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Lesson Fourteen

Contracts

Introduction

Contracts are an important part of everyday life. Working for an employer; insuring your car or your house and even buying a carton of milk are all governed by the law of contract.

A contract is an agreement between two or more persons (individuals, businesses, organizations or government agencies) to do, or to **refrain** from doing, a particular thing in exchange for something of value. Contracts generally can be written, using formal or informal terms, or entirely **verbal**. If one side fails to live up to his/her/its part of the bargain, there's a "**breach**" and certain **remedies** for solving the differences are available. The **terms of the contract** - the who, what, where, when, and how of the agreement - define the binding promises of each party to the contract.

The existence of a contract requires finding the following factual elements:

1. An offer

When you ask someone to do something, or offer to see someone for a price, you are making an offer. An offer is the first step in forming a contract. The middle step is the other party's **acceptance** of the deal. The last step is -- where you each live up to your side of the bargain. Words, gestures, or actions can signal an offer to enter into a contract and an acceptance. If you are forced to make an offer ("your money or life") it is not a **valid** offer. Similarly if you are tricked into accepting, it will not be **deemed** acceptance of the terms offered.

2. An acceptance

There are three types of acceptance:

Express - a direct agreement, when you say: "I accept your offer."

Implied - when both parties to a contract begin to perform the terms of the contract.

Conditional - when you say: "I accept your offer so long as you the advertisement by the end of this week."

3. A promise to perform

We should distinguish between two types of promise, namely those which do and don't give rise to a legal duty. Thus, a promise to meet one's other half for dinner at 7pm gives rise to no legal obligation - it is a "mere" promise - whereas a promise to sell someone a car for £5000 gives rise to legal obligation.

English contract doctrine distinguishes between **bilateral** and **unilateral** contracts. A **bilateral** contract gives rise to obligations on both sides. Thus in a contract of sale, the seller has an obligation to transfer title in the thing sold to the buyer, whilst the buyer has an obligation to pay the price. A **unilateral** contract, by contrast, gives rise to obligations on one side only. Thus "I will give you £100 if you run a marathon" gives rise to a legal duty on the maker of the statement (the **promisor**) to pay the money if the race is run, whilst the person to whom the statement is made (the **promisee**) is under no obligation to run in the first place.

4. A valuable consideration (which can be a promise or payment in some form)

Consideration is a necessary element of a valid contract. For a promise to be **enforceable** as a contract something (some consideration) must be given in exchange for that promise. In other words the **promisor** should receive some advantage or benefit or, alternatively, the **promisee** must suffer some **detriment**. The general rule in English contract law is that without consideration a contract shall be **deemed invalid** or, to be more precise, there will be no contract concluded at all.

5. Intention to be legally bound

There is a presumption for commercial agreements that parties intend to be legally bound (unless the parties expressly state that they do not want to be bound). On the other hand, many kinds of domestic and social agreements are **unenforceable** on the basis of public policy, for instance between children and parents.

6. Terms and conditions for performance

Terms and conditions constitute the very root of a contract. Breach of these terms **repudiates** the contract, allowing the other party to **discharge** the contract. Breach of these terms will give rise to damages.

7. Performance

Performance is completing the deal according to the terms given in the contract. For example, you want to buy that 1998 Ferrari at your local dealer's clearance sale. Your dealer, Mr. X, offers to sell you that Italian car if you pay him \$97,000. After a bit of **bargaining**, you agree to the terms and get the car at a reduced price of \$96,995, signing on **the dotted line**. A contract has been accepted. Mr. X, your car dealer, will deliver the 1997 Ferrari and then you pay him the

balance due. The dealer's delivery of the car and your payment of \$96,995 are the performance of the contract.

Both parties must live up to their end of the bargain in the contract to have closure. In other words, until both parties have properly performed under the contract, the contract remains open.

There can be four different ways in which contracts can be **set aside**. A contract may be deemed **'void'**, **'voidable'**, or **'unenforceable'**.

Voidness means that a contract never came into existence.

If a contract is voidable then at least one of the parties to the contract can decide to end it and get back anything that they have lost as a result of that contract; they declare the contract to be void.

If a contract term, rule or law etc is unenforceable, it is impossible to force people to obey it.

The following elements can invalidate a contract:

1. Misrepresentation

Misrepresentation means a false statement of fact made by one party to another party and has the effect of persuading that party into the contract. For example, under certain circumstances, false statements or promises made by a seller of goods regarding the quality or nature of the product that the seller has may constitute misrepresentation. A finding of misrepresentation allows for a remedy of **rescission** and sometimes **damages** depending on the type of misrepresentation.

2. Mistake

A mistake is an incorrect understanding by one or more parties to a contract and may be used as grounds to invalidate the agreement.

3. Duress and undue influence

Duress is the use of threats, force or false imprisonment to force a person to do something against their wishes or interests. An innocent party wishing to set aside a contract for duress to the person need only to prove that the threat was made and that it was a reason for entry into the contract. Blackmail or **extortion** are classic examples of duress.

Undue influence involves one person taking advantage of a position of power over another person. It is where free will to bargain is not possible. It may include insinuation, flattery, trickery, deception.

