



**NATIONAL OPEN UNIVERSITY OF  
NGERIA**

**SCHOOL OF LAW**

**COURSE CODE:LAW 100**

**COURSE TITLE:INTRODUCTION TO LAW**

- 1a. What is an exemption clause?
  - b. Name two steps that are involved in the process of determining whether an exclusion clause applies to a given situation.
- 2a. What happen if the true effect of an exclusion clause is misrepresented?
  - b. What is the effect of an established prior course of dealing?
  - c. What is the Contra Proferentum rule?
  - d. What is the deviation rule?

#### **4.0 CONCLUSION**

We have ruled that a contract may be oral, written and partly oral and partly written. In every case, the basic elements are offer and acceptance, intended to create legal relations and consideration. Terms of a contract may be expressed or implied. They may also be written and outside the scope of a contract. We have tried to distinguish one type from the other. We also evaluated their significance and how the courts have interpreted the different terms of a contract.

#### **5.0 SUMMARY**

1. If the contract is oral or a mixture of oral and written terms then all representations by the parties' may form part of the contract. Whether they do, depends primarily on the next step in this process described below.
  2. If the contract is wholly written, then the rule extrinsic evidence of document rule comes into play.
  3. Check if any of the exceptions to the general rule apply.
  4. Besides the fact that the form of the contract (between written, oral etc) may vary, there is also the prospect that there is more than one contract. In particular, a collateral contract might have come into existence. Note however that such a contract will not be readily inferred and that there are certain requirements that have to be met in this regard.
1. Distinguish three types of statements:
    - A puff, an exaggeration (usually unprovable) which gives no right of legal recourse even if it induces the receiver to enter into the contract. In case of problems in this area, it is suggested that you eliminate puffs first because they are easy to deal with.

- A representation is an inducing statement, which while not part of the contract may give rise to a remedy if it is false.
  - Term of the contract which is part of the contract and has that status because it is a legal promise. Once a term is breached by one party, then the other can sue for breach of contract without more. It is not necessary to prove that the term induced the contract etc. Of the three types of statements, clear terms have the highest status, puffs are the lowest and representations are somewhere in the middle.
2. In distinguishing between a representation and a term, use the four indicative factors set out above.

Exclusion clause are terms of a contract, and are commonly found in standard form contracts. In construing exclusion clauses, the court leans in favour of the consumer. Notice if it must be given, or deemed to be given or brought to the attention of the other party. It is also vitiated by misrepresentation. The test is objective.

## 6.0 TUTOR-MARKED ASSIGNMENT

- 1(a) Critically evaluate the decision in *Thorton v Shoe Lane Parking Ltd* (1971).
- (b). Would the decision have been different if Mr. Thorton had been a regular user of the car park?
2. X entered into a written contract to purchase a second-hand vehicle which B had previously described as a 1979 Volkswagen. In fact it was a 1978 Volkswagen and therefore worth \$200 less than the \$1 200 X paid for it. The written contract made no reference to the age of the vehicle. What remedies are open to?

What difference if any would it make if?

- (a) B was a used car dealer;
- (b) the contract described the car as a 1978 model: or
- (c) X suspected the car not to be a 1979 model but did not bother checking? (Graw, 1993).
3. A takes her expensive fur coat to B's dry cleaning establishment. She is handed a ticket, the face of which contains a number, her name, a description of the coat and an annotation to the effect that the coat will be ready the following Friday. On the reverse side in small print are the words: 'we will not be responsible for any loss or damage of whatever nature of howsoever caused.' On A's

return she discovers the coat to be badly torn. Advise her (Graw 1992, P. 191)

## **7.0 REFERENCES/FURTHER READINGS**

Carroll, L *Through the Looking Glass*.

Graw, S (1993). *Introduction to the Law of Contract*. Sydney: The Law Book Company Limited.

Khoury, D & Yamouni, YS (1995). *Understanding Contract Law*, 3<sup>rd</sup> edn. Sydney: Butterworths.

Sydney City Council v West (1965) 116 CLR 481.

