LAW OF CONTRACT.

A contract is a legally binding agreement made by two or more parties.

Types of Contracts.

1. Written
2. Simple contracts
3. Contracts requiring written evidence.

Legally binding agreement made by 2 or more parties

1. Written Contracts

These are contracts which must be contained in a formal documents. They include: Insurance contract, Hire purchase contract, Agency, Partnership, lease agreement.

2. Simple Contracts

These are contracts whose formation is not subjected to any legal formalities.
They may be oral, written or implied from the conduct of the parties.
examples: Contracts of sale of goods and Partnership agreement

3. Contracts Requiring Written Evidence.

These are contracts that must be contained in a memorandum e.g contracts of guarantee.

Essential Elements of a Contract.

1. Offer - expression by one party of intention to contract with another
2. Acceptance - assent of offer by offeree
3. Capacity - legal ability of a person to enter into a contractual relationship.
4. Intention - Intention of parties to create a legal relationship.
5. Consideration - price of contract
6. Legality
7. Formalities

expression by one party of its intention to contract with another

1. Oral, written or implied
Communicated to intended offeree
Clear & definite
general / specific

1. Offer.

It is expression by one party of its intention to contract with another. The parties in an offer are offerer and offeree.

Rules of an Offer.

1. It can be oral, written or implied from the conduct of the offerer.
2. It should be communicated to the intended offeree
3. It should be clear and definite.
4. It can be general or specific.

Invitation to Treat.

- Invitation by a party to another to make an offer

It is invitation by a party to another to make an offer.
examples: Invitation to tender, sale by display, sale by sale service.
A positive response to an invitation to treat is an offer
Examples of offer: Submition of a tender
Application for employment.
Bidding at an option.

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Types of Offers.

1. Cross offer
2. Counter offer
3. Conditional offer
4. Study offer

Cross Offer

It is where a party dispatches an offer to another who has send the same offer and the two offers cross in the course of communication.

Counter Offer

It is variation of or modification of terms of the offer by the ~~offere~~ offeree.

Conditional Offer

It is an offer which has conditioned attached.

Study Offer

It arises when a person's tenders to supply goods & services to another is accepted.

Termination of Offers

1. Rejection.
2. Lapse of time
3. Death of offerer or offeree before acceptance
4. Insanity of either party.
5. Counter offer
6. Revocation. - Is the withdrawal of offer by offerer

Rules of Revocation

1. It should be revoked any time before it become accepted.
2. It cannot be revoked after acceptance.
3. It must be communicated to the offeree.
4. It should be revoked within reasonable time.
5. It becomes legally effective when notice is received by offeree

2. Acceptance

It is assent of offer by the offeree.

Rules of Acceptance.

1. It can be oral, written or implied from the conduct of offeree.
2. It is an unconditional and unqualified - giving conditions makes it a counter offer
3. It must be accepted within stipulated or reasonable time.
4. It should be communicated to the offerer in the proscribe method.

* Where parties negotiate by telephone, acceptance is complete when the offerer hears the offeree word of acceptance.
* An offer to a specific person can only be accepted by that person.
* An offer to a class of person can only be accepted by that class of person.
* Where it is accepted that acceptance can be by post, acceptance is complete when the letter is posted whether it reaches the destination or not.

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3. ~~Infantion~~ Intention

- This is the intention of the parties to create a legal relationship. Intention to create legal relationship exists in business and commercial agrmt employment agrmt however the following agreements do not constitute to intention to create a legal relationship: Domestic/social agreement
Agreement btn husband wife
Agreement btn parent and child.

Legal business & commercial agrmt
Employment agreement

4. Capacity.

It is the legal ability of a party to enter into a contractual relationship. The law of contract limits the following persons: Infants/minors
Drunked person
Person's of unsound mind
Corporation
Undischarged bankrupt.

1. Infants/Minors

Contracts entered with a minor can be valid, voidable or void depending on the nature and purpose of the contract:

Valid / Binding contracts ~~entered~~ of the minor

1. Contracts for the supply of "necessaries"
2. Contracts for the supply of "other necessaries" e.g. education.
3. Contracts of benefitial service.

Voidable Contracts

These are contracts that a minor can avoid / repudiate either during infancy or within reasonable time after attaining the age of majority. These contracts are: Partnership agreement
Lease/tenancy agreement
Purchase of shares ~~of~~ contracts.

Void contracts

These are contracts that the law treats as non-existence. They confer no right or no obligations on the parties. These contracts include:

- Contracts for the supply of goods other than necessaries.
- Money lending contracts.

2. Drunked person / Unsound mind.

during occurs on two points / separate

- A contract entered with a drunken person / unsound mind is voidable at their option if at the point of entering the contract ~~he was too drunk~~, he was too ~~dr~~ drunk / insane to understand his action and the other party was aware of his condition.
- By avoiding the contract the party escapes liability on it.

3. Corporation

They have the capacity to contract in ~~at~~ their own name.

