

## Section B

### Important Diagram

Refer to study guide page 18

## STUDY UNIT 3

### LAW OF CONTRACT

#### THE CONTRACT AS A SOURCE OF OBLIGATION

By definition, a contract is an agreement between two or more people. One cannot, of course, agree with oneself, so there must be more than one person to a contract. **There may be several persons: for example, fifteen friends may decide to go into business to make a profit, and they form a partnership that creates legal rights and duties for all the partners.**

Not all agreements are contracts. A social appointment or engagement is an agreement, but not a contract. Take the example of a hostess who engages a professional caterer to provide food for a party to which ten guests have been invited. If five of the guests fail to attend the party, the hostess has no right to sue any of them for breach of contract. **But if the caterer fails to supply the food and drink, or supplies unsatisfactory food and drink, the hostess has a right to sue the caterer for breach of contract.**

Thus the distinction between a contract and other agreements is that there is a requirement that there should be a serious intention on the part of the contracting parties to be legally bound, that is to bring about one or more obligations. The concept of an 'obligation' is wider than the concept of a 'contract'.

### Obligation

An obligation is a bond or ties btwn two persons, which creates rights and privileges btwn two persons. **An obligation may arise from a contract but also from a delict. Both contract and delict create rights.**

An obligation is a title given to a legal relationship that exists between parties to an agreement when they acquire personal rights to each other

### Contract is a special type of agreement

A contract is a special type of agreement. We should understand all types of contracts are not agreements. Example social appointments are agreements but not real contracts. **If 2 parties have an intention to create rights and duties to the agreement it will become a contract.**

NB. For a contract to be stated there must be two parties involved

### What is a right?

A right is an advantage that entitles the holder of the right to demand that another person should do something, **or refrain from doing something, or pay some of money.**

### What is a duty?

A duty is a responsibility imposed by law, **and obliges or binds a person to performance.**

The two most important aspects of a contract are:

1. Intention what is aim of creating this legal obligation
2. The legal results rights and duties that follow

### Requirements to form a contract

#### (a) Consensus

There must be an agreement btwn two parties to do the same thing this means that each party of the contract must have a serious intention to create rights and duties and both parties will be legally bound. **It is important that both parties have intention of a contract and they must let this intention be known**

#### (b) Capacity to act

Each party must be legally capable of performing that particular act which gives rise to a contract.

**(c) Judicial possibility**

**Agreement must be legally possible. The agreement must be lawfully possible**

**(d) Physical executability**

**Agreement must be physically possible in other words it must be possible to perform the rights and duties arising from the contract.**

**(e) Formalities**

**Prescribed formalities must be observed**

**If all these requirements are fulfilled than only will a valid contract be drawn up**

**Freedom to contract**

**Cornerstone of modern law it states one is generally free to choose with whom he wants to contract. The main thing is that in an existing partnership agreement(contract) partners **may not impose unfair and discriminatory stipulations or conditions to their prospective partners, they may be forced to accept partners against their will.****

**Contracting electronically**

**Trade that is contracted electronically such as internet or email is referred to as electronic commerce transactions or ecommerce. **The South African Act says that a data message is not a contract unless stated so.****

## **GOOD LUCK**

**Notes compiled by Muhammed Arbee**

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