

Law of Contract



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INTRODUCTION

- The law of contract is the basic law that governs and relates to most aspects of human life.
- It governs human daily activities in almost all aspects, which may vary from simple contracts entered by individuals in order to get daily supplies to contracts of marriage, etc.
- Contracts provide the means for individuals and businesses to sell or transfer property, services and other rights.

DEFINITION

- Basically a contract is a promise or set of promises which the law will enforce.
- Art 30 of the Bahrain Civil Code states that a contract is created, subject to any special formalities that may be required by law for its conclusion, from the moment that two persons have exchanged two concordant intention without prejudice to the requirements of the law in special cases in terms of certain requirements for rendering the validity of such contract.

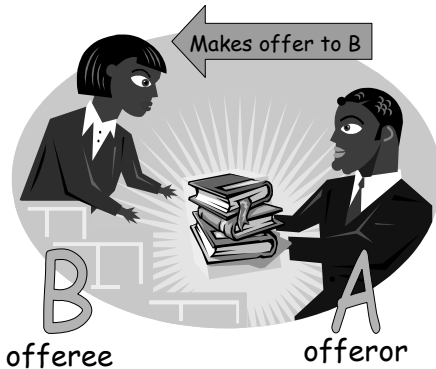
Offer + Acceptance = Agreement

DEFINITION

- A promise is formed when a proposal is accepted. Therefore, there is an agreement if *A*'s offers to *B* to sell his books for 35 is accepted by *B*.
- Secondly, the agreement must be enforceable by law. This implies that not all agreements are contracts although all contracts must be based on agreement. Any agreements, which are not enforceable by law, are not considered as valid contracts.
- Therefore, if *A* promises *B* 5,000 for murdering *C*, to which *B* has agreed, the agreement is void and not enforceable by law.

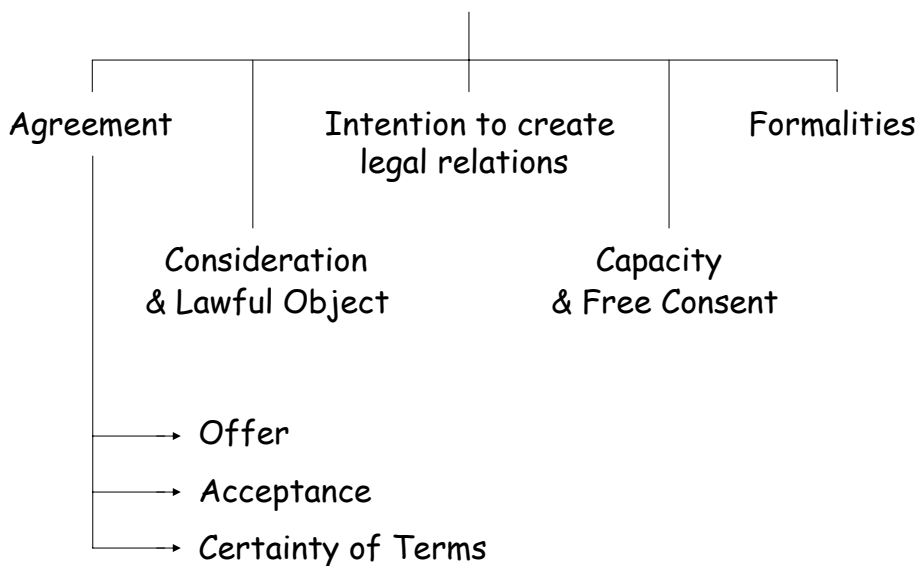
PARTIES TO CONTRACT

- Every contract must involve at least two parties that is the person who proposes the contract, who is known as the offeror, and the parties to whom the proposal is made, who is known as the offeree.



- Hence, if *A* makes an offer to sell his books for 35 to *B*, *A* is the offeror, being the person who proposes a contract; and *B* is the offeree, being the person to whom the proposal is made.

