

The law of contract - forms part of \perp law of obligations.

Obligation - is a juristic bond in terms of which \perp party or parties on \perp one side have a right to a performance & \perp party or parties on \perp other side have a duty to render \perp performance.

Sources of obligations.

- (1) Contract: eg \perp buyers right to delivery of \perp thing bought & \perp corresponding duty of \perp seller to deliver \perp thing, arises from \perp conclusion of a valid contract of sale between \perp parties
- (2) Delict: eg X commits defamation against Y
Y has a claim for payment of a sum of money by X in satisfaction for injury to his reputation
- (3) (a) Undue enrichment: There is no valid legal ground for \perp one's obtaining a benefit at \perp expense of \perp other.
(b) Family relationships: child's claim for maintenance against \perp parent
(c) Negotiorum gestio: where A in an emergency, incurs expense without B's consent in order to manage B's affairs to B's advantage. A has a claim against B for the expenses so incurred
- (d) Exercising of administrative authority:
When a municipality levies assessment rates, it acquires a claim against \perp prop owners concerned for \perp payment of taxes.

DEFINITIONS

Contract: is an agreement entered into with \perp intention of creating an obligation or obligations

“Legal facts” is a fact or set of facts to which \perp law attaches consequences. Obligations arise from legal facts eg \perp birth of a child (legal fact) creates obligations on \perp parents to support it. ✓

“Juristic acts” is \perp lawful act of a legal subject which has at least some of \perp consequences \pm \perp legal subject intended to bring about. ✓ eg: making of a will.

“Creditors & Debtors”

\perp person who is entitled to claim performance is \perp creditor, \perp person who is obliged to perform is called \perp debtor. ✓

“Personal rights” - performance may be claimed from a particular person, namely \perp debtor. \perp personal right, \perp object of which is a performance is a right & any 3rd party who culpably infringes it commits a delict.

“Performance” - is human conduct which may consist in someone's doing something or not doing something. (delivering something)

Civil obligations - may be enforced directly by recourse to a court of law.

Natural obligation may not. A natural obligation has some legal effect

• legal relationship as opposed to merely moral relationship. It can be validly discharged eg an obligation which requires payment of a gambling debt.

Void & Voidable contracts & passing of ownership

* impossibility of performance at time contract is entered into prevents creation of a valid contract because one of the basic req is lacking. ✓

• Supervening imp of performance can only prevent continued existence of an existing contract since all basic req were met at time of conclusion of contract ✓

• Material mistake will render a contract void i.e. NO CONTRACT COMES INTO EXISTENCE! it excludes the basic req for existence of a contract i.e. consent ✓

* Misrepresentation, duress/undue influence can only render a contract voidable - contract comes into existence but it may be terminated because in such a case there is consensus so the contract cannot be void but consent has been obtained in an improper manner.

Different Types of agreements

Agreements creating obligations (contracts)
contract denotes an agreement which creates obligations.

Agreement extinguishing a debt is one in terms of which an obligation is terminated
eg: release/discharge - Discharge is achieved by \perp debtor performing what he has undertaken to perform with \perp consequences
 \perp \perp obligation is terminated.

Real Agreement - is an agreement whereby a right is transferred. Real rights eg ownership are transferred by delivery (movable prop) or registration (immovable prop)
Personal rights by cession

Overlapping

D walks into a cafe puts his Rs on \perp counter
a points to a packet of sweets, \perp owner takes \perp money & hands over \perp sweets
In giving D \perp sweets \perp owner

- (1) Accepts D's tacit offer to buy \perp sweets
(Agreement Creating Obligations)
- (2) Performs by delivering sweets to D
(Agreement extinguishing a debt)
- (3) transfers ownership of sweets to D
(real agreement)

Requirements for a valid contract

- There must be consensus or ostensible agreement bet 2 parties
- 2 parties must have capacity to act
- 2 performance must be possible at 2 time 2 contract is entered into.
- 2 conclusion of 2 contract, 2 performance & 2 object of 2 contracting parties must be lawful
- Constitutive formalities must be complied with
- 2 contents / consequences of a contract must be ascertained or be readily ascertainable.

