

INTRODUCTORY ENGINEERING/ CONSTRUCTION CONTRACT LAW

Contract is a legally binding agreement made between two or more parties by which rights are acquired by one or more to acts or forbearances on the part of the other or others. The basis of law of contract is agreement. An agreement bringing with it obligations which are able to be enforced in the courts if it becomes necessary. Parties to contract are persons competent and qualified in the eye of the law to enter into contract. They are natural persons such as individuals while artificial persons are the corporate entities that are duly registered and or incorporated with the Corporate Affairs Commission (CAC).

Building Contract is a contract under which one party called the contractor agrees for valuable consideration to undertake to carry out work for another party called the Employer (Client or Owner) involving design(where applicable), fabrication, erection, alteration, repair range of contracts ranging from agreement to construct a building to work such as roads, culverts, bridges, railway, docks, canals, repair of a house roof contract and similar constructions. In **Modern Engineering(Bristol) Ltd v. Gilbert Ash-Northern (1974)** AC 689 Lord Diplock described contract as “ an entire contract for the sale of goods and work and labour for a lump sum price payable by instalment as the goods are delivered and the work done. Decisions have to be made from time to time about such essential matters as to matters as to making of variation orders, the expenditure of provisional and prime cost sums and the extension of time for carrying out of the work under the contract”.

ELEMENTS OF A CONTRACT

1. There must be an agreement. One cannot agree with himself. One will make an offer while the other will indicate its acceptance. When offer and acceptance correspond in every respect, there is an agreement between the parties. An advertisement is normally intended to be an invitation to treat that is, to negotiate. Further more, a shop keeper who displays goods in his window with a ticket on them stating a price, does not make an offer but merely invites the public to make an offer to buy the goods at the price stated. Therefore, if a customer tenders the price to collect the goods, the shop keeper is not under any obligation to sell it to him. The demand of the customer is the offer which the shopkeeper is free to accept or reject as he pleases. In **Pharmaceutical Society v. Boots Cash Chemist (Southern)1953 1QB 401** Held the contract was made, not when the customer put the goods in the basket, but when the Cashier accepted the offer to buy and received the price.

Invitation to treat is a declaration of intention that he intends to do a thing gives no right of action to another who suffers loss because the former does not carry out his intention. Such a declaration only means that an offer is to be made or invited in the future and not that an offer is made now.

How an Offer is made: The offer may be express or implied from conduct. The person making the offer is called the offeror while the person to whom it is made is the offeree. An offer may be made to the whole World at large, to a definite person or to some class of persons. An offer to a definite person can only be accepted by that person and by no one else. An offer to the World at large can be accepted by any one. A member of that class can only accept an offer to a definite class.

In **Carlill v. Carbolic Smoke ball co. (1893) 1QB 256**. Carbolic Smoke ball co. offered by way of reward #100 (pounds) to any one who contracted influenza after using their smoke ball as prescribed; the offer stated that they had lodged #100 with the “Alliance Bank, showing sincerity in this matter”. Mrs Carlill used the smokeball as prescribed but, but not withstanding, contracted influenza. She claimed the #100. Held the company was bound to pay; an offer made to the whole World can ripen into contract with any body who comes forward and performs the condition; the advertisement can not be said to be a “puff” since the company had lodged #100 to meet the obligation; the performance of the condition was a sufficient acceptance without notification and finally the inconvenience of applying the smokeball to one’s nostrils as prescribed was sufficient consideration. An offer must be communicated see the case of **Adam v. Lindsell**.

Lapse of Time : Death of either offeror or offeree before acceptance

Revocation of offer before acceptance: **Bryne v. Van Tienhoven** where it was held that revocation was of no effect until it reached B, and a contract was made whe B telegraphed .

Rejection of Offer: if the offeree communicates his rejection to the offeror; if the assent of the offeree is qualified or is subject to conditions.

Acceptance must be absolute and unqualified and must be communicated.

TENDERS: A tender is an offer. The acceptance of a tender has different legal results, depending on the terms of tender which are accepted. These terms may be qualification or qualified, conditionals, subject to contracts.

