

# Essay on contract

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



## **Introduction**

The paper begins by looking at the basic definition of the term contract. This is then followed by examining the concept of employment citing necessary obligations and or duties that employer and employee owe each other. After understanding of the general duties of both the employer and employee it discusses the case of Clarissa and the scenarios she is involved in. In order to critically examine this question it was necessary to incorporate and or cite past cases and or authorities to support the argument.

Laurence Koffman and Elizabeth McDonald; (2007, p. 1), defines contract as, “legally enforceable agreement giving rise to obligations for the parties involved.” They further argue that the law of contract determines which agreements are enforceable and provide remedies if contractual obligations are broken. A contract can either be express through writings or oral or through implied meaning.

## **Employment contract**

This is a type of contract between the employer and the employee; it is founded under labor law which regulates the relationship between the employer and employee and their work environment. Under this type of law both the employer and employee enter into agreement for which employee is expected to perform certain duty for which he or she is paid some money, benefit in kind as consideration. (Nicholus Countouris, 2007). The maxim of “do, ut des”; “I give, so you give” supports the relationship that do exist between the two parties.

## **Duties imposed on employer**

### Provision of work

An employer is under duty to provide employee with work though he or she will not be in any breach of implied duty to provide work provided the employer continues to pay employees. Exception is made to this clause where the lack of work leads to reduction in employee's wages or salary, if the work is necessary to gain particular skills. In *Collier vs. Sunday Reference Publishing Co. Ltd (1940)*; under this case, Collier was employed as sub-editor with Defendant's newspaper. The defendant continued to pay him despite lack of work; he sued claiming the company was at anytime obliged to provide him with a job. It was held that the contract of employment does not necessarily or obliges the master to provide the servant with work, on the judgment the honorable quoted, " provided I pay my cook her wages regularly, she cannot complain if I choose to eat all my meals out."

In another different case, *Langston vs. Amalgamated and Union of Engineering Works (1974)*; Fact about the case is that Langston refused to join the Union this forced the Union pressurize his employer to suspend him which they did on full pay. In this case it was held that where a person employs a skilled employee who needs practice to either develop or maintain such skills, then there may be obligation to provide reasonable amount of work to such employee. Therefore the employer was held liable for wrongful suspension.

In relation to Clarissa's case, her claim for provision of work while under six months notice does not hold, because, her presence will cause much harm in terms of tension among fellow employees. Much as she needs the job to gain

skills in the technical field, her plea cannot be heard since that would mean compromising another duty that employer owes to all the employees; the duty to provide safe place of work to all employees. See Hudson vs. Ridge Manufacturing Company Ltd (1957) as discussed below. Collier vs. Sunday Reference Publishing Co. Ltd (1940); as highlighted earlier also notes that it does not matter whether an employee is provided with work but what matters is that he or she is being paid a fact that Precision Missiles pic., does. “ Provided I pay my cook her wages regularly, she cannot complain if I choose to eat all my meals out.”

### **Duty to provide safe work place, equipment and employee**

The employer is under duty to provide competent fellow worker, provision of safe appliance and safe place of work and system of work. The employer is obliged to ensure that all staffs are competent to perform the job for which they have been hired for. This can be achieved through training employees. This duty stipulates that if an employee is injured as a result of incompetence of a fellow worker then the employer will be held liable regardless whether it was a blatant act or practical act. In the case of Hudson vs. Ridge Manufacturing Company Ltd (1957), Hudson was in his way to sick room when a fellow worker tripped him and he broke his waist; the employee was known as practical joker and had been warned by his employer to stop fooling about. In this case it was held by the honorable court that employer was liable because he was aware of this tendency but did not do more to stop such behavior even if it meant firing the employee. In relation to Clarissa’s case, her presence within the perimeter of the company amount to violation of a duty that an employer owes to the general

employees, because, her presence will cause much harm in terms of tension among fellow employees. She has actually put the life of fellow employee at risk from the two incidences. Much as she needs the job to gain necessary skills in the technical field, her plea cannot be heard since that would mean compromising another duty that employer owes to all the employees; the duty to provide safe place of work to all employees. See Hudson vs. Ridge Manufacturing Company Ltd (1957) as discussed above. Here the defendant was held liable for failure to stop a behavior from an employee who was jocular.

### **The duty of mutual trust and confidence**

This provision states that the employer is under duty to treat his or her employee with respect since the basis of employment relationship is mutuality of respect trust and confidence.

In relation to Clarissa's case, the management has lost confidence in her that's why she is given a garden leave. She can no longer deliver as she has always done for the past 30 years.

