

Professional Practices in ICT

ITC4182

Lecture 9

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THE LAW OF CONTRACTS IN SRI LANKA

An overview of the legal framework governing contracts in the country of Sri Lanka.

CONTRACTS

The law of contract is concerned about the **legal enforceability of promises.**

In that context, a contract may be described as **an agreement that the law (the Courts) will enforce.**

This notion of enforceability is central to contract law.

If you break (breach) the contract, the other party has several legal remedies. Firstly, he can sue you for damages for breach of contract. Also, he can ask the court to order you to perform the contract.





CONTRACTS

- Contract law in Sri Lanka is primarily governed by **Roman-Dutch Law**, supplemented by **English common law principles** and **statutory provisions**.
- It regulates agreements between parties, ensuring they are legally enforceable.
- A contract is a **legally binding agreement between two or more parties that creates rights and obligations that can be enforced by law**.

CONTRACT V. AGREEMENT

- Agreement is a state of mental harmony regarding a given matter between two persons, as gathered from their words or deeds.
- Agreement covers wider area than contract (not legally enforceable always)

TYPES OF CONTRACTS

- **Types of Contracts**

The main types of contracts in English law include contracts of record, contracts under seal, and simple contracts.

- **Contracts of Record**

Contracts of record are agreements that are recorded in an official document, such as a court judgment or a recognizance.

- **Contracts under Seal**

Contracts under seal are agreements that are signed, sealed, and delivered, and are considered to have a higher level of legal formality.

- **Simple Contracts**

Simple contracts are the most common type of contract, which can be either written or oral and do not require any special formalities.

- **The Roman Dutch law that applies in Sri Lanka, does not recognize the above distinctions and all contracts are treated as simple contracts.**

REQUIREMENTS FOR A VALID CONTRACT

- **Agreement**

The parties must have a mutual understanding and consensus on the terms of the contract, including the subject matter, price, and any other essential elements.

- **Intention to Create Legal Relations**

The parties must have a clear intention to create a legally binding agreement, rather than a mere social or domestic arrangement.

- **Legal Capacity**

The parties must have the legal capacity to enter into a contract, meaning they are of legal age and are not mentally incapacitated or under the influence of drugs or alcohol.

- **Lawful Purpose**

The purpose of the contract must be legal and not in violation of any laws or public policy.

KEY ELEMENTS OF A VALID CONTRACT IN SRI LANKA

- Offer and Acceptance

One party makes an offer, and the other party accepts it.

- Intention to Create Legal Relations

Both parties must intend for the contract to be legally enforceable.

- Consideration [Salaka Baleema](#)

There must be an exchange of value (e.g., money, goods, services).

- Capacity to Contract

Parties must be of legal age (18 years) and mentally sound.

