

LAW OF CONTRACT

Topic 2



What is a Contract?

- ▶ In legal sense :
 - An agreement between 2 or more parties that is legally binding between them.
- ▶ Section 2(h) of the Contracts Act: –
“ an agreement enforceable by law is a contract”.

What is a Contract? (contd)

- ▶ In short, all contracts are agreements.
- ▶ But not all agreements are automatically contracts and enforceable by law.
- ▶ An agreement can only be a contract if it fulfills the required elements.

Elements of a Contract

1. Proposal (offer).
2. Acceptance.
3. Consideration.
4. Intention to create legal relations.
5. Certainty.
6. Legal Capacity.
7. Free consent.
8. Legality of the objects.
9. Formalities.

Proposal (offer)

Section 2(a) of the CA :-

*“ when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to the act or abstinence, he is said to make a **proposal**”.*

- Sec.2(a) CA 1950 : Proposal/offer is an announcement of a person willingness to enter into a contract.



Proposal (offer)

▶ Example :

- A offers to sell his house to B for RM 10,000.00
- Thus, A by offering to sell his house to B for RM 10,000.00 in the hope that B will accept it, A is said to have made a proposal.

Proposal (offer)

Section 2(b) of the CA :-

“ when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal, when accepted becomes a promise”.

- ▶ **Sec.2(b) CA 1950 : Acceptance is the person's willingness to accept the proposal/offer.**

Example:

If B accepts A's proposal, then an agreement is created between the parties.

Proposal (offer)

Section 2(c) of the CA :-

“ the person making the proposal is called the “promisor” and the person accepting the proposal is called the “promisee”.

Thus, in the example stated above:

A is the promisor;

B is the promisee.

Invitation to Treat

- ▶ Is not a proposal and have no binding effects.
- ▶ It is preliminary communication between the parties during negotiations.
- ▶ In Hart v. Mills, it was held that ITT refers to:
 - “... *you offer to negotiate, or you issue advertisement that you have got a stock of books to sell, or houses to let, in which case there is no offer to be bound by any contract. Such advertisements are offers to negotiate – offers to receive offers – offers to chaffer ..*”

Invitation to Treat (ITT)

▶ Elements:–

1. Display of goods in a shop window.

Case : *Pharmaceutical Society of G.B v. Boots Cash Chemist Ltd*

2. Advertisement.

Case : *Coelho vs. The Public Services Commission*

Case : *Harris vs. Nickerson*

3. Auctioneer's invitation for bids:

Pharmaceutical Society of G.B v. Boots Cash Chemist Ltd

Facts: The defendants were charged under the Pharmacy and Poisons Act 1933 which made it unlawful to sell certain poisons unless such sale was supervised by registered pharmacist.

Issue: Whether there was a sale when a customer selected items he wished to buy and placed them in his basket?

Held: The display was only an ITT. A proposal to buy was made when the customer put the articles in the basket. Payment was to be made at the cashier's desk and a pharmacist was stationed to supervise the transaction. Hence, the contract was only concluded at the cashier's desk.

Coelho vs. *The Public Services Commission*

Facts: The applicant had applied for a post advertised in a newspaper by the respondent. He was later informed that his application had been accepted. After some time, the respondent decided to terminate the applicant assuming that he was on probation.

Held:

1. The advertisement was an ITT and the application from the applicant was a proposal.
2. The letter of acceptance by the respondent was an unqualified acceptance of the proposal.
Therefore, the termination was invalid.

Harris vs. Nickerson

Facts: The Defendant, an auctioneer, made an advertisement stating that he will be going to make an auction on a number of items including office's furniture on a specified date and place. The Plaintiff went to the auction but the Defendant had withdrawn the office's furniture from the auction.

Held:

The advertisement was an ITT to invite public to make proposal. Therefore, by withdrawing the office's furniture the Defendant did not breach any contract with the Plaintiff.

Invitation to Treat

3. Auctioneer's invitation for bids:

If Defendant made highest bid but withdrew it before the fall of the hammer, court has held that the bid itself constituted a proposal or offer by the Defendant, and auctioneer was free to accept it or reject it, since Defendant withdrew the bid before the fall of the hammer, therefore there was no contract between the parties.

Case: *Payne v Cave* (1789) 3 Term Rep 148

To Whom A Proposal Can Be Made

- ▶ It can be made :-

1. A particular person. (Sec. 2(b) of the CA).

“when the person to whom the proposal is made signifies his assent thereto...”

- The words of Section 2(b) clearly states that a proposal may be addressed to a specific person.
- Thus, only that particular addressee may accept the proposal.

To Whom A Proposal Can Be Made

2. General public. (Sec. 8 of the CA).

“Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

- Thus, anyone who meets the terms of the proposal may accept the proposal.

Case : *Carlill v. Carbolic Smoke Ball Co. Ltd.*

Carlill v. Carbolic Smoke Ball Co

Facts:

The Defendant advertised that they would pay £100 to anyone who still suffer influenza after using their product. The Plaintiff used the medicine advertised but still suffered from the influenza. She sued the Defendant for the reward.

Held:

The Defendant was liable to pay the reward as the advertisement was an offer to the public at large. The Plaintiff had accepted the offer by performing the prescribed conditions.

