



**NATIONAL OPEN UNIVERSITY OF  
NGERIA**

**SCHOOL OF LAW**

**COURSE CODE:LAW 100**

**COURSE TITLE:INTRODUCTION TO LAW**

- (f) If the mode is not prescribed then the law will require a reasonable mode of acceptance. What is reasonable will depend upon the circumstances of the case and in particular the means by which the offer is communicated in the first place. The mode of acceptance should normally be as quick as (or quicker than) the mode of the offer, unless the offeror expressly or impliedly indicates that some other method is acceptable. If, for example, the offer is made over the telephone, then it is unlikely to be reasonable for the offeree to accept by letter.
- (g) There are two points in time at which acceptance might be effective at law:

**(i) On Postage**

The postal rule states that the acceptance occurs (and the contract formed) at the moment a letter is posted. This will only apply where it is reasonable to use the post as a mode of communication for the acceptance. (See discussion above). This rule can be seen to be unfair on the offeror as that person does not know the precise time of acceptance (or that acceptance has occurred at all). In the circumstance, it is open for the offeror to exclude the use of the post by the offeree when accepting. In the circumstance, the offeror could require the offeree, for example, to telephone their acceptance.

**(ii) On Communication**

Where the negotiations are conducted by instantaneous means, e.g. where the parties use the telephone, telex or are in each other's presence, the contract forms when the acceptance reaches the offeror.

Where the post has been used, however, and the postal rule is excluded, i.e. actual communication is required (see discussion above), the contract will only form when the acceptance is communicated.

- (h) The rule regarding acceptance by post is an exception to the normal rule that a contract only arises when the acceptance is communicated to the offeror. With the postal rule a contract forms the moment the letter is posted whether or not it ever reaches the offeror.
- (i) The acceptance must be in response to the offer. The offeree must:
- Know of the offer; and

- Act, at least in part, in reliance upon it.
- (j) Subject to the postal rule, acceptance by the offeree is effective at law only upon **communication** to the offeror. There are two parts to this rule:
  - Acceptance must be expressed by words or conduct.

Mere passive silence in response to an offer is not acceptance. See *Selthouse v Bindley (1862) 142 ER 1037*.

The offeror may dispense with the need to communicate acceptance by words such as in the *Carlill* case or in the reward situation where performance of the act, (ie conduct), is deemed acceptance. This is distinguishable from *Felthouse v Bindley* where the offeror attempted to make silence acceptance so that the offeree would have to communicate rejection to avoid a contract arising. This is not acceptable in the eyes of the law.

In the context of a contract of employment, acceptance may be implied from the conduct of a person who starts work in response to an offer of employment.

The acceptance must be communicated either by the offeree or the offeree's authorized agent, see *Powell v Lee (1908) 99 LT 284*.

### **SELF ASSESSMENT EXERCISE 3**

1. How may acceptance be communicated?
2. Can an acceptance be revoked? If yes, how?
3. What is the postal rule? When does it apply?

### **3.7 Approach to Problem on Agreement**

Mention has already been made of the necessary step of translating legal principles (once you have understood them) into an approach to a problem in that area. Listed below are a series of steps that might assist in deciding whether an agreement has been reached. Treat the steps as a check list only. In other words, if the facts of a problem do not indicate the need to consider a particular step or issue, then ignore it.

#### **3.7.1 Point-Form Approach**

- Step 1       -       Is there an offer?  
                  Test: is there a final commitment?
- Step 2       -       To who is it made?

Step 3 - i.e. Who can accept?  
Has it been communicated?  
i.e. When is it effective at law?

Step 4 - Can it be revoked?  
i.e. is there a binding option?

Step 5 - Has it been terminated?

- Rejected – Express/Implied

- If so, when is the rejection effective at law?

- Revoked – If so, when is the revocation effective at law?

Lapse – Death/Time/Condition.

If so, when is the termination effective at law?

Step 6 - Has it been accepted?

6.1 Is acceptance made by offeree?

6.2 Is acceptance based on offer?

6.3 Is it unqualified acceptance?

6.4 Does it conform to terms of the offer?

6.5 Does the offeree use an appropriate mode?

6.6 Is acceptance in fact communicated (or posted, if postal rule applies)?

6.7 If so, when is acceptance effective at law?

#### **SELF ASSESSMENT EXERCISE 4**

Which, if any, of the following are offers capable of acceptance?

