

Commercial contracts under nigerian legislation



COMMERCIAL CONTRACTS UNDER NIGERIAN LEGISLATION Introduction A contract is an agreement which is legally binding on the parties to it and which if broken may be enforced by action in court against the party that has broken it. A contract may be void or voidable. A void contract is that which lacks the essential ingredients or elements of valid contract and therefore of no legal effect. A voidable contract is that which is valid in the first place but may be ended at the instance of one of the parties to it.

Such contracts include guarantee with a bank of moneylender, hire purchase and sale or leasing of land. The legal consequences of non-compliance are that they are not enforceable at law though they are not necessarily void. However, some categories of contracts must of necessity be in writing or else they shall be void absolutely. These include transfer of shares, marine insurance and hire purchase agreements. As a general rule also, all contracts are in the nature of agreement: however, not all agreements may constitute a contract properly so called.

For instance, an agreement for the sale of a parcel of land is intended to be binding and enforceable at law, whereas, an invitation to a luncheon which after all, did not hold may not be enforceable at the suit of the disappointed party. A contract may also be under-seal or by deed and may be simple or oral. It may be express when it is written or implied when it is inferred from the conduct and acts of the parties. In addition, there can be bilateral contract between two parties or multi-lateral contract among parties depending on the nature of obligations to be performed under the agreement.

Condition and warranty are the two basic types of express terms in a contract. Whether a term is a condition or warranty depends on the intention of the parties. A condition is a vital term which goes to the root of the contract. Breach of a condition entitles the innocent party to repudiate the contract and to claim damages. A warranty is a term which is subsidiary to the main purpose of the contract, breach of which only entitles the innocent party to damages.

FORMATION OF A VALID CONTRACT

The main requirements of a valid contract are as follows: 1. there must be an offer; 2. there must be an acceptance; 3. there must be consideration; 4. parties must have full contractual capacity; 5. there must be an intention to create legal relations; 6. object of the contract must not be unlawful nor illegal; 7. prescribed formalities must be followed, for example, it should be in writing or by deed.

Forms of Contract

Contract supported by consideration are essentially expected to be in writing. It is however important to note that a contract may also be oral or implied and yet be binding on the parties depending on the peculiar circumstances.

The fact remains that a contract may not be taken as being invalid or unenforceable for the mere fact that it is not in a written form. The court would normally not assist any person who was lured into an oral agreement. Writing merely facilitates the interpretation or proving of the terms of the contract barring which it may not be all that necessary. In considering commercial contracts under Nigerian legislation however, we would evaluate three of such contracts which are: ? hire purchase; ? sale of goods; ? agency.

AGENCY CONTRACT Introduction

Agency is a relationship that exists between two persons, one of whom expressly or impliedly agrees that the other should represent him or act on his behalf. The one that is represented is called the principal while the person representing or acting on somebody's behalf is called Agent. Agency relationship involves the consent of the agent and the principal that one should act for the other. It thus arises from a contract or agreements express or implied. *Ofofiele v. Chinwuba* Generally, the relationship of principal and agent may arise in three main ways: 1.

By agreement, whether contractual or not express or implied in nature 2. By subsequent ratification by the principal of the agent's act done on his behalf, and 3. By operation of law under the doctrine of necessity Whether or not an agency relationship exists would largely depend on the true nature of the agreement and the circumstances of the relationship between the principal and the agent. In another vein, the law of agency consists of the law of the employer and the employed, where the employment consists of bringing the employer into contractual relationship with the third party.

This relationship is simply referred to as "The Master and Servant" relationship under the labour law and for which there is a vicarious liability. An agent should be distinguished from an independent contractor. An independent contractor is the person who negotiates with the third party on his own behalf. An independent contractor is a person liable to give contract for service while an agent or servant renders contract of service. An independent contractor is personally liable at law for his actions. An agent is not a trustee of the goods in his care not being the legal owner.

The extent or scope of the Agent's discretion is determined by his principal's instructions. Legal title always remains in the principal. An agent can therefore not give good title all by himself. CLASSIFICATION OF AGENCY

a. Special Agent: This is someone who has authority to do some particular act on behalf of his principal though not a continuous basis; for instance, a special order to purchase a house or a vehicle.

b. General Agent: this is someone who has power to act for his principal in all matters involving business or trade, for example a solicitor or legal practitioner. . A Factor Agent: He is an agent who sells or disposes of goods that are entrusted to him. His activities are governed by the Factors Act 1889 (UK d. Broker Agent: He negotiates and makes contract for the sale and purchase of goods. However unlike a factor he is not left in possession of the goods. Typical example is insurance Brokers and Stock Brokers.

e. Universal Agent: This is someone who represents various principals in many aspects of trade. He is appointed by a Deed under Power of Attorney and has wide powers.

f.

Mercantile Agent: He represents someone in commercial and certain aspects of trade. Their duties are more or less similar to those of the factor agent

g. Auctioneer: He represents a principal in the disposal of real properties. They are usually licensed to sell properties of Mortgagors who have defaulted in payment. Auctioneer acts between the Vendor and the purchaser. He receives commission and invariably sells to the highest bidder.

h. Estate Agent: These deal in the acquisition of, valuation of and disposal of properties

i.

Del-Credere Agent: This is a mercantile agent who, in consideration of extra pay, that is del-credere commission guarantees to his principal that the 3rd

party with whom he enters into contract on behalf of the principal shall duly pay the sum becoming due under the contract. In effect a del credere agent is a surety of the person with whom he deals. This is just a form of guarantee which may not necessarily be in writing in order to be enforceable at law.

CREATION OF AGENCY It may be created in two broad ways namely:

(a) Expressly and (b) impliedly

- a. Express Creation:
 1. By deed - this involves issuing an authority in writing with the necessary instruction and attestation clauses. That is signed, sealed and delivered. This process is known as the granting a Power of Attorney.
 2. Oral instruction - This is agency by appointment, it deals with express authorisation of the principal to the agent to act for him
- b. Implied Creation
 1. Agency of necessity - This is created by act of person who normally had no authority but was compelled to reasonable act to protect the interest of the 3rd party especially during an emergency situation.
 - 2.

Agency by Estoppel: - This is a type of agency that can be inferred from the conduct of the parties. If the situation that exists suggests that parties want to create an agency relationship, either of the parties is stopped from denying the existence of such a relationship.

3. Apparent Agency - This occurs where a principal has not taken due precaution to prevent a situation where somebody portrays himself as having power to act as his agent.
4. Agency by ratification - This occurs where the principal having full knowledge of the fact, accepts the benefits of the contract entered into by his apparent agent.

Any act whether lawful or unlawful may be ratified provided it is not void. If it is voidable it is still capable of being ratified as long as it is valid. In *Brook v.*

Nook where an agent forged his principal's signature on a promissory note; it was held that the attempt at ratification was void. The principal must have capacity as at the date of the contract. In *Kelner v. Baxter* where a promoter tried to ratify some pre-incorporation contracts it was held that he could not succeed as the contracts predated the company.