* Similarly an advertisement of reward for the return of lost property.

Carlill v. Carbolic Smoke Ball Co

<p>Cured in 1 week.</p> <p>COLD IN THE HEAD Cured in 12 hours.</p> <p>COLD ON THE CHEST Cured in 12 hours.</p>	<p>Cured in 1 to 2 months.</p> <p>ASTHMA Subdued in 12 minutes.</p> <p>BRONCHITIS Cured in every case.</p>	<p>Cured in 12 hours.</p> <p>LOSS OF VOICE Fully restored.</p> <p>SORE THROAT Cured in 12 hours.</p>	<p>DEAFNESS Cured in 1 to 2 days.</p> <p>SMOBBING Cured in 1 week.</p> <p>BORN EYES Cured in 7 weeks.</p>	<p>Cured in 10 minutes.</p> <p>HAY FEVER Cured in every case.</p> <p>HEADACHE Cured in 10 minutes.</p>	<p>Subdued in 2 minutes.</p> <p>WEEPIING COUGH Subdued the first application.</p> <p>NEURALGIA Cured in 10 minutes.</p>
--	--	--	--	--	---

As all the Diseases mentioned above proceed from one cause, they can be Cured by this Remedy

£100 REWARD

WILL BE PAID BY THE
CARBOLIC SMOKE BALL CO.
to any Person who contracts the Inevitable Epidemic.



INFLUENZA,

which, or any Disease caused by taking Cold, after having used the **CARBOLIC SMOKE BALL** according to the printed directions supplied with each Ball.

£1000 IS DEPOSITED

with the ALLIANCE BANK, Regent Street, showing our sincerity in the matter.

During the last epidemic of INFLUENZA many thousand **CARBOLIC SMOKE BALLS** were sold in prevention against the Disease, and in an unaccounted case was the disease contracted by those using the **CARBOLIC SMOKE BALL**.

THE CARBOLIC SMOKE BALL,

TESTIMONIALS.

The Duke of Devonshire writes: "I am much obliged for the Carbolic Smoke Ball which you have sent me, and which I find most efficacious."

Mr. FRANCIS HARRIS, Bart., M.P., writes from Cavendish Square, London, W.1., "My Wife and my children have derived much benefit from the Carbolic Smoke Ball."

Lady Bessie writes from Chelsea, City of London, "I have used the Carbolic Smoke Ball in a variety of cases and a cure for a cold, and a few days' illness in consequence of it in her Ankle. Lady Bessie writes the Carbolic Smoke Ball will save all the winter the world-over."

Lady Bessie writes from Grosvenor Hill, Westminster, London, W.1., "My Mother is pleased to say that the Carbolic Smoke Ball has given every satisfaction; she considers it a very good invention."

Mr. Sir James writes from the Carbolic Smoke Ball.

AS ENDORSED BY

SIR MORELL MACKENZIE, M.D.,
and also accepted by

M.M. THE GERMAN EMPRESS.



R.S.E. The Duke of Devonshire, K.G.
R.S.E. The Duke of Cambridge, K.G.
The Duke of Fife, K.T.
The Marquis of Salisbury, K.G.
The Duke of Argyll, K.T.
The Duke of Wellington, K.G.
The Duke of Richmond and Gordon, K.G.
The Duke of Buccleugh.
The Duke of Devonshire.
The Duke of Northumberland.
The Duke of Norfolk.
The Duke of Rutland, K.G.
The Duke of Wellington.
The Marquis of Ripon, K.G.

TESTIMONIALS.

The Father of Lordess Wilson writes: "The Carbolic Smoke Ball has benefited me greatly."

The Viscountess of Salt writes from Parkworth House, Bradford, Jan. 25, 1890: "The Marchioness de Patis has had and the Smoke Ball when she was suffering from the epidemic of Influenza, and has not taken the Influenza, although surrounded by those suffering from it."

Dr. J. BARNES, F.R.S.E., writes from 4, St. John Street, London, W.1., "I have used other remedies, but in your Carbolic Smoke Ball."

A GENTLEMAN, Esq., Editor of the Lady's Pictorial, writes from 177, Strand, W.C., Feb. 21, 1890: "During a recent influenza season, as the prevailing epidemic I had some of the most painful and dangerous cases and beautiful cures, I attributed the safety to the use of the Carbolic Smoke Ball."

The Rev. Dr. CHURCHMAN & W. FRANK, M.A., D.C., writes from St. Paul's Church, London, May 1890: "I am

Counter-Proposal

- ▶ It is a variation or modification of the original proposal.
- ▶ It is treated as a rejection to the proposal.
- ▶ Case: *Hyde v. Wrench*.

Hyde v. Wrench

Facts:

The Defendant offered to sell his estate to the Plaintiff on June 6 for £1,000. The Plaintiff replied on June 8 that he would give £950. The Def refused and the Plaintiff then said he would give £1,000. The Def later refused to sell and the Plaintiff then sued the Defendant.

Held:

The Plaintiff had rejected the original offer by offering to buy the estate at £950. Thus, the refusal amounts to a counter-offer and therefore the Def was no longer bound to sell the estate to the Plaintiff.

- ▶ Note that an acceptance must be absolute and unqualified i.e if not it amounts to counter proposal.