Vermeesch, RB & Lindgren, KE (1995). *Business Law of Australian*. Sydney: Butterworths.

## **UNIT 4 CONTRACT: VALIDITY/ENFORCEABILITY AND DISCHARGE**

## CONTENTS

|       |                                  |
|-------|----------------------------------|
| 1.0   | Introduction                     |
| 2.0   | Objectives                       |
| 3.0   | Main Content                     |
| 3.1   | Form                             |
| 3.1.1 | Deed                             |
| 3.1.2 | In Writing                       |
| 3.1.3 | Evidence in Writing              |
| 3.2   | Capacity                         |
| 3.2.1 | Individual Needing Protection    |
| 3.2.2 | Protecting Society               |
| 3.3   | Consent                          |
| 3.3.1 | Misinterpretation                |
| 3.3.2 | Duress                           |
| 3.3.3 | Undue Influence                  |
| 3.3.4 | Unconscionable Contracts         |
| 3.4   | Illegality                       |
| 3.5   | Discharge of a Contract          |
| 3.5.1 | By Performance                   |
| 3.5.2 | By Agreement between the Parties |
| 3.5.3 | Operation of Law                 |
| 3.5.4 | By Frustration                   |
| 3.5.5 | Breach of Contract               |
| 3.6   | Remedies                         |
| 3.6.1 | Common Law                       |
| 3.6.2 | Equitable Remedies               |
| 4.0   | Conclusion                       |
| 5.0   | Summary                          |
| 6.0   | Tutor-Marked Assignment          |
| 7.0   | References/Further Readings      |

### 1.0 INTRODUCTION

The first half of this module examines a contract and its surrounding circumstances to see if they contain a feature which might render the contract unenforceable. A party may seek to rely on this feature or deficiency to assist in defending an action taken by the other party under the contract.

These features or deficiencies might cause the contract to be:

- Void;
- Voidable;
- Unenforceable by action; or
- Illegal.

A **void** contract is one which has no legal effect from the beginning. No rights or obligations are created or conferred by it.

A **voidable** contract is valid unless or until it is avoided or rescinded ie one of the parties may elect to affirm, or reject it, thereby either keeping it on foot or bringing it to an end. This termination may be retrospective eg fraudulent misrepresentation or prospective eg where an infant elects to avoid a contract before gaining his or her majority.

An **unenforceable** contract is one which is in substance valid but which cannot be enforced in court because of some technical defect.

