

**Contract.** A contract is a promise or set of promises of which the law seeks to compel the performance or to punish, the non-performance. A contract may consist of a simple promise by one person to another, or mutual promises by two persons to one another; or, there may be, indeed, any number of persons or any number of promises.

The word contract is often used to express indifferently:

1. The acts which create the legal relations between the parties
2. A writing which is itself such an act, or which is the evidence of such acts
3. The legal relations resulting from the operative acts.

**The classification of contract:**

**Express contracts** are those in which the promise or promises are stated in express words, whether oral or written. This type of contract parties are fully aware of their agreed upon terms.

**Implied contracts** are those in which the promise or promises are inferred from acts or circumstances which justify the promise in understanding that the promisor intended to make such promise or promises, although the intention was not manifested in words.

**Formal contracts** are those in which the binding force or the effect of the obligation depends upon the transaction being given a certain form as distinguished from having substantial attributes.

**Simple contracts** are a contract made orally or in writing or both of them rather than a contract made under seal. Simple contracts require consideration to be valid but simple contracts may be implied from the conduct of parties bound by the contract.

**Unilateral contract** is one where one person only or several persons acting as a unit make a promise or promises.

**Bilateral contract** is a contract in which both parties exchange promises to perform.

## **FORMATION OF A CONTRACT**

**A. OFFER**

**B. ACCEPTANCE**

**C. CONSIDERATION**

**D. CONTRACTUAL INTENTION**

**E. PRIVITY**

**F. CAPACITY**

**G. FORM**

A contract is an agreement giving rise to obligations which are enforced or recognized by law. In common law, there are 3 basic essentials to the

creation of a contract: (i) agreement; (ii) contractual intention; and (iii) consideration.

**A. OFFER** An offer is an expression of willingness to contract on specified terms, made with the intention that it is to be binding once accepted by the person to whom it is addressed.<sup>1</sup> There must be an objective manifestation of intent by the offeror to be bound by the offer if accepted by the other party. Therefore, the offeror will be bound if his words or conduct are such as to induce a reasonable third-party observer to believe that he intends to be bound, even if in fact he has no such intention. This was held to be the case where a university made an offer of a place to an intending student as a result of a clerical error. An offer can be addressed to a single person, to a specified group of persons, or to the world at large. An offer may be made expressly (by words) or by conduct. An offer must be distinguished from an invitation to treat, by which a person does not make an offer but invites another party to do so. Whether a statement is an offer or an invitation to treat depends primarily on the intention with which it is made.

**B. ACCEPTANCE** An acceptance is a final and unqualified expression of assent to the terms of an offer. Again, there must be an objective manifestation, by the recipient of the offer, of an intention to be bound by its terms. An offer must be accepted in accordance with its precise terms if it is to form an agreement. It must exactly match the offer and ALL terms must be accepted. Acceptance has no legal effect until it is communicated to the offeror (because it could cause hardship to the offeror to be bound without knowing that his offer had been accepted). The general rule is that a postal acceptance takes effect when the letter of acceptance is posted (even if the letter may be lost, delayed or destroyed). However, the postal rule will not apply if it is excluded by the express terms of the offer. An offer which requires acceptance to be communicated in a specified way can generally be accepted only in that way. If acceptance occurs via an instantaneous medium such as email, it will take effect at the time and place of receipt.<sup>7</sup> Note that an offeror cannot stipulate that the offeree's silence amounts to acceptance.

A communication fails to take effect as an acceptance where it attempts to vary the terms of an offer. In such cases it is a counter-offer, which the original offeror can either accept or reject.

**C. CONSIDERATION** In common law, a promise is not, as a general rule, binding as a contract unless it is supported by consideration (or it is made as a deed). Consideration is "something of value" which is given for a promise and is required in order to make the promise enforceable as a contract. This is traditionally either some detriment to the promisee (in that he may give value) and/or some benefit to the promisor (in that he may receive value).