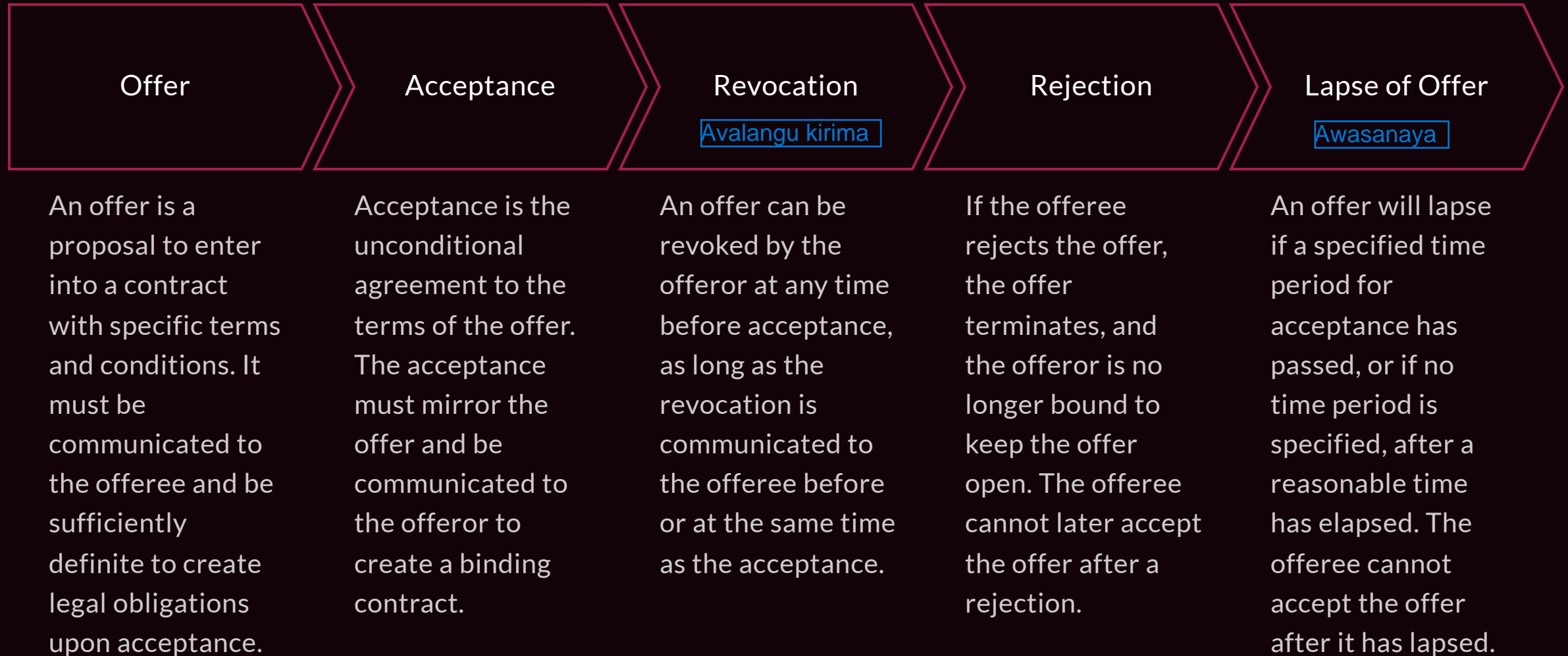
- Legality of Object

The contract's purpose must be legal and not against public policy.

- Free Consent

The agreement must be made without coercion, undue influence, fraud, misrepresentation, or mistake.

OFFER AND ACCEPTANCE



CONSIDERATION VS. JUSTA CAUSA

Consideration (English Law Influence)

Consideration refers to something of value exchanged between parties in a contract. In English contract law, a contract is generally not enforceable without consideration, except in certain circumstances like contracts made under seal.

Example: A agrees to sell a laptop to B for Rs. 50,000.

Justa Causa (Roman-Dutch Law Influence)

Justa causa (Latin for "just cause") is a broader concept than consideration. It refers to a legitimate or lawful reason for entering into a contract. Under Roman-Dutch law, a contract is enforceable if it has justa causa, even without formal consideration.

Example: A father promises to give his daughter Rs. 1 million as a gift. Even though there is no consideration, the contract is still enforceable under Sri Lankan law because it has justa causa.

CONSIDERATION VS. JUSTA CAUSA

Differences

1. Consideration is derived from English common law, while justa causa is a concept from Roman-Dutch law.
2. Consideration requires an exchange of value, while justa causa is a broader concept that includes moral, family, or social obligations.
3. Contracts without consideration may still be enforceable under Sri Lankan law if they have justa causa.

Similarities

1. Both consideration and justa causa serve the purpose of ensuring that contracts are legally binding and not entered into for illegal or improper reasons.
2. Legality is a requirement for both consideration and justa causa in Sri Lankan contract law.

CONTRACTUAL CAPACITY

Minors

Individuals under the age of majority (typically 18 in most jurisdictions) may have limited contractual capacity, with certain exceptions or the ability to void or ratify contracts upon reaching the age of majority.

Mentally Unsound Persons

Individuals who are deemed mentally incapable of understanding the nature and consequences of their actions due to conditions such as mental illness, intellectual disability, or dementia may have limited contractual capacity.

Intoxicated Individuals

Individuals who are under the influence of alcohol or drugs to the extent that they are unable to comprehend the nature and consequences of their actions may have limited contractual capacity.

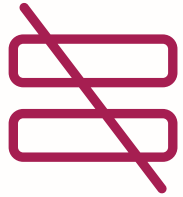
Legal Protections

The law often provides certain protections for individuals with limited contractual capacity, such as the ability to void or rescind contracts, or the requirement of legal guardians or representatives to enter into binding agreements.

Exceptions and Considerations

There may be exceptions or nuances in the law regarding the contractual capacity of minors, mentally unsound persons, and intoxicated individuals, depending on the specific jurisdiction and the nature of the contract.

FACTORS INVALIDATING CONTRACTS



Mistake

An error in the understanding or agreement of the parties that can invalidate a contract.



Misrepresentation

A false statement of fact made by one party to the contract that induces the other party to enter the agreement, rendering it invalid.



Duress and Undue Influence

Coercion or excessive pressure exerted on a party to enter a contract, making the agreement unenforceable.