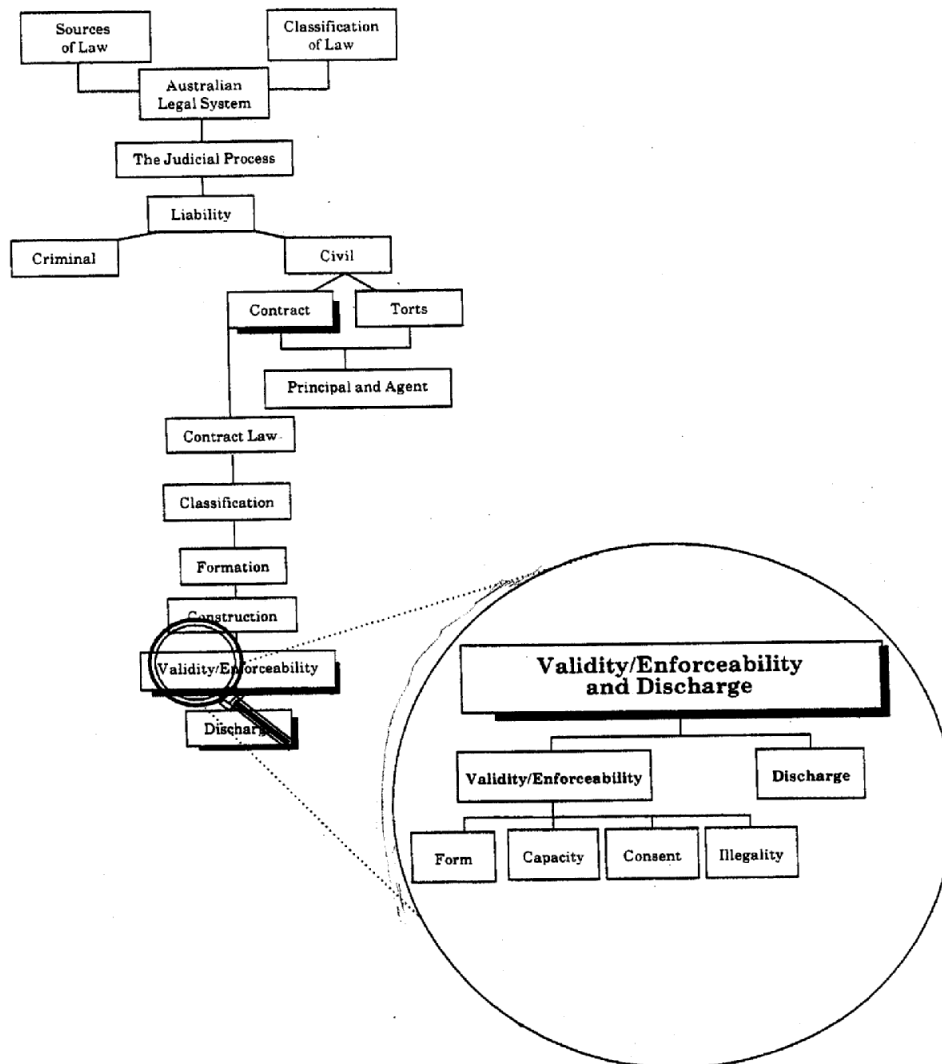
An **illegal** contract is one which contravenes some common law or statutory prohibition. The effect of this contravention varies depending on the prohibition.

It is important that you are able to use terms correctly are when applying the principles in the following topics to a particular contract and that you able to state what their effect is on the contract in question. Many students use these terms interchangeably in examinations and we are left wondering whether they mean what they have written or if in fact they were thinking of, for example, ‘voidable’ when they wrote ‘void’.

The second half of the module looks at discharge of a contract – its termination and the termination of the parties’ rights and obligations.

The areas covered in this Unit are quite detailed, however in this course a relatively brief treatment is all that can be accomplished.

**Contract: Validity/Enforceability and Discharge**  
**See the General Overview below:**



## 2.0 OBJECTIVES

On successful completion of this module, you should be able to:

- describe circumstances where a contract which has apparently been validly formed is nevertheless deprived of legal effect
- give examples of contracts which require a particular form to be enforceable
- list categories of persons whose capacity to contract may be limited and describe the basic principles of law applicable to minors, those mentally incapable and drunkards
- describe the different types of misrepresentation and apply them to appropriate factual situations
- list some example of different types of illegality that are likely to render a contract unenforceable
- describe the means by which a contract may be discharged
- determine the effect of frustration and breach of contract on the parties

- describe the remedies available to a party for breach of contract.

### **3.0 MAIN CONTENT**

#### **3.1 Form**

Some contracts to be valid and enforceable, are required to be in a particular form. You are not required to know this area in detail but rather, to be aware of the categories of format required and an example of each:

##### **3.1.1 Deed**

Certain contracts must be in the form of a deed to be enforceable. For example, an agreement or a promise which is not supported by consideration is not enforceable unless in the form of a deed.

##### **3.1.2 In Writing**

Statutes require a variety of contracts to be wholly reduced to writing, such as cheques and higher purchase agreement.

##### **3.1.3 Evidenced in Writing**

Other statutes have listed certain contracts as unenforceable unless there is written evidence of the terms e.g. a contract to sell land must have a signed memorandum in writing. In this category, the memorandum does not necessarily contain every single term of the contract, as is required in the contracts in writing category.