Study unit 2. CONSENSUS.

Consensus / ostensible consensus is one of 2 requirements for 2 conclusion of a valid contract. ✓

Actual agreement of 2 intention of 2 contracting parties. *Consensus is generally accepted as 2 primary basis of contractual liability". Saambou - Nasionale Bouvereniging v Friedman ✓

Where actual agreement does not exist but one of 2 parties has a reasonable reliance, 2 it does exist. In such a case there is ostensible consensus.

The will Theory requires actual or conscious consensus between contractants, a contract will not arise where consensus has been excluded by a material mistake (a mistake 2 excludes one or more of 2 elements of consensus)

②
66
The Reliance Theory is an expression of a secondary basis of contractual liability.

In a minority of contracts one of the parties fails to express his intention correctly. In the latter instance the problem is solved by holding the erring party bound to his expressed intention because of the fact that he has created a reasonable reliance in the mind of the other party that they have reached consensus, this is a secondary basis of contractual liability.

ELEMENTS OF CONSENSUS

(a) Agreement regarding consequences the parties wish to create.

- the contracting parties must agree that this person shall owe this performance to the person

Should the contractants or one contractant be mistaken as to (1) the persons between whom obligations as legal ties are to be created, or (2) the performances to be rendered, there is no consensus but dissensus.

(b) Agreement regarding creation of juristic consequences

• Social agreements: A & B agree to take turns to give each other lifts to work - Parties do not intend to create juristic consequences
• an agreement without the intention to create liability

⑦
• Intention to be legally bound
↓ contractants must reach unanimity
regarding ↓ fact that they wish to be legally bound
↓ intention to bind oneself juristically is ↓
basis of contractual liability. ✓

• Causa Contractus (reason for ↓ contract) Causa
obligationis (reason for ↓ obligation)
↓ parties must have ↓ serious & deliberate intention
to bind themselves juristically. ✓

• Justa Causa Contractus
↓ parties should have had not only ↓ serious
intention to enter into a contract, but also a
lawful object in entering into a contract.

Consensus is absent : Vasco Dry Cleaners Vs Twycross

1/ Simulated agreements → when neither parties
have ↓ intention to be bound although they create ↓
impression outwardly that they do.

A sells his goods to B to evade tax.

2/ where only one of ↓ parties did not have ↓
intention to be bound A makes an offer as a
joke, ~~without intention to buy~~ at an auction
without ↓ intention to buy.

(c) Awareness Regarding Unanimity.

• lack of awareness of unanimity excludes
consensus.

• knowledge of & acceptance of ↓ offer
on ↓ one hand & knowledge of ↓ acceptance
on ↓ other hand is required.

STUDY UNIT 3 / FORMATION OF A CONTRACT THE OFFER

The Requirements for a valid offer

- 1) • A offer must be definite & complete
A offer must embody or contain sufficient information to enable a person to whom it is addressed to form a clear idea of exactly what a offeror has in mind. ✓
- 2) • A offer must contemplate acceptance and a resultant obligation
A offer must be a firm offer
An advertisement is merely an invitation to do business, Does not generally constitute an offer.
CRAWLEY V REX ✓

Promise of reward is a form of advertisement & does constitute an offer Bloom Vs American Swiss ✓
- 3) • A offer must come to the attention of a offeree (addressee) a offeree must have knowledge of a offer and to be able to react to it ✓
McKenzie Farmers + Bloom Vs A S W C.
- 4) • An offer must as a rule be directed at a definite person or persons, although it may also be directed @ undefined persons.
4.1 a) * An offer directed at defined persons where offer addressed to unascertained persons, it may be accepted by any one of them, but where addressed to specific

person/persons may only be accepted by 1 addressee
Bird Vs Sumerville. ✓

4.2 * An offer directed at undefined persons

eg: promise of reward, and auctions

Simple auction: 1 bidder makes an offer which 1 auctioneer then considers & either accepts or rejects. If 1 auctioneer implies, by 1 consideration of a new bid, \neq he does not accept, \neq previous bid falls away. ✓

Auction subject to conditions: is different.

