THE LAW OF CONTRACT

A Teaching Version — Prof Samba Online University of Nigeria

Under the supervision of Prof Samba
Law Professor at Rev Fr Moses Orshio Adasu University, Makurdi

IMPRINT

This teaching book was written for the Prof Samba Online University of Nigeria and stands **under the supervision of Prof Samba**. It teaches the law in general words, in the university's own teaching version. No textbook in copyright is copied in it, and no statute or constitution is reproduced wholesale: principles are taught, and brief reference is made to principle only.

Prof Samba
samba.48hourrfprescue.com
info@samba.48hourrfprescue.com

Formats: this book stands as a PDF on the university's Law Library page, with DOCX and Markdown masters held in the university's records.

How to use this book: read a chapter, work the example, answer the discussion questions in writing, then read the summary again before you move on. Law is learned by working, not by looking.

Chapter 1 — What a Contract Is

A contract is an agreement the law enforces. This opening chapter teaches its nature: how contract differs from mere promise, why the law enforces bargains, and the freedom — and limits — of contract.

Agreement and enforceability

Not every agreement is a contract. Social and domestic promises are presumed not to bind in law; commercial agreements are presumed to bind. Between the presumptions lies the intention to create legal relations, judged objectively: what would reasonable persons, in these parties' positions, have understood?

The enforceable bargain rests on exchange — each side gives something for the other's promise. That exchange, consideration, is the common law's test of which promises deserve the courts.

Freedom of contract

The classical doctrine lets competent parties make their own terms: the court enforces the bargain made, not the bargain that would have been fair. Freedom of contract built the commercial world, and its premise — parties of equal strength choosing freely — is also its weakness, which the modern law answers with controls on unfair terms and protection for consumers.

The student should hold both truths: freedom is the system's engine, and its regulation is the system's conscience.

Form

Most contracts need no form: they may be oral, written, or made by conduct. Some must be in writing or evidenced in writing by statute — land transactions are the standing example — and some must be by

deed. Form serves evidence, caution, and ceremony; where form is required and absent, the consequence varies from unenforceability to voidness, and the student must read the requiring statute.

Even where writing is not required, the wise contract is written: memory is a poor witness, and most contract litigation is archaeology over what was agreed.

Classification

Contracts are classified as bilateral or unilateral, express or implied, executed or executory, valid, void, voidable, or unenforceable. Each label carries consequences, and precision with the labels is the beginning of precision in the subject.

Worked example

Two friends agree that one will drive the other to the airport 'as a favour between friends'; the driver oversleeps and the friend misses a flight. However real the disappointment, the domestic-social presumption answers: no intention to create legal relations, no contract, no claim. The same promise inside a paid booking would bind at once.

Discussion questions

• What separates a contract from a mere agreement?

• Why does the law presume differently for domestic and commercial promises?

• What three purposes does legal form serve?

Chapter summary

In this chapter you have studied the following ground. A contract is an agreement the law enforces. On agreement and enforceability: Not

every agreement is a contract. Social and domestic promises are presumed not to bind in law; commercial agreements are presumed to bind. Between the presumptions lies the intention to create legal relations, judged objectively: what would reasonable persons, in these parties' positions, have understood? On freedom of contract: The classical doctrine lets competent parties make their own terms: the court enforces the bargain made, not the bargain that would have been fair. On form: Most contracts need no form: they may be oral, written, or made by conduct. On classification: Contracts are classified as bilateral or unilateral, express or implied, executed or executory, valid, void, voidable, or unenforceable. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 2 — Offer and Acceptance

A contract is made when an offer is accepted. This chapter teaches what an offer is, how it differs from an invitation to treat, how acceptance works, and how offers die.

The offer

An offer is a definite promise to be bound on stated terms, made with the intention that acceptance shall bind. It may be made to a person, a class, or the whole world — the famous reward and advertisement cases teach that an offer to the world is accepted by performing its conditions.