For example, payment by a buyer is consideration for the seller's promise to deliver goods, and delivery of goods is consideration for the buyer's promise to pay. Consideration need not be adequate. Courts do not, in general

ask whether adequate value has been given (in the sense of there being any economic equivalence between the value of the consideration given and the value of any goods or services received). This is because they do not normally interfere with the bargain made between the parties<sup>10</sup>.

Accordingly, nominal consideration is sufficient

**D. CONTRACTUAL INTENTION** An agreement, even if supported by consideration, is not binding as a contract if it was made without an intention to create legal intentions. That is, the parties must intend their agreement to be legally binding. In the case of ordinary commercial transactions, there is a presumption that the parties intended to create legal relations. The onus of rebutting this presumption is on the party who asserts that no legal effect was intended, and the onus is a heavy one. Many social arrangements do not amount to contracts because they are not intended to be legally binding. Equally, many domestic arrangements, such as between husband and wife, or between parent and child, lack force because the parties did not intend them to have legal consequences

**E. PRIVACY** is a doctrine that imposes rights and obligations to parties of a contract and restricts non -contractual parties from enforcing the contract. lack of private states that there is no contract between parties, thereby not

requiring them to perform certain duties and not entitling them to certain rights.

**F. CAPACITY** contractual capacity is the ability of an individual to enter into a binding legal contract and expose themselves or their company if they have signatory authority to the obligations and consequences that flow from the contract.

**G. FORM** The general rule is that contracts can be made informally; most contracts can be formed orally, and in some cases, no oral or written communication at all is needed. Thus, an informal exchange of promises can still be as binding and legally valid as a written contract.

## Terms of contract

The terms of a contract can be divided into **express terms** and **implied terms**

**EXPRESS TERMS** Express terms are ones that the parties have set out in their agreement. The parties may record their agreement, and hence the terms of their contract, in more than one document. Those terms may be incorporated by reference into the contract; (for example, where a contract is made subject to standard terms drawn up by a relevant trading association). Or, a contract may be contained in more than one document even though one does not expressly refer to the other (for example, dealings which take place under a 'master contract' with a separate document being executed every time an individual contract is made) Here, the master contract lays out most of the underlying terms on which the parties are dealing, while certain specific terms – price, times for delivery etc – are covered in individual contracts for each specific trade. Incorporation without express reference depends on the intention of the parties, determined in accordance with the objective test of agreement. Once the express terms have been identified, there is the question of interpretation. The document setting out the parties' agreement must be interpreted objectively.



**IMPLIED TERMS** A contract may contain terms which are not expressly stated but which are implied, either because the parties intended this, or by operation of law, or by custom or usage.

**Four categories of implied terms:**

1. **Implied by fact** These are terms that courts assume both parties would have intended to include in the contract had they thought about the issue
2. **Implied by law** Terms implied in law are terms imported by operation of law, whether the parties intended to include them or not. For example, in a contract for the sale of goods, it is an implied term that the goods will be of a certain quality and, if sold for a particular purpose, will be fit for that purpose.
3. **Implied by custom** Terms can be implied if there is evidence that under local custom, they would usually be present
4. **Implied by trade usage** Terms usually used in contracts within a particular trade or business may be implied into other such contracts.

## MISTAKE AND MISREPRESENTATION

**MISTAKE** in contract law a mistake is a mistaken belief at contracting, that certain facts are true .it can be argued as a defense and if raised successfully can lead to the agreement. And there are three different types of mistake **unilateral mistake, mutual mistake and the common mistake**

**unilateral mistake:** is where only one party to a contract is mistaken about the terms or subject matter contained in contract.

**mutual mistake:** it occurs when the parties to a contract are both mistaken about the same material fact within their contract.

**common mistake** is where both parties hold the same mistaken belief of the facts.

**MISREPRESENTATION:** is when an untrue statement of fact or law is made by party A or its agent to party B, which induces party B to enter a contract with party A thereby causing party B loss

## **TYPES OF MISREPRESENTATION**

**Fraudulent misrepresentation:** where a false misrepresentation has been made knowingly or without belief in its truth or recklessly as to its truth

**Negligent misrepresentation:** a representation made carelessly and in breach of duty owed by party A to party B to take reasonable care that the representation is accurate.