ELEMENTS OF CONTRACT



OFFER

- Offer or proposal is an expression of willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to the act or abstinence
- It can be made either orally or in writing or implied by the conduct of the person making the offer.
- An offer is made orally when a person uses verbal communication in making his proposal. When he puts such proposal in written form (including by sending such offer through e-mail) then he is making offer in writing. When a person takes an item from the shop-shelf, brings it to the cashier and gives his money to pay for the items' price, his conduct indicates that he is making an offer.

Types of Offer

1. Bilateral Offer, ie, the offer that is made to a specific person or group of persons
 2. Unilateral Offer *Carlill v. Carbolic Smoke Ball*, ie, the offer that is made to the world at large
- Generally an offer cannot be made to the world at large. (Hence advertisement is not an offer)
 - However, if the offer is conditional, then there is effective offer and this can be accepted when the offeree performs the act in question.

OFFER

Offer must be distinguished from:

1. Invitation to Treat
2. Mere answer to a request for Information

Invitation to Treat

1. Display of Goods in shops
2. Advertisements
3. Auctions
4. Tenders

Answer to a Request for Information

Hence in *Harvey v. Facey* where the appellant sent a telegram to the respondent asking the price of Bumper Hall Pen to which the respondent replied "Lowest cash price for Bumper Hall Pen \$900." It was held that the respondent was not bound by the subsequent telegram from the appellant, stating that "we agree to buy Bumper Hall Pen for \$900 asked by you" because the respondent's telegram was merely a supply of information and not an offer.

Cross Offer

There is no contract when A sends a letter to B offering to sell his handphone for 500 and B, not knowing about this letter has sent an e-mail, asking if A would sell his handphone for 500 to him. Cross-offers are actually two offers and there is no acceptance hence there can't be any contract

Termination of Offer

1. Revocation

may be done anytime before the offeree accepts the offer, provided the revocation is communicated to the offeree

Revocation may be communicated by a reliable third party

2. Rejection

either express or implied, ie by attempting to modify the terms of offer

3. Lapse of Time

4. Lost of capacity

5. Failure to meet conditions

ACCEPTANCE

- Acceptance is a final and unqualified assent to the terms of the offer, made in the manner specified or indicated by the offeror.

Types of Acceptance

- Types of Acceptance:
1. By Conduct
 2. Oral Acceptance
 3. Acceptance in writing

Silence is not acceptance

Exceptions:

1. The offeree assumed the duty to do positive act to reject the offer;
2. Unilateral contract, where the offeror has waived the need of communication of acceptance;
3. Previous course of dealing.

Conditions of Acceptance

1. Acceptance must be absolute and unqualified. Any attempt to modify the contents of an offer will operate as implied rejection to the offer;
2. When there are conditions stated in the offer as to how the acceptance shall be communicated, these shall be complied with;
3. Acceptance must be communicated.

Communication of Acceptance

1. By Instantaneous Modes of Communication
(there must be actual communication)
2. English Postal Acceptance Rule does not have
general application in Bahrain - see Article 45
of the Civil Code
3. Internet Communication
(whether Instantaneous or postal?)

CERTAINTY OF TERMS

- It is very important that the terms of an agreement must be certain because any 'agreements, the meaning of which is not certain, or capable of being made certain, are void'
- An agreement between A and B to sell 'a hundred tons of oil' without any indication as to the kind of oil was intended is void for uncertainty. However if there is any indication that specifies the kind of oil, then the agreement is valid.

CONSIDERATION

- Consideration is the act of the promisee or his abstinence from doing either in past or present or even his promise to act or to abstain from doing something, at the desire of the promisor.
- It also means 'some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by other.'