An invitation to treat is not an offer: goods on a shelf, advertisements, price lists, and auction announcements invite the customer to offer. The distinction decides who holds the power of acceptance — the shop displays, the customer offers, the till accepts.

Acceptance

Acceptance must be final, unqualified, and communicated. A reply that varies the terms is a counter-offer, which kills the original offer: the varied reply cannot later be turned into acceptance of the original terms. Silence is not acceptance — the offeror cannot impose a contract by declaring that silence will bind.

Acceptance by post, in the classical rule, is complete when the letter is posted, because the parties who chose the post accepted its risks; instantaneous communications complete acceptance on receipt. Modern electronic dealings are fitted to the same principles: dispatch and receipt rules follow the medium's nature.

Termination of offers

An offer dies by revocation (communicated before acceptance), by rejection or counter-offer, by lapse of its stated or a reasonable time, by the death of a party in appropriate cases, and by failure of a condition. Revocation of a unilateral offer after performance has begun raises the law's conscience: the offeror who has invited performance may be restrained from revoking mid-performance.

Battle of the forms — each side contracting on its own printed terms — is decided by the sequence of offer and counter-offer: the last terms standing before performance are ordinarily the contract's, the 'last shot' doctrine.

Worked example

A seller quotes a price 'firm for seven days', then on day three sells to another and writes withdrawing the quote; the buyer's acceptance letter, posted on day two, arrives on day four. The postal rule completes the contract on day two's posting; the revocation, arriving later, comes too late. Sequence is destiny in offer and acceptance.

Discussion questions

• Distinguish offer from invitation to treat, with examples.

• What does a counter-offer do to the original offer?

• Why is acceptance by post complete on posting?

Chapter summary

In this chapter you have studied the following ground. A contract is made when an offer is accepted. On the offer: An offer is a definite promise to be bound on stated terms, made with the intention that acceptance shall bind. On acceptance: Acceptance must be final, unqualified, and communicated. On termination of offers: An offer

dies by revocation (communicated before acceptance), by rejection or counter-offer, by lapse of its stated or a reasonable time, by the death of a party in appropriate cases, and by failure of a condition. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 3 — Consideration

Consideration is the price of the promise: something of value in law's eye, given for the promise. This chapter teaches its rules — need, sufficiency, past consideration, and the promises the law enforces without it.

The doctrine

Consideration must move from the promisee, need not be adequate, but must be sufficient — of some value in law's estimation. Courts do not weigh bargains: a peppercorn may buy a promise, for the parties are the judges of their exchange. But the illusory and the past are not consideration at all.

Adequacy is the market's question; sufficiency is the law's. The distinction preserves freedom of contract while keeping the doctrine's gate.

Past consideration

An act done before the promise is past consideration and generally no consideration: the promise rewards a completed act it did not induce. Exceptions exist where the act was done at the promisor's request in circumstances implying payment — the requested service later priced is the standing example.

Consideration must also not be what the promisee already owes: performing an existing duty — contractual or public — is generally no consideration for a new promise, though exceeding the duty is, and modern authority softens the rule where the promisor gains a practical benefit without duress.

Promissory estoppel

Where a promise was intended to be acted on, and was acted on, equity may hold the promisor to it despite absent consideration — promissory estoppel, a shield and not a sword in the classical doctrine: it defends, it does not found a claim. Its conditions are a clear promise, reliance, and inequity in retraction.

Estoppel is the doctrine's conscience, and the student should learn its limits as carefully as its reach.

Worked example

After a contractor rescues a project at the client's urgent request, the client promises a bonus, then refuses to pay, pleading past consideration. The request exception answers: the work was done at the promisor's request in circumstances plainly implying payment. The promise prices a requested service; it is enforceable.

Discussion questions

• Must consideration be adequate? Must it be sufficient? Explain both.

• State the exception to the past-consideration rule.

• Why is promissory estoppel called a shield, not a sword?