Remedies for breach of contract

A breach of contract is failure to perform as stated in the contract. There are many ways to remedy a breached contract assuming it has not been **waived**. Typically, the remedy for breach of contract is an award of money **damages**. When dealing with unique subject matter, **specific performance** may be ordered. For example when an art collector purchases a rare painting and the vendor refuses to deliver, the collector's damages would be equal to the sum paid. The court may make an order of

"**specific performance**", requiring that the contract be performed. In some circumstances a court will order a party to perform his or her promise or issue an order, known as an "**injunction**," that a party refrain from doing something that would breach the contract.

Glossary

acceptance - zaakceptowanie	to refrain – powstrzymać się
to bargain - negocjować	remedy - zadośćuczynienie
bilateral - dwustronny	to repudiate - wypowiedzieć
breach - naruszenie	rescission – uchylenie, unieważnienie
damages - odszkodowanie	to set aside – uchylić, unieważnić
to deem - uznać	specific performance – nakaz spełnienie
detriment - szkoda	obowiązków umownych
to discharge - uchylić	terms of contract – warunki umowy
dotted line – linia kropkowana	undue influence – bezprawny nacisk
duress - przymus	unenforceable - niewykonalny
enforceable - wykonalny	unilateral - jednostronny
extortion - wymuszenie	valid - ważny
injunction - nakaz	verbal - ustny
invalid – nieważny, nieprawomocny	void - nieważny
promisee – strona otrzymująca przyrzeczenie	voidable – dający się unieważnić
promisor - przyrzekający	to waive – uchylić, odstąpić

EXERCISE 1

Decide if the contracts listed below are unilateral or bilateral? Write a letter U or B in the boxes provided.

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- A. A broker offers a trip to Hawaii to any salesperson who sells \$1 million of property during the month.
 - B. A contract for the sale of a home, the buyer promises to pay the seller \$200,000 in exchange for the seller's promise to deliver title to the property.
 - C. John promises Mary to pay her € 50 if she finds his dog.
 - D. Someone offered to drive you to work on Mondays and Tuesdays in exchange for your promise to return the favour on Wednesdays and Thursdays.
 - E. I will pay you \$1,000 if you bring my car from Cleveland to San Francisco.
 - F. Chris promises to sell Joe a Car for \$1000 and Joe promises to pay \$1000 for the car.
-

Exercise 2

Decide on what grounds the contracts in the following situations can be invalidated: mistake, misrepresentation or duress.

- A. Armstrong threatened to kill Barton if he did not sign a contract, so the court set the contract aside.
- B. The plaintiff entered into a contract to purchase a medical practice. During negotiations it was said that the practice produced an income of £2000 per year. Before the contract was signed, the practice took a downward turn and lost a significant amount of value.
- C. A person sees an advertisement of car to be sold for €1 which is a fault of the newspaper company that printed the newspaper and not the fault of the car dealer.
- D. A seller who sell you a car promises the car was owned by an elderly lady who only drove it to church on Sunday but in reality it was crashed twice and its meter was turned back.

Exercise 3
Form collocations

a	undue	1	of contract
b	specific	2	a contract
c	breach	3	invalid
d	to deem	4	influence
e	terms	5	performance
f	to set	6	and conditions
g	to discharge	7	aside

Exercise 4

Complete the sentences with the following words: void, undue influence, voidable, duress, enforceable, mistake.

- The lawyer for a US citizen on trial in the United Arab Emirates says his client's testimony was given under, since he was tortured.
- The head of the health service in Scotland has admitted that significant were made in drawing up the new contract for NHS consultants.
- The new leader of Britain's chief architectural body has accused the Prince of Wales of abusing his position to influence planning decisions and exerting on the planning process to oppose modern designs in favour of his preferred brand of classicism.
- If a management contract is not approved by the National Commission, it is
- Californian judges have ruled that a contract written in blood is not legally
- A contract between a minor and another party is generally viewed as by the minor.

Exercise 5

Cut the stripes and match the words on the left with their definitions.



acceptance	a non-conditional affirmation by an offeree that they are willing to contract in the terms of an offer.
bilateral	a contract where each of the parties have reciprocal obligations.
consideration	payment made in exchange for performance of a contract; something of value given by one party to another in order to induce (=persuade, encourage, convince) the other to contract
breach of contract	to break or violate a contract
detriment	harm or damage
donation	legal term for gift, whether of goods, services or legal rights.
donee	the party who receives under a donation.
donor	the party who gives under a donation.
unenforceable	impossible to obey
void	having no legal force or effect; not legally binding

voidable	at least one of the parties to the contract can decide to end it and get back anything that they have lost as a result of that contract (=declare the contract to be void)
offer	a statement made setting out terms by which an offeror is willing to be bound.
offeree	one who receives an offer.
offeror	one who makes an offer.
promisee	party who benefits from a contractual obligation undertaken towards them by another, loosely <i>person to whom a promise is made.</i>
promisor	party who undertakes a contractual obligation towards another, loosely <i>person by whom a promise is made.</i>
performance	completing the deal
unilateral	a contract under which only one party has obligations.

ANSWERS

EX. 1. AU, BB, CU, DB, EU, FB

EX. 3. A4, B5, C1, D3, E6, F7, G2,

EX. 2. A duress, B misrepresentation, C mistake, D misrepresentation

EX. 4. 1. duress, 2. mistake, 3. undue influence, 4. void, 5. enforceable, 6. voidable