

INTRODUCTION TO CONTRACT

WHAT IS A CONTRACT?

There are 2 types of contract:

SIMPLE

SPECIAL

DEFINITION

It is that branch of law that determines whether a promise is binding at law
or

A contract is a promise which the courts will enforce.

It is:-an Agreement between 2, or more, parties. That agreement can be reached
in

a number of ways:

Verbally,

it can be inferred from conduct,

in writing (it does not need to be in writing
unless for the sale of land, or for a credit agreement),

by a mixture of words and writing.

SIMPLE OR SPECIAL

The main differences between the two types of contract are:

- a) Form: simple contracts have no set form
 special contracts must be made by deed
 (e.g. the Form of Agreement in ICE Editions)
- b) Limitation: liability on simple contracts lasts for 6 years
 liability on special contracts lasts for 12 years

Most contracts are simple ones, e.g.

getting on a bus

buying goods in a shop

booking a holiday

accepting a job

Special contracts tend to be mainly those relating to commercial undertakings.

Not all promises are legally enforceable. Is there an Intention?

You may think that on moral grounds a person should be held responsible but law and morality are not always the same thing.

For example:

A promise by a Father to give his son extra pocket money for getting good exam results:

The promise to lend a hand to a neighbour to cut the grass are not enforceable.

The law draws a line between agreements of a commercial nature and those of a social or domestic nature.

"If there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty of contracting and that their contracts, when entered into freely and voluntarily, shall be held sacred and shall be enforced by the Courts of Justice"

Sir George Jessel

Printing and Numerical Registering Co. v Sampson (1875)

LR 19 Eq 462

However, there were exceptions to this rule even in 1875.

Pearce and Another v Brooks (1866) LR 1 Ex 213

(Illegality at common law)

The plaintiffs supplied a carriage on hire to the defendant, until purchase money could be paid in installments during a period not exceeding one year.

The defendant was a prostitute and she intended to use the carriage to lure clients, One of the two plaintiffs was aware of her mode of life, there was no evidence they knew what the carriage was to be used for.

Held, on appeal, there was enough evidence to support the jury findings. She was not liable for hire of the carriage.

Other examples are:

contracts to commit a crime, fraud or civil wrong

contracts prejudicial to public safety

contracts prejudicial to the administration of justice

contracts liable to corrupt public life

contracts to defraud the revenue

This freedom has been further eroded by statute, in particular the Unfair Contract Terms Act 1977, but the rule still is, in principle, that of freedom to contract.

**"A contract is a promise or a set of promises
for the breach of which the law gives a remedy,
or the performance of which the law recognizes as a duty"
Restatement of Contracts (U.S.)**

This statement probably goes too far:

**"a promise or set of promises which the law will enforce"
Sir Frederick Pollack**

This begs the question as to which promises will be enforced, i.e. which are contracts, and which will not be enforced, so are not contracts?

"English Law, having committed itself to a rather technical and schematic doctrine of contract, in application takes a practical approach, often at the cost of forcing the facts to fit uneasily into the marked slots of offer, acceptance and consideration."

(Lord Wilberforce: New Zealand Shipping Co. Ltd. v A M Satterthwaite & Co. Ltd. [1975] AC 154)

There are four elements which make up a contract, all four of which must be present for a contract to persist:

OFFER, ACCEPTANCE, CONSIDERATION, INTENTION

An individual must also have the CAPACITY to contract

OFFER

The analysis is normally done on the basis that a contract is formed by the presence of certain elements and, although there are cases in which some of them are difficult to find this is the easiest way to start.

The first such element is - has one party made an offer.

Carlill v Carbolic Smoke Ball Co. [1892] 2 QB 256

An advert was placed for 'smoke balls' to prevent influenza. The advert offered to pay £100 if anyone contracted influenza after using the ball. The company deposited £1,000 with the Alliance Bank to show their sincerity in the matter. The plaintiff bought one of the balls but contracted influenza. It was held that she was entitled to recover the £100.