Revocation of Proposal

- ▶ Sec.3–Revocation is complete when it is communicated to the offeror
- ▶ Sec.4(3)(a)(b)–If offeree wants to revoke his acceptance, He must make sure that his revocation would reach the offeror before his communication of acceptance reaches the offeror.

Revocation Of Proposal.

1. Notice of Revocation.

Sec. 6(a) of CA :

A proposal is revoked by the communication of notice of revocation by the proposer to the other party.

2. Lapse of Time.

Sec. 6(b) of CA :

A proposal is revoked by the lapse of time prescribed in the proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance.

Revocation of Proposal

3. Failure to fulfill a condition precedent.

Sec. 6(c) :

A proposal is revoked by the failure of the acceptor to fulfill a condition precedent to acceptance.

4. Death or mental disorder of the proposer.

Sec. 6(d) :

A proposal is revoked by the death or mental disorder of the proposer, if the fact of his death or mental disorder comes to the knowledge of the acceptor before acceptance.

Acceptance

Sec. 2 (b) of the CA :

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted: a proposal when accepted, becomes a promise.

Sec. 2 (c) of the CA :

The person making the proposal is called the “promisor” and the person accepting the proposal is called the “promisee”.

Acceptance

Manner of acceptance.

Sec. 7 of the CA :

In order to convert a proposal into a promise the acceptance must :-

(a) be absolute and unqualified.

(b) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. ...”

Communication of Acceptance

Sec.3–Acceptance must be communicated

General rule– Acceptance is effective or complete only when it is communicated to the proposer.

- ▶ Sec.5(1) A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards

Acceptance by silent–is not accepted

Acceptance

Must also be “communicated”:

that is when it is actually brought to the notice of the proposer.

Example: I shout an offer to a man across the river but I do not hear his reply because it was drowned by an aircraft flying overhead. There is **NO** contract. If he wishes to make the contract, he must wait until the aircraft is gone and then shout his acceptance, then there **IS** a contract. Otherwise, **NO** contract.

Acceptance

Similarly with contract over the telephone, if there is interruption, and I hear no acceptance then NO acceptance. Contract is complete until I hear the answer of acceptance.

Similarly with contract by telegram; if there is interruption, and I hear no acceptance then NO acceptance. Contract is complete until I received the message of acceptance.

Case: *Entores Ltd v Miles Far East Corp.*
[1955] 2 QB 327

Entores Ltd v Miles Far East Corp

Offer by telegram sent from London.
Acceptance of offer sent from Amsterdam to London. Plaintiff wished to claim damages against defendant for breach of contract, and wished to start the action in London. Question was where the acceptance was completed and where contract was made. Court HELD: communication of acceptance completed in London when proposer received it, and that contract made in London that is the place where acceptance was received.

Acceptance (the Postal Rule)

- ▶ Sometimes, there is a gap of time between the communication of acceptance by the acceptor and the receiving of that communication of acceptance by the proposer, for example. When the acceptance is sent by post or telegram by the acceptor to the proposer. What is the law?
- ▶ Postal rule is the exception to the rule that acceptance is only complete when it is communicated to the proposer.
- ▶ The rule is that an acceptance by post takes effect as soon as it is posted
- ▶ Sec. 4(2) (a) and 4(2)(b), CA provides the rule:
Acceptance is complete upon posting or dispatch of telegram
Case: *Adam v Lindsell* 106 ER 250
Byrne v Tienhoven
Household Fire Insurance Co. v Grant

Adam v Lindsell

Defendant (D) wrote to Plaintiff (P) proposing to sell wool on certain terms. D misdirected the letter and it reached P much later.

Not receiving a reply, D sold the wool to someone else. P, upon receiving the proposal letter, though late, immediately posted acceptance.

Court **HELD**: that acceptance was complete upon posting of acceptance by P, and that there was a valid contract between the parties.

Byrne v Tienhoven

1st Oct– Defendant posted letter of offer to Plaintiff. On 8th Oct–Defendant posted a letter revoking offer of 1st Oct. On 11th Oct–Plaintiff received letter of offer posted on 1st Oct and sent acceptance by telegram on the same day. It was also followed by letter of acceptance on 15th Oct. On 20th Oct– Plaintiff received letter of revocation by Defendant.

Held: There was a contract between the parties because the revocation of offer posted on 8th Oct was not effective till 20th Oct when it was received by P. P had already accepted the Offer on 11th Oct when the telegram was sent.(postal rule)

Household Fire Insurance Co. v Grant

- ▶ Fact: Grant applied for shares in a company. A letter of allotment was posted but never reached Grant.
- ▶ Held: Grant was shareholder in the company
- ▶ The communication of acceptance is complete:–
 - ▶ As against offeror – when the letter of acceptance is posted
 - ▶ As against offeree – when the letter of acceptance is received by the offeror

Consideration

Sec. 26 of the CA: –

An agreement made without consideration is void unless belong to the exceptions.

Sec. 2(d) of the CA: – (definition)

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promise to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise”.

Consideration

Consideration can be classified into: –

- (a) executory,
- (b) executed and
- (c) past consideration.

Executory Consideration

a promise is made in return for a promise.