A contract is an agreement freely entered by the parties and may be terminated by any of the contracting parties with good or bad or no reasons at all. **FGN V. Zebra (2002) 125CNJ 330 @ 352** The word “condition” as used in the letter of offer, can have no other meaning than non-technical one as the dealings between the parties after acceptance of offer render those conditions to mean “terms”. **Alfotrin V. AGF (1996) 9NWLR (pt. 476) 634,656,657 referred in FGN V.Zebra (supra) at 354. (Anyah V. Imo Concorde Hotels [2002] – plastic disc lost his car in the hotel**

QUERY: The appellant was at all material times accredited distributor of Anambra State Motor Manufacturing Co. Ltd. Both appellant and representative entered into a contract for the sale and delivery of two Mercedes Benz Trucks by the appellant to the representative.

The cost of each car was ₦840,000. The receipt paid ₦1,692,519.40 being the cost of the two trucks to the appellant bank by a bank draft made in favour of the manufacturers. The money was directly remitted to ANAMCO who delivered the two trucks to the appellant on 13/4/93 at the rate of ₦546,259.20 per truck. The appellant by a letter dated 31/3/93 informed the respondent that the prices of the vehicles had been reviewed upwards to ₦1,500,000.00 per truck and requested the respondent to remit additional sum to make up the increased price. Instead of directing the two trucks to the respondent the appellant sold them to a third party, Leventis on the pretext that the respondent did not pay the additional sum requested by the appellant. The respondent claimed that the money which he paid for the trucks was raised from his banks and he was charged interest at the rate of 35% from 1993 to 1994 and 21% thereafter and that the price of the trucks had gone up to ₦3,000,00.00 per truck. **SABRU MOTORS LTD**

V. RAJAB LTD (2002) 4SCNJ 370 Section 51 Sales of Goods Act (SGA) provides as follows:

51 (1) Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may maintain an action against the seller for damages for non-delivery.

(2) The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of event, from the seller's breach of contract.

(3) Where there is an available market for the goods in question the measure of damage is prime facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver considered and damages.

The Supreme court held, that by provision of S.51(3), SGA 1893 and there being an available market for the type of vehicles at the time of breach, the measure of damages is to be determined by the difference between the contract price and the market or current price at the time when the vehicles ought to have been delivered or, if time was fixed, then at the time of the refusal to deliver.

Formation of Contract

- i. **Elements of a valid contract:** offer, an unqualified acceptance of that offer and legal consideration. There must be a mutuality of purpose and an intention. Capacity and legality are equally fundamental for a valid contract. The two contracting parties must agree. *Tsokwa Motorss (Nig) Ltd V. Union Bank of Nig. Ltd., Neka V. ACB Ltd referred.*
- ii. **Meaning of offer and how it can be converted into a contract:** An offer is an expression of readiness to contract on the terms specified by the offeror which is accepted by the offeree, will give rise to a binding contract. In other words, if it is by acceptance that the offer is converted into a contract see *UBA V. Tejumola & Sons Ltd.*
- iii. **Nature and effect of a counter offer:** A counter offer by the offeree operates as a rejection of the original offer, thus terminating it. Where there is a counter offer or qualified acceptance, it does not give rise to a binding contract between the parties.
- iv. **Contract relating to land must be in writing:** By virtue of Section 4 of Statute of Frauds 1677 but where there is no document or evidence in writing signed by the parties the contract is invalid.

QUIZ

Gideon undertook to find a buyer for Aisha's property located at No.4 Shiroro Road Minna, Niger State. In order to convince a prospective buyer of the genuineness of the transaction, asked for and received from Aisha title documents in respect of the land. Aisha informed Gideon of the selling price fixed of ₦1million. Ene indicated her interest and agreed to pay ₦800,000 which price Aisha accepted and agreed to sell.

Later Aisha received a cheque for ₦600,000 on the understanding that the ₦200,000 will be paid within a week of receipt of the cheque. Aisha demanded for his title documents and that he was ready to refund the ₦600,000 which he ordered Ene to come and collect the ₦600,000 already paid. Ene did not turn up for her money but proceeded to commence renovation of the property.

Statement preliminary to an offer involves:

- a. Invitation to treat b. A declaration of intention

See the case of **Pharmaceutical Society V. Boots Cash Chemists** (1953). QB 40 An offer may be implied or express ii. All offers must be communicated

Lapse of Offer:

- i. On the death of the offeror or the offeree before acceptance
- ii. By non-acceptance within the revocation time prescribed for acceptance by the offeror
- iii. When no time for acceptance is prescribed by non-acceptance or within a reasonable time.

Revocation of offer:

- i. An offer may be revoked at any time before acceptance
- ii. Revocation does not take effect until it is actually communicated to the offeree i.e. the revocation must actually have reached the offeree.

