**LAW OF CONTRACT.**

**COURSE CODE:CPE 505**

**COURSE TITLE: ENGINEERING LAW**

**NUMBER OF UNITS: 2 Units**

**COURSE DURATION: 4 hours per week.**

**COURSE LECTURER:**

**TOPIC: Law of Contract.**

**INTENDED LEARNING OUTCOMES**

At the completion of this topic, students are expected to:

1. Know what the Law of Contract entails

2. Know the classes of contract.

3. Elements of a valid contract

a. Offer

i. Offer distinguished from invitation to treat

ii.Auctions

iii.Display of goods to sale and advertisement.

b. **ACCEPTANCE**:

1. Counter offer

ii. Cross Offer

iii. Conditional Acceptance

iv. Acceptance in Ignorance of offer

v. Communication of acceptance

c.

i. Stare Decisis

ii. Ratio decidendi

iii. Obiter dictum

iv. Hierarchy of courts

d. Customary/ Islamic law.

3. Answer questions on the topics in the interactive session.

**COURSE DETAILS:**

**RESOURCES**

**Lecture time:**

Monday 10:00 am-12:00 noon.

Law of Contract by Lawrence Atsegbua

Law of Contract by Edoba Omoregie

Law of Contract by Itse Sagay.

**LAW OF CONTRACT**

**Introduction.**

The modern law of contract was developed between the eighteenth and nineteenth century, replacing the classical law of contract which was influenced by the principle of **Laissez-faire** (freedom of Contract).

Under the principle of Laissez-faire parties to a contract had the unlimited freedom of entering into contract of any kind. It was under the principle of laisez-faire that the principle of santity of contract and freedom of contract was built. This principle gave parties the right to the terms and ambit of contract. Judges however took side with the principle by placing emphasis on the freedom of the contracting parties to fix the terms of their contract.

Towards the twentieth century, commercial activities increased, and the principle of freedom of contract was no longer sufficient to cater for the nature of contract that evolved, hence the need for legislative control for contract came about. Legislature came in to redress some imbalance in the bargaining powers between the parties. The intervention of legislature wasn’t to determine the terms of the contract , but on specific grounds such as misrepresentation, illegality and undue influence.

This was the position in the case of A.G Akwa Ibom State v. A.G Abia State it was held

That where parties have entered into a contract or agreement voluntarily without fraud, mistake, deception or misrepresentation they are bound with such agreement this is because a party cannot resile from a contract just because he later found out that the condition of the contract or agreement are not favourable to him.

**Definition of Contract.**

Contract is an agreement which the law will enforce or recognise as affecting the legal rights and duties of the parties.It could also be defined as an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.It is important to note that not all agreements are enforceable at law, illegal, social and domestic agreements are not enforceable at law.

Simply put that a contract is not merely an agreement between two or more parties but one which is legally enforceable, that is an agreement that can be enforced by the courts. While all contracts are agreements, not all agreements are contracts.

**Classification of contracts.**

A contract can be classified into three angles .

1. A contract under seal or formal contracts and a simple contract: a contract under seal derives its validity from its form and it is enforceable in the absence of consideration. An agreement for the conveyance of land must be under seal. While a simple contract are all other contracts apart from contracts under seal, they may be in writing or parol but they however need consideration for it to be enforceable.
2. Bilateral contracts and Unilateral: a bilateral contract is an exchange of promises,it consist of the offeror promising to do something in return for the offeree’s promise. If G invites tenders for the building of his house, and he accepts R’s tender it means G promises to pay R the sum that is accruable to the contract if he meets the require specification. At his stage all what we have is mere exchange of promise which is an executor contract. While unilateral contract is a promise on one side the performance of an act on the other side. Example is the famous case of Carlil and Carbolic Smoke Ball co. unilateral contract is well illustrated by reward cases example is reward to find a lost one, pet or property or better still promotional adverts by soft drinks company.
3. Express and Implied contracts: a contract is said to be express when the terms of the contracts are clearly spelt out and in most time reduced into writing while an implied contract is such that the terms are not clear but the existence of a contract would be construed from the conduct of the parties. A passenger usually enters a bus without dialogue with the driver but his conduct implies he would pay his fair.

