

BUSINESS CONTRACTS

A business contract is a legally binding agreement between two or more parties that is enforceable by the law

OR

A contract is an agreement or promise between two or more persons by which rights acquired by one party to act on the party of the other parties that is legally binding or enforceable by law.

PARTIES TO A CONTRACT

For a contract to exist there must be legal persons or entities with common interest (who have interest in it) such persons are referred to as parties to a contract

These parties have the legal capacity to enter into a contract, for instance adult persons, registered business like co-operatives, limited liability companies

However, some group of persons or business cannot legally binding contracts for instance.

- ✓ A minor or person who is under the age of 18years cannot enter into a valid contract
- ✓ A person of unsound mind cannot enter into a valid contract which he or she is in that state or un sound mind
- ✓ A drunkard cannot enter into a legal contract while he or she is in that state of Drunkardness
- ✓ Un - incorporated / unregistered businesses like partnership, sole proprietorship, cannot enter into a valid contract (in their capacities as business entities) may be their owners can do it on their behalf.

TYPES OF CONTRACTS

- 1.** Oral contracts, these are also referred to as a gentle man's agreement where parties agree to deal with each other without writing down anything. The law does not easily enforce such a type of a contract as there is nowhere to refer to on what was agreed upon
- 2.** Written contracts. These are written down and signed by both parties and witnessed by a third party. Examples of such contracts may include, sales agreement, appointment letters etc. such a law is easily enforceable by law.

ESSENTIALS OF VALID CONTRACT

- i. **The Offer.** These are terms and conditions set by one party to the contract to the other as being his or her dealing position. It refers to the proposal made by the offeror on certain terms together with a promise to be bound by the proposal if the offeree accepts the stated terms.
- ii. **Acceptance.** This refers to the positive response to an offer. This is the agreeing to the terms and conditions set by the other party to whom the offer was made.

- iii. **The Lawful Consideration.** This refers to the price paid by one party for the promise of the other but in monetary terms i.e a contract is not legally binding unless it is supported by considerations (money). For example, if Opio enters into a contract to supply beer to Okello at Uganda shs 15,000 per crate, the shs 15,000 is the monetary consideration.

Note. An agreement is legally enforceable only when each of the parties to it gives something and gets something. That something given or obtained is the price for the promise, and it is called consideration.

- iv. **The capacity of parties.** The capacity of parties to an agreement must be competent enough to contract, otherwise it cannot be enforced by court of law, in order to be competent to contract, and the parties must be of the age of majority and of sound mind.

Note. If any of the parties to the agreement suffers from minority, lunacy, Drunkard-ness etc. the agreement is not enforceable by law, except in some special cases.

- v. **Free Consent.** This means that, both the concerned parties must agree on the same thing in the sense freely without any undue influence, fraud, misrepresentation or mistake.
- vi. **Lawful object.** A valid contract relates to legal transaction. The product or object to be offered should not be illegal, fraudulent, or opposed to public like prostitution, gambling, corruption. Etc.
- vii. **Intention to create a legal relationship.** There must be an intention among the parties that the agreement be attached be legal obligation. Agreements of social or domestic nature do not contemplate legal relations. And as such, they do not give rise to a contract. For instance agreements between husbands and wife also lack the intentions to create legal relations and hence do not result into legal contracts.
- viii. **Possibility of performance.** To be a valid contract, the activity must be possible to be performed legally and physically. If an act is impossible in itself physically or legally, the agreement cannot be enforceable by law.
- ix. **Certainty.** The terms and conditions of a contract must be clear, defined and where possible measurable.
- x. **Independent Witness.** Valid contract should be witnessed by an independent party with no any interest of transaction.
- xi. **Form.** A valid contract must be put in writing for easy reference in case of any misunderstanding. It should appear in black and white.

TERMS AND CONDITIONS OF A CONTRACT

Terms and conditions of a contract refer to the ways the parties to the contract have agreed to deal with each other in their contract.

Before a contract is concluded each of the parties make statements that are meant to induce the other party to enter into a contract. These statements turn out to be known as representations

When such statements turn out to be false, they are known as misrepresentations and such statements can lead to a contract become invalid, void or voidable

When the parties to the contract are bargaining and agreeing to deal with each other, they set themselves measures at which they have to deal with each other. These terms normally relate to transaction itself and they may include the following.

- ✓ Description of the nature of goods and services (offer) that will be involved in the contract
- ✓ The price / consideration at which the goods and services are to be exchanged.
- ✓ The quality of goods and services involved in the agreement
- ✓ The lead time of the supplier
- ✓ The frequency at which the goods are to be supplied
- ✓ The time of delivery of goods and provision of services
- ✓ The place where the goods should be delivered
- ✓ The mode of delivery of goods
- ✓ The terms and conditions of payment for the offer (goods and services) i.e on cash basis, credit basis, installment payment or payment in kind.
- ✓ The credit period that shall be allowed
- ✓ The place where payment shall be made
- ✓ Benefits to the buyer if any such as discounts
- ✓ Other costs if any like insurance, transport etc
- ✓ The procedure and method of settling disagreements / conflicts in case they arise
- ✓ The conditions under which the contract may be terminated

IMPLICATIONS OF A CONTRACT

When a contract is being made, the intention to create a legal relationship is an essential element in such a contract; this is an implication that any contract made between the parties must have an intention to create legal relationship. So any contract that is devoided of this is illegal

A contract is an agreement enforceable ie when parties enter into it as they create obligations which each of them is expected to observe by due performance. This implies that if any parties fail to carry out his / her obligation, he is said to be in breach of the contract and there are set remedies which the law makes available to the innocent party.