In the case of *Bryne V. Van Tienhoven*: A, of Cardiff, by a letter of October 1 offered to sell goods to B in New York. B received the offer on the 11th and immediately telegraphed his acceptance. On the 8th, A wrote revoking his offer, and this was received by B on the 20th. Held, the revocation was of no effect until it reached B, and a contract was made when B telegraphed.

See also *Henthorn V. Fraser* F. handed to H a written option on some property at \$750. The next day F. posted a withdrawal of the offer. This was posted between 12:00noon and 1:00pm and did not reach H. until after 5:00pm. In the meantime H. at 3:50pm had posted an acceptance.

Held (1) Although the offer was not made by post, yet the parties must have contemplated the post as a mode of communicating acceptance; (2) F's revocation was of no effect until it is actually reached H. and did not operate from the time of posting it. (3) A binding contract was made on the posting of his acceptance: *Heathorn V. Frase*

REJECTION OF AN OFFER:

- i. If the offeree communicates his rejection to the offeror;
- ii. If the assent of the offeree is qualified or is subject to conditions. This qualified or new condition changes the initial offer and as such revokes the entire offer or negotiation. This is called Counter Offer.

TENDER: A tender is an offer. The acceptance of a tender has different legal results, depending on the terms of tender, which are accepted. These terms may be qualification or qualified, conditionals, subject to contracts.

FUNDAMENTAL REQUIREMENTS OF PROCUREMENTS:

The Public procurement (Due Process) Act 2007 provides the requirements for all bidders with regard to public procurement of goods, supplies and services shall contain in the solicitation documents:

- (a) Possess the necessary:
 - i) professional and technical qualifications to carry out particular procurements;
 - ii) financial capability;
 - iii) equipment and other relevant infrastructure;
 - iv) shall have adequate personnel to perform the obligations of the procurement contract;
- (b) possess legal capacity to enter into the procurement contract;
- (c) Must have fulfilled all its obligations to pay taxes, pensions and social security contributions;
- (d) Not have any director who has been convicted in any country for criminal offence relating to fraud or financial impropriety or criminal misrepresentation or falsification of facts relating to any matter;
- (e) Accompany every bid with an affidavit disclosing whether or not any officer of the relevant committees of the procurement entity of Bureau as a former or present director, shareholder or has any pecuniary interest in the bid and confirmed that all information presented in its bid are true and correct in all particulars;
- (f) Not be in receivership, subject of any form of insolvency or bankruptcy proceedings or subject of any form of winding up petition or proceedings;

The Acceptance

1. Acceptance must be made while the offer is still in force, before offer has lapsed, been revoked or rejected. Once the acceptance is complete, the offer has become irrevocable.
2. Acceptance must be absolute and qualified.

In **Neale V. Merrett**: M. offered land to N at \$280. N. replied accepting, and enclosing \$80 with a promise to pay the balance by monthly instalments of \$50 each. Held, no contract, as there was an unqualified acceptance.

Communication of acceptance must be in writing, by words or by conduct.

See **Felt house v. Bindley**

Acting upon it does not require communicate acceptance e.g. *Carlill V. Carbolic Smoke Ball Co.*

Acceptance in an Instantaneous Contracts may be by telephone, text or between parties present, the contract is complete only when the acceptance is received by the offeror and not merely when transmitted.

Brinkibon Ltd V. Stahag Stahl Held: Acceptance by text from London to Vienna caused the contract to be made in Vienna. Acceptance Subject to Contract: Means that the parties do not intend to be bound until a formal contract is prepared and signed. **Chillingworth V. Esche** –for a purchase of a house where an Agreement has not been signed by the offeree, such is not binding.

CONSIDERATION: Consideration is another essential feature of a binding Contract, other than a contract made under seal, is that the agreement must be supported by consideration. The most common forms of consideration are payment of money, provision of goods and the performance of work. Consideration has been defined by the court in **Currie V. Misa** as some “right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other,” the benefit accruing or the detriment sustained was in return for a promise given or received.