*Many of the emblems of today's legal writing have their origins in the past. Many of these historical influences result in verbosity. Some, as we have seen, are rooted in the development of legal language, others spring from the method adopted for determining fees*

*Long ago, court officials derived their income from fees paid by litigants. The fees were based on the length of documents at the rate of so many pence of folio. The longer the document the larger the court fee; the greater the court fee, the greater the earnings of court officials. The fatter the documents, the fatter the fee! Lawyers were paid in like manner, conveyancers being paid by the length of their conveyances. Thus recital upon recital were inserted. Provision was piled upon provision. The length of covenants for title grew. All the time coupling of words grew with vigour until Davidson in 1860 commented, 'this multiplication of useless expressions probably owed its origin to the*



*want of knowledge of the true meaning and the application of each word, and a consequent apprehension, that if one word alone were used, a wrong one might be adopted and the right one omitted; and to the general disposition of the profession to seek safety in verbosity rather than in discrimination of language'. (Source: Robinson 1973, p 13-14)*

## **3.2 Capacity**

Although traditionally the emphasis in the law has been on the freedom of the individual to contract, the courts have always, from earliest times, recognized certain categories of persons whose capacity to enter into a binding contract is in some way limited.

Stephen Graw in his very useful work *An Introduction to the Law of Contract* (at p 94) notes that there are two principal aims underlying the law of capacity to contract. On the one hand there are certain individuals who need protection from others and, on the other, sometimes society needs protection from certain individuals;

The individuals who are generally recognized as needing protection are:

- Minors
- Those mentally incapable
- Drunkards.

Persons from whom society is said to need protection are:

- Convicted felons
- Aliens
- Bankrupts
- Companies (in certain circumstances).

While on the face of it this may appear to extend to quite a wide group of people, in reality this is not so. In fact capacity to contract does not often in practice impact upon the formation or performance of contracts. Having said that, a brief mention will be made of the different classes of persons listed above.

### **3.2.1 Individuals Needing Protection**

**(a) Minors or Infants**

The approach of the law here is to look at the contract from the minor's point of view and categorize it accordingly. If it is either a contract for necessities or a contract of employment such as an apprenticeship then it is **valid** – ie it is essentially treated as though the infant was an adult. 'Necessaries' are (as the name suggests) those items needed to sustain life such as food, clothing and shelter. In judging what are necessities the law takes into account the infant's station in life because what are necessities to one may not be necessities to another.

Another group of contracts are those where the infant obtains a long term interest in some item of property such as a lease, partnership or shares in a company. Here the contract is treated as subsisting until the infant decides to terminate or rescind it. This must occur either while the infant is under eighteen or within a reasonable time of attaining her or his majority. The contract is said to be voidable at the option of the infant.

The final group are those contracts not described above where the law presumes they are not to the infant's benefit and they are considered void, i.e. of no effect. This group consists of all contracts not covered by the valid and voidable categories.

**(b) Mentally ill and Drunkards**

The law treats these two groups in much the same ways as infants. Contracts for necessities can be enforced against them but generally other contracts are voidable at their option. The law however does not treat a defence of incapacity for this group lightly – especially those who plead they were drunk. So two qualifications or requirements must be met before incapacity sufficient to affect the contract is established.