4. Undischarged Bankrupt

Their capacity to contract is restricted by the provision of the bankruptcy act

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5. Consideration.

It is the price of the contract

Types of Consideration.

1. Executory Consideration.

This is where parties exchange mutual promises but neither of the parties has performed its part of the contract. Cannot support a contractual claim.

2. Executed Consideration.

This is where the parties have executed their promises. It can support a contractual claim.

3. Past consideration.

This is the promise made after the services have been rendered. Past consideration is not good to support contractual claim. Exemptions to this general rule are:

1. Acknowledgement of statute ~~bad~~ barred debt - Statute barred debt is a debt that cannot be enforced because 6yrs have passed without the plaintiff / debtor taking legal action to recover it. However if the ~~creditor~~ debtor acknowledges the debt it becomes a good consideration.
2. Negotiable instruments - These are bill of exchange, promissory notes, share warranties and cheques.
3. Rendering of service on request

Rules of Consideration.

1. Mutual love and affection is not sufficient consideration.
2. Past consideration is not sufficient consideration.
3. Consideration should be legal
4. Consideration should flow from the plaintiff.
5. Consideration must be real - valuable in the eyes of law.

Privaty of Contracts.

The doctrine states that only parties persons to a contract can sue or be sued on the contract. It therefore follows that only person party who has provided consideration to a promise can sue or be sued on it.

Exemptions to the doctrine of Privaty of Contracts.

1. Agency - The agent can sue yet he is not party to the contract since the contracting parties are the principal and 3rd party.
2. Legal assignment - A lawyer can sue on behalf of the creditor to recover the debt from the debtor.
3. Negotiable instruments - A bearer of instrument can sue on it.
4. 3rd Party insurance - Victims of the motor vehicle accident (3rd party) can sue yet their are not parties as contracting parties are insurer & insured.
5. Restrictive covenants -
6. Trust

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Terms | Contents of a Contract

1. Express terms - They are oral | hand written terms agreed by parties. Written terms prevail over all terms.

2. Implied terms - They are implied by statutes or by court of law. Implied terms by statutes (sale of Goods Act) include: condition (major) & warranties (minor).

Conditions (Major) Terms.

1. Right to sale - seller has right to sell goods when they pass.
2. Correspond to description.
3. Fitness of purpose
4. Merchantable quality - should be free from any defect
5. Sale by sample - implies the following:
   - The bulk shall correspond with sample in quality
   - Buyer should be afforded reasonable opportunity to compare the bulk with the sample.
   - Goods shall be free from any defect that may render them unmarketable.

Warranties (Minor) Terms.

1. Quiet of possession.
2. Free from charge | encumbrances - Not use goods as security.

Terms Implied by Court of law.

- Reasonable by stander taste - It is any term a reasonable person upon hearing a contract being made would have implied.
- Trade usages | customs - implied customarily. The party relying on trade custom must prove that:
  1. Custom exist.
  2. It's reasonable.
  3. It's known to parties
  4. It's certain.

- Contractual terms maybe conditions, warranties or innominate terms. Innominate are terms of contract that cannot be categorised as condition or warranties.

Vitiating Elements.

- They are factors that affect validity of a contract. They include:
  - Misrepresentation.
  - Mistake
  - Duress
  - Undue influence.

false representation

Innocent party to avoid contract:
1. Must be prooved
2. Stament in question was false.
3. Statement was one of fact & not opinion
4. Statement was relied on by recipient

① Misrepresentation.

It's a false representation. It makes the contract voidable at the option of innocent party. However, for innocent party to avoid the contract, it must be ① prooved, ② statement in question was false, ③ statement was one of fact and not opinion ④ statement was relied on by recipient.

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The general rule is that ommission, silence or non-disclosure does not amount to misrepresentation: exceptions
1. In contracts of utmost good faith eg insurance, partnership & agency.
2. Where disclosure is statutory requirement.
3. Where statement made is half true.
4. If statement was true when made & turns false due to circumstances when contract is concluded.

Types of Misrepresentation.

① Innocent misrepresentation. It's false statement given by maker and maker believed its honestly true & had no means of ascertaining that it was true.

Remedies to innocent Party.

1. Rescission of contract - cancelling the contract
2. Sue for damages: compensation for monetary losses incurred.

② Negligence misrepresentation- It's when a person giving false information gives it unknowingly but had the means to ascertain it's falsity but fails to do it.

Reliance of Negligence Misrepresentation.

1. Special relationship btn maker & recepient or statement giving rise to legal duty of care.
2. There was breach of ~~contract~~ duty by giving false representation
3. The parties have had loss.

③ Fraudulent misrepresentation - It's false statement which the maker has knowledge that it's false & makes it carelessly & recklessly.

Remedies - Rescission
- Damages.

② Mistake.

Types - Mistake of law
- Mistake of fact.