The general rules of consideration are:

- I. Consideration is required for all simple contracts;
- II. Consideration must be of some value but need not be adequate;
- III. A promise to perform an existing obligation is not sufficient consideration, but a promise to do something different is good consideration; The court in the case of **Central London Property Trust V. High Trees House (1947) KB** held, as the agreement for reduction of rent had been acted upon C. could not claim the full rent, but that it was only operative during the conditions which had given rise to it. As the flats had been fully let in 1945 the full rent was payable then unlike in 1940 when C. agreed to reduce the rent as a result of the war.
- IV. Consideration must be legal, an illegal consideration makes the whole contract invalid;
- V. Consideration must not be past. A past consideration is one which is wholly executed and finished before the promise is made. It must be distinguished from an executed consideration which is given at the time when the promise is made. In **Roscorla V. Thomas (1842) 3 Q.B** where A sold a horse to B and after the sale was completed, promised that the horse was free from vice. It was in fact vicious. Held, in the previous sale there was no consideration for the promise, which was therefore unenforceable.
- VI. Consideration must move from the promisee to the promisor. This means that the person to whom the promise is made must furnish the consideration. The case of **Dunlop Pneumatic Tyre Co. Ltd V. Selfridge & Co. Ltd (1915) A.C** illustrate this principle of law as applicable to contract: Dunlop who were wholesale tyre manufacturers sold tyres to X under a contract where by X agreed not to sell the tyres below Dunlop's list prices and, as Dunlop's agent, to obtain similar agreement similar to that which he had entered into. They broke this agreement and Dunlop sued for breach of contract. Held,

assuming that X was the agent of Dunlop when he obtained the price maintenance stipulation from Selfridge, Dunlop could not enforce the contract because no consideration moved from them.

This rule is based on the principle that a stranger to the contract can not sue on it, a rule known as the privity of contract.

DURESS AND UNDUE INFLUENCE: Duress is actual or threatened violence to, or restraint of the person of, a contracting party. If a contract is made under duress it is at once suspect, because consent has not been freely given to the bargain supposedly made. The contract is voidable at the option of the party concerned.

UNENFORCEABLE CONTRACTS: Contracts may be described as void, or voidable or unenforceable.

A void contract creates no legal rights and can not therefore be sued upon. It may occur because of a mistake as to the nature of the contract, or because it involves the performance of something illegal that is prohibited by law. A void contract may also result because of the incapacity of the parties, as in the case of infants. Corporations cannot make contracts beyond their stated powers which are said to be *ultra vires* (beyond one's powers).

A contract is said to be voidable when only one of the parties may take advantage. In cases involving misrepresentation, only the party who has been misled has the right to void the contract.

Unenforceable contracts are those that are valid, but due to neglect of formalities involved, a party seeking to enforce it will be denied remedy.

TERMS OF CONTRACT: The undertakings and promises contained in the contract is known as terms of contract.

1. Express terms
2. Implied terms – Terms may be implied by conduct/ nature of contract/court/ term/custom of trade or professions/statutes

CONDITION AND WARRANTIES

A condition is a vital term of contract, going to the root of the contract, a breach of which entitles the injured party, if he so intended to rescind the contract and to claim damages for non-performance. It is defined by Fletcher Moulton L.J in *Wallis V. Pratt* as “an obligation which goes so directly to the substance of the contract, or, in other words, is so essential to its very nature, that its non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all”.

Warranty: A warranty is not a vital contract term, but one which is merely subsidiary, a breach of which gives no right to rescind but only an action for damages for the loss which he has suffered. It may be made orally or in writing.

IMPLIED TERMS IN CONSTRUCTION OR BUILDING CONTRACT

- i. The Employer must put the Contractor in to possession of the land without encumbrance.
- ii. The Contractor must be paid for job executed provided he complies with the agreement.
- iii. The Contractor must carry on with job in a like, diligent and skillful manner etc
- iv. The scope of the job must be complied with.

Implied terms by Statute: The Sales of Goods Act (SGA) 1893 provided the following implied terms

- a. That the seller has title to sell the goods and the buyer shall enjoy quiet i.e. undisturbed possession – *S.12 SGA see the case of Akosile V. Ogidan*
- b. That, if the sale is by description, the goods correspond with it, and if it is by sale and description, they correspond to both. *S.13 SGA*
- c. That, if the seller sells in the course of business, the goods are of merchantable quality, i.e. that they are fit for the purpose for which the goods of that kind are commonly bought. *S.14 SGA see Grant V. Australian Knitting Mill*
- d. That if the sale is by sample, the bulk will correspond with sample, the buyer is given a reasonable opportunity of comparing bulk with sample, and the goods are free from any defect, rendering them unmerchantable, which was not apparent on reasonable inspection of the sample. *S.15 SGA*

Exemption Clause:

1. An exemption clause can not be introduced into a contract unilaterally after it is made. See: *Olley V. Marlborough Court Ltd, Union Bank Ltd V. Hill Station Hotel, Anya V. Concorde Hotel*
2. An attempt to introduce exemption clause in a receipt given after the conclusion of the contract would not make it a term of contract and is not binding on the party who receives it. *Chapleton V. Barry UDC; Thornton V. Shoe Lane Parking Ltd.*
3. A party to a contract must be given adequate notice or have knowledge of terms intended to exclude a party from liability before the contract is concluded.

