

# Good example of case study on aspects of contract and business law

[Business](#), [Customers](#)



## **Introduction**

In the day-to-day running of businesses, the parties that are involved are guided by some kind of law to ensure smooth running of the business. As such, there ought to be an agreement between the parties to the transaction, which in most cases, is binding. In essence, this would mean that the parties make a contract between themselves. In essence, the main aim of the contract is to outline the objectives of the agreement to ensure that it is accomplished in a prescribed manner. This is essential in order to avoid breach of the terms, which could lead the parties to seek litigation over the disputes. Lawsuits are, in most cases, very expensive and time consuming when dealing with issues of contracts. They also mean that the parties to the contract lose the control they have towards the disputed issue, since their fate will be decided by the judgments that the jury would make. It is essential therefore to ensure that necessary steps are taken to avoid this. This is the essence of a contract.

In order for an agreement to be considered a contract, and subsequently to become legally binding, several things are taken into account. For instance, there must be consent between the two parties to the agreement. However, consent to a contract must be in a free and mutual manner. The consent must also be communicated to both parties, after which consent is deemed to have been achieved. Agreements in which consent is not met are not legally binding. It would, therefore, be illegal if consent were achieved through undue influence, duress, and mistake or through fraud.

The legality of the contract also depends on whether there is consideration. This means that all parties to a contract must, in one way or another, gain

something. In essence, if a party to a contract decides to or not to do something, they must gain something from the agreement. As such, promises and gifts do not make part of a contract, since only one party will benefit.

There must be an offer for a contract to be valid. Simply put, offer refers to the process in which a party gives something up for there to be a contract. Acceptance means that the second party must make a decision as whether he is willing to make the contract. In the offer and acceptance stages of the contract, several problems may arise. Effectively, a counter-offer kills the contract. In essence, this happens when two parties make similar offers to each other, ignoring the other's offer. When this happens, the contract is killed. The only solution to this problem is by ignoring one offer. Some legality in contract include that the parties must intend to be legally bound. Law also requires that the parties should not be considered minors. Most laws do not agree that minors should be engaged in making contracts. Contracts, in most cases, come into force after the second party has accepted the offer. Different scenarios have different points at which the contracts can be considered to become legally binding. In determining such points, the intention of the parties should be taken into account.

Misrepresentation in contract law means that a party makes a false statement regarding the contract to the agreement. In essence, the misrepresentation is made with the purpose of hiding some fact and thereby, inducing another party to accept the offer. Victims of misrepresentation always have a remedy of rescission of the contract. In some cases, they may seek damages.

Misrepresentation may take many forms. Fraudulent misrepresentation happens when a party to the contract makes a representation with the aim of deceiving the other party, when they know that the representation is false. Negligent misrepresentation occurs where a party makes a representation negligently and carelessly, without having a reasonable basis. Innocent misrepresentation occurs when the party makes a misrepresentation while believing that their representation was true.

Standard form contract occurs when all the terms and conditions are set by only one party to the contract. When this happens, the second party has no negotiating power. In most cases, the standard form contracts take a 'take it or leave it' nature. The second party has no ability to negotiate the terms and he only has the option to agree to the set terms or disagree with them. There are several cases in which the standard form contracts are used. In insurance policies, for instance, only the insurer has the ability to make the terms, while the insured can only accept or reject them, without bargaining. Contracts involving government agencies also tend to take this form of contract.

Standard form contracts are very effective. This is despite the fact that only one party is given the ability to make the rules. In essence, the parties to the contract ought to weigh their options and decide whether to be involved in the contract or not. Undue influence and duress are in most cases absent, and as such, a party willing to be bound by the contract must be bound by the terms of the contract.

In the sale and supply of goods and services, there is law that adequately protects the consumers from being exploited by the contracts. In essence,

this is in most cases achieved through the remedies that are to their disposal. There are several damages to ensure that the consumers are not exploited by the sellers. Examples of the available remedies include damages, repudiation, rescission, specific performance, injunctions and restitutionary awards. Damages ensure that the consumers are compensated in case of a breach of the contract. Repudiation gives the consumers to bring the contract to an end when there is a breach of the terms. Rescission, though available at the judge's discretion, places both parties to the position they were in before the contract came into force. Specific performance, on the other hand, means that the court can order the sellers and suppliers to fully perform the contractual obligations they owe the consumers.

In dealing with a business, consumers are guaranteed statutory protection. This is to ensure that the businessmen do not exploit them and that they freely go about their businesses without worrying as to the possible exploitation from the sellers. There is a requirement in the statutes that the consumers to a given transaction always have a right to goods that are of a merchantable quality. In this sense, the goods should be safe and be designed for their intended purpose. It is the duty of the business to disclose all the relevant information about the goods that the consumers are interested in.

It is statutory that the consumers should be able to access and go through the terms of service in order to, among many other things, know the description details of the goods. Selling defective goods to the consumers is considered a malpractice and the consumers often have a remedy for that.

However, the consumers are sometimes required to 'be aware' when making some transactions. A caveat emptor will effectively mean that the consumer has no remedy to their claims.