

BUSINESS LAW

Basic contract law

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Obligation

An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

It can stem from:

- contract
- tort (causing damage)
- unilateral declaration
- law
- court decision
- etc.

Contract

This materia is based on:

The Principles on European Contract Law

Basic principles (of the Principles :)

- parties are free to enter into a contract and to
- determine its contents,
- subject to the requirements of good faith and fair dealing, and the mandatory rules established by the Principles (mandatory rules of national law(s) should be also taken into account)
- duty to cooperate

Formation of the contract

Offer >> acceptance

Conditions for the Conclusion of a Contract

A contract is concluded if:

- (a) the parties **intend** to be legally bound, and
- (b) they reach a sufficient **agreement** without any further requirement

A contract **need not be concluded** or evidenced **in writing** nor is it subject to any other requirement as to form

The contract may be proved by any means, including witnesses

Offer and Acceptance

A proposal amounts to an **offer** if:

- (a) it is intended to result in a contract if the other party accepts it, and
- (b) it contains sufficiently definite terms to form a contract

An offer may be made to one or more specific persons or to the public

A proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted

Any form of statement or conduct by the offeree is an **acceptance** if it indicates assent to the offer.

Silence or inactivity does not in itself amount to acceptance

Time of conclusion of the contract

If an acceptance has been dispatched by the offeree the contract is concluded when the acceptance reaches the offeror.

In case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror (or practices which the parties have established between themselves)

Invalidity of the contract

Fundamental **Mistake** as to Facts or Law

A party may avoid a contract for mistake of fact or law existing when the contract was concluded if:

the mistake was caused by information given by the other party; or the other party knew or ought to have known of the mistake and it was contrary to good faith and fair dealing to leave the mistaken party in error; or the other party made the same mistake, and the other party knew or ought to have known that the mistaken party, had it known the truth, would not have entered the contract or would have done so only on fundamentally different terms

Fraud

A party may avoid a contract when it has been led to conclude it by the other party's fraudulent representation, whether by words or conduct, or fraudulent non-disclosure of any information which in accordance with good faith and fair dealing it should have disclosed

A party's representation or non-disclosure is fraudulent if it was intended to deceive

Invalidity of the contract

Threat

A party may avoid a contract when it has been led to conclude it by the other party's imminent and serious threat of an act: which is wrongful in itself, or which it is wrongful to use as a means to obtain the conclusion of the contract

Unfair Terms not Individually Negotiated

A party may avoid a term which has not been individually negotiated if, contrary to the requirements of good faith and fair dealing, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of that party, taking into account the nature of the performance to be rendered under the contract, all the other terms of the contract and the circumstances at the time the contract was concluded

Invalidity of the contract

The contract is invalid (null and void) if:

- illegal
- immoral
- there is lack of capacity

Interpretation

A contract is to be interpreted according to the common intention of the parties even if this differs from the literal meaning of the words

If an intention cannot be established, the contract is to be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances

Thank you!



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