Held - By the Court of Appeal that:

- (a) the deposit of money showed an intention to be bound; therefore the advert was an offer;
- (b) it was possible to make an offer to the world at large, which is accepted by anyone who buys a smoke ball;
- (c) the offer of protection would cover the period of use; and
- (d) the buying and using of the smoke ball amounted to acceptance

It was also held that generally an advert is not an offer, but in this case it was an offer to the whole world

But:

Fisher v Bell [1961] 1 QB 394

A shopkeeper displayed a flick knife with a price tag in the window. The Restriction of Offensive Weapons Act 1959 made it an offence to 'offer for sale' a 'flick knife'. The shopkeeper was prosecuted in the magistrates' court but the Justices declined to convict on the basis that the knife had not, in law, been 'offered for sale'.

Held - Queen's Bench. Lord Parker CJ stated: "It is perfectly clear that according to the ordinary law of contract the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale the acceptance of which constitutes a contract."

See also Partridge v Crittenden (1968) 2 All ER 421

The defendant placed an advert in a classified section of a magazine offering some brambling finches for sale. S.6 of the Protection of Birds Act 1954 made it an offence to offer such birds for sale. He was charged and convicted of the offence and appealed against his conviction.

Held: The defendant's conviction was quashed. The advert was an invitation to treat not an offer. The literal rule of statutory interpretation was applied.

A contract, except in certain particular cases, does not need to be in writing.

Wilkie v London Passenger Transport Board [1947] 1 All ER 258

A bus company makes the offer by running a bus, and a passenger accepts that offer when he gets properly on board that bus, Lord Green.

Held - The contract would be complete even if no fare is yet paid or ticket given.

Clifton v Palumbo [1944] 2 All ER 497

The plaintiff wrote to the defendant offering for sale his "I am prepared to offer you or your nominee my Lytham estate for £600,000, I also agree that a

reasonable and sufficient time shall be granted to you for the examination and consideration of all the data and details necessary for the preparation of the Schedule of Completion).

Held - The court of appeal: the letter was not a definite offer, but a preliminary statement as to a price, which, especially in a transaction of this magnitude, was but one of the many questions to be considered.

Gibson v Manchester City Council [1979] 1 All ER 972

The Council were selling council houses to tenants. They wrote to Mr Gibson stating "the council may be prepared to sell the house to you at the purchase price of £2725 less 20%"

The letter invited Mr Gibson to make a formal application, which he did. The control of the council changed hands in the local govt elections, and the policy of selling council houses was reversed.

Held - The House of Lords, That the letter was at most an invitation to treat, and Mr Gibson's application was an offer, not an acceptance.

In the commercial world it is assumed that parties intend to contract so:

Estimates - may be offers

Price lists - generally not offers

Adverts - generally not offers

Requests for tenders - generally not offers but may be bound to consider

Blackpool and Fylde Aero Club Ltd. v Blackpool B.C. [1990] 1 WLR 1195

The Council invited the plaintiffs, along with others to tender for the running of pleasure flights from the airfield, which was owned & managed by the council. Tender to be delivered at Town hall by a set date. The plaintiffs delivered by hand their tender (the highest) to the town hall letter box on the final day for tenders. Unfortunately the letter box was not emptied till the following day. The tender committee assumed the tender was delivered late and put it to one side, awarding the contract to another tenderer.

Held - The Court of Appeal, The council had in place elaborate terms for tendering and implicitly undertook to operate it according to their terms. The council should have considered the plaintiffs tender. Plaintiffs awarded damages.

As a result an invitation to tender can give rise to binding obligations

Or may be bound to award:

**Harvela Investments Ltd. v Royal Trust Co. of Canada (CI)
Ltd. [1986] AC 207**

A company was owned by 3 others, one of which the, first defendants, wanted to sell its 12% holding of shares, so they asked for sealed bids by competitive tenders. The obvious buyers were the plaintiffs, who owned 43% and the second defendants who owned 40% of the shares, if either bought them then they would have control of the company.