1 conditions may relate to many things: to 1 manner & time of payment, to 1 passing of ownership, to 1 auctioneer's remuneration. Conditions relate to 1 contents of 1 contracts of sale which are envisaged. ✓

Legal consequences of an offer - an obligation will not arise where an offer has been made but not accepted. ✓ NO OBLIGATION WILL ARISE

LAPSE OF AN OFFER

- after 1 expiry or lapse of 1 prescribed time, or of a reasonable time
- Upon 1 death of either 1 offeror or 1 offeree
- Upon being rejected
- Upon revocation.

STUDY UNIT 4 - FORMATION OF THE CONTRACT

Requirements for valid acceptance

1) \perp acceptance must be unconditional & unequivocal
 Consent is possible only where \perp whole offer is accepted
 When \perp acceptance contains conditions, it is a counter offer which \perp original offeror may accept or reject
 - An ambiguous acceptance does not constitute a valid acceptance.

2) \perp offer must be accepted by \perp person to whom it was addressed.

\perp offer cannot be accepted by anyone but \perp person to whom it is made. Bird Vs Sumerville.
 except offer of reward - public: anyone in \perp public may accept it.

3) \perp acceptance must be a reaction to \perp offer. a person cannot accept an offer of which he is not aware

Bloom

Bloom Vs American Swiss: \perp court held that he could not recover \perp reward because "until \perp plaintiff knew of \perp offer he could not accept it, until he accepted it there could be no contract.

for a contract requires \perp there should be consensus of two minds, and if \perp one did not know what \perp other was proposing, \perp two minds never came together.

4) \perp acceptance must comply with any formalities set by law or by \perp offeror. Brand Vs Spies.

↓ information Theory & its consequences Rest on ↓ theory ↓ ↓ primary basis for contractual liability is actual & conscious agreement between ↓ contractants.

- ↓ offeror must be informed of ↓ acceptance of his offer before actual consensus has been reached & a contract arises. Then can be no consensus unless ↓ offeror knows ↓ his offer has been accepted. ✓

Contracts concluded by way of letter/Telegram. * DRI

- ↓ declaration Theory: ↓ agreement is concluded once ↓ offeree has expressed his acceptance, ↓ is when he has written his letter (WRITTEN)

- ↓ reception Theory: ↓ agreement comes into being when ↓ offeror receives ↓ offeree's letter of acceptance. (RECEIVES)

- ↓ information theory: agreement is concluded only when ↓ offeror has been informed of ↓ acceptance i.o.w. when A has read B's letter. (READS) offeror reads ↓ offeree's letter.

Application of ↓ expedition theory

Cape Explosive works Ltd v South African Oil & fat industries; Cape Explosive works Ltd v lever

Brothers ⇒ agreements entered into by letter: arise at ↓ place where & at ↓ moment when ↓ letter of acceptance is mailed. This judgment was approved by ↓ appellate division in Kergeulen Sealing & whaling Co v Com for Inland revenue.

Criticisms of ↓ expedition theory.

- ↓ offeror who uses ↓ post to convey his offer thereby tacitly prescribes ↓ post as ↓ mode of acceptance.

Vander merwe refer to authorities who criticise this theory as unconvincing and entailing a fiction.

- Creates risk liability.

Expedition theory applies to letter and telegram.

Consequences of Expedition Theory.

- Courts have adopted the posting of a letter of acceptance determines when the agreement is formed, and also where the agreement is concluded.
- Once a letter of acceptance has been posted, the offeror may no longer revoke his offer & the offeree may no longer revoke his acceptance.
- Revocation of acceptance will result in breach of contract.
- Suggested application of the info theory in case of revocation of acceptance.
- Suppose that a letter of acceptance is delayed or lost in the post, in terms of the expedition theory a contract has already arisen at the time when the letter of acceptance was posted.