Types of Consideration

1. Executed: in return for promise, the other party performs an act (*Carlill v. Carbolic SM*)
2. Executory: in return for a promise, the other party gives promise to do something in future
3. Past: promise given in returned for an act done (this type of consideration is not generally considered as a good consideration unless if it has been done based on the offeror's request, understood to be rewarded and it's legal)

Conditions of Consideration

- Consideration must be lawful
- Consideration must be sufficient but need not be adequate.

LAWFUL OBJECT

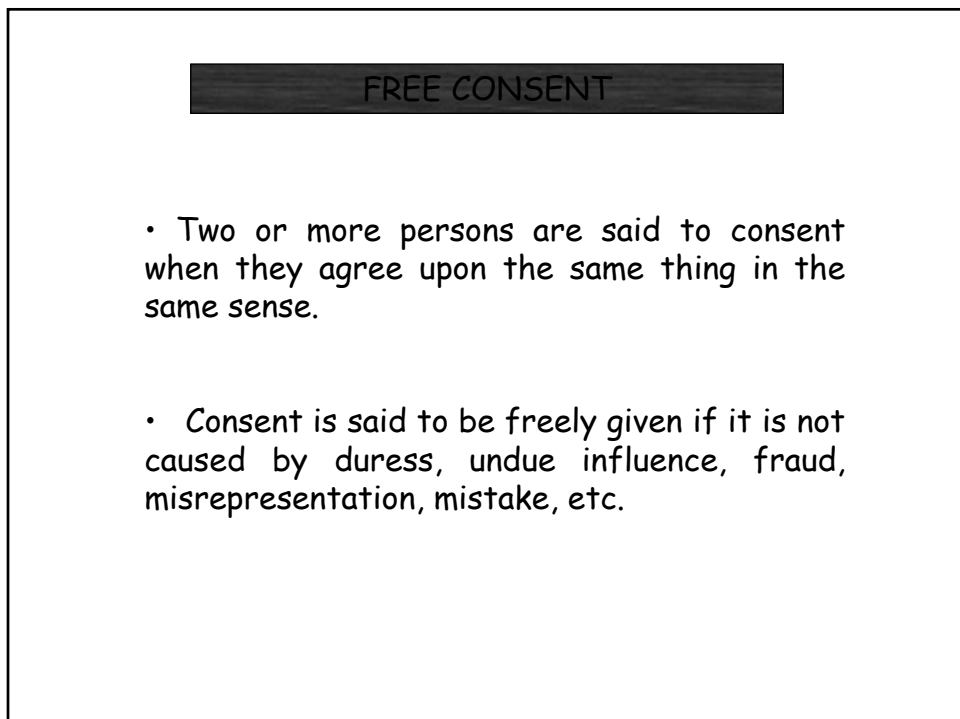
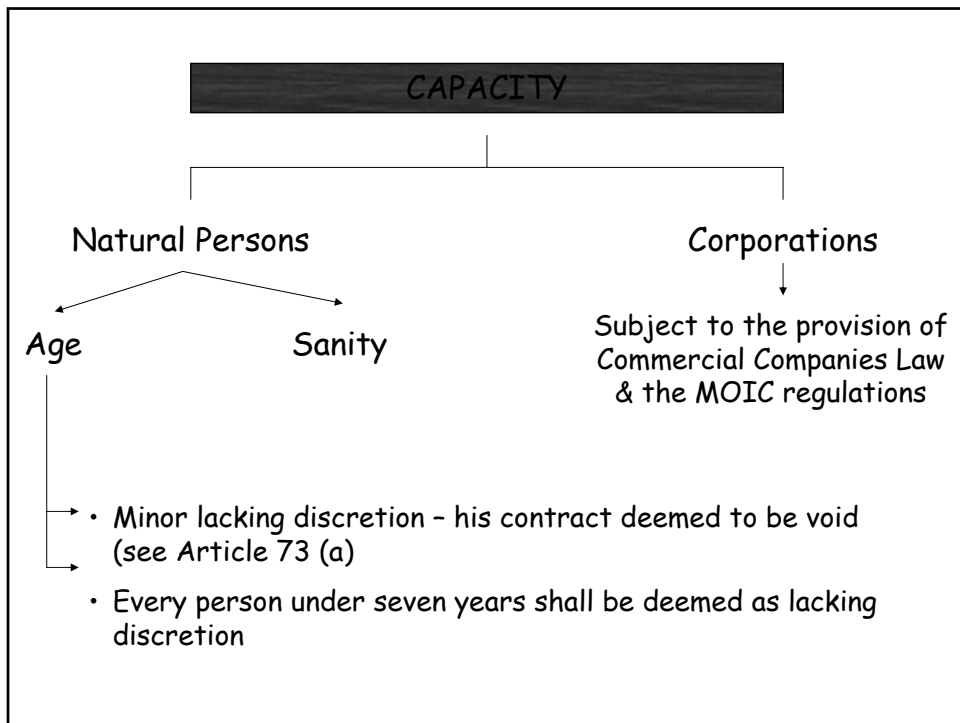
- Object or an agreement is lawful unless, among others:
 - (a) it is forbidden by a law;
 - (b) it is of such nature that, if permitted, it would defeat any law;
 - (c) it is fraudulent;
 - (d) it involves or implies injury to the person or property of another; or
 - (e) the court regards it as immoral, or opposed to public policy.
- The object of an agreement must be lawful because if any part of the object is unlawful, the agreement is void