The plaintiffs bid \$2,175,000.

The second defendants bid \$2,100,000 "or \$100,000 in excess of any other offer" The second offer was accepted.

Held - The House of Lords, Bids are confidential; a referential bid would defeat the notion of a competitive tender. The first defendants were legally obliged to accept the plaintiffs offer; a referential bid was inconsistent with an obligation to accept the higher of two sealed bids.

Intention

Do the parties intend to be bound by a legal contract?

Social agreements are generally not legally binding

For example: a promise by a father to give extra pocket money to his child for doing well in exams.

Coward v MIB [1963] 1 QB 359 Court of Appeal

Coward was killed whilst riding pillion on a motorcycle driven by a friend and work colleague on the way to work. The collision was due to the negligence of the friend. Coward's widow sought to claim damages from the Motor Insurance Bureau since the rider's insurance did not cover pillion passengers. The Motor Insurance Bureau would only be obliged to pay if insurance for the pillion was compulsory. Insurance was only compulsory for pillions if they were carried for hire or reward. Coward paid the friend a small weekly sum to take him to and from work each day. The widow therefore argued that this was a contract for hire or reward. However, the MIB argued that to amount to a contract for hire or reward there had to be an intention to create legal relations which was absent in agreements of this nature between friends.

Held: There was no contract of hire or reward as it was a social and domestic agreement and therefore no intention to create legal relations. The widow was therefore not entitled to compensation

Balfour v Balfour [1919] 2 KB 571

Mr. Balfour had agreed to give his wife £30 a month as maintenance while he was living abroad. Once he left, they separated and Mr. Balfour stopped payments. Mrs. Balfour brought an action to enforce the payments. Held: there was not enough evidence to suggest that they were intending to be legally bound by the promise.

If sufficient intent can be found a contract can exist**Merritt v. Merritt** [1970] 1 WLR 1211 Court of Appeal

A husband left his wife and went to live with another woman. There was £180 left owing on the house which was jointly owned by the couple. The husband signed an agreement whereby he would pay the wife £40 per month to enable her to meet the mortgage payments and if she paid all the charges in connection with the mortgage until it was paid off he would transfer his share of the house to her. When the mortgage was fully paid she brought an action for a declaration that the house belonged to her.

Held: The agreement was binding. The Court of Appeal distinguished the case of *Balfour v Balfour* on the grounds that the parties were separated. Where spouses have separated it is generally considered that they do intend to be bound by their agreements. The written agreement signed was further evidence of an intention to be bound

Capacity

In general, a valid contract may be made by any person recognised by law as having legal personality, that is natural persons, corporations and the Crown.

However, the following classes of persons are in law incompetent to contract, or are only capable of contracting to a limited extent or in a particular manner:

(1) bankrupts - A bankrupt's property vests on adjudication in the trustee in bankruptcy: see the Insolvency Act 1986.

(2) minors - The age of majority is 18 years (see the Family Law Reform Act 1969 s 1); and the contractual incapacity of minors was much reduced by the Minors' Contracts Act 1987.

(3) persons of unsound mind - the original rule of law was that a contract with a person of unsound mind was void. This was later qualified by a rule that a person could not plead his own unsoundness of mind to avoid a contract he had made. This in turn gave way to a further rule that such a plea was permissible if it could be shown that the other contracting party knew of the insanity (Hart v O'Connor [1985] AC 1000 at 1018–1019, [1985] 2 All ER 880 at 888, PC; Irvani v Irvani [2000] 1 Lloyd's Rep 412, CA)

(4) alien enemies - The rights and liabilities of an alien to sue and be sued in respect of a contract generally depend on whether he is an alien friend or an alien enemy. An alien friend can sue and be sued in the same manner as a British citizen.

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