Chapter summary

In this chapter you have studied the following ground. Consideration is the price of the promise: something of value in law's eye, given for the promise. On the doctrine: Consideration must move from the promisee, need not be adequate, but must be sufficient — of some value in law's estimation. On past consideration: An act done before the promise is past consideration and generally no consideration: the promise rewards a completed act it did not induce. On promissory estoppel: Where a promise was intended to be acted on, and was acted on, equity may

hold the promisor to it despite absent consideration — promissory estoppel, a shield and not a sword in the classical doctrine: it defends, it does not found a claim. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 4 — Intention, Capacity, and Form

Three gatekeepers stand at contract's door: the intention to be bound, the capacity to bind oneself, and the form the law sometimes requires. This chapter teaches each.

Intention to create legal relations

The presumptions organise the cases: commercial agreements intend legal relations unless the parties plainly exclude them — an 'honour clause' can do so expressly; domestic and social agreements intend none unless the circumstances rebut — separated spouses dealing at arm's length are the classic rebuttal.

The test is objective throughout: the parties' reasonable appearance, not their private reservations.

Capacity — minors

A minor's contracts are, in general, voidable or unenforceable against the minor, with standing exceptions: necessaries — goods and services suitable to the minor's station, sold at a reasonable price — bind the minor to pay; and beneficial contracts of service and education bind where, taken as a whole, they are for the minor's benefit.

The policy is protection with realism: the minor is shielded from improvidence, yet may eat, learn, and work. A contract's benefit is judged as a whole — one harsh clause does not condemn a beneficial apprenticeship, nor does one kind clause save an oppressive one.

Capacity — others

Mental incapacity makes a contract voidable where the incapacity was known to the other party; necessaries again bind to a reasonable price. Companies contract through their constitutions and officers; agents

bind principals within their authority — the law of agency standing behind every organisational contract.

Drunkenness follows incapacity's pattern: voidable where the condition was apparent and the bargain unfair, with restitution tempering relief.

Privity

Only a party to a contract may sue or be sued on it — the privity doctrine, consideration's twin. The stranger who benefits from a contract cannot, in the classical law, enforce it, though statutes and devices — agency, trust, assignment — carry many benefits across the line. Modern reform in many systems gives the intended third-party beneficiary a direct right; the student should know the classical rule and its modern softenings.

Worked example

A seventeen-year-old apprentice signs a training contract with several strict clauses but, taken whole, excellent terms of instruction and wages. Judged as a whole it is beneficial and binds him. The same youth's purchase of luxury goods far beyond his station binds him not at all — necessaries are measured by station and need, not by desire.

Discussion questions

• State the two presumptions on intention and one rebuttal of each.

• Which minors' contracts bind, and why those?

• What is privity, and how do benefits cross its line lawfully?

Chapter summary

In this chapter you have studied the following ground. Three gatekeepers stand at contract's door: the intention to be bound, the

capacity to bind oneself, and the form the law sometimes requires. On intention to create legal relations: The presumptions organise the cases: commercial agreements intend legal relations unless the parties plainly exclude them — an 'honour clause' can do so expressly; domestic and social agreements intend none unless the circumstances rebut — separated spouses dealing at arm's length are the classic rebuttal. On capacity — minors: A minor's contracts are, in general, voidable or unenforceable against the minor, with standing exceptions: necessaries — goods and services suitable to the minor's station, sold at a reasonable price — bind the minor to pay; and beneficial contracts of service and education bind where, taken as a whole, they are for the minor's benefit. On capacity — others: Mental incapacity makes a contract voidable where the incapacity was known to the other party; necessaries again bind to a reasonable price. On privity: Only a party to a contract may sue or be sued on it — the privity doctrine, consideration's twin. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 5 — The Terms of the Contract

The contract's content — its terms — decides most disputes. This chapter teaches express and implied terms, the parol evidence rule, exemption clauses, and the modern control of unfair terms.

Express and implied terms

Express terms are those the parties stated, in writing or speech. Terms are implied from fact — the parties' presumed intention, as in the officious-bystander and business-efficacy tests; from law — the incidents the law attaches to contracts of a class, as in sale of goods; from custom; and from statute, whose implied terms increasingly cannot be excluded in consumer dealings.