PRIVITY OF CONTRACT

The doctrine of privity is meant to prevent persons or third parties who are not parties to a contract as a general rule. This rule was found to cause hardships and consequently, the case of *Dunlop Tyres V. Selfridge* provided the circumstances where strangers or persons who were originally non parties to contract can benefit from it. These exceptions are:

- i. Agency relationships
- ii. Trust relations allowing the beneficiaries to enforce their claims,
- iii. Actions for debt,

- iv. Enforcing an order of courts etc.

REMEDIES FOR BREACH OF CONTRACT

1. **Injunction:** An order of an injunction is made pending the determination of an issue pending in court in order to preserve the status quo awaiting the determination of the issue – *Nwakwo V. Onono eze-Madu* (2005) All FWLR 1258 @ 1267 D-E; *Akibu V. Oduntan*; *Ojukwu V. Gov. of Lagos*; *Obeya Memorial Specialist V. Attorney General Federation*. The court considered the following vital issues before the grant of an order of injunction:
 - i. Balance of convenience
 - ii. The existence of the res
2. **Damages:** has been defined as a pecuniary compensation or indemnity which may be recovered in court by any person who has suffered loss, detriment, or injury whether to his person, property or rights through the unlawful act or omission or negligence of another. It is a sum of money awarded to a person injured by the tort of another. *Ozor V. Eneh* (2005) AllFWLR 927 @ 351-352

Damages arising from breach of contract: When two parties have made a contract, the damages which the other party ought to receive in respect of the breach of such contract should be such as may fairly and reasonably be considered either naturally according to the usual course of things flowing from such breach of the contract itself or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach. *Apugo V. O.H.M.B* (2006) All FWLR (pt322) 15

Damages are compensation for loss, injury or harm of any kind.

Once the court has awarded a party compensation for the loss or harm, or injury he has suffered, it is not open to the court again to proceed to award him any kind of additional damages that may look like a bonus. This is part of the rule against double compensation. *SPDC Nig Ltd V. Katad Nig. Ltd* (2005) , *Lagos City Council V. Unachuckwu* (1978). *Imo Concorde Hotel ltd V. Anya* (1992) .

Object of Damages: The whole idea of damages is to restore the person wronged, often the plaintiff into what is called *restitution in integrum* which means that he is entitled to recover a sum as will replace him, so far as can be done by compensation in money, in the same position as if the loss or damages had not been inflicted on him, but subject to the rules of law as to remoteness of damages or the rule against double compensation see SPDC at 689 (Supra).

SPECIFIC PERFORMANCE

Specific performance is a discretionary remedy. The discretion is judicial and is exercised on well settled principles. It is based on:

- i. Existence of a valid contract, enforceable contract,
- ii. The contract must not suffer from defect such as informality, mistake or illegality which makes the contract invalid and unenforceable,
- iii. It may also not be granted in case of severe hardship to the defendant.

To sue for specific performance is to assume that a contract is still subsisting and therefore to insist that it should be performed. That means the plaintiff would not want it repudiated unless for any reason, the courts were unable to aid him to enforce specific performance. He may also then fall back on the remedy at common law for damages.

Help Nig Ltd V. Silver Anchor Nig Ltd (2006) All FWLR (pt 311) at 1843 B-C; In the English case of Pated V. Ali (1984) ch. 283, specified perform for the contract for the sale of a house was refused after a 4 years delay.

See also: International Textile industries Nig. Ltd V. Dr Aderemi & ors (1998) 8 NWLR(pt.614) 268, Afro Tech. Services Ltd V. Mia & Sons Ltd & anor (2000) 15 NWLR(pt 692) 730@ 790. Schindemi V. Gov. Of Lagos State (2006) All FWLR (pt311) 1879.

SPECIFIC PERFORMANCE IN A BUILDING CONTRACT.

Specific performance is a special decree issued by the court ordering the defendant to perform his promise. Indeed, it is an equitable remedy granted by the court, in its discretion such discretion however, being exercised according to well established principles. Such a decree will not be made where the common law remedy of damages will adequately compensate the plaintiff or where the court can not properly supervise performance. For these reasons, it is settled that, as a general rule, the court will not compel the building of houses. See **WILKINSON VS.**

CLEMENTS (1872) LR8CH. 96. It must be said loud however, that a breach of building contract must of itself be accorded compensatory award in monetary terms.

