

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.

