

Bilateral and unilateral contracts law contract essay

Law



CONTRACTA contract is an agreement having a lawful object entered into voluntarily by two or more parties, each of whom intends to create one or more legal obligations between them. The elements of a contract are " offer" and " acceptance" by " competent persons" having legal capacity who exchange " consideration" to create " mutuality of obligation." (Wikipedia, n. d.)In simple words a contract is an agreement between two or more persons as well as entities whereby they set their responsibilities and duties towards each other in a proper documentation form. Furthermore it is a piece of document that is enforceable by the law. A contract comprise of four vital elements. First of all, there must be an offer made by the offer to the offeree. Then there should be an acceptance to the terms and conditions of the offer in a clear manner by the offeree. The next step comes the intentions of both parties to enter into a contract. Both the parties must not be forced or pressurized to enter in to a contract. It should be their free will to bind themselves in a contract. Lastly, there must be a consideration which is the assigning of the monetary value to the contract. Hence there should be an agreed price contained in the contract and not mere promises made to one another. (Small Business Development Association, n. d.)Not only the points mentioned above contributed towards a valid contract being made but also other factors are also equally important such as the mental condition of a person. As well as the person should not be a minor, drunk at the time of the contract. There should not be undue influence or pressure imposed on a party to enter in to a contract. Otherwise such contract will not remain valid as far as law is concerned. Hence, the validity of the contract must be maintained to keep it enforceable. There are various different types of

contacts. Some of them are: Bilateral and Unilateral Contracts Executed and Executory Contracts Void and Voidable Contracts Adhesion Contracts Express Contracts Implied Contracts

BILATERAL AND UNILATERAL CONTRACTS These contracts are also called reciprocal contracts. They involve fulfilling of the promises by each party in future. Hence it is a mutual obligation contract and the contract will be fulfilled once both parties carry out their respective obligations. It is also said to be a two-sided contract. (Yahoo Voices, 2006) On the other hand unilateral contract is a one-sided contract. The promise has been made by one party in the contract. For example A promises to pay B a reward if he finds his dogs. B is not under any obligation to find the dog but if he does A will be required to fulfill his promise of the payment of reward. Under such contracts the offer can be extended to a large number of people. The most common example would be of an insurance contract where the offer is made to pay compensation if something happens to the offeree. (Law Exams, n. d.)

EXECUTED AND EXECUTORY CONTRACTS Executed contract is when there is no further obligation left for both parties to perform. The contract is executed at the time it has been made for example contract relating to sales of an article. As soon as the sales take place the contract is finished. Whereas under the executory contract there is still some obligation left to be done. Hence the contract has not been fully performed. For example building a house that would require six months is an executory contract dependent on the obligation that would be fulfilled in six month time. (The Law Dictionary, n. d.)

VOID AND VOIDABLE CONTRACTS A void contract is not a valid contract so it is not enforceable by the law. A void contract is considered illegal and

taken to be no existent in the eye of law. Hence it is a no contract situation (as if the contract was never made) where the parties cannot use this contract to sue each other for damages and compensation. (Legal Match, 2011) On the other hand voidable contract is a valid contract and usually one party is bound to fulfill its obligation and the other party has the right to cancel the contract who has the legitimate powers. A contract is voidable under the circumstances that fraud has taken place or there has been a misrepresentation of information or undue influence of one party. (The free dictionary, n. d.)

ADHESION CONTRACTS These are standard form of contracts according to which goods and services are provided to the customers on the basis of 'take it' or 'leave it'. Hence the bigger party has the bargaining power and the weak party has no say in such type of contract. Hence the weaker party cannot negotiate its terms and conditions. If the conditions does not appeal to the customer then he would have to let go the product. Adhesion contracts are mainly found in consumer goods sector. (The Free Dictionary, 2008)

EXPRESS CONTRACTS Under the express contracts the terms and conditions are clearly stated out and in a proper writing. The contract reflects the clear intentions of both parties. As their specific clauses are entered in the contract. If an express contract is formed between the parties the law will not accept and alternate or substitute to the promise mentioned in the contract. (US Legal, n. d.)

IMPLIED CONTRACTS Implied contracts are the conditions that are not mentioned orally or in writing in the contract but are enforceable. In other words the contract does not explicitly show some of the conditions but when a situation arises it is assumed that both parties would mutually agree to the implied terms. The most common

implied contract is that of an employee where it is implied that the employer cannot fire without showing a good reason to fire. (Shegerian & Associates, Inc, n. d.)