The rule of assessment of damages in flowing from a breach by an employer in a building contract, is well set out in *Hudson's Building and Engineering Contracts, 10th Edition at page 585.*

“the measure of damages as a legal problem gives little difficulty in the cases of breaches of contract by the employer. It is obvious that the builders work for a profit and apart from his entitlement to the price, the damages to a builder caused by the breach of contract by the employer will be assessed in the light of its impact upon his profit. In the case of prevention, that is to say, where the employer has wrongfully terminated the contract, or has committed a fundamental breach justifying the builder in treating the contract as at an end, and the latter accordingly ceases to work, the measure of damages will be the loss of profit which he would have otherwise earned. In the more usual case where the work is partly carried out at the time when the contract is repudiated, the builder will wrongly be entitled to the value of the work done assessed at the contract rates, plus his profits on the remaining work” The above exposition of the law on assessment of damages was quoted with approval by the supreme court in **UKOHA & urs V. OKORONKWO (1972) 5SC 260. KUSFA V. UNITED BAWO CONSTRUCTION Co. Ltd (1994) 4 NWLR (pt 336) 1.**

Going by the above principles, a builder who complains about the wrongful termination of his construct of building will be entitled to the value of the work already done by him which will be assessed to the value of the work already done by him which will be assessed at the contract

rates, plus his profits on the remaining work yet to be done before the contract was repudiated. To succeed on the two items, an aggrieved builder must adduce credible evidence.

Claim by a builder who complains of wrongful termination of contract.

- i. The value of the work already done by him which must be assessed at the contract rates and
- ii, his profits on the remaining work yet to be done before the contract was repudiated”

QUANTUM MERUIT Where there is breach of contract, the injured party instead of suing for damages, may claim payment for what he has done under the contract. His right to a payment does not arise out of the original contract but based on an implied promise by the other party arising from the acceptance of an executed consideration. This is termed a quantum meruit.

Quantum meruit- by notion of indivisibility of consideration The rule in **Cutter V. Powell** inability of a party to be paid for work partially done- **Sumpter V. Hedges**

Discharge of contract

- i. Refusal of performance of the contract
- ii. Performance in accordance with the contract document in line with Time of Payment, Tender;
- iii. Agreement;
- iv. Termination by notice;
- v. iv. Acceptance of breach
- vi. v. Frustration and/ force majeure

Where both parties have performed what they agree to do under the contract, the contract is discharged.

Held: In **Dahiru V. Kamale (2006) All FWLR (pt 295) 614 @ 649 B-D**

FRUSTRATION

When the common object of the contract can no longer be achieved because in the light of the circumstances, a situation fundamentally different from the contemplated, when the parties entered into the contract, has unexpectedly emerged, the contract is at an end, for otherwise, the parties would be bound to perform a contract which they did not make. **National Carriers V. Panalpina Nig. Ltd (1981) AC**

AN ACT OF GOD” OR FORCE MAJEURE An act of God is an extraordinary occurrence which would not have been foreseen and which could not have been guarded against. With all the technological advancement vis-à-vis meteorological forecasting of the weather, nonetheless serious flood do occur, in Miami and other cities in the USA. No human efforts accurately forecast and guard against such epidemics, not to talk about Sunamic disaster in South Asian and South America of recent. In such circumstances nobody could be rightly blamed. It is unforeseen and actually fell within the act of God which cannot be reasonably be part of the agreement. This effectively frustrated trust the whole contract between the parties. It was an unforeseen peril/ disaster that could not have been reasonably guarded against by the exercise of reasonable care. In **NACB V. Salems farms Ltd**. The respondent took agricultural loan bought some cows which all 44 died except 18 cows. The Court of Appeal held the catastrophe was not as a result of any fault or negligence on the part of the respondent.

SUBJECT TO In **Federal Republic of Nigeria V. Osahon** (2006) All FWLR (pt312) 19758C.