Illegality

Contracts that involve unlawful activities or violate public policy are considered void and cannot be enforced.

These factors can invalidate a contract, rendering it unenforceable. Understanding these legal principles is crucial when entering into any contractual agreement.

TERMINATION AND DISCHARGE OF CONTRACT

- **Performance**

The contract is terminated when both parties have fully performed their obligations under the agreement.

- **Agreement**

The contract can be terminated by mutual agreement of the parties, through a new contract or amendment.

- **Release or Waiver**

One party may release the other from their contractual obligations, either explicitly or through waiver of their rights.

- **Compromise**

The parties may agree to a mutually acceptable compromise, modifying the original contract terms.

- **Novation**

The original contract is replaced by a new contract, with different parties or terms, effectively terminating the original agreement.

- **Operation of Law**

Certain legal doctrines, such as insolvency, death, or supervening impossibility, can terminate a contract by operation of law.

- **Merger**

When two entities involved in a contract merge, the contract may be terminated and replaced by a new agreement.

- **Breach**

If one party materially breaches the contract, the other party may have the right to terminate the agreement.

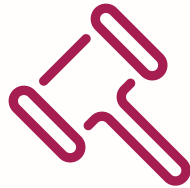
REMEDIES FOR BREACH OF CONTRACTS

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Monetary Damages

Compensation for the financial losses incurred due to the breach of contract.



Specific Performance

Court order requiring the breaching party to fulfill their contractual obligations.



Rescission

Cancellation of the contract and restoration of the parties to their original positions.



Injunction

Court order prohibiting the breaching party from continuing the breach.

The available remedies for breach of contract aim to compensate the injured party, enforce the contract, or undo the transaction, depending on the specific circumstances of the case.

TYPES OF CONTRACTS IN SRI LANKA



Express Contracts

Contracts with clearly stated terms, either in writing or verbally.



Implied Contracts

Contracts formed through the conduct of the parties rather than written or spoken words.



Unilateral Contracts

Contracts where one party makes a promise in exchange for an act by another party.



Bilateral Contracts

Contracts where both parties exchange promises to perform certain obligations.

KEY STATUTES GOVERNING CONTRACTS IN SRI LANKA

- **Roman-Dutch Common Law**

The primary foundation of contract law in Sri Lanka, inherited from the country's colonial history.

- **English Common Law Principles**

Applied in some cases, particularly regarding commercial transactions, due to Sri Lanka's historical ties with the British Empire.

- **Civil Procedure Code (1889)**

Governs contractual disputes and enforcement, providing a legal framework for contract-related legal proceedings.

- **Prevention of Frauds Ordinance (1840)**

Requires certain contracts, such as those related to land, to be in writing, ensuring transparency and preventing fraudulent activities.

- **Contract Act No. 25 of 1872 (Indian Influence)**

Some principles are borrowed from the Indian Contract Act, such as offer, acceptance, and breach of contract, reflecting the historical connections between the two countries.

KEY STATUTES GOVERNING CONTRACTS IN SRI LANKA

- Prevention of Frauds Ordinance No. 7 of 1840
- The Prescription Ordinance No. 22 of 1871
- The Trusts Ordinance No. 9 of 1917
- The Companies Act No. 7 of 2007
- Electronic Transactions Act No. 19 of 2006
- Consumer Affairs Authority Act No. 9 of 2003
- Sale of Goods Ordinance No. 11 of 1896
- Bills of Exchange Ordinance No. 25 of 1927
- Hire-Purchase Act No. 2 of 1964
- Mortgage Act No. 6 of 1949
- Inland Trust Receipts Act No. 14 of 1990
- Financial Transactions Reporting Act No. 6 of 2006
- Debt Recovery (Special Provisions) Act No. 2 of 1990
- Unfair Contract Terms Act (based on common law principles)
- Insurance Industry Act No. 43 of 2000
- Intellectual Property Act No. 36 of 2003

TYPES OF CONTRACTS RELATED TO IT

- **Software Development Contracts**

These contracts define the terms of custom software development, including deliverables, timelines, and intellectual property rights. Examples include Fixed-Price Contracts, Time and Materials Contracts, and Agile Development Contracts.

- **IT Service Contracts**

These agreements govern IT-related services such as support, maintenance, and consulting. Examples include Service Level Agreements (SLAs), Managed Services Agreements (MSAs), and Cloud Services Agreements.

- **Software Licensing Contracts**

These contracts regulate how software can be used, distributed, or modified. Examples include Proprietary Software Licenses, Open-Source Licenses, End-User License Agreements (EULAs), and Software as a Service (SaaS) Agreements.

