

# Main elements constituting a valid contract



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The word 'law' has been given many definitions. The higher being is the state and the inferior being is the individual. The sanctions or punishments include imprisonment, fines, damages and injunctions. In our country Malaysia, Federal Constitution declares itself as the supreme law of the Federation. Hence, to put it modestly, law may be defined as a body of rules which are enforced by the state. Furthermore, law save from harm the basic individual rights and freedom such as liberty, equality and freedom of speech. It avoid individuals in powerful positions from taking an unreasonable advantage of other people and ensures a harmless and peaceful society, in which individual rights are conserved, law has develops as the norms and needs of society changes. Malaysia practices Parliamentary democracy with Constitutional Monarchy, wherein the Yang Di-Pertuan Agong (King) is the Paramount Ruler. The constitution of Malaysia divides the authority of the Federation into three branches, namely Legislative, Administrative or Executive and Judiciary.

### **Definition for question 1**

Contracts are not only applicable to business but are also part of our everyday life. A contract is made out of the simple act of purchasing a newspaper, using a credit card to buy a dress or paying a parking fee. Other contracts such as the sale and purchase of property are additional complex, requiring formal written documents. Law, is merely anxious with the fulfillment of certain conditions by the parties so that the transactions can be standard as legally binding agreement and enforceable. Section 2(h) of CA 1950 states that ' an agreement enforceable by law is a contract'. The strongest contract, in terms of enforceability, has an offer, acceptance,

consideration for the exchange, clearly sets out the terms of the agreement without doubt, and is signed by the involved parties with appropriate capacity to enter into the contract. Hence, a contract can be defined as an agreement the law between two or more parties to do or to abstain from doing some act/acts, their intention being to create legal relation and not purely to exchange mutual promise to give something of value as consideration for any benefits derived from the agreement. Thus each of the parties to a contract wants or needs something the other party has in its power to give, and each of the parties is willing to give up something of in order to make safe what the other party has.

## **Basic Elements of a Valid Contract an Overview**

From the definition above, it may be concluded that the basis of a contract is agreement between parties. As such, the existence of other elements is also required to allow an agreement to transform into a contract and make it enforceable in law.

For a valid contract, the basic elements that need to exist are:

**Agreement (comprising offer and acceptance):** The existence of an offer and an acceptance are a means of analyzing the process of negotiation to decide whether a contract has been made and if so, when it was made. Mutual assent of the parties is the basic of an agreement.

**Consideration:** This is the value given by the parties for the promise that is being made. Usually consideration takes the form of money, property and services.

Capacity: Only parties who have capacity are able to enter into a valid and enforceable contract. Persons who are under age or have serious mental disability do not have legal capacity to enter into a contract.

Consent: If the parties do not enter into the agreement willingly, the agreement could be regarded as invalid. Genuine consent into a contract can be affected by a number of issues. For example, during the contractual negotiations, there may have been:

### **Undue influence**

### **Mistake as to the terms and identity of the person**

### **Misrepresentation**

### **Unconscionable conduct**

### **Duress or coercion.**

Certainty: All the terms of a contract should be clear and precise such that the parties know that they are agreeing to.

Legality: any agreement to violate the law or any agreement forbidden by law is void. Contracts are illegal for two reasons: firstly, because their object is illegal; secondly, because although the object is perfectly legal, the manner of making it is against the law.

Figure of basic elements of a valid contract:

Formation of a contract

Certainty

Legality

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Consent

Intention to create legal relations

Capacity

Consideration

Agreement

Offer

Acceptance

Agreement, the parties must agree on the rights and obligations to be created under the contract. Agreement that is reached through a process of offer and acceptance is a primary part of any contract because it requires *consensus ad idem*, the meeting of the minds of the parties entering into the contract. For example, the model case was *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui* (1984), where the Federal Court held that where there was no offer and acceptance, the purported hire-purchase agreement was declared void *ab initio*, and the agreement was void from the beginning. Thus it can be seen that 'agreement' forms the basis of a contract - if there is no valid agreement to begin with, there can be no valid contract at all. It is important that an agreement determine a contractual relationship, which means that it is essential for the parties to be able to define when an offer has been made and when the offer has been accepted. Offer proposal, also under the agreement, the person making the offer or proposal is called the 'promisor' or offeror. The person to whom the proposal or offer is being made to is

recognized as the promisee or offeree. If this person accepts the offer, then he is also called the acceptor. An offer is referred to in s 2(a) of CA 1950 as a proposal which is made when 'one person signifies to another his willingness to do or abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence'.