The terms of contract are in most cases agreed upon by the parties themselves. However, for certain contracts, especially those involving sale of goods, the following terms are implied by law

- ✓ There is legal relationship between the parties to contract ie the seller and the buyer.
- ✓ Business operations are legally binding and must be observed according to the requirements of law.
- ✓ The contract has to be accomplished in the stated period of time.
- ✓ Breach of any clause will lead to undesirable consequences to the party violating the contract
- ✓ Both parties to the contract have the obligation to work hard to fulfill what is spelt in the contract

- ✓ If one of the parties to contract fails to perform in accordance to what was agreed upon, the aggrieved party may seek through courts of law solutions for the loss suffered. Therefore, parties to the contracts always consult and be advised on the contracts before they sign them.

DISCHARGE OR TERMINATION OF A CONTRACT

This refers to the disagreement of the parties from their contractual obligation created by the contract. Its effects are to relieve the parties of any further responsibility imposed on them by the contract. A contract may be discharged through any of the following ways.

By performance. If the contract is fulfilled as per the agreed terms and conditions. A contract is discharged when each party to it performed to the full satisfaction of the other in accordance with the agreed terms and conditions.

By frustration. This refers to the conditions that render the performance of a contract impossible. For instance war outbreak, which creates hostile environment government intervention, may also lead to a contract to an end, nonoccurrence of an event ie some contracts may be on certain events.

E.g if it rains, so failure of such an event to occur automatically terminates the contract, so failure of such an event to occur automatically terminates the contract

By breach of the contract, it occurs when one of the parties fails to perform his/her obligation in accordance with the contract. It can be partial or total breach.

Partial breach is where only one part of the agreement had been fulfilled while total breach means that no part of the agreement has been fulfilled. The contract can hence be terminated by the parties involved or the aggrieved party can go to court to seek termination and remedy as may be determined by court.

By operation of the law ie if there is lapse of time, bankruptcy of one or both of the concerned parties, then a contract may come to an end or may be discharged.

Destruction of the subject matter. When the subject matter of the contract is destroyed and ceases to exist, the contract is terminated since it has no basis. For example if A agrees to sell his car to B in a week time and after a day, it catches fire, then the contract is terminated as the subject matter is destroyed by fire.

By rescission. A rescission of a contract is when a contract is terminated because and individual misrepresented themselves, acted illegally or made a mistake. For example if you bought a house but after further inspection you discover that the seller intentionally hid the poor physical condition of the home you possible terminated the contract.

CONDITIONS UNDER WHICH A CONTRACT MAY BE TERMINATED

- ✓ When parties involved agree to terminate the contract.
- ✓ When there is a breach of a contract. An agreement may come to an end if either of the parties fails or refuses to perform according to agreed terms and conditions of the contract.
- ✓ When the transactions involved declared illegal.
- ✓ When one of the parties of the contract ceases to be a legal entity. E.g. when the person becomes insane.
- ✓ When the time of duration of a contract expires.

- ✓ When one of the parties declared bankrupt.
- ✓ When there is misrepresentation. i.e when there are false statements within the terms and conditions of the contract
- ✓ When there is death of one of the parties.
- ✓ In case of frustration. I.e performance of the contract impossible. E.g. government intervention, non-occurrence of the events etc.
- ✓ When one of the parties found to be minor.
- ✓ In case there is operation bylaw. ie conditions of law may terminate it.
- ✓ In case of performance. After the obligations of the contract are fulfilled by both parties.

Importance of business contracts

- i. It promotes a legal relationship among the concerned parties. It protects an entrepreneur from untrustworthy customers or business partners
- ii. It promotes production of quality products. This is because quality requirements are always specified in a contract.
- iii. It promotes confidence that may arise due to lack of integrity and trust worthy
- iv. It enables business to run with a high degree of certainty incase terms and condition are well defined.
- v. It promotes hard working. This is because concerned parties always work hard in order to fulfill the legal obligations and promise.
- vi. It controls possible future misunderstandings among the concerned parties.

Sample questions

Question 1

- a) *What is meant by the term business contract?*
- b) *Describe the essentials of a valid contract.*

Question 2

- a) *Outline the importance of business contracts.*
- b) *Under what circumstance may contract be terminated?*

Question 3

- a) *Explain the factors considered when designing a contract.*
- b) *State the implications of a valid contract.*

End