

Sample essay on contract

[Law](#), [Criminal Justice](#)



Question one: Elements of a Contract

The law of contract is entertained under the Common Law as modified by Doctrines of Equity. Under the same, there are essential elements that constitute a contract and which go to the root of the contract. This is to say that failure in any of these elements necessarily renders the contract null and void. In this section, the paper shall discuss the elements of a contract necessary for to render the valid.

A contract essentially begins with an offer. This should be distinguished from an intention to treat. The latter does not lead to an offer but merely communicates the intention of the other party to receive an offer. However, an offer refers to the commitment to deliver a product or perform a service in return for a reward often given by the other party. In contract law, the one who offers is referred to as the offeror. For a contract to be valid, the offer has to subsist. The offer must flow from the offeror to the offeree. It is imperative to appreciate the fact that the offer must be voluntary and not forced or induced as a consequence of pressure or duress from the other party.

The offer is met by an acceptance. An acceptance flows from the recipient of the offer. The acceptance basically expresses agreement of the offer. It is the process by which the other party expresses his commitment to the contract. It is imperative that for an acceptance to be valid, it must not suppose or attempt to alter the terms of the contract as contained in the offer. This is to say that in acceptance, all a party has to do is accept without issuing any other terms. Otherwise, an alteration or modification of the terms of the offer results to a counteroffer and not an offer. The holding in Hyde v

Wrench is illustrative. In this case the offeree purported to accept an offer by altering the initial price of the offer. It was held that the same could not amount to an acceptance but should properly be considered a counteroffer. It is imperative to appreciate the place of the offer and the acceptance in the formation of the contract. For a contract to be valid the parties to the contract must be at consensus otherwise referred to as consensus ad idem. This refers to the meeting of the minds. In other words, the parties must both concur as to their intention and meaning in reaching the contract. The offer and acceptance prima facie demonstrate the meeting of the minds and the contract would be valid only if consensus is proved. It is the validity of the contract that supports the enforcement of the said contract by a Court of Competence jurisdiction.

The third element of the contract properly considered is the capacity. The same relates to the legal ability of the persons to enter into a contract. In defining and explaining what capacity entails, it is imperative to appreciate the spirit of the law in requiring capacity of parties to the contract. It should be appreciated that a contract is a private engagement which only involves the parties contracting. In that vein, under the doctrine of privity of contract, only parties to the contract can sue in seeking for the enforcement of the contract. In that context, the law requires that contracting parties are of full capacity to contract. Capacity is considered in two main spheres. These are in terms of age of the parties and in terms of the state of mind of the parties. In the former, the law imposes an obligation that only adults (persons who have attained the age of the majority) are competent to contract. However, it is imperative to appreciate the fact that minors are considered competent

in cases of necessities and in contracts which go to their personal benefits. It is essential that the two exceptions are considered with the parties being cognizant of the legal imperatives.

As to the latter, the law equally requires that the parties contracting must be in the proper state of mind whereby their commitments in the contracts can be enforced. Under the same, persons of unsound mind at the time of contracting the contract are considered incompetent. The same application applies to parties who at the time of entering the contract were drunk.

Another element that informs a valid contract is the consideration. This refers to the reward or detriment suffered by the offeree in return for the product or service given by the offeror. The consideration may not necessarily be in monetary form although in many cases it is in monetary form.

Lastly, there has to be a clear intention to form a legal contract. By this the parties in engaging must demonstrate that the contract is legal and binding. This is a construction that the court assesses by virtue of the facts of the case. Some of the factors suggesting a legal intention include the fact that contract had the other elements of contracts such as offer, acceptance and consideration.

Question Two: Breach of Contract

Under English law, breach of contract avails to the aggrieved party some remedies pursued in a court of competent jurisdiction. In event that Kim is to breach the contract, Choc Delux would consider the nature of the breach contract. The same may fall into either of the two categories. These are breaches that go to the root of the contract and breaches of mere warranties

of the contract. For the former, the breach necessarily repudiates the contract. The aggrieved party, in this case Choc Delux, would stop dispensing their part of their bargain and sue for damages for the inconveniences and losses incurred thereof under Common Law. On the other hand, the aggrieved party may sue for specific performance whereby Kim is forced to discharge her part of the bargain under the Doctrines of Equity.

However, where the breach is a breach of mere warranties, Choc Delux would continue with discharge of their end of the bargain and then sue Kim for breach of conditions requiring the remedy of damages. Therefore, the difference though subtle, lies in the fact that in the former, Choc Delux are relieved of their duties in the contract by the said breach while in the latter, Choc Delux must proceed with the discharge of their end of the bargain then seek the assistance of the Court in enforcing the contract. The beauty of Contract law is that no party would be allowed to suffer a wrong without a remedy, a trait that the Doctrines of Equity invented for purposes of ensuring justice and fairness to contracting parties.

Bibliography

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