Illustration (a) of Section 24:

A agrees to sell his house to B for \$10,000. Here, B's promise to pay the sum of \$10,000 is the consideration for A's promise to sell the house, and A's promise to sell the house is the consideration for B's promise to pay the \$10,000. These are lawful considerations.

Executed Consideration

Is a promise made in return for the performance of an act.

Example:

A offers RM 100 to anyone who finds and returns his lost cat. B finds and returns the cat to A. B's promise is executed and only A's liability remains outstanding.

Past Consideration

Is a promise made subsequent to and in return for an act that has already been performed.

Illustration (c) of Section 26:

A finds B's purse and gives it to him. B promises to give A RM 50. This is a contract.

Sec. 2(d) recognizes past consideration by the words:

"...has done or abstained from doing ..."

Past Consideration

Section 26 :

An agreement made without consideration is void, unless–

(b) or is a promise to compensate for something done;

it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do;

Thus, under M'sian law past consideration is sufficient to support a contract in contrast with English law which provides otherwise.

Kepong Prospecting v. A.E Schmidt

Facts:

Schmidt had assisted another in obtaining a permit for mining ore in Johor. He then helped the formation of the company and was appointed managing director. Later, an agreement was entered into between them whereby the company undertook to pay him 1% of the value of all ore sold from the mining land. This was in consideration of the services rendered by Schmidt prior to its formation, after incorporation and for future services.

Kepong Prospecting v. A.E Schmidt

Issue:

Whether services rendered after incorporation but before agreement were a valid consideration.

Held:

The services did constitute a valid consideration and Schmidt was entitled to his claim.

Re McArdle (1951)

- ▶ A case on consideration one of the requirements in the formation of a contract. This 1951 case concerned a house where Mr. McArdle and his wife lived, but which belonged to his mother. McArdle's wife paid for some repairs and improvements in the house, and the mother promised that this would be paid back from her estate when she died.

Re McArdle (1951)

- ▶ McArdle and the other beneficiaries of the will produced a document in which they promised to pay this back to Mrs. McArdle upon the death of the mother. When McArdle later inherited the house, the wife claimed that she should be paid, but the beneficiaries of the will refused.
- ▶ Held :Since the improvements have been carried out before the document was executed, the consideration was past and the promise could not be enforced.

Past consideration

- ▶ In Malaysia past consideration is a good consideration, but English law did not recognize past consideration.

Rules As to consideration

1) Adequacy of Consideration

Exception 2 of Sec. 26: –

‘An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate ...’

Illustration (f) to Sec. 26

A agrees to sell a horse worth RM 1,000 for RM 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

Phang Swee Kim v. Beh I Hock

Facts:

The respondent agreed to transfer to the appellant a parcel of land on payment of Japanese Currency 20,000 when the land was subdivided although the land was worth much more. The respondent later refused to honor the promise.

Held:

The Federal Court by applying Explanation 2 and Illustration (f) of Section 26 ruled that the agreement was valid despite the inadequacy of the consideration.

2) Consideration Need Not Move From Promisee

Sect. 2 (d) of the CA:

“When at the desire of the promisor, the promisee or any other person has done or abstained from doing, ...”

Under M’sian law, consideration can move from somebody else other than promisee.

Case : *Venkata Chinnaya v. Verikatara Maya*

Venkata Chinnaya v. Verikatara Maya

Facts:

A sister agreed to pay an annuity of Rs 653 to her brothers who provided no consideration for the promise. On the same day their mother had given the sister some land stipulating that she must pay the annuity to her brothers. The sister failed to fulfill her promise and the brothers sued for the annuity.

Held:

She was liable on the promise as there was a valid consideration for the promise from her mother though not from the promisee.

3) Waiver of Performance

Sec. 64 of the CA :

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

1. Illustration (b) : Payment of smaller in discharge of larger sum.

A owes B RM 5,000. A pays to B, and B accepts, in satisfaction of the whole debt, RM 2,000 paid at the time and place at which the RM 5,000 were payable. The whole debt is discharged.

Waiver of Performance

2. Illustration (c): Part payment by a 3rd party in discharge of a debt.

A owes B RM 5,000. C pays to B RM 1,000 and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

Case : *Kerpa Singh v. Bariam Singh*

Kerpa Singh v. Bariam Singh

Facts: The respondent owed the appellant RM 8,869.94 under a judgment debt. The respondent's son wrote a letter to the appellant offering RM 4,000 in full satisfaction of the respondent debt. And if the appellant refused to accept, the cheque should be returned to him. Later the appellant's lawyer, having cashed the cheque, proceeded to ask the balance of the debt by taking bankruptcy notice on the respondent

Held: The Federal Court ruled that the acceptance of the cheque from the respondent's son in full satisfaction precluded them from claiming the balance.

Waiver of Performance

3. Illustration (d) : The debt is unascertained but the person accepts an agreed sum in discharge of the debt.

A owes B under a contract, a sum of money, the amount of which has not been ascertained. A, without ascertaining the amount, gives to B, and B, in satisfaction thereof, accepts the sum of RM 2,000. This is a discharge of the whole debt, whatever may be its amount

Waiver of Performance

4. Illustration (e): Composition with creditors for payment of smaller sum.

A owes B RM 2,000, and is also indebted to other creditors. A makes an arrangement with his creditors, including B, to pay them a composition of fifty cent in the ringgit upon their respective demands. Payment to B of RM1,000 is a discharge of B's demand.