**Innocent misrepresentation:** a representation that is neither fraudulent nor negligent, and the remedy is rescission or damages, simply rescission means that the parties are restored so far as possible to the position that they were in before the contract was entered

## Duress and Undue Influence

**Duress:** is defined as some kind of threat, violent or other action which is used to coerce somebody into doing something against their will. This refers to where a party uses duress against the other party in order to enter into a contract which they either do not want to or the terms of the contract are unfavorable to them.

### Types of duress:

1. **physical duress** :refers to causing or threatening to cause physical harm to an individual ,their family or their goods.
2. **Economic duress**: refers to threatening another with economic harm.

### The Elements of duress:

- 1.the threat involves serious harm or death.
- 2.the threat must be believable ,immediate and unavoidable
- 3.the threatened party must enter the contract to protect themselves.

**Undue Influence** :is an equitable doctrine that involves one person taking advantage of a position of power over another person and this most commonly occurs when a more powerful party exerts its influence over a less powerful party in order to its desired outcome .

### Types of undue influence

1. **Presumed undue influence** :refers to the influence that is presumed due to the specific relationship that exists between the parties (e.g. the relationship between parent and child , solicitor and client)
2. **Actual undue influence** : protect an individual that has been victimized by a dominant party.

Elements of undue influence in order to prove undue influence the victim party must prove different legal elements

1. the victim must show reasons why they were susceptible to someone's else's influence
2. the victim must explain how the other party had the opportunity to take advantage of them
3. the victim must demonstrates that the other party did take advantage of that opportunity likely by manipulating

## Illegality

Illegality in contract law is a concept which indicates that a contract is illegal, and therefore unenforceable even if the other requirements of a contract are present. In the law of contract there are two forms of illegality: Common law illegality and statutory illegality.

**Common law illegality:** is defined as a contract that is contrary to public policy and good morals.

**Statutory illegality:** defined as contracts made illegal by statute and directly prohibited which is also a contract with an illegal objective and illegally performed.

## Performance

The performance of a contract is the carrying out of the promises made by the parties .it can be done several ways including through action or inaction . for a contract to be valid both parties must perform their obligations. If one party fails to do so it can lead to disputes and litigation.

### Types of performance

1. **Actual performance** :is one where both parties have fulfilled their obligations as set out in the contract
2. **Substantial performance** : is one where only some of obligations under a contract have been met .
3. **Breach of contract**: where the performance by any of the parties is not been done .

## Breach of contract

Breach of contract is a violation of any of the agreed upon terms and conditions of a binding contract . the breach could be anything from a late payment to a more serious violation , such as the failure to deliver a promised asset. If it can be proved that a contract was breached , the remedy would generally be to give the victim what they were initially promised.

### Types of contract Breaches

1. **Minor breach** : it happens when you don't receive an item or service by the date.
2. **Material breach** : is when you receive something different from what was stated in the agreement.
3. **Actual breach** : when one party refuses to fully perform the terms of the contracts.
4. **Anticipatory breach** : when a party states in advance that they will not be delivering on the terms of the contract .



## THE END OF A CONTRACT

**EXPIRATION, TERMINATION, VITIATION, FRUSTRATION**

EXPIRATION : This refers to a contract which comes to an end in accordance with its terms, either because it has a fixed expiry date or because there is a right to terminate contained in the contract.

TERMINATION : is legally ending a contract before one or more parties have met their obligations. Only the parties that have signed the contract can terminate the contract.

VITIATION There are situations where the parties have reached agreement but the question arises whether the existence or non-existence of some fact, or the occurrence or non-occurrence of some event, has destroyed the basis on which that agreement was reached so that the agreement is discharged or in some other way vitiated.

FRUSTRATION Under the doctrine of frustration, a contract may be discharged if, after its formation, an unforeseen event occurs which makes performance of the contract impossible, illegal or essentially different from what was contemplated

