms, any variation or modification of the offer amounts to a conditional acceptance which is not an acceptance
4. An offer must be accepted within the stipulated time if any or within a reasonable time failing which it lapses.
5. Acceptance must be communicated to the offeror in the prescribed method if any or an equally expeditions method. Where no method of communication is prescribed, the method to apply depends on the type of offer and the circumstances in which the offer is made.
6. As a general rule, silence by the offered does not amount to acceptance.
7. Where parties negotiate by word of mouth in each other’s presence, acceptance is deemed complete when the offeror hears the offeree’s words of acceptance.
8. Where parties negotiate by telephone, acceptance is deemed complete when the offeror hears the offeree’s words of acceptance.
9. Where parties negotiate by telex acceptance is deemed complete when the offeree’s words of acceptance are received by the offeror.
10. In unilateral offers, commencement and continuation of performance constricts acceptance.
11. An offer to a class of persons can only be accepted by a member of that class for an agreement to arise.
12. An offer to the general public may be accepted by any person who fulfils its conditions.

**INTENTION TO CREATE LEGAL RELATIONS**

In addition to offer and acceptance, an agreement must be characterized by intention. The parties must have intended to create legal relations. Intention is one of the basic elements of a contract as common law. An agreement is unenforceable unless the parties thereto intended such a consequence.

**CAPACITY**

**CAPACITY**

In addition to consensus and intention, a contract must be characterized by capacity. This is the legal ability of a party to enter into a contractual relationship. For an agreement to be enforceable as a contract the parties must have had the requisite capacity.

As a general rule, every person has a capacity to enter into any contractual relationship.

However, in practice, the law of contract restricts or limits the contractual capacity of certain classes of persons namely;

1. Infants or minors.
2. Drunken persons.
3. Persons of unsound mind.
4. Corporations.
5. Undischarged bankrupts.
6. **CONTRACTUAL CAPACITY OF INFANTS OR MINORS**

Under Section 2 of the Age of Majority Act, an infant or minor is any person who has not attained the age of 18.

Contracts entered into by an infant are binding, voidable or void depending on their nature and purpose. For example contracts for supply of necessities, voidable contracts are contracts which the infant escapes liabilities and void contracts are contracts that are non-existent.

1. **CONTRACTUAL CAPACITY OF DRUNKEN PERSONS**

**A contract entered by a drunken person is voidable at his option by establishing that:**

1. He was too drunk to understand his acts.
2. The other party was aware of his condition.

By avoiding the contract, the person escapes liability on it.

1. **CONTRACTUAL CAPACITY OF PERSONS OF UNSOUND MIND**

A contract entered into by a person of unsound mind is voidable at his option by establishing that:

1. He was too insane to understand his acts.
2. The other party was aware of his mental condition.

By avoiding the contract the party escapes liability on it.

1. **CONTRACTUAL CAPACITY OF UNDISCHARGED BANKRUPTS**

These are persons who have been declared bankrupt by a court of competent jurisdiction. Their capacity to contract is restricted by the provisions of the Bankruptcy Act.

1. **CONTRACTUAL CAPACITY OF CORPORATIONS**

The contractual capacity of a registered company is defined by the object clause of the memorandum. At common law a registered company has capacity to enter into transactions set forth in the objects and those that are reasonably incidental to the attainment or pursuit of such objects.

**CONSIDERATION**

In addition to consensus, capacity and intention, an agreement must be characterized by consideration to be enforceable as a contract. Consideration is the bargain element of a contract.

It is nothing but mutuality. It is defined as **“an act or promise offered by the one party and accepted by the other party as price for that others promise.”**

**CONSI TYPES OF CONSIDERATIONS**

Consideration may be **executory** or **executed** but must not be **past.** However in certain circumstance past consideration may support a contractual claim.

1. **Executory Consideration**

Consideration is executory where the parties exchange mutual promises. Neither of the parties has performed its part of the contract. The whole transaction is in future.

Executory consideration is good to support a contractual claim. E.g. purchase of goods on credit for future delivery.

1. **Executed Consideration**

Consideration is executed where a party does an act to purchase the others promise. The act may be partial or total performance of the party’s contractual obligation. It is good consideration to support a contractual claim.

1. **Past Consideration**

Consideration is past where a promise is made after services have been rendered. There is no mutuality between the parties. Past consideration is generally not good to support a contractual claim.

**RULES OF CONSIDERATION**

1. **Mutual love and affection is not sufficient consideration**

It was so held in the case of *Thomas v. Thomas.* Mr. Thomas had expressly stated that if he died before his wife, she was free to use his house as long as she remains unmarried. His brothers who later became executors of his estate knew of this wish.

After his death, Mrs. Thomas remained in his house and unmarried. After the death of one of the executors, the other sought to evict Mrs. Thomas from the house. She sued the late husband’s estate. It was held that the husbands promise was enforceable as she had provided consideration by way of the £1 she paid for every year she lived in the house. The love she had for the late husband was not sufficient consideration but the £1 she paid every year was.

1. **Consideration must be legal**

The act or promise offered must be lawful as illegal consideration invalidates the contract.

1. **Consideration must not be past**

As a general rule, past consideration is not good to support a contractual claim

1. **Consideration must be real**

This rule means that consideration must be something of value in the eyes of the law. It means that consideration must be sufficient though it need not be adequate.

1. **Consideration must flow from the plaintiff/ promise**

This rule means that the person to whom the promise is made provides consideration and by so doing there is a bargain between the parties or mutuality

**TERMS OF A CONTRACT**

1. **Express Terms**

These are the oral and written terms agreed upon by the parties. Written terms prevail over oral terms. If contractual terms are written, oral evidence is generally not admissible to vary or explain the written terms.