- Mistake of law does not affect a contract but mistake of fact affects contractual relationship.
- They are also called operating mistake & include:
  * Common
  * Mutual
  * Unilateral
  * Mistak only signed doc.
  * Mistake as to quality of subject matter.

* Common mistake - Both parties make same mistake & renders contract void. They are facts unknown to parties
* Mutual mistake- arises when parties misunderstand each other. Makes contract void.
* Unilateral mistake- Only one party is mistaken & mistake is induced by other

party. It occurs when a fraudulent person misrepresents his identity. Makes the contracts voidable at option of innocent party.

*Doc. mistakenly signed - Arises when a party to a contract signs a wrong doc.

*Mistake of quality & matter - Occurs when parties to contract is mistaken about quality of subject matter makes contract voidable.

③ Duress

- Is actual violence or Threat. Is when a contractual relationship is procured by actual violence. The party is compelled to contract. makes contracts voidable. For avoidance of contract must prove:
  - Threat was intended to cause fear, injury or loss of Property
  - Threat was directed to person & not property.
  - Threat was illegal.

④ Undue Influence

It's when 2 parties have unequal power & one party dominates over each other making junior party not to exercise independent judgement on a contract.

Rescission.

- It's right exercised by innocent party where it avoids a contract.
- The right of rescission, it's lost in the following ways:
  1. Delays - defeats equity
  2. Attirmation - acceptance of a contract
  3. Third party rights
  4. Where rescission is impossible.

6. Legality.

- An illegal contracts ~~it's~~ injurious ~~to~~ public safety. Contracts maybe declared illegal by statutes or law.
- Illegal contracts include:
  - Contracts to commit crime, torts or frauds
  - Contracts prejudicial to public safety.
  - Contracts prejudicial to administration of justice.
  - Contracts to defraud state revenue.
  - Contracts to promote corruption in public.
  - Contracts to promote sexual & immorality.
- Illegal contracts are void
- A void contract creates no rights & imposes no obligation on the parties ~~enforceable~~. The law treats them as inexistent.

Void Contracts.

- They are contracts which the law treats as non-existence & thus are enforceable. They are contracts of uberimae fidei e.g. Partnership & insurance.

7. Formalities.

- Contracts are subject to certain formalities e.g
  - Should be in writting
  - There should be a signature

Discharge of Contracts

1. Mutual Agreement - Parties expressly agree to discharge.
2. Breach of contract
3. Frustration
4. Performance.
5. Operation of law.

1. Mutual Agreement.

It may be bilateral or unilateral

2. Performance.

- It's when both parties have performed their mutual obligation as agreed. Common law insisted discharge by performance, was only possible if parties performed their obligation precisely & exactly giving rise to the doctrine of precise & exact. However, it also admitted to this doctrine to mitigate its harshness.
- Opposite of doctrine of precise & exact is doctrine of part performance, when one is paid of part of work done is called quantum meruit.

Exceptions to Doctrine of Precise & Exact / Case of granting Quantum Meruit its acceptable.

1. Divisible contract
2. Substantial performance
3. Partial performance is acceptable
4. Prevented performance - worker giver prevents you from doing the work.
5. Time of performation
6. Frustration of a contract.

3. Frustration of Contract.

A contract can be frustrated by the following circumstances:

1. Distruction of subject matter - subject matter is foundation of a contract.
2. Non-occurrence of event
3. Illegality - change of law, a contract may become illegal.
4. Death.
5. Supervening event - Events delaying performance & thereby change commercial characteristics of a contract.

Effects of Frustration of Contract

1. It's terminated.
2. Money paid is recoverable.
3. Money payable ceases to be payable.
4. Party suffering the loss, can sue for damages.

4. Breach of Contract

- Can either be anticipatory or actual.

Anticipatory is where other party has intimidated not to perform the contract whereas actual means terms of contract are violated.

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5. Operation of Law
-This discharge takes place especially due to merger or winding up.

Remedies of Breach of Contract

1. Damages
2. Injuction
3. Rescission
4. Specific performance
5. Account
6. Tracing & Identification
7. Quantum meruit
8. Winding up
9. Appointment of a receiver

1. Damage - This monetary compensation.
2. Specific performance. It's granted in following circumstances:
   - Monetary compensation is inadequate.
   - Subject matter is unique.
   - Word of specific performance is based on principles of equity.
   - A court of law will not give a decree of specific performance if:
     - Contract is ~~recov~~ revocable/cancellable.
     - Performance of contract requires constant supervision.
     - Was acquired by fair means.
     - Contract is enforceable in part only.
     - Contract was acquired on personal services
     - Contract is incapable of being performed.

3. Injuctions
-It's restreant order that the court gives to prevent someone from doing a particular thing.
- It can be prohibitory (restreant), mandatory (restorative), temporal (interim or permanent).

4. Account
It's where a party has breached it's judiciary duties e.g making secreting profits, competing with firm, the court may compel the person in possession of trust to account for gains made.

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