

# Aspects of a contract essay

[Business](#), [Company](#)



The nature of business transactions in the contemporary society is increasingly becoming a complicated exercise. Advancement of technology, globalization and increased competition within business circles are some of the reasons that have complicated commercial transactions. The market economy is so competitive that entrepreneurs have to design new and innovative mechanisms to ensure that they keep their businesses.

Businesses are adopting more effective and efficient measures to meet the needs of their customers in order for them to maintain and enlarge their customer base.

Car-rex's wish to customize their standard contract forms is a desirable strategy, and indeed should be encouraged to ensure that their clients are served well. There are many contractual agreements that Car-rex is involved in. In order to service all their current clients, they have maintainace contracts, service contracts, repair contracts and contracts of sale for new and old cars and vans. For example, any client who wishes to procure the maintenance services of the company is given a standard form maintainace contract to fill. It is the same case for all the other services. This is a cheap, fast and convenient way of serving clients. Furthermore, the process cuts costs of negotiations between the company and the client making the cost per transaction cheap and sustainable. On the other hand, it denies clients the opportunity to bargain. It also prevents the company from meeting specific needs of clients by negotiating special rates for each of them. The system also fails to provide a mechanism to motivate loyal and new clients. Car-rex decision in tailoring every contract of sale to a client's needs is both noble and productive. It will significantly increase the company's competitive

profile placing it ahead of the pack. It is thus vital that this presentation interrogates what a contract entails, its elements and the most suitable format of contracts adopted by Car-rex.

A contract is a legally binding agreement between two parties which gives rise to obligations for both parties, which are enforceable in a court of law. A contract can be either oral or written. Some contracts are partly written and partly oral. Various jurisdictions have statute laws that govern contractual relations and obligations. Most of these statutes provide implied conditions and warranties for contracts while others contain provisions for presumptions in various sectors, if they are no express provisions from the contract. There are many types and categories of contracts. For example, Car-rex has maintenance and contracts of sale. A contract of sale is a legally binding agreement between the seller and the buyer. The seller transfers the property in the goods to the buyer for a consideration called the price. In this case, the goods are the cars and vans sold by Car-rex. The company also offers Contracts of Service through its service, maintenance and repairing programs and packages. It can also be said that it uses employment contracts to hire its employees who work in various sectors including Jerry. All sectors of the business industry must at one point or another have a contractual arrangement. This makes a contract a vital instrument during the course of business transactions.

A contract has to satisfy a precise set of elements for it to be considered valid and enforceable. The cardinal elements include an offer, an unequivocal acceptance, and sufficient consideration, capacity of the parties, free consent, formalities, a lawful object and intention to create legal

relations. Each of these elements remains essential and must be fulfilled. It is not proper or advisable to ignore even one of them because it might make the courts invalidate the contract on that grounds. Before parties enter into a contract, they begin by expressing interest in the object of mutual concern. Car-rex uses its showroom to display its cars and vans. This is called an ‘invitation to treat’, which means an expression of the willingness of a party to engage in negotiations which may lead to the making of an offer. Other incidents of invitations to treat include advertising the cars in the papers, publicizing the company through posters and leaflets, radio, television and other forms of media including online.

When a client visits the company’s showroom and asks the salesman if he could have a car for a certain price, this is called an offer. An offer is a statement by a party during the negotiations stipulating a set of terms that they are willing to be bound by. An offer is a bold statement by a party who is ready to enter into a contract. In most cases, but not always, the offer is made by the client. Sometimes the salesman or the company can also make an offer to the client. There are three answers to an offer. These include acceptance, rejection or a counter-offer. A rejection brings to a close the negotiations. The parties can either elect to call it quits or initiate the negotiations afresh. A counter-offer also serves to terminate the original offer. If the party who made the original offer rejects the counter offer, the negotiations come to a close and the counter-offerer cannot go back and accept the original offer. Acceptance of an offer must be forthcoming and unequivocal. This means accepting all the terms of the offeror unconditionally. Altering even a single condition is tantamount to a counter-

offer. If the offeree accepts the offer then the contract is formed. These are the initial fundamental requirements of a contract.

The other requirements are qualifications to the contracting parties. There must be consideration moving from the promisor to the promisee.

Consideration refers to the price of which the promisee is buying the promise of the promiser. In case of a contract of sale between Car-rex and a customer, the consideration is the price from the customer. The client is also receiving a car as consideration for his money. It is crucial to appreciate that consideration only need to be sufficient rather than adequate. This means that courts uphold the freedom of contract negotiations. Contracting entities are treated as if they are of equal negotiating powers and strengths. This may not always be the case as big corporate companies usually exert undue influence on individual parties. However, courts can only interfere with a contract with respect to consideration if a party proves wrongdoing from the other party and nothing else.