Intention to Create Legal Relation

- ▶ CA is silent as to the requirement of ICLR.
- ▶ However, case law stipulates the necessity of ICLR as an element of valid contract.
- ▶ To determine whether ICLR is needed or not, we need to identify the agreements between the contracting parties.
- ▶ 2 types of agreements:
 - (a) Business agreements.
 - (b) Social, domestic or family agreements.

Business Agreements

- ▶ In business agreements, the presumption : The parties intend legal consequences unless stated otherwise i.e the parties have clearly stated in any clause that they have no intention to create legal relations.
- ▶ Case : *Rose & Frank Co. v. JR Crompton & Bros. Ltd*

Rose & Frank Co. v. JR Crompton & Bros. Ltd

Facts:

The Appellant (agent) entered into an agency agreement with the Respondent (principal) in 1913 to sell and distribute certain goods in U.S. One of the clause in the agreement stated that “*... or legal agreement and shall not be subject to legal jurisdiction in the Courts of U.S. and England ...*”.

In 1919, the Respondent received order from the Appellant but failed to fulfill the request. The Appellant sued the Respondent for non delivery of the goods.

*Rose & Frank Co. v.
JR Crompton & Bros. Ltd*

Held:

Though the agreement was based on commercial arrangement the Respondent managed to prove that both parties have no intentions to create legal relations based on the clause in the said agreement. Thus the said agreement was not legally binding because it lacked the element of ICLR

Social, Domestic or Family Agreement

- ▶ Presumption :

The parties are presumed not to have intended legal relations. However, the presumption is rebuttable based on circumstances of each case.

- ▶ *Balfour v. Balfour*

- ▶ *Meritt v. Meritt*

Balfour v. Balfour

Facts:

The Defendant (husband) was a civil servant stationed in Ceylon. He Had promised to pay the Plaintiff (wife) a monthly allowance as maintenance. Later he defaulted and the Plaintiff sued him for breach of contract.

Held:

There was no enforceable agreement because the agreement was based on domestic arrangement. Further there was no evidence that both parties have intentions to create legal relation.

Merritt v. Merritt

Facts:

The Defendant (husband) left the matrimonial home which was in the joint names of Defendant and Plaintiff (wife) and subject to a mortgage. The Defendant agreed to pay certain amount of money per month and she would pay the outstanding mortgage payments. When payments had been completed, he would transfer the house to her. The agreement was recorded in writing. Upon completion of the payment, the Defendant refused to transfer the house to her.

Held:

Based on the circumstances of the case, the parties had intended to create legal relation by putting the agreement in writing. The court held that the agreement should be a legally binding contract and ordered the house to be transferred to the Plaintiff (wife).

Certainty

- ▶ Despite the existence of proposal and acceptance, an agreement may be rendered void if its terms are uncertain.

Sec. 30 of the CA :

Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Certainty

Illustrations:-

(a) A agrees to sell to B “ a hundred tons of oil”. There is nothing whatever to show that kind of oil was intended. The agreement is void for uncertainty.

(b) A agrees to sell to B one hundred tons of oil of a specified description, known as an article of commerce. There is no uncertainty here to make the agreement void.

(c) A, who is a dealer in coconut oil only, agrees to sell to B “one hundreds tons of oil”. The nature of A’s trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut oil.

Certainty

- (d) A agrees to sell to B “all the grain in my granary at Ipoh”. There is no uncertainty here to make the agreement void.
- (e) A agrees to sell to B “one thousand gantangs of rice at a price to be fixed by C”. As the price is capable of being made certain, there is no uncertainty here to make the agreement void.
- (f) A agrees to sell to B “my white horse for ringgit five hundred or ringgit one thousand”. There is nothing to show which of the two prices was to be given. The agreement is void.
- ▶ Case : *Karuppan Chetty V. Suah Tian*

Legal Capacity (Competency)

- ▶ Sec 10(1) of the CA :

All agreements are contracts if they are made by the free consent of parties competent to contract

...

- ▶ Sec 11 of the CA :

Every person is competent to contract :

1. Who is of the age of majority,
2. Who is of sound mind,
3. Who is not disqualified from contracting by any law to which he is subject.

Minor

- ▶ The age of majority is 18 as provided by the Age of Majority Act 1971.
- ▶ Any person below the age of majority is called a minor.
- ▶ The CA is silent as to the effect of contracts entered into by minor. Therefore, we need to refer to case law.

Minor

- ▶ General rule / principle : any contracts entered into by minor are void.

Cases : *Mohori Bibee v. Dharmodas Chose*
Tan Hee Juan v. Teh Boon Keat

- ▶ However, there are 3 exceptions to the rule:
 - - i. Contract for necessaries
 - ii. Contract of scholarship
 - iii. Contract of insurance

Minor

Mohori Bibee v. Dharmodas Chose.

It was held that contracts by minors are void.

Tan Hee Juan v. Teh Boon Keat.

Facts:

The Plaintiff (minor) executed transfers of land in favour of the Def and the transfer was registered.

Held:

The transfer was void and ordered the land to be restored to the minor.