**Elements of a valid contract**

A contract comes into existence when parties to the contract have reached a concrete agreement. An agreement is reached when one party accepts the offer made by the other. That is to say, in forming a contract, the elements of a valid contracts offer, acceptance and consideration are basic and the intention to create a legal obligation and capacity to enter into contract can be added to the element but it is important to note that it is not as basic as the other three earlier mentioned.

**Offer:** An offer is a definite statement by one party communicating the terms on which he will contract with the other party to whom the statement is made**.** An offer is a basic requirement for the formation of a contract. One of the elementary rules for the law of contract is that there must be a definite offer by the offeror to theofferee with the intention that the terms becomes binding as soon as they are accepted by the offeree. In **Brodgen v. Metropolitan Railway co.** the plantiff made an offer to the defendant in writing requesting the later to sign and return the letter containing the letter, the defendant never did this but went ahead to perform the contract on those terms as stipulated by the contract. It was held that there was a contract which was accepted by the conduct of the defendant

**Offer distinguished from invitation to treat**

It’s a preliminary step in negotiation which may lead to an offer. It is important to note the an invitation to treat is not an offer but a phenomenon that is preliminary to the offer it is not capable of being accepted. Examples of an invitation to treat are display of goods on shelves, adverts for shares, adverts in newspapers and promos by companies. **Berliet Nig Ltd v. Francis** the respondent who was the branch manager of the appellant company received a letter from the Lagos branch manager stating the fact that staff of the company were to hold 10% of the company’s share upon which the Benin branch manager sent the sum of #5000 apply for share subsequent upon which receipt was issued but shares was not allotted to him he sued the company for specific performance.it was held that the managing directors letter to the branch manager wasn’t an offer but an invitation to treat, however it was his reply and the payment of #5000 that constituted and offer which wasn’t accepted.

**Auctions**

An auctioneers request for a bid is not an offer but an invitation to treat, the bid is an offer while the fall of the auctioneers hammer is what constitutes an acceptance. A notice for an auction sale which did not hold cannot impose liability on the auctioneer. In **Payne v. Cave** it was held that that the bid which constitutes the offer is accepted by the auctioneer when the hammer falls in the customary way.

**Display of goods to sale and advertisement.**

Display of goods on a shelve in a self-service shop is not an offer but an invitation to treat, the customer makes an offer to buy them when he carries the goods to the cash desk where the shop keeper may accept or reject it. **Timothy v. Simpson** it was held that the display of goods in a shop window is not an offer to sell the goods but an invitation to a customer to make an offer to buy the goods.

**Tenders**

**Sale of shares**

**Contract of vehicular conveyance**

**ACCEPTANCE**:

An offer emanating from an offeror must be accepted by an offeree for there to be a valid contract. Acceptance is the final and unequivocal expression of consent to the terms of an offer that must be communicated to the offeror either expressly or by the performance of the act demanded by the offeror. The acceptance of an offer is a pre-requisite to the formation of a binding contract, of which the absence of an acceptance may cause the offer to lapse or be revoked by the offeror. But if the offer is however accepted, then a binding and complete contract is formed. It is important to note that acceptance is only possible while the offer is still in force, that is before the offer has lapsed, been rejected or revoked. In **Neale v Merret** the defendant offered land to the plaintiff $280. Plantiff replied accepting and enclosing $80 with a promise to pay the balance by monthly instalment of $50 each month. It was held that there was no contract between the parties as there was not an unqualified acceptance by the plaintiff.

**Counter offer** is a matter of principle of acceptance that it must conform with the offer, where the offer is modified, varied or new terms are added, a counter offer is said to have been made. Counter offer effectively cancels the previous offer and then becomes the new offer. This was the position in **Bilante International Ltd v. NDIC** it was held that an offer must be accepted unconditionally and unqualified. An offer is impliedly rejected if the offeree instead of accepting the original offer makes a counter offer which varies the term proposed by the offeree.