INTENTION TO CREATE LEGAL RELATIONS

- Some agreements are not intended to be legally enforceable. There is this presumption in domestic and social arrangements
- The above presumption may be rebutted if contrary conclusion is reached by the court after examining the words used and surrounding circumstances
- In cases involving commercial dealings, the mere fact that an agreement is supported by the consideration raises a presumption that the parties intended the agreement to be legally binding

INTENTION TO CREATE LEGAL RELATIONS

- In order to determine whether there is any intention to create legal relations, it is necessary to ask the following questions and adopt this approach:
 1. Is the agreement social/domestic or commercial in nature?
 2. * If it is domestic/social arrangements the presumption is; there is no intention to create legal relations.
** However if it is commercial agreement, it is presumed that the parties intended to bind one another legally.
 3. Is there any evidence to rebut the above presumption?
 4. * If the answer is 'no', then the presumption shall stand.
** However if there's any evidence to show the contrary, the presumption is rebutted and the result shall be contrary to the presumption.



TERMINATION OF CONTRACT

- A contract can be terminated either by the following:
 1. Performance
 2. Consent
 3. Impossibility
 4. Breach of contract

REMEDIES

- There are four remedies for breach of contract. There are:
 1. Damages
 2. Injunction
 3. Specific Performance
 4. *Quantum Meruit*

INTERNET CONTRACTING

- The use of Internet as medium of communication has widened the scope for contract formation. Sale and purchase activities are held online either for performance of contract through the Internet itself or to be performed outside the cyber world
- The UNCITRAL Model for EC in Art. 11 (1) provides that "[i]n the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages. Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose."

INTERNET CONTRACTING

- Identical to contracts formed in traditional way, contracts formed over the Internet are simply contracts formed by using the Internet as an alternative paperless media communication, in place of ordinary face to face communication or communication via telephone, post or using the fax or other communication facilities
- Hence, there must be at least two parties acting as offeror and offeree. There must also be a valid offer accepted by a valid acceptance. And likewise it is necessary that there must be consideration without which contract is unlikely to be enforceable as against the other party.

INTERNET CONTRACTING

- However the formation of contract over the Internet may attract several issues, mainly because anyone can pose as whoever he wishes online without being known to others; the nature of Internet that was designed to be an open network (as open as possible) allows the message to be tampered along the way before it reaches the intended recipient; etc.
- Hence, there is a need to have a system that is able to identify that a sender is really the person as he claims to be and to ensure the authenticity/security of any internet communication.

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