Exceptions to the general rule

1. Contract for necessaries.

Sec. 69 of the CA :

If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Case : *Government of M'sia v. Gurcharan Singh.*

Government of M'sia v. Gurcharan Singh

Facts:

The plaintiff entered into scholarship agreement with the defendant (minor at that time) to study abroad.

Held:

Education was held to be included under necessities. Therefore the contract with the defendant (minor) was valid.

Exceptions to the general rule

2. Contract of Scholarship

Sec. 4 of the Contracts (Amendment) Act, 1976 :

Notwithstanding anything to the contrary contained in the principal Act, no scholarship agreement shall be invalidated on the ground that

–

(a) the scholar entering into such agreement is not of the age of majority; ...”

Person of Sound Mind

- ▶ Sec. 11 of the CA. (previous)

- ▶ Sec. 12 of the CA :-

(1) A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

Person of Sound Mind

- ▶ Sec 12 :

(2) A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

(3) A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Person of Sound Mind

▶ Illustrations :

(a) A patient in a mental hospital, who is at intervals of sound mind, may contract during those intervals.

(b) A sane man, who is delirious from fever, or who is so drunk that he cannot understand the terms of a contract, or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.

Corporations

- ▶ They are artificial persons incorporated under the Companies Act 1965.
- ▶ They have separate legal entity distinct from its members i.e may enter into contracts under its own name, may sue or be sued etc.
- ▶ They are bound by memorandum of association (MOA) and articles of association (AOA).
- ▶ If they make contracts inconsistent with MOA and AOA the contracts will be ultra vires i.e the contracts are void.

Free Consent

- ▶ Sec. 10 of the CA :

“All agreements are contracts if they are made by the free consent of parties competent to contract ...”

- ▶ Sec. 13 of the CA :

“ Two or more persons are said to consent when they agree upon the same thing in the same sense”

Free Consent

- ▶ Sec. 14 of the CA :

“ Consent is said to be free when it is not caused by

–

(a) coercion, as defined in section 15;

(b) undue influence, as defined in section 16;

(c) fraud, as defined in section 17;

(d) misrepresentation, as defined in section 18; or

(e) mistake, subject to sections 21, 22 and 23.

- ▶ Consent is free if it is not given through the said circumstances. If not, then the agreement is either void or voidable.

Free Consent

- ▶ Sec. 2(g) of the CA :

“ an agreement not enforceable by law is said to be void”

i.e. it refers to an agreement which has no legal effects at all.

- ▶ Sec. 2(i) of the CA :

“ an agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract”

i.e. it refers to an agreement which gives one / more parties the choice of either affirming / rejecting it but not the others.

Voidable Contract.

- ▶ Sec. 19 (1) of the CA :

“When consent to an agreement is caused by coercion, fraud or misrepresentation the agreement is a contract voidable at the option of the party whose consent was so caused”.

- ▶ Sec. 20 of the CA

“When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused”.

a) Coercion

- ▶ Sec 15 of the CA :

“Coercion” is the committing, or threatening to commit any act forbidden by the Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Case : *Kesarmal vs Valiappa Chettiar.*

It was held that a transfer executed under the orders of Sultan and in the presence of Japanese Officers was voidable at the will of the party whose consent was so caused as the consent was not free.

b) Undue Influence

- ▶ Sec 16 (1) of the CA :

A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Illustration (b) to Section 16.

A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employs undue influence.

Chait Singh V. Budin b Abdullah (1918)

Held: A presumption of undue influence on the grounds of unconscionable bargain was upheld when a money lender sued a borrower on a loan at 36% interest, which was an excessive rate and in the light of the fact that the Defendant was an illiterate man.

c) Fraud

- ▶ Sec 17 of the CA :

“Fraud” includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or is agent, or to induce him to enter into the contract :

(a) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true;

(b) the active concealment of a fact by one having knowledge of belief of the fact;

(c) a promise made without any intention of performing it;

Fraud

(d) any other act fitted to deceive; and

(e) any such act or omission as the law specifically declares to be fraudulent.

i.e. In short fraud refers to any acts by a party to a contract with an intention to deceive the other contracting party.

Explanation to Section 19 of the CA :

The representee must have relied on the statement of the representator. If not, he cannot repudiate the contract on the ground of fraud / misrepresentation.

Weber v. Brown.

Kheng Chwee Lian v. Wong Tak Thong

Weber v. Brown

Facts :

The plaintiff sued the defendant for damages relating to fraudulent misrepresentation of the number of trees of an estate which the plaintiff had purchased. The number of trees represented was in excess of the actual number existed on the estate.

Held :

The defendant had made a fraudulent misrepresentation to the plaintiff and as a result the plaintiff had acquired the estate i.e. the consent was not freely given.

Kheng Chwee Lian v. Wong Tak Thong

Facts :

The respondent had been persuaded to enter into the second contract with the appellant on the fraudulent representation that the area of land was of the same size as the land under the first agreement.

Held :

The respondent was induced by fraud into signing the second agreement. Therefore, the second contract was voidable at the option of the respondent.

d) Misrepresentation

- ▶ Sec. 18 of the CA :

“Misrepresentation” includes–

(a) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, although he believes it to be true;

(b) any breach of duty which, without an intent to deceive, gives an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him; and

Misrepresentation

(c) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

- ▶ In short, misrepresentation refers to false statements made by a representor and which induces the other party to enter into a contract.