**Cross Offer**

A cross offer would arise where two parties make identical offer to each other usually through distance communication maybe by post or fax. Since a contract can only subsist when there is consensus by the parties, it is only proper to say cross offer brings about two identical offers.

**Conditional Acceptance**

Mere acceptance may not conclude a contract because of an attempt to place a condition for accepting the term of the offer. For sale of land, parties usually expect that a deal is struck when a deed evidencing the purchase is prepared. It then means whatever oral agreement they must have reached is “subject to contract” in **Winn v. Bull** the defendant agreed to take the lease of a house subject to the preparation and approval a lease agreement the court held that the contract was inchoate subject to the agreement.

**Acceptance in Ignorance of offer**

This arises where a person accepts an offer unknown to him. In a celebrated case of **Gibbon v. Proctor**  the defendant gave police officers information that would lead to the arrest of a person who assaulted an under aged girl prior to the publication of an handbill offering a reward to anyone who provides the information. It was held that the plaintiff was entitled to the reward.

**Communication of acceptance**

Acceptance is only effective when communicated to the offeror in such form as stipulated or ascertainable in Union Bank of **Nigeria plc v. Prof A.O. Ozigi** it was held that an acceptance of an offer may be demonstrated in three ways

By conduct of the parties

By their words

By conducts that have passed between them.

**Acceptance by post:** where an offer is accepted by post, the acceptance takes effect the moment the letter was accepted. **Adams v. Lindsell**

**Revocation of acceptance**: Acceptance can be revoked at any time before it gets to the offeror

**Termination of offer**: an offer may come to an end under the following circumstance. It may be revoked, it may lapse, it may be rejected or it may come to an end by the death of the parties.

**Revocation**: an offer can be revoked before it is accepted in **Amana Suits Hotel v. PDP** it was held that when revocation is made before acceptance there is no liability on the part of the offeror.

**Lapse of time**: An offer which is stipulated to last for a certain period cannot be said to have been accepted after the expiration of the stipulated time**.**

**Rejection**: when an offer is out rightly rejected, it amounts to termination.

**Death of either Party**: the death of either party to the agreement puts an end to the agreement. Where the offeree has knowledge of the offeror’s death he cannot accept the offer.

**CONSIDERATION**

Consideration is one of the essential ingredients in the formation of a contract. As a general rule, a contract is not binding or enforceable unless it is made by deed (under seal) or backed with consideration. Consideration must move from the promisee is based on the doctrine of reprocity.

In ***Currier v. Misa***

A valuable consideration in the eye of the law, may consist either of some right, interest, profit or benefit accruing to the one party or some forbearance, detriment loss or responsibility given suffered or undertaken by the other, thus consideration does not only consist of profit by one party, thus also exist where the other party abandons some legal rights in the present or limits his legal freedom of action in the future as an inducement for the promise for the first. So it is irrelevant whether one party benefits but enough that he accepts the consideration and that the party giving it does thereby undertake some burden or loss something which in contemplation of law may be of value.

**Executed and Executory Consideration:**

Consideration is said to be executed when the act constituting the consideration is completely performed at the time of the contract. Consideration is said to be executor if it’s a promise for a promise or a promise for an act done by another provided they are in respect of one bargain.

**Past consideration:**  where an act by the plaintiff was completely performed before the promise by the defendant.

**Intention to create Legal Obligation:** the general rule guiding the law of contract is that in **social and domestic agreement**, there are no intention to create legal obligations except a contract is proved between the parties. In Balfour v. Balfour it was held that a promise of maintenance allowance by a husband to his wife was not binding as it lacks the intention to create legal obligation.

**Collective Agreement:** CA between Trade Unions and employers association are not intended to create legal relations

**Commercial Agreement:** intention to create legal relation is often presumed in commercial transaction unless rebutted by either party.