Not every statement in negotiation is a term: representations induce contracts without entering them, and their remedies differ. The statement's importance, the parties' relative knowledge, and any invitation to verify help classify it.

The parol evidence rule

Where a contract is wholly in writing, extrinsic evidence is generally inadmissible to add to or contradict it — the document is the bargain. Exceptions — rectification, collateral contracts, evidence of custom or of the parties' identity — keep the rule honest. Entire-agreement clauses attempt to seal the document completely, and modern courts read them strictly.

Incorporation of standard terms requires reasonable notice before or at contracting; the ticket cases teach that the later the terms arrive, the less they bind.

Exemption clauses

A clause excluding or limiting liability must first be incorporated, then construed — against the party relying on it, where ambiguous — and then survive statutory control. Negligence liability can be excluded only by the clearest words; liability for death or personal injury from negligence cannot be excluded at all in the modern consumer statutes' pattern.

Unfair-terms control tests the clause by fairness and transparency: a term that causes significant imbalance contrary to good faith is unenforceable against the consumer. The clause's prominence matters — the more unusual and onerous, the clearer the notice required.

Conditions, warranties, and innominate terms

Terms are classified by the consequence of breach: breach of condition allows termination and damages; breach of warranty allows damages only; innominate terms allow termination only when the breach deprives the innocent party of substantially the whole benefit. The classification question — what did the parties intend the consequence to be — is answered from the contract's structure and the breach's effect.

Worked example

A carrier's ticket, handed over after payment, bears a clause excluding all liability for loss, in small print never drawn to the passenger's attention. Incorporation fails at the threshold — terms delivered after contracting are not in the contract — and the clause never reaches construction or control. Sequence defeats it before fairness is reached.

Discussion questions

• Name the four roads by which terms are implied.

• What are the three stages of testing an exemption clause?

• How does an innominate term decide termination?

Chapter summary

In this chapter you have studied the following ground. The contract's content — its terms — decides most disputes. On express and implied terms: Express terms are those the parties stated, in writing or speech. On the parol evidence rule: Where a contract is wholly in writing, extrinsic evidence is generally inadmissible to add to or contradict it — the document is the bargain. On exemption clauses: A clause excluding or limiting liability must first be incorporated, then construed — against the party relying on it, where ambiguous — and then survive statutory control. On conditions, warranties, and innominate terms: Terms are classified by the consequence of breach: breach of condition allows termination and damages; breach of warranty allows damages only; innominate terms allow termination only when the breach deprives the innocent party of substantially the whole benefit. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 6 — Vitiating Factors

Some contracts are born flawed: by mistake, misrepresentation, duress, undue influence, or illegality. This chapter teaches the vitiating factors and the void or voidable consequences that follow each.

Mistake

Mistake is classified by reach: common mistake — both parties erring on a fundamental fact, as where the subject matter has perished — may make the contract void; mutual mistake — at cross purposes — is judged objectively and rarely voids; unilateral mistake — one party erring, the other knowing — may void where the mistake goes to a term or to identity in face-to-face dealings' careful rules.

A mistake as to quality alone almost never voids: the buyer of a horse that proves unsound bought a horse. Equity's wider relief for mistake has largely been absorbed into careful common-law analysis and the law of rectification for documents that misrecord a true agreement.

Misrepresentation

A false statement of fact, made by one party to induce the other into the contract, and inducing him, makes the contract voidable and may ground damages: fraudulent misrepresentation in deceit, negligent misrepresentation at common law and under modern statutes, and innocent misrepresentation with rescission and discretionary damages.

Silence is generally not misrepresentation — but half-truths are, statements falsified by later events must be corrected, and contracts of utmost good faith and fiduciary relations impose duties to disclose.

Duress and undue influence

Duress — illegitimate pressure that coerces the will, including economic duress where the pressure is illegitimate and leaves no practical alternative — makes the contract voidable. The modern doctrine looks to the pressure's legitimacy, not only its kind: threatening what one has a right to do is ordinarily lawful; threatening it to extract an unrelated gain may not be.