BALANCE OF RISK Risk is associated with the occurrence of unforeseeable event in the future. Most such uncertainty is present in the external environment in which the business is operating. Not all the risks can be quantified which leaves the parties in the contract exposed to risk. So risk assessment experts are hired by businesses to modify the existing contracts and help in formation of new contracts. Such professional people point out the potential risk a business might face and make adjustments in the contract accordingly. (MAHLER, n. d.)

In order to assess the risk the analysis of various factors should be done and the factors having potential serious implications on the business should be identified. Risk modelling should be done keeping various situations in mind. To mitigate the risk contract are used as favorable clauses can be included in case of uncertain event. The risk or loss of one party can be in favor or advantageous for the other. So the balance of risk can be maintained by obtaining greater negotiation or bargaining power. More say in the contract would help the party to avoid risk in future as the terms that go in its favor will be included. Apart from this other arrangement could be made to balance of the risk such as both parties could mutually decide to share risk if some uncertain situation occurs. Therefore it depends upon the understanding of the parties in terms of what powers are given to one another that could be utilized in future. Hence the negotiation power is the key to attain balance of risk in a contract.

APPLICATION OF CONTRACTS In today's era the contracts are back bone of each business, company or any party involved in any kind of transaction. As

there are various threats and risk a business has to face so in order to mitigate those risks for that reason contracts are used which provide protection to the business. For example a partnership business operating in a telecom industry would need to devise various contracts. First of all there must be contract amongst the partners identifying one another's responsibilities, duties, contributions and profit and loss sharing ratios so that there is no dispute in the ownership of the business. Secondly, contracts with employees are required so that they are bound with the company for a reasonable amount of time which provides the business security when it comes to human resource. Sub -contractors or persons to whom the work has been outsourced are also eligible for contracts so that the quality is not compromised. Most importantly contracts with the government and regulatory authorities should be made carefully. As these contracts would enable the business benefit in political uncertainty and licensing issues in future. Last but not the least the consumers will also have to sign a contract weather it could be in the form of a disclaimer so that the business is on the safer side if some unseen dispute occurs with the client. **ARBITRATION**

CLAUSE AND ITS EFFECTIVENESS Arbitration is a clause whereby both parties choose to settle down a dispute outside the court in the event of breach of contract. This is based on mutual agreement of both parties so one party cannot be force to arbitrate if it does not agree to it. When arbitration is to take place an arbitrator is appointed by the consent of both parties.

Arbitration gives both parties the autonomy to deal with their matter in their own way in terms of providing them flexibility. The arbitration clause ensures the privacy of the parties which otherwise would become public if court were

involved. Secondly the procedure becomes much shorter as compared to the normal court proceedings. Then arbitration is less costly than the other route where lawyers are to be hired that demand high price. (Merriam Webster, n. d.) Along with this another advantage of arbitration is biasness or neutrality. The judges are sometime reported to have favored one party and discriminated against the other. Whereas an arbitrator is a neutral personality eh is assumed to give a fair judgment. This is also backed by the fact that the appointment of the arbitrator is done via consent of the parties so the issue of biasness is removed. (The World Business Organisation, n. d.) Moreover the judgments under arbitration cannot be appealed again or violated by not accepting it. The judgment is binding and has to be honored. A party cannot run away if the decision is not in its favor. This is in contrast to the regular court proceedings where the party has the right to appeal and reopen the matter once again. (The World Business Organisation, n. d.) A typical arbitration clause that should be included in a contract must contain the consent of both parties to resort to arbitration in case of dispute. Then the number of arbitrators to be appointed should be decided first whether one or two shall be appointed. The location where the arbitration would take place should be decided. In other words the city must be selected first. Language also plays an important role if the contract parties are from different regions so the language used in arbitration must be decided initially. The law under which the dispute will be resolved should be identified beforehand in the arbitration clause. (LCIA, n. d.)

ARBITRATION BODIES

The arbitration bodies are responsible for carrying out arbitration among the parties. There are various arbitration bodied across the world some of them

are mentioned below. The Arbitration and Dispute Resolution Institute – This is a body from Oslo handling disputes nationally and internationally. It basically deals in commerce, industry and shipping contract issues. (Virtual Library, n. d.)City Disputes Panel – This is an arbitration body from the UK and basically focus on financial service industry and commercial operations. (Virtual Library, n. d.)The London Maritime Arbitrators Association- This is also a UK body dealing in arbitration of shipping industry. (Virtual Library, n. d.)National Arbitration Forum- This is an arbitration body of USA. It basically deals in employment and insurance contracts. (Virtual Library, n. d.)