2 **2 2. Implied Terms**

These are terms which though not agreed to by the parties, are an integral part of the contract. These terms may be implied by statutes or by a court of law.

**VITIATING ELEMENTS (FACTORS AFFECTING CONTRACTS**)

These are circumstances which interfere with the enforceability of a contract. They have a negative effect on contracts.

They may render a contract void or avoidable. A void contract is unenforceable while avoidable contract is enforceable unless avoided.

**These factors include: -**

1. Misrepresentation

2. Mistake

3. Duress

4. Undue influence

1. **Misrepresentation**

This is a false representation. It is a false statement made by a party to induce another to enter into a contractual relationship.

1. **Mistake**

As a general rule a mistake of law does not affect a contract however, a mistake of foreign law may affect a contract. Mistakes of facts affected contractual relationships. A mistake is said to be misapprehension of a fact or factual situation. It is an erroneous assumption.

1. **Duress**

At common law duress means actual violence or threats thereof. It exists where a contractual relationship is procured by actual violence on the person or threats thereof.

The party is compelled or coerced to contract. For the most part, duress consists of threats

1. **Undue Influence**

It is said to exist where a party dominates the other persons will thereby inhibiting its exercise of an independent judgment on the contract. One party thus exercises overwhelming influence over the other. Undue influence was developed by equity with a fairly wide scope.

**ILLEGALITY**

The term illegality does not necessarily mean that a criminal offence is involved. It means that the contract in question is unenforceable as it is injurious to the public or is inconsistent with the public good. An illegal contract is un-enforceable. This is because for an agreement to be enforceable, it must have been entered into for a lawful purpose. A contract may be declared, illegal by statutes or a court of law.

**VOID CONTRACTS**

These are contracts which the law treats as nonexistent, they are generally unenforceable. However, if a contract is only void but not illegal some rights may be enforced by exception. A contract may be declared void by statute or a court of law.

**FORMALITIES**

In addition to the basic elements of a contract certain contracts are subject to certain formalities, which must be complied with for the agreement to be legally enforceable. The formalities includes:

1. **REQUIREMENT OF WRITING**

Some contracts must be embodied in a formal document e.g. Hire Purchase Agreement, contract of Marine Insurance.

1. **REQUIREMENT FOR WRITTEN EVIDENCE**

Some contracts must be evidenced by some note or memorandum which must contain:-

a. Description of the parties

b. Description of the subject matter of the contract

c. The Consideration

d. Signature of the parties

1. **REQUIREMENT OF CONSENT**

Under sec. 6 of the Land Control Act, a contract for the sale of agricultural land must be consented by the Land Control Board of the district in which the land is located failing which the contract is unenforceable.

1. **REQUIREMENT OF SIGNATURE**

A contract entered into with the government must be signed by the Revenue Officer of the ministry or some other duty authorized person failing which the contract is enforceable

**DISCHARGE OF CONTRACT**

**DISCHOF CONTRACT**

A contract is said to be discharged, when the obligation created by it ceases to bind the parties who are now freed from performance. However, whether a party is liable or not after discharge, depends on the method of discharge.

**A contract may be discharged in the following ways:-**

1. Express agreement

2. Performance

3. Breach

4. Impossibility or Doctrine of Frustration

5. Operation of Law.

* **Discharge by Express Agreement**

A contract may be discharged by agreement if the parties thereto expressly agree to discharge the contract. The mutual promises constitute consideration to support the discharge. Discharge by agreement justified on the premise that whatever is created by agreement may be extinguished by agreement.

* **Discharge by Performance**

A contract is discharged by performance if both parties perform their mutual obligations as agreed.

Each party must have performed its party

* **Discharge by Impossibility or Doctrine of Frustration**
* **Death or Permanent Incapacitation**

In contracts of personal service or performance e.g. employment, the death or permanent incapacitation of a party frustrates the contract and discharges the parties as the obligations are not generally transferable

* **Discharge by Breach of Contract**

Breach of a contract does not discharge it; it gives the innocent party an opportunity to treat the contract as repudiated or as existing

* **Discharge by Operation of Law**

Discharge of the operation of law entails the discharge of parties form their contractual obligations at the instance of the law. The parties are freed by law.

**REMEDIES FOR BREACH OF CONTRACT**

When a contract is breached, the innocent party is contractual rights are violated and the party has a cause of action known as breach of contract which entitles it to a remedy.

Remedies for breach of contracts are:-

* Common Law and
* Equitable

Whereas Common Law remedies comprise damages only, Equitable remedies include;

1. **Injunction-** This is a court order which either restrains a party from doing or continuing to do a particular thing or compels it to undo what it has wrongfully done. It is an equitable remedy whose award is discretional and may be granted in circumstance in which:-
* Monetary compensation is inadequate
* It is necessary to maintain the *status quo*
1. **Rescission-** The essence of this remedy is to restore the parties to the position they were before the contract. It is an equitable remedy whose award is discretional. The remedy may be availed whenever a contract is vitiated by misrepresentation
2. **Specific performance**- The decree of specific performance is a court order which compels a party to perform its contractual obligations as previously agreed. It compels a party to discharge its contractual obligation.
3. Quantum Merit- This literally means “**as much as is earned or deserved”** This is compensation for work done. The plaintiff is paid for the proportion of the task completed.
4. Winding Up
5. Appointment of Receiver