- a. a departmental store leaflet offering pool furniture at a 50% discount
- b. as for (a) above, but also offering “rain checks” for those unable to be supplied from current stock
- c. a display in a store window of a video recorder with N5000 price tag
- d. a passenger who boards a bus
- e. an announcement inviting contractors to tender for certain work stating that the lowest tender will be accepted.
- f. statement by the Governor, wazobia. State that if re-elected, he will reduce taxes?

## 4.0 CONCLUSION

Contract is a bargain. There must be an offer and acceptance. We note certain principles of importance which regulate the legal effects of offer and acceptance. You need to be conversant with them. Offer is different from invitation to treat. You also have seen that offer may be revoked, rejected or stale. Only persons to whom offer is made may accept it and such acceptance must be total. It has to be communicated unless communication is dispensed with. If acceptance is by post, then postal rules must apply. Approach to problems on agreement her lies inserted. Practice it and should you encounter any difficulty, then read over the unit until you get over.

## 5.0 SUMMARY

Each one of us enters into one form of contract or another, every day. Buying and selling articles, entering 'Danfo' 'BRT', Okada, or 'Kabu Kabu' are common forms of contract. Bargain between the Federal Government and Julius Berger to build high way or bridges are also contracts. Contracts may be classified into formal and simple contracts. The latter is more common and of any importance and its basic elements are agreement, intention to create legal relations and considerations. In this unit we dealt with agreement. This comprises offer and acceptance. We discussed what constitutes an offer and how it may be revoked, expressly or impliedly rejected it may also lapse by death, effluxion of time or failure of condition precedent. In the same way, acceptance must be unqualified, by words or conduct and communicated. Please note: the importance of divided cases to problems of contracts cannot be sufficiently stressed.

## 6.0 TUTOR-MARKED ASSIGNMENT

1. A writes to B saying: "I am prepared to sell you my car for N500.00. If I have not heard from you by Saturday, I'll assume we have a deal and I'll deliver on Sunday afternoon. Assume B did not contact A, comment on the following:
  - (a) A delivers the car but B refuses to pay or accept delivery
  - (b) B waits for delivery, A fails to arrive and refuses to sell.
2. On 1 June, S wrote to P offering to sell P his car for N1.2million, the offer to remain open until 7 June. However, soon after posting that letter, S changed his mind, and on the morning of 2 June, he posted a second letter to P addressing him that the car was no longer for sale.

P received S's first letter at 10a.m on 3 June, and at 2, p.m on the same day posted the following reply to S: "I like your offer, but, due to my present financial position, will you accept payment of N200,000 per month. Over 6 months. This letter reached S on the morning of 4 June.

That afternoon (4 June), P also changed his mind; at 3p.m. He posted the following letter to S: "Forget my letter, I accept your offer and can pay immediately I receive the car." An hour after, posting that letter, P received S's second letter and S receives P's second letter the following morning.

- a. Is there a contract between S and P? if not, why not? If so, why?
- b. Would your answer to (a) be different had S not promised to keep the offer open until 7 June?

## **7.0 REFERENCES/FURTHER READINGS**

Graws; (1993). *Introduction to the Law of Contract*. Sydney: The Law Book Co Ltd.

Vermeesch R. & Anov; (1995). *Business Law of Australia*. Sydney: Butterworths.\_

## **UNIT 2      CONTRACT: INTENTION AND CONSIDERATIONS**

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### **1.0 INTRODUCTION**

To constitute a valid contract, there must be an agreement (oral or written or both), an intention to create legal relations and consideration. We discussed agreement in the last unit. Can you recall what an offer is and how to bring it to an end? Good. Now we are about to consider the two other basic elements – intention to create legal relations and considerations. But before then, the objectives. Let us see.