Undue influence presumes itself in relationships of trust — solicitor and client, parent and young child, spiritual adviser and follower — where a transaction calls for explanation; outside them it must be proved. Independent advice is the presumption's practical antidote.

Illegality

A contract illegal by statute or at common law — to commit a crime, to defraud the revenue, to corrupt public life — is unenforceable, and money paid under it is generally irrecoverable, the courts leaving the parties where they find them, subject to exceptions for the protected class, the less culpable party, and timely repentance. Severance may save a lawful remainder where the illegality is a detachable clause.

Worked example

An elderly widow transfers her house to a spiritual adviser for a nominal sum, without independent advice. The relationship raises the presumption of undue influence; the transaction cries out for explanation; none is given. The transfer is voidable at her election, and equity sets it aside — protection arriving through presumption where proof of pressure would be impossible.

Discussion questions

• Distinguish common, mutual, and unilateral mistake.

• When is silence a misrepresentation?

• What two elements make economic duress?

Chapter summary

In this chapter you have studied the following ground. Some contracts are born flawed: by mistake, misrepresentation, duress, undue influence, or illegality. On mistake: Mistake is classified by reach: common mistake — both parties erring on a fundamental fact, as where the subject matter has perished — may make the contract void; mutual mistake — at cross purposes — is judged objectively and rarely voids; unilateral mistake — one party erring, the other knowing — may void where the mistake goes to a term or to identity in face-to-face dealings' careful rules. On misrepresentation: A false statement of fact, made by one party to induce the other into the contract, and inducing him, makes the contract voidable and may ground damages: fraudulent misrepresentation in deceit, negligent misrepresentation at common law and under modern statutes, and innocent misrepresentation with rescission and discretionary damages. On duress and undue influence: Duress — illegitimate pressure that coerces the will, including economic duress where the pressure is illegitimate and leaves no practical alternative — makes the contract voidable. On illegality: A contract illegal by statute or at common law — to commit a crime, to defraud the revenue, to corrupt public life — is unenforceable, and money paid under it is generally irrecoverable, the courts leaving the parties where they find them, subject to exceptions for the protected class, the less culpable party, and timely repentance. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 7 — Discharge of Contract

Contracts end: by performance, agreement, frustration, or breach. This chapter teaches the four discharges and the rules of tender, accord, and the frustrating event.

Discharge by performance

Performance must be exact and entire where the contract is entire: the builder who leaves the work unfinished recovers nothing on the contract in the strict doctrine, tempered by substantial performance — where the work is substantially done, the price is payable less the defects — and by acceptance of part performance and prevention by the other party.

Tender of performance, wrongfully refused, discharges the tendering party; tender of money refused keeps the debt alive but stops interest and costs from running against the debtor who remains ready.

Discharge by agreement

Parties may end by agreement what they made by agreement: bilateral discharge, where each releases the other; accord and satisfaction, where a substituted performance is accepted; novation, substituting a new contract or a new party; and variation, which itself needs consideration or a deed or estoppel's support — the practical-benefit doctrine and the doctrine against duress standing guard on both sides.

Waiver and election appear here too: a party who waives a term or elects to affirm a broken contract cannot later revive what he has forgone with knowledge.

Frustration

Where an event beyond the parties' contemplation destroys the contract's foundation — the subject matter perishes, a party whose personality is essential dies or is incapacitated, the common purpose is destroyed as in the famous coronation cases, or law intervenes — the contract is discharged automatically, without election. Frustration is narrow by design: mere hardship, expense, or a bad bargain never frustrates.

The consequences are adjusted by statute in the modern law: money paid is recoverable and benefits conferred are paid for, so that the loss lies more justly than the old rule of letting it fall where it struck.