Acceptance, for a contract to be valid, there must be a proper acceptance by the offeree. Section 2(b) of CA 1950 provides that when by offeree signifies his assent to the offer, the offer is said to be accepted. Rules of a valid acceptance, if the acceptance of any promise is made in words, the promise is said to be express, and if the acceptance is made other than in words, the promise is said to be implied: s 9, CA 1950.

Intention to create legal relations, an agreement reached between an offeror and an offeree will be a legally binding contract only if the parties intended that they should be legally bound. The parties' intention to be bound can be specifically stated or be implied from their actions. Where intention is expressly stated, the courts would not impure otherwise unless there is strong evidence to prove the contrary. In social and domestic agreements between family and friends, there is a presumption that these agreements are not meant to be legally binding unless the contrary can be proven. In *Balfour v Balfour* (1919), the husband went to work in Ceylon and agreed to pay his wife 30 per month. He didn't pay the money and the wife sued. It was held that there was no contract because the parties didn't intend to create a legal relationship.

In business and commercial agreements, which are more formal in nature; there is a presumption that there is an intention to create legal relations. Also, the intention to exclude legal consequences must be seen clearly in unambiguous words. The onus of proof is on the party who alleges that no legal effect is intended. In *Edwards v Skyways (1964)*, the plaintiff, who was a pilot, was made redundant by the defendant. He had been informed by his pilots' association that he would be given an ex gratia payment. The defendant failed to pay, so the pilot sued. The defendant argued that the use of the words 'ex gratia' meant that the agreement was not binding. The court held that this agreement related to business matters and was presumed to be binding, and the defendant had failed to rebut this presumption.

Capacity to contract, in order to have a valid contract, all parties to a contract must have capacity to enter into a contract. Capacity refers to the legal ability to go through into a contract, and the law generally assumes that everyone has capacity to contract, except certain categories of persons. Section 11 of CA 1950 provides that every person is competent to contract who is of the age of majority according to the law to which he is subject, of sound mind, and not disqualified from contracting by any law to which he is subject.

Certainty, agreements that are not certain in meaning or which the meaning is not capable of being made certain are void; s 30, CA 1950. The terms of an agreement ought to be obvious, precise, and certain. It cannot be vague. An agreement which is ambiguous and uncertain is not capable of being accepted as a valid contract. In *Karuppan Chetty v Suah Thiam (1916)*, the

contract was declared void as the phrase to last 'for last long as he likes' carries uncertain definition.

Legality, even where all the requirements of a valid contract discussed above the present, a contract may be illegal and thus unenforceable. Section 24 of CA 1950 further provides that the following consideration and objects are unlawful such as, it is forbidden by law and nature as to beat any law. In addition, it is fraudulent and involves or implies injury to person or property of another and the court regards it as dishonest, or opposed to public policy. Such agreements might be regarded as void.

Consent, although all the elements of formation may be present rendering the contract valid, in certain circumstances if genuine consent is not obtained, and then there can be no agreement and no contract between the parties. Even if consent is given, it may not have been freely given. Section 14 of CA 1950 states that consent is not free when it is result of coercion, undue influence, fraud, misrepresentation, and mistake.

## **Conclusion:**

In this subject, I had learned a lot of legal things. At the end of this question, I had been search out to identify the essential elements required to figure a simple and valid contract, and the factors that can influence its validity and how to recognized when agreements has been legally binding. It's very effective for our future when we had starts a business.

## **Definition of question 2**

Remedies that are existed for breach of contract would depend on the gravity of the effect and impact of the breach. The types of remedies that

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are available are such as rescission of contract, the contract is annulled and both sides are excused from further performance and any money advanced is returned. Secondly is the damages, an equitable quantum of money is paid to the plaintiff to compensate for any loss. Thirdly goes to specific performance, a court order requiring performance exactly as specified in the contract. This remedy is unusual, except in real estate transactions and other unique property, as the courts do not want to get elaborate with monitoring performance. As a final point, injunction is a court order directing one party to perform or to refrain doing a certain act. It is used more than ever in situations where a monetary award for damages would not satisfy a plaintiff's claim or would not protect personal or property right from irreparable harm. A remedy is very important and critical in the legal relations.

## Remedies

What are remedies? Remedies are when a party to a contract unjustifiably fails to declines to perform his part of the contract; the other party has a right of legal action. The methods which are given by the law to an innocent party by which he may enforce a right or redress an injury are called 'remedies'. Remedies that are available for breach of contract would depend on the consequence and impact of the breach. Probable remedies are such as rescission of contract, damages, specific performance, and injunction. Equitable remedies are generally remedies other than the payment of damages. This would include such remedies as obtaining an injunction, or requiring specific performance a contract.

To begin with rescission of contract, on a breach of a condition of a contract, the injured party may treat the contract as at an end (or rescinded) and refused to perform or implement his part of the contract. When one 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; s 40, CA 1950. A person who rightly rescinds a contract is also entitled to damages under s 76, CA 1950.