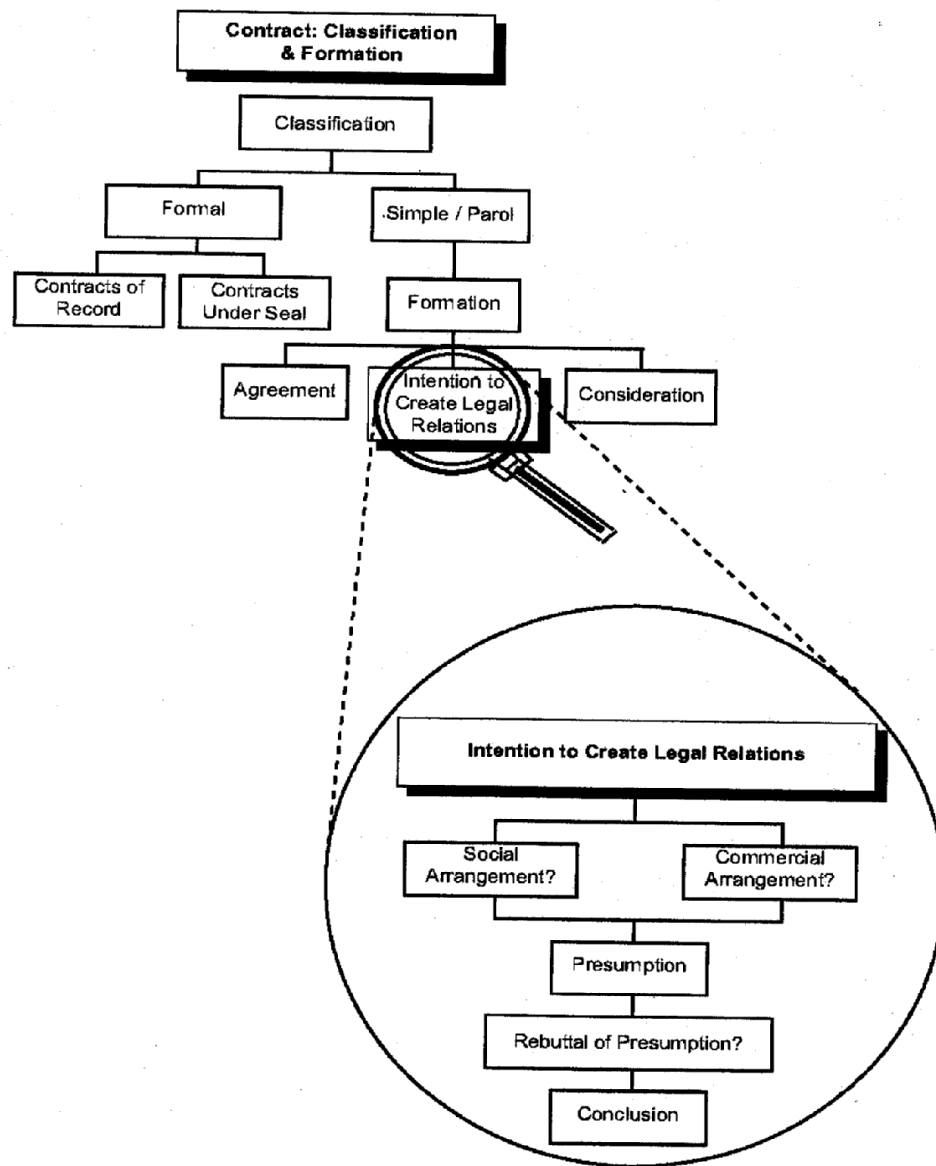
### **2.0 OBJECTIVES**

On successful completion of this unit, you should be able:

- apply the principles relating to intention to create legal relations to relevant problem questions
- define ‘consideration’ and apply the rules relating to consideration to decide whether ‘good’ consideration is present
- explain the impact of promissory estoppels on the enforceability of promises and apply the doctrine to given fact situations;
- decide whether a simple contract has been formed in given fact situations.

### 3.0 MAIN CONTENT

#### 3.1 Overview of Contract



#### 3.2 Intention to Create Legal Relations

There are certain agreements, which although they may contain an offer and an acceptance, are not enforceable at law. This is because the law considers that there is no intention on the part of the parties to create legal relations. This occurs in most social agreements, for example a person agreeing to come to your place for dinner. It would be ridiculous to think that you could sue that person if he/she failed to turn up.

To determine if there has been an intention to create legal relations, the courts have tended to classify the agreement in question, in one of two ways:



- Social, family or domestic arrangements; or
- Commercial or business arrangement.

Having made the initial classification, the courts then make a presumption. In the case of social agreements the law presumes that there is no intention to create legal relations while in commercial transactions, the presumption works the other way. In both cases the presumption can be rebutted by evidence to the contrary. In considering whether the presumption has been rebutted the courts look at the intention of the parties. However, regardless of what the parties may have subjectively considered their intention to be, the courts apply an objective test and decide on the basis of what a reasonable person would consider the parties' intentions to be in the light of their words and conduct and the surrounding circumstances.

### 3.2.1 Social or Family Agreements

A case dealing with a social situation where the presumption against the existence of a legally binding contract was not rebutted is *Balfour v Balfour* (1919) 2 KB 571; whereas examples of the reverse situation are *Simpkins v Pays* (1955).

