

LAW OF CONTRACT

- The law of contract is about the enforcement of promises. Not all promises are enforced by courts. To enforce a set of promises, or an agreement, courts look for the presence of certain elements. When these elements are present a court will find that the agreement is a contract.
- To say that we have a contract means that the parties have voluntarily assumed liabilities with regard to each other. The process of agreement begins with an offer. For a contract to be formed, this offer must be unconditionally accepted.
- **Contract** : “ A contract is an agreement which the law will enforce as affecting the legal rights and duties of the parties involved” (Sagey, Nigerian Law of contract).
- **Nikki Tobi** defines Contract as “ an agreement between two or more persons which creates in the parties reciprocal legal obligations to do or not to do particular things.”

Not all agreements are enforceable in law; for example social or domestic agreement

Classification of Contracts

- *Formal and simple Contract*: This contract involves written documents, signed by parties, sealed. It does not necessarily involve consideration once it is signed and sealed except they agree on consideration. Example giving an equipment or possession free of charge to another party there is need to be a complete agreement with seal.

Simple contract: example a contract between a book seller and the buyer.

Express or Implied contract: The terms of an express contract are clearly stated by the parties either in writing or orally, e.g a person going to a destination and when gets to motor park enters without questions into the bus going to where he intends to go; and the driver collects the fare. Buying things through a vending machine; also at the supply of an article, having received it you are paying.

Bilateral and unilateral contracts

Bilateral contract is an exchange of promises, though the promises may still remain unperformed. When the promises are yet to be performed the consideration involved is also said to be executory i.e. futuristic.

Unilateral contract consists of actual performance of an act in return for a promise e.g. 'will you go to Benin on my behalf; the person making this request does not need a letter of acceptance to go, all he needed is action and eventual evidence to show the other party has gone and come. It could be a promise for a particular obligation (offer) made by someone to the whole world.

A statement of intention

In this instance, one party states that he intends to do something. This differs from an offer in that he is not stating that he will do something. The case of *Harris v Nickerson* (1873) illustrates this point. The auctioneer's advertisement was a statement that he intended to sell certain items; it was not an offer that he would sell the items.

A supply of information

In this instance, one party provides information to another party. He supplies the information to enlighten the other party. The statement is not intended to be acted upon. See *Harvey v Facey* (1893) where one party telegraphed, in response to the query of the other, what the lowest price was that he would accept for his property.

Formation of Contract

A contract is valid if and only if it has the following elements:

- a) Offer,
- b) Acceptance,
- c) Consideration, and
- d) Intention to enter into legal relations.

A. Offer

An offer is an expression of willingness to contract on certain terms. It must be made with the intention that it will become binding upon acceptance.

- An offer could be defined as "a definite undertaking or promise made by one party with the intention that it shall become binding on the party making it

as soon as it is accepted by the party to whom it is addressed”. It is a definite proposal made by someone and the intention accepted by another.

- The person making the offer is called offeror, while the person to whom it is made is called the offeree. An offer could be made expressly or impliedly.

An Invitation to Treat: While an offer is a definite clear and final declaration of a contracting party’s intention to be bound based on certain terms, an **invitation to treat** is not “an offer but **a mere offer to receive offers, an offer to negotiate** or “**an offer to chaffer**”. An invitation to negotiate or enter into some dialogue with people to make offer through the submission of tender.

The following transactions illustrate an invitation treat:

- a) *Auctions:* The request of an auctioneer for a bid is not an offer but an invitation to a treat.
- b) *Display of Goods in a shop:* When a shop owner displays goods in a self – service shop, a supermarket, or shop window, he does not thereby offer the goods for sale, but inviting the public to come and offers. It is when you are interested in buying that you make an offer to the buyer.
- c) *Advertisement of Goods in Catalogue:* Goods that are showcased in catalogues for buyers to see is an invitation to treat.
- d) *Invitation to tender:* *This is a mere invitation of offers, and the tender that is submitted is the offer that the advertiser is free to accept or reject.*
- e) *Buses, taxi and trains:* *The passenger’s entry into a bus is the acceptance of the offer that the bus or taxi driver made when he stopped at the bus stop.*
- f) *Invitation to subscribe shares in a public company:* *The potential subscriber makes the offer that the issuer is free to accept or reject. Otherwise the issuer would be bound to sell to every one who had applied for shares in the company, irrespective of the number of shares available for sale or subscription.*