Bisset v. Wilkinson

The seller told the buyer that he can took 2,000 sheep in the estate. It is only an opinion.

Held: no misrepresentation

Void Contracts

- ▶ Sec. 21 of the CA :
 - Agreement void where both parties are under mistake as to matter of fact.
- ▶ Sec. 22 :
 - Mistake as to law in M'sia – not voidable.
 - Mistake as to foreign law – void contract.
- ▶ Sec. 23 :
 - Mistake by one party as to matter of fact – not voidable.

e) Mistake

- ▶ Sec. 21 of the CA :

Where both parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Illustration (b) to Section 21.

A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

Mistake

- ▶ Sec. 23 of the CA :

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

- * Section 23 deals with unilateral mistake i.e. mistake by one party only. Such mistake will not affect the validity of a contract because a person is expected to take reasonable care to ascertain what he is contracting about.
- * Where a contract is void, no title / rights can pass under it and neither party is under any obligation to perform it.

Legality of the Object

- ▶ A contract may be void through illegality.
- ▶ Section 10(1) of the CA :
“ All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void”.

Legality of the Object

▶ Sec. 24 of the CA :

“ The consideration or object of an agreement is lawful, unless

- (a) it is forbidden by 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.*

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Legality of the Object

- ▶ *Chung Khiaw Bank Ltd. V. Hotel Rasa Sayang Sdn Bhd & Anor.*

Facts :

Loans were extended by the appellants to the respondent and secured by several documents and guarantees. It was found that the documents evidencing the loans showed that the hotel whose shares were being purchased by a company had given financial assistance to a company contravening Companies Act.

Held :

The transactions were tainted with illegality therefore void.

Legality of the Object

- ▶ Sec. 25 of the CA :

“ If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void”.

- ▶ **Illustration.**

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles. B promises to pay to A a salary of \$10,000 a year. The agreement is void, the object of A's promise and the consideration for B's promise, being in part unlawful.

Restraint of Business & Legal Proceedings

▶ Sec. 28 of the CA :

“ Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

3 exceptions on to the rule:

Exception 1: An agreement not to carry on business on which good-will is sold. “ One who sells good-will of a business may agree with the buyer to refrain carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; Provided that such limits appear to the court reasonable, regards being had to the nature of the business.”

Restraint of Business & Legal Proceedings

Exception 2: or agreement between partners prior to dissolution. “Partners may, upon or in anticipation of a dissolution of the partnership, agree that some or all of them will not carry on a business similar to that of the partnership within such a local limits as are referred to in Exception 1.”

Exception 3: “or during continuance of partnership.” Partners may agree that some one or all of them will not carry on any business, other than that of the partnership, during the continuance of the partnership.

Restraint of Business & Legal Proceedings

- ▶ Sec. 29 of the CA :

“ Every agreement by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, which limits the time within which he may thus enforce his rights, is void to that extent.”

Means: there should no contract to oust jurisdiction of court, thus contract void as against public policy.

Restraint of Business & Legal Proceedings

3 exceptions to the rules:

Exception 1: Saving of contract to refer to arbitration if dispute arises. “This section shall not render illegal a contract by which 2 or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount award in the arbitration shall be recoverable in respect of the dispute so referred.”

Restraint of Business & Legal Proceedings

Exception 2: Saving of contract to refer to question that have already arise. “Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any law as to reference to arbitration.”

Restraint of Business & Legal Proceedings

Exception 3: Exercising of governmental discretion under a written contract of scholarship. “Nor shall this section render illegal any contract in writing between the Government and any person with respect to an award of a scholarship by the Government wherein it is provided that the discretion exercised by the Government under that contract shall be final and conclusive and shall not be questioned by any court. In this exception, the expression “scholarship” includes any bursary to be awarded or tuition or examination fees to be defrayed by the Government and the expression “Government” includes Government of the States.

Formalities

- ▶ General rule : a contract can be made orally, in writing or by conduct.
- ▶ Diamond Peek Sdn Bhd v. D.R Tweedie
Held:
An oral agreement for the sale of immovable property is valid and enforceable.
- ▶ However there are exceptions to the rule.

Exceptions :

- ▶ Sec. 10(2) of the CA :

“Nothing herein contained shall affect any law by which any contract is required to be made in writing ...”

Example:

1. Hire–Purchase Agreement : the agreement must be in writing if not it shall not be enforceable.
2. Agreement made on account of natural love and affection (Sec 26(a) CA).
3. Agreement to pay a statute–barred debt (Sect 26(c) of CA)

Discharge of a Contract

- ▶ Once a contract is terminated or discharged the contracting parties are free from further obligations.

- ▶ A contract may be discharged by :-
 1. Performance.
 2. Agreement.
 3. Breach of contract.
 4. Frustration.

1) Discharge by performance

- ▶ Performance is the usual method to discharge a contract.
- ▶ Once the contracting parties have performed or carried out their obligation under the contract, the contract is said to be discharged.
- ▶ Example:
 - If Ali has agreed to deliver certain goods to Abu on payment of RM 100, once Abu paid the price and Ali delivered the goods, the contract is discharged.