Discharge by breach

A breach discharges when it is a breach of condition or a repudiatory breach of an innominate term: the innocent party may elect to terminate and sue, or to affirm and sue for damages while the contract lives. Anticipatory breach — repudiation before the time of performance — gives the election at once: accept the repudiation and sue now, or hold the contract open and take the risks of that holding.

Worked example

A hall is hired for a procession-viewing on a day the procession is cancelled by authority. The hiring's foundation — a shared assumption that the procession would pass — is destroyed, though the hall stands intact. Frustration discharges both parties; the deposit is adjusted under the modern statutory pattern rather than forfeited by the accident of who held it.

Discussion questions

• When does substantial performance earn the price?

• Why is frustration kept narrow?

• What election does an anticipatory breach create, and what risks attend each branch?

Chapter summary

In this chapter you have studied the following ground. Contracts end: by performance, agreement, frustration, or breach. On discharge by performance: Performance must be exact and entire where the contract is entire: the builder who leaves the work unfinished recovers nothing on the contract in the strict doctrine, tempered by substantial performance — where the work is substantially done, the price is payable less the defects — and by acceptance of part performance and prevention by the other party. On discharge by agreement: Parties may end by agreement what they made by agreement: bilateral discharge, where each releases the other; accord and satisfaction, where a substituted performance is accepted; novation, substituting a new contract or a new party; and variation, which itself needs consideration or a deed or estoppel's support — the practical-benefit doctrine and the doctrine against duress standing guard on both sides. On frustration: Where an event beyond the parties' contemplation destroys the contract's foundation — the subject matter perishes, a party whose personality is essential dies or is incapacitated, the common purpose is destroyed as in the famous coronation cases, or law intervenes — the contract is discharged automatically, without election. On discharge by breach: A breach discharges when it is a breach of condition or a repudiatory breach of an innominate term: the innocent party may elect to terminate and sue, or to affirm and sue for damages while the contract lives. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 8 — Remedies for Breach

Breach proven, the law answers with remedies: damages first, then the equitable orders — specific performance and injunction — and restitution. This chapter teaches their measures and limits.

Damages — the expectation measure

Contract damages protect the expectation: the innocent party is put, so far as money can, in the position performance would have given. Loss of profit, wasted expenditure in the alternative, and the cost of cure or the difference in value are its measures. The plaintiff must mitigate — take reasonable steps to reduce the loss — and cannot recover what mitigation would have avoided.

Non-pecuniary loss is generally irrecoverable, save where the contract's very object was pleasure, relaxation, or peace of mind — the holiday cases — where disappointment is the loss the contract existed to prevent.

Remoteness

Loss is recoverable only if it was within the parties' reasonable contemplation at contracting: arising naturally from the breach, or from special circumstances then communicated. The two limbs of the classic rule sort the ordinary loss, which needs no telling, from the extraordinary, which must be told to be charged.

Remoteness is contracting's information discipline: it prices silence. The party with unusual exposure must speak, or bear the unusual loss himself.

Liquidated damages and penalties

A clause fixing damages in advance is enforceable where it protects a legitimate interest and is not extravagant or unconscionable in proportion — the modern test — and unenforceable as a penalty where it merely terrorises performance. The label the parties used decides nothing; the substance decides.

Agreed-damages clauses are commerce's convenience: they spare the cost of proving loss. The penalty doctrine is the court's refusal to let that convenience become oppression.

Equitable remedies

Specific performance orders the contract performed — available where damages are inadequate, classically for land, whose every parcel is unique; refused where supervision would be constant, where the contract is for personal service, or where the claimant's own conduct is inequitable. Injunctions restrain breach, notably of negative promises — the singer who promised not to sing elsewhere may be restrained from doing so, though never ordered to sing.

Restitution unwinds benefits where a contract fails entirely or is void: money paid for a consideration that has wholly failed is recoverable in quasi-contract, the ancestor of the modern unjust-enrichment analysis.

Worked example

A miller delays delivering a repaired shaft, not knowing the mill's other shaft has also broken and the whole mill stands idle. The ordinary loss of profits during repair delay is recoverable — mills stop when shafts are away; the exceptional loss from the second, unknown breakdown is not, for it was never within contemplation when the repair was promised. Remoteness draws the line exactly there.

