

INTRODUCTION TO CONTRACT LAW

DEFINITION

A contract may be defined as a legally binding agreement or, in the words of Sir Frederick Pollock: “A promise or set of promises which the law will enforce”.

The agreement will create rights and obligations that may be enforced in the courts. The normal method of enforcement is an action for damages for breach of contract, though in some cases the court may order performance by the party in default.

CLASSIFICATION

Contracts may be divided into two broad classes:

1. Contracts by deed

A deed is a formal legal document signed, witnessed and delivered to effect a conveyance or transfer of property or to create a legal obligation or contract.

2. Simple contracts

Contracts which are not deeds are known as simple contracts. They are informal contracts and may be made in any way – in writing, orally or they may be implied from conduct.

Another way of classifying contracts is according to whether they are “bilateral” or “unilateral”.

1. Bilateral contracts

A bilateral contract is one where a promise by one party is exchanged for a promise by the other. The exchange of promises is enough to render them both enforceable. Thus in a contract for the sale of goods, the buyer promises to pay the price and the seller promises to deliver the goods.

2. Unilateral contracts

A unilateral contract is one where one party promises to do something in return for an act of the other party, as opposed to a promise, eg, where X promises a reward to anyone who will find his lost wallet. The essence of the unilateral contract is that only one party, X, is bound to do anything. No one is bound to search for the lost wallet, but if Y, having seen the offer, recovers the wallet and returns it, he/she is entitled to the reward.

ELEMENTS

The essential elements of a contract are:

1. Agreement

An agreement is formed when one party accepts the offer of another and involves a “meeting of the minds”.

2. Consideration

Both parties must have provided consideration, ie, each side must promise to give or do something for the other.

3. Intention to create legal relations

The parties must have intended their agreement to have legal consequences. The law will not concern itself with purely domestic or social agreements.

4. Form

In some cases, certain formalities (that is, writing) must be observed.

5. Capacity

The parties must be legally capable of entering into a contract.

6. Consent

The agreement must have been entered into freely. Consent may be vitiated by duress or undue influence.

7. Legality

The purpose of the agreement must not be illegal or contrary to public policy.

A contract which possesses all these requirements is said to be valid. The absence of an essential element will render the contract either void, voidable or unenforceable (as to which see below).

In addition, a contract consists of various terms, both express and implied. A term may be inserted into the contract to exclude or limit one party's liability (the so-called "small print"). A term may also be regarded as unfair. A contract may be invalidated by a mistake and where the contract has been induced by misrepresentation the innocent party may have the right to set it aside. As a general rule, third parties have no rights under a contract but there are exceptions to the doctrine of privity. There are different ways of discharging a contract and remedies are available for breach of contract at common law and equity.

ENFORCEABILITY

1. Void contracts

A "void contract" is one where the whole transaction is regarded as a nullity. It means that at no time has there been a contract between the parties. Any goods or money obtained under the agreement must be returned. Where items have been resold to a third party, they may be recovered by the original owner.

2. Voidable contracts

A contract which is voidable operates in every respect as a valid contract unless and until one of the parties takes steps to avoid it. Anything obtained under the contract must be returned, insofar as this is possible. If goods have been resold before the contract was avoided, the original owner will *not* be able to reclaim them.

3. Unenforceable contracts

An unenforceable contract is a valid contract but it cannot be enforced in the courts if one of the parties refuses to carry out its terms. Items received under the contract cannot generally be reclaimed.