Another cardinal requirement of a contract is that parties must have had intentions to create legal relations. In order to avoid any ambiguity in contracts where there are no express or implied provisions for this requirement, case law has established two presumptions. The first presumption is that the law presumes that in domestic matters, parties do not intend to enter into legal agreements. For example, a promise from a husband to his wife to take her to dinner does not intend to have legal implications. The second presumption denotes that parties engaging in commercial transactions intend their actions and promises to be legally binding on both parties. This is because of the pecuniary interests attached

to such arrangement following promises made during the negotiations.

Parties must also have the capacity to enter into a contract. People suffering from insanity, drunken persons and minors lack the capacity to enter into a contract. They are only bound by a contract that they entered into if the contract is supplying them with necessities that were instrumental to them during the time the necessities were requested and the time they were delivered. Minors can enter into valid contracts if they are represented by either their parent or a guardian as a guarantor. The voluntary consent of the parties to enter into a contract is also extremely significant. A party who does not enter into a contract voluntarily can plead the defence of duress or undue influence. If the courts believe them then they are relieved of all their contractual obligations. Furthermore, a valid contract must be one concerning a lawful exercise. The legality of a contract is significant if one has to rely on courts of law to enforce them. Courts cannot enforce an agreement that will further an illegal activity or is a result of an unlawful exercise.

Therefore, Car-rex must ensure that all the contracts that they enter into with clients meet the stipulated threshold. This is not only in activities involving clients, but also in other arrangements involving the government, suppliers, employees and other stakeholders. The expansion ambitions by the company also have to be done within a lawful framework that respects all contractual requirements. For example, the company has a plan to begin leasing cars and vans for individuals and businesses. This can be done by creatively crafting the requisite contracts to suit the needs of clients from the two sides.

With regard to tailoring every contract of sale per clients' needs in order to increase sales, the company needs to design a system that addresses all these concerns. For example, standard form contracts can be drafted for every sector. This means that there will be a leasing contract to individuals and a leasing contract to businesses. The two will contain different terms. However, while the original copy will be stored in a computer database, copies made will be amended to suit different needs of clients during the process of bargaining and negotiating. Warranties may be varied, but the fundamental content of the contract maintained. This will act as an incentive to clients as they will find the company accommodating to their needs. A breach of a contractual obligation entitles the injured party to a remedy. Contracts usually have a penalty clause for nonperformance to encourage parties to meet their obligations. However, irrespective of whether there is a penalty clause or not, failure to meet one's contractual obligation entitles the injured party to a remedy. A breach of a contractual obligation entails failure by a party to meet one or more of the terms of the contract. A term may be a warranty or a condition. The main remedies available for breach of a contract include damages, repudiation, rescission, specific performance, injunctions and restitutionary awards.

Tom and Jack Black entered into a valid contract. It had met all the requisite conditions and, therefore, was enforceable. The terms of the contract were that Tom pays half the money upfront and the rest after the show. On the other hand, Jack Black was supposed to perform and entertain the crowd on Saturday at the car sales extravaganza for an hour. The consideration for Tom and Car-rex's money was Black's performance. The fundamental object

of the contract was Black's performance. His failure to perform at the extravaganza thus constitutes a fundamental breach of the contract. It entitles Tom to repudiate the contract. If the court finds that Black breached the contract, it must award Tom damages. He is also free to request the court for further orders. The most obvious in this case is that of restitution. This is Tom's claim of the money paid as a part payment for Black's performance. Following his failure to meet his part of the bargain, Tom is entitled to request back his contributions. The damages awarded to Tom, as in other contractual relations, are meant to put the injured party in a position that he would have been if the other party had fulfilled his end of the bargain.

The other available remedies include rescission, specific performance and injunctions. They are discretionary in nature and courts may or may not grant them to the injured party. Specific performance could be granted to the court if the injured party asked for it. For example, suppose the sale extravaganza had not yet occurred and Tom had requested the court to order Black to perform, this would be a case of specific performance. However, courts are slow in granting such orders. This is because courts cannot make orders in futility. It must be a performance that can be monitored and one that is not of a personal nature. This means that a court is less likely to order Black to perform if he does not want to. Rescission entails taking back the parties to the position they were before the performance of the contract. Such an order would be effective if the subject matter can easily be given back without undue prejudice to any party. Injunctions, on the other hand, affect matters where performance is yet to



start. They are orders of the court restraining a party from engaging in a particular activity until the matter is brought to a conclusion. It is also significant to mention that Black can defend himself in court. There are various defences available to him. Some of these include misrepresentation, fraud, mistake and unconscionability, among others. He may also argue that his consent to perform at the event which led to the contractual agreement was not voluntary. His defence heavily depends on the process through which the contractual agreement was arrived at.

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