Which party is at fault?

If the delay or loss is due to the offeror's fault he should bear the risk & the offeree should be able to rely on the existence of the contract.

If the offeree is at fault then the offeree should be able to dispute the existence of the contract even though the offeree has posted a letter of acceptance.

Agreements concluded by telephone, telex, telefax / email
Information theory applies to agreements
concluded by telephone. (S v Henckert), telex,
telefax & email

* Place of formation of a contract
agreement is concluded @ a place where the last
act necessary to constitute a agreement is
performed. Written agreements are concluded
at a place where the last signature affixed.

* Entering into negotiation creates a certain
relationship between a parties which is governed
by good faith & objective reasonableness which
requires each party to have due regard for
a legitimate expectations & interests of the other.
In certain circumstances a law could impose a
duty to inform or to exercise due care,
an obligation to pay compensation for loss
arising out of a frustration of reasonable
expectation or a duty to continue negotiating
in good faith.

STUDY UNIT 5!

OPTION CONTRACTS

DESCRIPTION & REQUIREMENTS

- contracting parties may enter into an agreement in terms of which \perp offeror undertakes not to revoke his offer - One party grants \perp other an option. \perp parties agree \perp offeror will not revoke \perp offer, either expressly or by implication eg by offering \perp same thing to a 3rd party. ✓

DEFINITION OPTION

as an offer (substantive offer) reinforced by an agreement (option contract) in terms of which \perp offeror (grantor) undertakes as against \perp offeree (grantee) to keep open his offer (usually for a specific period) to \perp offeree ✓ or to put it differently in terms of which \perp offeree acquires \perp power to consider & accept \perp offer (usually within a specified time period)

CONSEQUENCES OF AN OPTION

" " REVOCAATION

De wet & Van Wyk - an offer is made irrevocable by agreement (conclusion of option contract). An attempted revocation of \perp substantive offer would have no legal effect. ✓

According to SA law an offer can be protected against revocation only by agreement. \perp option contract is \therefore \perp only way to render an offer

irrevocable. A unilateral declaration by an offerer \pm offer is irrevocable, accordingly has no effect in our law.

Our courts regard an offer by a pactum de contrahendo as irrevocable. There is \pm view \pm an option does not render \pm substantive offer irrevocable but \pm revocation of \pm substantive offer will constitute breach of contract which should give rise to \pm normal remedies available in \pm case of breach of contract.

An attempted revocation of \pm substantive offer does not prevent \pm exercise of \pm option & \pm option holder may enforce \pm contract specifically by means of an interdict against \pm grantor of \pm option. \pm option holder may also claim damages, if suffered, to place him in \pm position \pm he would have been in if \pm option had been exercised.

Juristic Nature S.N.

Termination of options S.N.

Formalities & Cession S.N.

RIGHTS OF PREFERENCE

- another type of pactum de contrahendo
one ^{of} prospective contractants is granted a preferential right to conclude a contract with \perp other prospective contractant.

- A right of pre-emption occurs when a prospective seller undertakes as against a prospective purchaser to give him (\perp purchaser) preference if he should decide to sell.

Legal nature & consequences of a right of pre-emption

- \perp contract of pre-emption does not place a duty on \perp grantor to sell \perp subject matter of \perp right, \perp grantee merely acquires \perp preferential right to buy should \perp grantor decide to sell. \perp prospective seller's capacity to alienate \perp thing in question is thus restricted.

- \perp prospective purchaser also acquires a right, but whereas \perp performance to which \perp grantor of an option is bound is \perp maintenance of an offer, \perp obligation in \perp case of \perp right of pre-emption is a neg one \perp is \perp \perp thing may not be alienated to 3rd party except under \perp conditions prescribed in \perp agreement creating \perp right. (Owsranick case).

Formalities concerning rights of pre-emption

if object of sale is land, both offer to buy/sell & acceptance must be in writing. Contract from which right of pre-emption arises also in writing. (Hirschowitz v Moolman)