Discussion questions

• State the expectation measure and the duty to mitigate.

• Recite the two limbs of remoteness.

• When will a court order specific performance, and when refuse it?

Chapter summary

In this chapter you have studied the following ground. Breach proven, the law answers with remedies: damages first, then the equitable orders — specific performance and injunction — and restitution. On damages — the expectation measure: Contract damages protect the expectation: the innocent party is put, so far as money can, in the position performance would have given. On remoteness: Loss is recoverable only if it was within the parties' reasonable contemplation at contracting: arising naturally from the breach, or from special circumstances then communicated. On liquidated damages and penalties: A clause fixing damages in advance is enforceable where it protects a legitimate interest and is not extravagant or unconscionable in proportion — the modern test — and unenforceable as a penalty where it merely terrorises performance. On equitable remedies: Specific performance orders the contract performed — available where damages are inadequate, classically for land, whose every parcel is unique; refused where supervision would be constant, where the contract is for personal service, or where the claimant's own conduct is inequitable. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 9 — Sale of Goods and Consumer Contracts in Outline

The most common contracts of daily life — sales of goods and consumer dealings — carry statutory terms of their own. This chapter teaches their outline: title, quality, fitness, and the consumer's remedies.

The sale contract's implied terms

In a sale of goods the law implies terms that the seller has a right to sell, that goods correspond with their description, that they are of satisfactory quality, and that where the buyer relies on the seller's skill for a stated purpose, they are reasonably fit for it. These terms are conditions in business sales, and in consumer sales they stand behind a ladder of remedies.

Property and risk pass by the parties' intention, gathered from the statute's rules where intention is silent — a favourite examination field, because the answer decides who bears a fire's loss the night before delivery.

Consumer protection

The consumer — buying outside his trade — receives the modern law's special care: information duties, cancellation rights in distance and doorstep selling, the short-term right to reject faulty goods, then repair, replacement, and price reduction in sequence. The ladder is deliberate: rejection first while the fault is fresh, cure next, money last.

Unfair terms in consumer contracts are controlled by the fairness test taught in the Terms chapter; in consumer contracts the control is at its strictest, and core terms escape only when transparent and prominent.

Agency in outline

Most organisational contracting runs through agents: persons authorised to bind principals. Authority may be actual — express or implied from the role — or apparent, where the principal's conduct clothes the agent with an authority the third party reasonably believes. The undisclosed principal doctrine lets an unnamed principal sue and be sued, within limits equity and fairness set.

The agent who exceeds authority answers for breach of warranty of authority; the principal who holds the agent out answers to the third party. Authority questions are fact questions dressed as law, and the student should plead them in the alternative.

Worked example

A buyer tells a dealer he needs a car able to tow his boat, relies on the dealer's choice, and is sold a car whose transmission cannot tow. The fitness term is breached: purpose made known, reliance shown, fitness absent. The consumer ladder then supplies the remedies in their order.

Discussion questions

• Name the four implied terms of a sale.

• Why is the consumer's remedy ladder ordered as it is?

• Distinguish actual from apparent authority.

Chapter summary

In this chapter you have studied the following ground. The most common contracts of daily life — sales of goods and consumer dealings — carry statutory terms of their own. On the sale contract's implied terms: In a sale of goods the law implies terms that the seller has a right to sell, that goods correspond with their description, that

they are of satisfactory quality, and that where the buyer relies on the seller's skill for a stated purpose, they are reasonably fit for it. On consumer protection: The consumer — buying outside his trade — receives the modern law's special care: information duties, cancellation rights in distance and doorstep selling, the short-term right to reject faulty goods, then repair, replacement, and price reduction in sequence. On agency in outline: Most organisational contracting runs through agents: persons authorised to bind principals. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

Chapter 10 — Revision: The Contract Map

The final chapter rebuilds the subject: formation, content, vitiation, discharge, remedies — and the problem method that examinations and practice both reward.