Next, are damages? Section 76 of CA 1950 provides that the injured party or the party that has suffered loss has a right to compensation for the loss or damaged suffered, payable to the breach of contract and the aim of damages is to put the innocent party into a position he would have been, had the contract been performed. Such as compensatory or ordinary damages, these are damages that are given to be party who has suffered loss caused by the breach of contract. The general position with regard to damages for breach of contract is that damages may be improved as long as they are not too remote. In the other words, damages might only be recovered in the relevant losses for example arise naturally as a result of the breach or don't take place naturally but are losses which are parties knew, at the time they made the contract, would be probable result of the breach. This principle stems from the decision in *Hedley v Baxendale* (1854) and is also provided in s 74(1) of CA 1950. How many kind of damages that under damaged? For example, exemplary damages, liquidated damages, and nominal damages, and so on. Start with the exemplary damages, these damages are damages that required and/or awarded by the court when the

defendant's willful acts were malicious, violent, oppressive, fraudulent, wanton, or grossly reckless. These damages are awarded both as a punishment and to set a public example. Although often requested, exemplary damages are infrequently awarded. Next to liquidated damages, liquidated damages are monetary compensation whose amount the parties agree upon during the formation of a contract for the injured party to pull together as compensation if a specific breach occurs. Damages can be liquidated in a contract only if the injury is either uncertain or difficult to quantify, or it would be difficult to prove the loss, or it would be difficult to find another adequate remedy. Hence, the amount is reasonable and is considered the actual or anticipated harm caused by the contract breach, and the damages are structured to function as damages, not as a penalty. Hence, if the above criteria are not met, a liquidated damages clause will be void. After that is turned to nominal damages. Nominal damages are damages which consist of a small amount of cash payment which the court orders to be paid to the plaintiff who has suffered a quantifiable pecuniary loss. The award serves as a token of honor to the rights of the plaintiff. Nominal damages are habitually sought to obtain a legal record of who was at fault. Specific performance, specific performance is an equitable remedy. It is a specialized remedy used by the courts when no other remedy (such as money) will adequately compensate the injured party. In addition, specific performance is not a typical remedy. If a legal remedy will put the injured party in the position he would have enjoyed had the contract been fully performed, then the court will use that opportunity instead. The most common courts grant specific performance is that the subject of the contract

is exclusive. For example, Donald offers to sell Belle his beachfront house and Belle accepts. Donald subsequently decides to keep the house. Since there is no other house exactly like Donald's house, Belle may be entitled to specific performance of the contract and the court may compel Donald to sell the house. Some more, specific performance is governed by the Specific Relief Act 1950. Section 11 of Specific Relief Act 1950 provides the circumstances when a court may grant specific performance:

Where the act agreed to be done is in performance, wholly or partly, of a trust.

There exists no standard for ascertaining the actual damage caused by non performance of the act agreed to be done.

Where pecuniary performance is an inadequate relief.

Where pecuniary relief cannot be obtained for the breach.

Sections 20 and 21 of Specific Relief Act 1950 state that specific performance cannot be granted where damages are granted, the terms of the contract are uncertain, there is evidence of fraud and the performance of the contract would involve hardship on the defendant.

Injunction, an injunction is an order of the court restraining a person from doing a specific act in the future. It is granted only when it is just and equitable to do so having regard to all the circumstances of the case.

Specific relief Act 1950, section 50 of Specific Relief Act 1950 provides that it is a preventive relief granted at the discretion of the courts. In respect of contracts, an injunction may be sought to prevent a party from committing a

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breach of contract. For example, the court may order that a seller be restrained from selling land to anyone else when the seller has contracted to sell that land to the plaintiff. A court may award damages to an injured party either in addition to, or in substitution for, an order of injunction.

Quantum meruit, quantum meruit determines the amount to be paid for services, when no contract exists (a doctor giving emergency aid), or where the parties to a contract have failed to agree on a price, and so on. If there is an existing contract for a stipulated amount and the mode of compensation for services, the plaintiff cannot abandon the contract and resort to an action for quantum meruit. For example, if a person sues for payment for services in such circumstances, the court will calculate the amount due based on time and usual rate of pay or the customary charge, based on quantum meruit by implying a contract existed.

### **Conclusion:**

For the end of this question, I had learned about the significant and important of the remedies in the legal relations. In this question, I can find out and understand the exchange of benefits and obligations between the parties, which makes the agreement enforceable. Furthermore, students also can consider and evaluate the factors that influence the availability of compensation for losses suffered from breach of contractual obligations and identify the described remedies other than damages which may be available to the victims of a breach of contract.