While all relevant matters are considered in determining the intention of the parties, a number of **indicative factors** have been developed, which are of assistance (remember that these factors are **not** elements and operate as a guide only). They include:

- The gravity of the foreseeable detriment which would be suffered by the promises if the promisor reneged on his/her promise.
- The degree of precision/certainty of the agreement
- The sections legal consequences involved in the promises made (eg changing of wills)
- Whether married parties were living in amity at the time of the agreement.

### 3.2.2 Business or Commercial

Of course in a business or commercial context the parties almost invariably intend their agreements to be enforceable and the presumption is to that effect. Two cases where the presumption was rebutted are *Rose & Frank Co. v Crompton & Bros Ltd* [1925] AC 445 and *Jones v Vernon's Pools Ltd* [1938] 2 All ER 626.

A situation more likely to arise in commerce is where one party (usually a company) gives to another a 'letter of comfort'. The nature and effect of a letter of comfort was in issue in *Kleinwort Benson Ltd v Malaysia*

*Mining Corp Berhad* the circumstances were that the parent company gave a letter of comfort to a bank who was about to loan some money to the parent's subsidiary company. The letter said in part: 'It is our policy to ensure that the business of [the subsidiary] is at all times in a position to meet its liabilities to you under the above arrangements'. The loan was advanced to the subsidiary but was not repaid. The subsidiary became insolvent and the bank sued the parent company on the letter of comfort. The bank lost, the court holding that the letter did not constitute a legally binding promise. In reaching this conclusion the court relied heavily on the word 'policy' in the letter of comfort as suggesting a non-binding undertaking. This case shows that much depends on the words used and there are instances in the law where, on different wording, letters of comfort have been regarded as showing an intention to be legally bound.

## Example of Documents

### Simple Contract

This agreement entered into on the *24th day of July 1990*  
 BETWEEN *John Smith of 1 Jones Street, Thomsonville* in the State of Queensland (hereinafter referred to as the 'seller')  
 AND: *Emma Partridge of 41 Henley Street, Brisbane* in the State of Queensland (hereinafter referred to as the 'buyer').

#### Recitals

- A. The seller is the owner of a motor vehicle *Mazda 929* registered number *ABC-123* (hereinafter referred to as the 'vehicle').  
 B. The buyer wishes to buy the vehicle from the seller  
 It is hereby agreed by the parties that:

#### Operative Part

1. The buyer shall pay the seller the sum of *nine thousand dollars (\$9000)* by cash or bank cheque as consideration for the vehicle.
2. The buyer is to pay the seller the total price on delivery of the vehicle.
3. The seller is to deliver the vehicle to the place of residence of the buyer at a mutually agreed time but within seven (7) days of signing this agreement.

SIGNED *Emma Partridge*  
 (Buyer)

WITNESS *John Mitchell*

SIGNED *John Smith*  
 (Seller)

WITNESS *Thomas Fraser*

### Deed

This deed entered into on this *24th day of July 1990*.  
 BETWEEN *Jill Jones of 1 Smith Street, The Village* in the State of Queensland (hereinafter referred to as the 'seller')  
 AND: *Jack Johnson of 13 Long Drive, the Township*, in the State of Queensland (hereinafter referred to as the 'buyer').

#### Recital

- A. The seller is the owner of a motor vehicle *Mazda 929* registered number *ABC-123* (hereinafter referred to as the 'vehicle').  
 B. The buyer wishes to buy the vehicle from the seller

#### THIS DEED WITNESSETH AS FOLLOWS:

#### Operative Part

1. The buyer shall pay the seller the sum of *nine thousand dollars (\$9000)* by cash or bank cheque as consideration for the vehicle.
2. The buyer is to pay the seller the total price on delivery of the vehicle.
3. The seller is to deliver the vehicle to the place of residence of the buyer at *10am* on the *29th day of July 1990* unless otherwise mutually agreed but within seven (7) days of signing this agreement.

SIGNED, SEALED AND DELIVERED  
 by the said *Jill Jones* in the  
 Presence of *Bill Smith*  
*Bill Smith*  
 (Witness) JP

*Jill Jones* (Seller)

SIGNED, SEALED AND DELIVERED  
 by the said *Jack Johnson* in the  
 presence of *Bill Smith*  
*Bill Smith*  
 (Witness) JP

*Jack Johnson* (Buyer)

**SELF ASSESSMENT EXERCISE**

**1. Point-Form Approach**

Now read the relevant paragraphs on intention and complete the following approaches on a problem in this area.

**Point-Form Approach to Intention**

Step 1 is the agreement \_\_\_\_\_ or \_\_\_\_\_ ?