- **IT Outsourcing Contracts**

These contracts define the terms under which IT services are outsourced to external vendors. Examples include Business Process Outsourcing (BPO) Contracts and Offshore Development Agreements.

- **Data Protection and Privacy Contracts**

These contracts ensure compliance with data privacy laws such as GDPR, CCPA, and Sri Lanka's Data Protection Act. Examples include Data Processing Agreements (DPAs) and Non-Disclosure Agreements (NDAs).

- **IT Employment and Freelance Contracts**

These contracts define the legal relationship between IT professionals and companies. Examples include Employment Agreements and Independent Contractor Agreements.

- **IT Hardware and Infrastructure Contracts**

These agreements govern the purchase, leasing, and maintenance of IT equipment. Examples include Hardware Purchase Agreements and IT Leasing Agreements.

UNDERSTANDING THE STRUCTURE OF A CONTRACT

Parties

Identify the parties involved in the contract, such as the contracting parties, their legal names, and their roles.

Recital

Provide background information and context for the contract, including the purpose and the relationship between the parties.

Main Obligations/Terms

Outline the key responsibilities, rights, and obligations of each party as per the contract.

Termination and Breach

Specify the conditions under which the contract can be terminated, as well as the consequences of a breach of contract.

Jurisdiction and Execution

Include the governing law and jurisdiction, as well as the signature page where the parties execute the contract.

GENERAL CONTRACT STRUCTURE

- Parties
- Recital
- **Body of the Contract**
- Main Obligations/ Terms
- Payment Clause
- Warranties/ Representations
- Intellectual Property
- Limitation of Liability / Exclusion of Liability /Indemnities
- Termination
- Breach
- Liquidated Damages
- Force Majeure
- Notice
- **Boilerplate Clauses (Entire Agreement/Severance/ Waiver/Assignment)**
- **Jurisdiction Clause**
- **Execution Page (Signature Page)**
- **Schedules (if any)**

RISK-RELATED CLAUSES IN CONTRACTS

Liquidated Damages Clause

- Liquidated damages are a set amount of money that a party pays to another party if they breach a contract.
- **Specifies a pre-agreed penalty** for delays or failure to meet contractual obligations.
- Breaches like missed deadlines, late project delivery, or performance failures.
- A previously agreed amount of damages payable by the defaulting party for failure to meet timescales.
- It must be a genuine pre-estimate, and the court has no regard to the parties' intention or the issue of whether there was any actual loss.

Indemnity Clause

- An **Indemnity Clause** in a contract protects one party from legal liability arising from the actions of the other party.
- It typically requires one party (the indemnifying party) to compensate the other (the indemnified party) for losses, damages, claims, or expenses resulting from specific breaches, misconduct, or legal issues.
- Breaches, negligence, intellectual property infringement, legal claims from third parties.
- **Compensation is not pre-determined** but depends on actual losses or legal expenses incurred.

RISK-RELATED CLAUSES IN CONTRACTS

Force Majeure Clause

- A remedy for extreme events which prevent actual performance, such as acts of God, pandemics, riots, etc.
- The clause defines force majeure and outlines the requirements for compliance, the time of the effect of the force majeure event, and the distinction between force majeure and frustration.

Termination Clause

- Creates the parties procedure for the exit strategy from the contract
- Various methods
 - ☆ Expiry
 - ☆ Notice
- Consider Carefully at what rights you intend a party to have in the event of different types of breaches

COMMISSIONED SOFTWARE AGREEMENTS

Commissioned Software means software that has been developed specifically for the Customer

Matters to be considered

- Type of development (water fall/agile)
- Legal issues relating each step based on the type of development
- Testing /acceptance
- Compilation of documents
- Subsequent maintenance
- Future developments

SOFTWARE LICENSE AGREEMENT

- The Intellectual Property Rights of a Software is protected by way of copyright
- A software license agreement authorizes a person to do certain act (i.e. use, edit, etc) which would otherwise be an infringement of copyright. The party granting this authorization is known as 'licensor' while party receiving the authorization is known as 'licensee'.
- The clause in a licensing agreement depend of the nature of the license granted .
- **Period**, What that **rights granted** under the license, **Limitation** of the rights granted, **Option of revocation**, **Exclusivity** or non exclusivity, **Territorial limitations**, **Right of the grantor** to grant the license

OUTSOURCING AGREEMENTS

- Responsibility of performance of a specific function of an entity is transferred to a third party
- IT related outsourcing contract
- Parts of development
- Maintenance
- Matters to be considered in outsourcing
- Confidentiality