2) Discharge by Agreement

- ▶ Section 63 of the CA :

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. i.e. with the creation of a new contract, the original contract will be discharged.

- ▶ E.g.

- A owes B RM 100 under a contract. It is agreed between A, B and C that B shall accept C as his debtor instead of A. The old debt of A to B is discharged. Now C owes B under the new contract.

3) Discharge by Breach

- ▶ When a party to a contract fails to perform his obligation, there is a breach of the contract and the other party not in breach is entitled to take appropriate action.
- ▶ i.e. either to continue with the contract and claim damages or repudiate the contract.

Discharge by Breach

- ▶ Section 40 of the CA :

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

4) Discharge by frustration

- ▶ Section 57 of the CA :

(1) An agreement to do an act impossible in itself is void.

(2) A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Discharge by Frustration

- ▶ It lays down 2 categories :-
 1. impossibility of performance at the time a contract is made.
e.g. A agrees with B to discover treasure by magic.
The agreement is void.
 2. Impossibility of performance of the contract after it has been made.
i.e. contracts have become impossible to perform subsequent to their making.

Discharge by frustration

- ▶ Example:–
- ▶ Illustration (e) to Section 57 of the CA :

A contracts to act at a theatre for 6 months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

Discharge by frustration

- ▶ *Krell v Henry*

A room was hired for the sole purpose of watching the coronation procession of King Edward VII. However, owing to the King illness the procession was cancelled. The court held that Henry could be excused from paying the rent for the room because the contract was frustrated.

Consequences of Frustration

- ▶ Section 66 of the CA :-

“ ... any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

- ▶ Illustration (d) of Section 66.

A contracts to sing for B at a concert for \$1000, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the \$1000 paid in advance.

Remedies

- ▶ When there is a breach of contract, the party not in default may claim one / more of the following remedies :-
 - i. Damages
 - ii. Specific performance
 - iii. Rescission of contract
 - iv. Injunction

i) Damages

- ▶ Damages are granted as compensation for the damage, loss or injury suffered through a breach of contract.

Section 74(1) of the CA inter alia provides :-

An injured party is entitled to claim :

- Damages arising naturally from the breach.*
- Special damages if he can show that the other party knew at the time of making the contract that the special loss is likely to result from the breach.*

Case : Tham Cheow Toh v Associated Metal Smelters Ltd

Tham Cheow Toh v Associated Metal Smelters Ltd

Facts:

The defendant agreed to sell a metal melting furnace to the plaintiff and had given an undertaking that the furnace would have a temperature of at least 2,600 degrees Fahrenheit. The furnace supplied by the defendant did not meet the required temperature. The plaintiff sued the defendant for breach of condition and claimed damages including loss of profit.

Held:

The defendant was liable to the payment for loss of profits as the defendant knew the requirement to deliver a furnace capable of producing the special temperature not lower than 2,600 degrees Fahrenheit

ii) Specific Performance

- ▶ A decree of the court directing the contract to be performed according to its terms.
- ▶ It is a discretionary remedy
i.e. the court has a discretion either to grant or to refuse such decree.
- ▶ It is governed by the Specific Relief Act 1950.

Specific Performance

▶ Example:

- A has agreed to sell a piece of land to B and B has agreed to pay the price in full. However, after B having paid the price in full, A breached the contract by refusing to sell the land to B.
- B can apply for specific performance to compel A to sell the land to him.

Specific Performance

- ▶ Normally, land transactions can be enforced by specific performance.
- ▶ Section 11(2) of SRA 1950 inter alia provides that specific performance may be granted in respect of agreement relating to land transaction when the breach cannot be relieved by monetary compensation (damages).

Specific Performance

- ▶ Section 20 of SRA provides that specific performance will not be granted where monetary compensation (damages) is adequate.
- ▶ Example :
A has breached a contract with B for non-delivery of certain books to B. In such a case, normally the court will award damages and not a decree of specific performance.

iii) Rescission of Contract

- ▶ If a party breaches his promise under a contract, the party not in breach has the right to rescind/terminate the contract
- ▶ If the party not in default chooses to rescind the contract, any benefit which he has received from the defaulted party must be restored/returned

iv) Injunction

- ▶ It is an order granted at the discretion of the court and can be either interlocutory (temporary) injunction or perpetual injunction.
- ▶ Interlocutory injunction is granted by the court to preserve the status quo pending the resolution of a legal action.

e.g. A owns a house next to B's land. B commenced piling operations on his land which have damaged A's house. B has also ignored A's request to stop the piling operation. Thus, A can apply for interlocutory injunction to restrain B from continuing work until further order of the court.

Perpetual Injunction

- ▶ A perpetual or permanent injunction can only be granted after a full trial and once granted the other party is permanently prohibited from doing the act.
- ▶ From the aforesaid example, once the perpetual injunction is granted B is permanently prohibited from the piling operation.
- ▶ Case : *Pertama Cabaret Nite Club v. Roman Tam*

Pertama Cabaret Nite Club v. Roman Tam

Fact:

The respondent (singer) had signed a contract to sing at the appellant's club. The contract also provided that in the event of a breach, the respondent should not perform in KL during the fixed period of the contract. The respondent later breached the contract and attempted to sing in a rival club.

Held:

The court granted an interlocutory injunction restraining the respondent from singing in a rival club.