### **Duty to provide employee with pay, wages or salary**

The employers are under obligations at all the time to pay the employees even if there is no work. This provision ensures that the employers pay a just and fair remuneration based on the services of employee. That is why Precisions Missile pic, Continues to pay Clarissa despite the fact that she has been under garden leave.

## **Duty to indemnify**

This obligation requires employer to reimburse employee any expense incurred by the employee in the course his or her duty. The expenses extend to such issues like out of station allowance, postage, packing fees. Much as Clarissa is dismissed from work she is entitled to lieu of notice for which she will be paid for six months.

## **Duties of employee**

### **Duty of Loyalty**

This duty stipulates that an employee has a duty to act solely for the benefit of the employer when engaging in any conduct that relates to the scope of his or her employment. It states that an employee is obligated to give preference to the business of the employer when conducting any business on his or her own that is similar to the employer's business. It prohibits use of the employer's confidential information to compete with the employer after termination for this amount to breach of duty of loyalty.

In relation Clarissa's case she is bound to breach the duty of loyalty by virtue of fact that she has access to changing missile technology, including the secret guidance systems used by Precision Missiles pic, should she and takes or uses such information against Precision.

### **Duty of competence**

This duty obliges the employee to do " what he or she is supposed to do" and not just doing it but must perfect it. The burden of proof here in case of conflict lies on the employer to prove that the employee's performance has below standard.

In relation to Clarissa's case, she has been working for thirty years and employer can tell by evaluating past performance. Further more not only on a single occasion has her performance been questioned but on two occasions within one month. It is reported that, " Clarissa carelessly left the trigger switch (that fires the weapons) in the factory, so the display had to be aborted". This is a clear proof that she has been under performing. Whether or not she was under going difficult time or not does not matter after all she had the option of seeking leave. She also inadvertently programmed a demonstration missile to fly for 100km rather than the planed 1km. whether intentional or not is not the; she has incompetently performed. An attempt to bring a legal course of action by Clarissa is bound to fail since she is the one who has failed to perform her part.

### **Work with reasonable care and skill.**

This duty obliges the employee to act while under the course of his or her employment with reasonable care and skills while performing the task. The employee is not bound by this provision to exert any extraordinary skills performing duty. A reasonable skill that any other ordinary would have applied under the same scenario is recommended.

### **Conclusion**

Turning to the case of Clarissa, her claim for provision of work while under six months notice does not hold, because, her presence will cause much harm in terms of tension among fellow employees who have since lost hope in her. It is the duty of the employer to provide safety to all employees therefore by giving Clarissa a garden leave, the employer is safeguarding the

safety of all the employees Clarissa not excluded. Though one of the provisions of the employer is to provide work to the employee, in this case the welfare of the people is the supreme law; “saluus populi suprema lex”, therefore based on this fact alone Clarissa stand to lose should she be tempted to sue the company claiming for lack of provision of work, wrongful dismissal.

Clarissa has breached terms of employment as stipulated in the employment act. She has proved to be incompetent in delivering her duties as stipulated in the duties she owes to the employer. Clarissa should be advised to accept dismissal and look for other greener pastures some where else upon maturity of the 6 months notice of dismissal.

As to whether she should accept the Flares offer I would say no; she is still under employment contract with the Precision Company and therefore if she accepts the offer it will amount to breach of contract between her and the precision company. Acceptance of the job shall lead to breach of contract and Precision is entitled to claim for general damages and specific contract. It shall also amount to breach of duty of loyalty.

## **Reference**

Nicholus Countouris, (2007), The Changing Law of Employment Relationship: Comparative analysis in the European context. UK; University of Reading Publishers

Irvin H. Perline and Jona Goldschmidt, (n. d.), Psychology and Law of Work Place Violence: A Hand book for Mental Health. Illinois; Charles Thomas Publishers

Laurence Koffman and Elizabeth McDonald, (2007), The Law of Contract, 6th



Ed. New York: Oxford University Press Inc.

Lindsay, Mr. Justice, 'The implied term of trust and confidence' *Industrial Law Journal*, 30(1) 2001 pp. 1-16

Brodie, D. 'Mutual trust and the values of the employment contract', *Industrial Law Journal* 30(1) 2001, pp. 84-100

Hepple, B. 'Restructuring employment rights' 15 *Industrial Law Journal* 69, 1986, pp. 69

*Hudson vs. Ridge Manufacturing Company Ltd* (1957)

*Collier vs. Sunday Reference Publishing Co. Ltd* (1940)