The expression “subject to” when used in a statute means liable, subordinate subservient, or inferior to, governed or affected by; provided that or provided; answerable for. The term introduces a condition, a restriction, a limitation, to a provision. It subordinates the provisions of the subject section to the section empowered by reference thereto and which is intended not to be diminished by the subject section. **Odogwu Onochie V. (2006)**

The expression generally implies that what is “subject to” shall govern, control and prevail over what follows in that subject section of the enactment, so that it renders the provisions to which it is subject conditional upon compliance with or adherence to what is prescribed in the provision referred to:

F.R.N V. Osahon @ 203 F-H, LSDPC V. Foreign Finance corp (1981) ,Tukur V. Govt. of Gongola state (1989) , Idehen V. Idehen (1999).

DUTY ON COURT IN INTERPRETING STATUTORY PROVISIONS

In interpretation of a statute, where its interpretation will result in defeating its object, the court would not lend its weight to such interpretation. The language of the statute must not be stretched to defeat the aim of the statute. In other words, the interpretation which appears to defeat the intention of the legislature, shall be bye-passed in favour of that which would further the object of the Act.

Onochie V. Odogun (2006), Ansaldo & NigLtd V. National provident Fund Management Board (1991), Savannah Bank Nig Ltd V. Ajilo (1989)

The doctrine of **LIS PENDIS**: simply means a “pending suit”. It means a pending action or a controversy in court, particularly in relation to the subject matter of a party.

It denotes those principles and rules of law which define and limit the operation of the common law maxim, to the effect that nothing relating to the subject matter of a suit can be changed while it is pending; and subject to certain limitations and qualifications considered infra one who, with actual or constructive notice of the pending actions acquires from a party thereto an interest in the property involved in a litigation in a court having jurisdiction of the subject matter and of the person of the one from whom the interest is acquired, takes subject to the rights of the parties to the litigation as finally determined by the judge or decree.

Olori motors & co ltd V. UBN plc (pt 318) 7325C@ 753 C-F.

The Supreme court has warned that there must be an end to litigation which is based on public policy, The courts in considering the extent of the application of *lis pendis*, the courts must be careful not to overly extent its application too wide as it could lead to all manner of problems and perhaps in justice for there must be an end to litigation. It not be quite accord with prudence and even in the interest of public policy that an action cannot be regarded as having come to an end after the judgement of the court by way of sale commences such a sale more than 2 months after the determination of the action completely ignorant of any process filed and yet to be caught in the operation of this doctrine.

DEED ESCROW: A deed may be delivered as an escrow, that is, as a simple writing not to become the deed of the party expressed to be binding thereby until some condition shall have been performed; for example, not until the grantee order a deed of conveyance on sale or mortgage or of reconveyance or discharge of a mortgage shall have paid the consideration money, or not until the person to benefit under the deed shall have executed some other deed or document as agreed with the party delivering the escrow. It is not necessary that the delivery of a deed as an escrow should be made in any special form or accompanied with any particular words. **Dalfam Nig. Ltd. V. Okaku International Ltd. (2002) FWLR (pt96) 501 @ 527**

Power of Attorney: There are circumstances where the transactions involve special skills or training expected of an agent such as Solicitors, Estate Agents etc. they deal in the conveyancing /assignment of real properties. Contracts of such natures by law are expected to be by deed. Consequently, appointment of agents should also be by deed called Power of Attorney. The power may be removed where the donee consents to it's removal. The power does not, however, lapse on the death, bankruptcy, incapacity or dissolution of the donor of the power. The parties are the Donor and the donee. The character involves commencement, the instruction and the signature with the need for registration as may be applicable. It may be revocable or irrevocable. A power of Attorney can not be given orally Section 118 of the Evidence Act CAP 112 LFN 1990 requires that a power of Attorney should not only be executed it should also be authenticated.

What actions of an employee is binding on the employer. A limited liability company to definitely constitute one of the many situations in law where consequences attach to acts, motives or opinions of a person or persons. Though in the eyes of the law, a company is a separate personality that can sue and be sued. It can do nothing for itself, nor think for itself, since it is a fiction and does not exist in the physical world. Once it has been established that an employee is acting in the course of his employment. The employer is liable for his actions, but certainly not all human beings (biological persons) employed by a company would always have their acts or actions binding on it (the company) **KANU V. OPARAOCHA (2006) All frouR (pt 309) 1499 @ 1511 E-11 Per Aderenic JCA: pp: 1511 -1512 H-F** “ the problem then arises as to which of these human beings one looks to in order to attribute their actions or thoughts to the company. Lord Denning in **Bolton (Engineering) co. ltd V. Graham & Sons Ltd (1957) 1QB159** “offered the following guide: A company may in many ways be likened to a human being. It has a brain and a nerve centre which are the human beings exercising the object clauses of the company within power of the company.