The whole in one view

A contract question is five questions in order. Was a contract formed — offer, acceptance, consideration, intention, capacity, form? What are its terms? Is it vitiated — mistake, misrepresentation, duress, influence, illegality? How was it discharged — performance, agreement, frustration, breach? What remedy follows? Answer in that order and no doctrine will ambush you.

Revise by reconstruction: for each doctrine, write its test and one example from memory, then verify. The example is the memory's anchor.

The problem method

In a problem, identify each agreement, each party, each promise. Work the five questions party by party. Where facts are ambiguous, argue both readings and state which you prefer and why — examiners reward the argued preference over the silent guess.

Time spent classifying the claim — term or representation, condition or warranty, void or voidable — is never wasted: the classification is half the answer.

Further study

From principles, go to the statutes of sale and consumer protection in your jurisdiction, and to the leading cases on offer, consideration, and exemption clauses. This teaching version has built the frame; the

authorities now hang the pictures.

Worked example

A revision problem: an elderly farmer 'sells' his land by a document signed after days of pressure from the buyer, who knew the farmer believed — wrongly — that the land had been compulsorily acquired already. Formation is present in form; vitiation dominates: unilateral mistake known to the buyer, misrepresentation by silence in the face of a known error, and pressure amounting to duress. The contract is voidable at the farmer's election, with restitution following rescission.

Discussion questions

• Recite the five questions of a contract problem in order.

• Why is classification half the answer?

• What should revision by reconstruction look like in practice?

Chapter summary

In this chapter you have studied the following ground. The final chapter rebuilds the subject: formation, content, vitiation, discharge, remedies — and the problem method that examinations and practice both reward. On the whole in one view: A contract question is five questions in order. On the problem method: In a problem, identify each agreement, each party, each promise. On further study: From principles, go to the statutes of sale and consumer protection in your jurisdiction, and to the leading cases on offer, consideration, and exemption clauses. Work the discussion questions before you continue; the summary is a map for revision, not a substitute for the chapter.

PRACTICE PROBLEMS WITH GUIDED OUTLINES

Four problems follow, one for each of the first four chapters' ground. Attempt each in writing, under time, before reading its outline. The outline names the points a full answer must reach; it does not write the answer — that labour is yours, and it is where the learning is.

Problem 1 — What a Contract Is

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Agreement and enforceability; Freedom of contract; Form; Classification. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "Two friends agree that one will drive the other to the airport 'as a favour between friends'; the driver oversleeps and the friend misses a flight. However real the disappointment,..."

Problem 2 — Offer and Acceptance

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The offer; Acceptance; Termination of offers. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A seller quotes a price 'firm for seven days', then on day three sells to another and writes withdrawing the quote; the buyer's acceptance letter, posted on day two, arrives on day..."

Problem 3 — Consideration

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: The doctrine; Past consideration; Promissory estoppel. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "After a contractor rescues a project at the client's urgent request, the client promises a bonus, then refuses to pay, pleading past consideration. The request exception answers: t..."

Problem 4 — Intention, Capacity, and Form

Advise on a dispute raising the ground of this chapter. A full answer must reach, in order: Intention to create legal relations; Capacity — minors; Capacity — others; Privity. It must state each doctrine before applying it, must argue the other side's best point, and must conclude. Compare your attempt with the chapter's worked example: "A seventeen-year-old apprentice signs a training contract with several strict clauses but, taken whole, excellent terms of instruction and wages. Judged as a whole it is beneficial..."

A LAST WORD TO THE STUDENT

You have finished this teaching book. Finish is the wrong word: a law book is a tool, and it earns its place only when you return to it with a problem in your hand. Keep it beside the other books of this library, work the questions again after a month, and let each return teach you what the first reading could not. That is how lawyers are made — by return, by work, and by patience.

Prof Samba Online University of Nigeria — samba.48hourrfprescue.com — info@samba.48hourrfprescue.com