Step 2 (a) If it is \_\_\_\_\_, the law presumes \_\_\_\_\_

(b) If it is \_\_\_\_\_, the law presumes \_\_\_\_\_

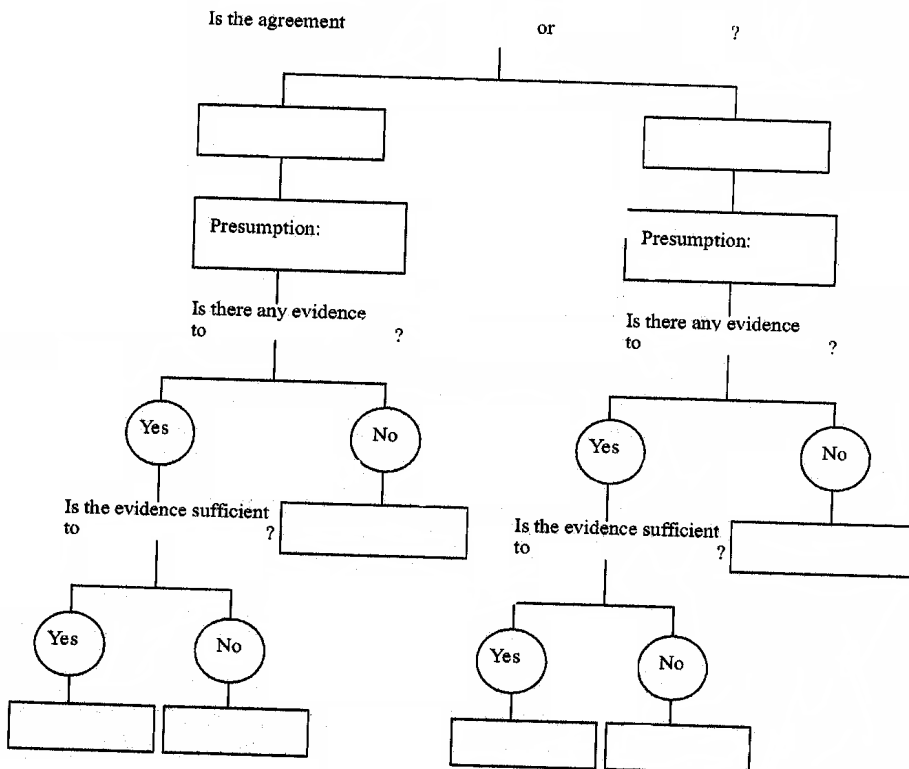
Step 3 is there any evidence to \_\_\_\_\_ ?

Step 4 is this evidence sufficient to \_\_\_\_\_ ?

Step 5 Therefore the parties did/did not intend to create legal relations.

**Feedback** is provided at the end of this unit.

**2. Algorithmic Approach**



**Feedback** is provided at the end of this unit.

### 3.3 Consideration

Consideration is the price paid (not necessarily in monetary terms) for the promise of the other party. If you do not pay for (or ‘buy’) the promise of the other then you cannot enforce that promise. For example, say a person (D) promise to come to P’s house each week during the summer to mow P’s lawn. This promise is not enforceable by P unless P gives something in return for the promise of the mowing. P might pay for the mowing or promise to fix D’s car or provide D with certain goods. The point is that P must promise something in exchange for D’s promise to mow the lawn, otherwise D’s promise is gratuitous and unenforceable. Of course for a contract to be enforceable it must comply with the other elements of a contract such as agreement and intention to create legal relations.

The price of one party to buy the other’s promise is said to be **detriment** to that person. So the detriment to P in the example above is the payment for the mowing, the fixing of the car as the case may be. Of course there is a detriment to D as well because he has to mow the lawn. But there are also **benefits** to each so that in ordinary case each person in a contract receives a benefit but suffers a detriment. The definition of consideration is expanded on below.

To try and determine if consideration is present in a given situation judges have developed certain rules. The main ones are:

- (a) Consideration is not the equivalent of a moral obligation. For a time in English legal history it was a belief, widely held, that consideration was equal to the requirement to fulfill a moral obligation. This is no longer the case now – some **legal obligation** must be present to constitute ‘sufficient’ consideration.

- (b) The following are definitions of sufficient consideration:

*Some right, interest, profit, or benefit according to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.*

An act or forbearance of one party, or the promise thereof is the price for which the promise of the other is bought, and the promise thus given for value is enforceable.

- (c) Consideration may be **executed**, i.e. an act/forbearance given for a promise, or **executory**, i.e. a promise given for a person.