NATURE OF CONSTRUCTION CONTRACT

It is a question of construction of the contract whether is entire or divisible but the courts have tended to the view that in evaluating sum contract there is an implied term that no part or the price is to be recovered without complete performance. In most modern contracts of any size, however, payments by instalments are specified, so that the law on entire contracts is not often relevant to contracts nowadays. In **Thomas Alplin &Co Ltd V. Northern Nigeria Development**

Corporation “ In an entire contract, complete performance by one party is a condition precedent to the liability of the other, in such a contract consideration is usually a lump sum which is payable only upon complete performance by the other party. The opposite of an entire contract is a divisible contract, which is separable into parts. So that different parts of the contract may be assigned to general parts of the performance e.g. an agreement for payment pro rata”

Discharge of a Contract

How rights and obligations of partners to a valid contract may be terminated are by Rescission/Assent; By agreement ; Waving or default of a party; Accord and satisfactions; Waiver and variation of contract.

Council for the Registration of Engineering in Nigeria (COREN) Act 2018 as amended provides as follow:

Section 4A. (1) The Registrar shall prepare and maintain, in accordance with rules made by the Council under this section, registers of names, addresses and approved qualifications and, of such other particulars as may be specified, of all persons who are entitled, in accordance with the provisions of this Act, to be registered as registered engineering practitioners and who apply in the specified manner to be so registered.

(2) The registers of engineering practitioners (in this Act referred to as the "the Registers") shall consist of registered -

(a) engineers; (b) engineering technologists; (c) engineering technicians; (d) engineering craftsmen;(e) engineering consulting firms; and (f) engineering firms compiled subject to the provisions of section 10 of this Act.

(3) Subject to the provisions of this Act, the Council

(4) The Registrar shall -

(a) correct, in accordance with the Council's directions, any entry in the register which the Council directs him to correct as being, in the Council's opinion, an entry which was incorrectly made;

(b) make any necessary alteration to the registered particulars of registered persons;

(c) remove from the register the name of any registered person who has died;

(d) remove, from the relevant register of engineering practitioners, all particulars relating to persons registered improperly out of misinformation, expiration of resident permits or any other grounds;

(e) remove, from the appropriate register, any person who, after due inquiry, is adjudged by the Council to have been guilty in his professional capacity of infamous conduct, gross negligence or incompetence; or (f) remove from the appropriate register, any person who is convicted of any criminal offence which, in

the opinion of the Council, renders him unfit to practise".

(5) If the Registrar- (a) sends by post or electronic means to any registered person a registered letter or electronic mail addressed to him at his address on the register and copied to the respective professional associations; enquiring whether the registered particulars relating to him are correct and receives no reply to the letter within the period of six months from the date of posting it, and (b) upon the expiration of that period, sends in like manner to the person in question a second similar letter and receives no reply to that letter within three months from the date of posting it, the Registrar may remove the particulars relating to the person in question from the relevant register.

(6) Upon appeal, the Council may direct the Registrar to restore to the appropriate part of the register the particulars so removed."

Section 22 of the Principal Act as amended provides :

"engineering practitioner" includes a registered engineer, engineering technologist, engineering technician and engineering craftsman;

"practice of engineering" includes any act of planning, professional service or creative work requiring the application of special knowledge of mathematics, physics, chemistry, biology and engineering principles in form of consultation, invention, discovery, valuation, research and teaching in recognised engineering institutions, planning, operation, maintenance supervision of construction and installation involving investigating, advising, operating, evaluating, measuring, planning, designing, specifying, laying and directing, constructing, commissioning, inspecting or testing in connection with any public or private utility, structure, building machine, equipment, processing, work or project safeguarding the public interest in all sectors of the economy for the benefit of mankind;

"professional misconduct" refers to when any person who is licenced under this Act -

(a) deliberately fails to follow the standards of conduct and practice of engineering profession set by the Council;

(b) commits gross negligence in the conduct of his professional duties;

(c) allows another person to practice in his name where the person

(i) is not a holder of a licence,

(ii) is not in partnership with him,

(iii) takes advantages of a clients' by abusing position of trust, expertise or authority,

(iv) lacks regards or concern for client needs or ~ights, or

(v) shows incompetence or inability to render professional engineering service or works; or

(d) knowingly submits a land survey, valuation or environmental impact assessment document prepared by a person who is not licenced to prepare such documents under any written law in force;

"registered engineering practitioner" means a person registered under the various categories.