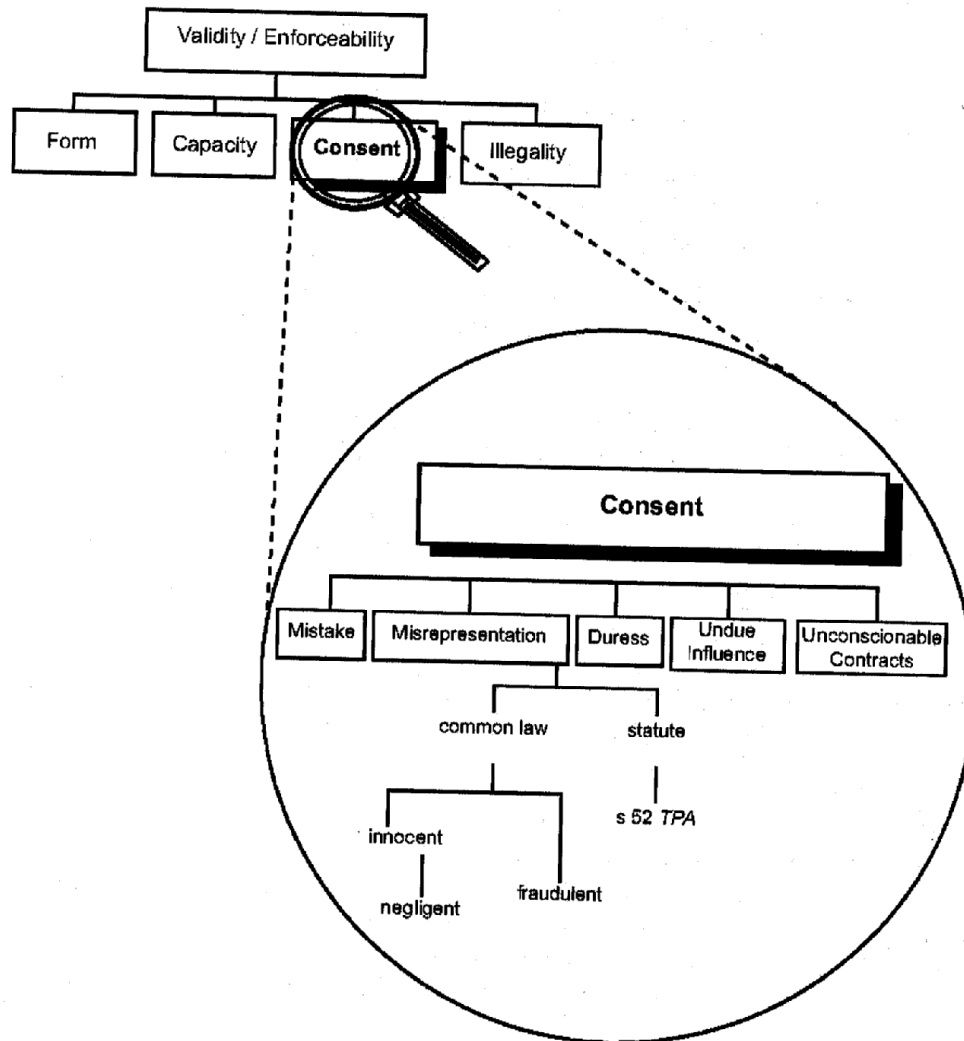
Those qualifications are:

- The person concerned must have been incapable of understanding the nature of what they were agreeing to at the time that they contracted; and
- The other party must have been or should have been aware of their condition and the consequent incapacity.

**3.2.2 Protecting Society**

- **Convicted Felons.** Historically those convicted of a felony that attracted the death penalty had no right to contract. Perhaps strangely the position regarding those convicted of offences that do not carry the death penalty is not clear but in practice the problem does not appear to arise.
- **Aliens** (those not born in Nigeria or naturalized) are only under some incapacity when the alien's country of birth is at war with Nigeria.
- **Bankrupts** and their right to contract, are affected in two main ways. In the first place there are severe limitations on the right of the bankrupt to dispose of property once they have been declared bankrupt. Secondly, up until they are discharged from bankruptcy the bankrupt cannot obtain credit for \$3 000 or more without disclosing that they are a bankrupt. Failure to disclose attracts a penalty under the *Bankruptcy Act*.

It should be realized that the treatment given above is very broad and the many qualifications and intricacies of the law have not been explored. These would need to be researched before a problem in this area could be confidently solved. In this course however the broad outline above is sufficient.



### SELF ASSESSMENT EXERCISE 1

- 1(a) What are the three classes of minor's contract?
- (b) What two tests are used to determine whether something is a "necessary"?
- (c) Yuguda, a sixteen year old, has a job working at the cattle farm. He rides a bicycle covering kilometers to get to work. Yuguda bought a new bicycle from a "Releigh Company" which took his old bicycle as a trade in. Yuguda failed to pay Releigh Co. the balance owed on his new bicycle. Releigh Co. wants its bicycle back or the balance owed.

Advise parties about their respective rights. Give reasons for your answer.

### 3.3 Consent

This topic covers matters which may affect whether the parties have in fact given real consent to the contract. For example one of them may not have genuinely agreed to that contract.