

Lesson One

What is a Contract?

1.1 Definition of a Contract

There are several popular definitions of a contract.

- A contract is a promise or a set of promises for the breach of which the law gives a remedy.
- A contract is a promise or a set of promises the performance of which the law in some way recognises as a duty.
- A contract is a legally binding agreement made between two or more parties by which rights are acquired by one or more for acts or forbearances on the part of the other.
- A contract is an agreement between two or more parties which is intended to have legal consequences.
- A contract is an agreement between two or more parties which is legally binding and which the courts will enforce.

Definitions of contract are usually cast in terms of agreement or of promises. But neither of these is completely satisfactory as a basis for a definition. To define contracts in terms of agreement may well mislead readers as to the real importance of agreement in the modern law. And the definition of the American Restatement of Contracts is consequently accepted as the most accurate. *A contract is a promise or a set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognises as a duty.* Some other definitions are in similar terms.

Pollock for instance defines a *contract as a promise or a set of promises which the law will enforce.* There is nothing seriously objectionable about this, and in fact lawyers constantly talk about contracts being enforced.

Strictly speaking, this definition is incorrect because the law does not actually compel the performance of a contract, but merely gives remedy, which is normally in form of damages where there is a breach. The word “promise” is used in this definition, and it is even used in the whole law of contract in a special sense. It must be noted that a promise in the law of contract does not necessarily postulate future conduct by the promisor. Hence, even a transaction which is immediately and completely executed on both sides such as cash sale in shop is a contract. It may seem artificial to talk of such a transaction as consisting of a promise or a set of promises, but the artificiality is reduced when it is recalled that a promise that a state of affairs exist, e.g. that the goods sold are of good quality is a contractual promise.

Similarly, a promise that something will occur in the future, even though it is not in the control of the promisor may perfectly be a contractual promise. But in some cases like

this kind it will be more realistic to recognize that the contract or even part of it consists of an agreement. It is submitted that the weakness of the definition of the American Restatement is that it ignores the bargain element in contracts. No indication is made in the definition that a contract is a two-sided affair. Something being promised or done on one side in return for something being promised or done on the other side.

1.2 Classification of Contracts

Contracts are classified as follows:

- Formal and informal contracts
- Express and Implied Contracts
- Void and Voidable Contracts
- Bilateral and Unilateral Contracts

1.2.1 Formal and informal contracts

The traditional classification of contracts is into contracts under seal and contracts made by word of mouth. In other words, a contract can either be formal or informal, i.e. in writing or by word of mouth. Contracts under seal resemble ordinary contracts although here the liability is based on a written promise. Note that a contract under seal must be made by a deed, i.e. it must be in writing.

1.2.2 Express and Implied Contracts

A contract is described as express when the terms of the contract are clearly stated. An example is a building contract where all the material terms are clearly spelt out in an agreement specifying among others the price and quantities of materials to be used and duration of construction.

The terms of an implied contract are not expressly stated. The existence of a contract is construed from the conduct of the parties rather than from their words or correspondence. For example a passenger usually enters a bus without any dialogue between him and the conductor or driver. Yet to all reasonable men his action implies that he will pay his fare, while the bus owner is obliged to carry him safely to his destination, provided that it is on the route of the bus.

1.2.3 Void and Voidable Contracts

A void contract is a contract which is of no legal effect and therefore is a nullity from the beginning. The effect of such a contract is that neither party to the contract can claim any right or benefit under the contract. And if money has been paid, the money is not recoverable, and if goods have exchanged hands, the goods or the value of the goods is not recoverable. And if money is yet to be paid, it ceases to be payable. Good examples of such a contract are contracts entered into with infants or minors, which are absolutely void.

A voidable contract on the other hand is a contract that is valid from the beginning, but one of the parties to the contract might have entered into the contract either under mistake, misrepresentation, duress and undue influence, illegality or lack of capacity.

- Mistakes: The 3 types of mistakes are common, mutual and unilateral mistakes. A common mistake occurs when both parties are both mistaken about the same thing. In a mutual mistake both parties are mistaken but not about the same thing, such as when an offer is accepted in a sense fundamentally different than that intended by the offeror. In a unilateral mistake only one party is entering into the contract under a mistake and the other party either knows or is presumed to know that the first party is indeed labouring under a mistake.
- Misrepresentation: This is an untrue statement made by one party to a contract to the other, before or at the time of contracting with regard to some existing fact or some past event which is one of the causes that induce the contract.
- Undue influence: This is when there is a special relationship between one party and the other, such as doctor and patient, parent and child, teacher and student or fiancé and fiancée.
- Duress: This is the case when one party enters into the contract by force or coercion.
- Illegality: The law frowns upon an agreement that breaches the law code.
- Lack of capacity: This is when one party lacks the capacity to enter into the contract.

Unenforceable contracts are contracts which were valid when made but due to some reasons are unenforceable. The reasons may be one or more of the following:

- Absence of evidence of contract.
- The form required by law is not complied with.

Another classification of contract is legal and illegal contracts. An illegal contract does not mean a contract which is contrary to criminal law, because a contract can be illegal without contravening the criminal law. Such contracts are contrary to public policy and a good example here is prostitution.

1.2.4 Bilateral and Unilateral Contracts

Unilateral contracts are made by a person alone, for example promising a reward for information leading to the arrest and conviction of criminals or leading to the location of a lost loved one, or a reward for the finding and returning of a lost object of great value to the offeror. In such situations the offeree accepts by actually providing the information or locating the missing person or object and reuniting it with the offeror.

A bilateral contract consists of an exchange of promises, with the offeree promising to do something in return for the offeror's promise. An example is a building contract where the owner invited tenders for the building of his house. If the owner accepts a particular contractor's tender, then he promises to pay the contractor a sum of money

in return for his promise to build the house according to specification and within the stipulated period.

The essential distinction is that in a bilateral contract both parties are equally bound to the performance of their promises whereas in a unilateral contract, one party, that is the promisor is bound to do anything.

1.3 Elements of a valid Contract

There are six essential elements of a valid contract

1. Offer.
2. Acceptance.
3. Consideration
4. Intension to create legal relations.
5. Capacity of parties to enter into the contract.
6. Absence of any possible fault, either in the formation or execution of the contract.

1.3.1 Offer

An offer is a definite undertaking, or an expression of willingness by one person to another to enter into a contract or agreement with him. It is made with the intention that it shall become binding on the person making it as soon as it is accepted by the other person to whom it is addressed. Generally, an offer may be made to an individual, to a group of people or to the whole world, e.g. advertisements. It may be made by word or by conduct.

1.3.2 Acceptance

Acceptance must satisfy two conditions:

- There must be positive evidence (by word or by conduct) from which acceptance may be inferred.
- Acceptance must be communicated to the offeror if it is not by conduct and if the offeror does not waive communication.

1.3.3 Consideration

Consideration basically signifies some benefits or advantage going to one party or some loss or detriment suffered by the other party. In other words consideration means the price at which the others promise is bought.

1.3.4 Intension to create legal relations

A contract is an agreement that is intended to have legal consequences. There are many instances where although an agreement has been struck and consideration provided, the parties never intended that their contract should be enforced in a law

court. This is the case with domestic and social agreements. Commercial agreements however presume the presence of contractual intention.

1.3.5 Capacity of parties to enter into the contract

The law protects certain classes of people who by reason of age or deficiency in mental ability and understanding might be taken advantage of by experienced and mature adults. This includes infants, minors, married women, illiterates and insane and drunken persons.

1.3.6 Absence of any possible fault, either in the formation or execution of the contract

A contract is voidable if there was a fault either in the formation or execution of the contract.