

## Translation<sup>1</sup> English law of Contracts

### Introduction

A contract is a legally binding agreement. An agreement occurs when two minds meet upon a common purpose. This "meeting of minds" is called *consensus ad idem*, i.e. consent to the matter.

### 1. Two main types of contracts

- a) **Specialty contracts** (or contracts by deed under seal) are used for various transactions such as conveyances of land, a lease of property for more than three years, articles of partnership, settlements. The characteristics of a contract by deed are that it is : (1) signed, (2) sealed and (3) delivered. A specialty must be registered by a solicitor.
- b) **Simple contracts** or "parol" contracts are informal contracts. They may be made in any form, orally, in writing, by telephone, telegram, or by implication from conduct (a person who takes a seat in a bus is entering into an implied contract to pay his or her fare). They must include some consideration.

### 2. Formation of a valid simple contract

The following elements are necessary:

- a) Intention to create legal relations (*animus contrahendi*).
- b) Offer and acceptance: there must be an offer made by one party and an unreserved acceptance of that offer by the other party. Silence is not considered as an acceptance.
- c) Consideration: or the price for which the promise of the other is bought. Consideration must be present or future (executed or executory); it must not be previous to the contract itself (past consideration), except in the case of services rendered at the express request of the other party.
- d) Certainty of terms. There are two types of terms:
  - Express terms (oral or written) must state clearly and precisely the rights and obligations of each party. Express terms are of two kinds:
    - conditions which go to the root of the contract;
    - warranties or terms of the contract which are collateral or subsidiary to the main purpose of the contract.
  - Implied or innominate terms: the contents of a contract include general rules which are not formulated (commercial local usages, customs or statutes), but to which the courts will give as much importance as to the express terms.
- e) Capacity of the parties: the general rule is that any person may enter into a binding contract. Yet special rules affect infants and minors, insane and drunken persons, enemy aliens and corporations.
- f) Legality of the object: a contract is illegal if it contravenes a statute, or the common law, or morality.
- g) Genuine consent: the following elements may vitiate consent, 1) mistake: the general rule of common law is that mistake does not affect the validity of a contract. However, some kinds of mistakes, known as "operative" mistakes, undermine the agreement so that there is no true consent and render the contract

<sup>1</sup> DHUICK Bernard, FRISON Danièle, L'Anglais juridique, langues pour tous, Paris: Pocket, 1993.

void; 2) misrepresentation: a misrepresentation makes the contract voidable: the aggrieved party will have to go to court to have the contract declared void. It has to be active: silence does not amount to misrepresentation. There are three kinds of misrepresentation: innocent (when the defendant, in good faith, is unaware that his statement is wrong), negligent (when the defendant is unaware that his statement is wrong but is liable for not controlling its authenticity), fraudulent (when the defendant intentionally).

For a contract to be valid, all the above elements must be present. If one or more is absent the contract is void or voidable.

### 3. Privity of contract

As a general rule, a contract cannot be opposed to third parties. However, English law has admitted large exceptions to the principle which are known as agency and trust and necessarily imply third parties.

### 4. Discharged contract

A contract may be discharge by: a) agreement; b) performance; c) breach; d) frustration; e) operation of the law, for example, lapse of time; where it is entered into for a particular period of time a contract is discharged at the expiration of that period.

### 5. Document

#### UNFAIR CONTRACT TERMS ACT 1977

#### Section 2

- (1) A person cannot by reference to any contract term or to a notice [...] exclude or limit his liability for death or personal injury resulting from negligence.
- (2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the term or notice satisfies the requirement of reasonableness.
- (3) Where a contract term or notice purports to exclude or restrict liability for negligence a person's agreement to or awareness of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

#### Section 3

- (1) this section applies as between contracting parties where one of them deals as consumer or on the other's standard terms of business.
- (2) As against that party, the other cannot by reference to any contract term.
  - a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or
  - b) claim to be entitled:
    - to render a contractual performance substantially different from that which was reasonably expected of him, or
    - in respect of the whole or any part of his contractual obligation, to render no performance at all,except in so far as (in any of the cases mentioned above in this subsection) the contract term satisfies the requirement of reasonableness.

#### Section 5

- (1) in the case of goods of a type ordinarily supplied for private use or consumption, where loss or damage
  - a) arises from the goods proving defective while in consumer use; and
  - b) results from the negligence of a person concerned in the manufacture or distribution of the goods,

liability for the loss or damage cannot be excluded or restricted by reference to any contract term or notice contained in or operating by reference to a guarantee of the goods.

## 6. Key sentences – Translate

1. Today, sealing a contract means that the solicitor affixes to the contract a paper wafer which is touched by the person making the deed.
2. Undue influence is a more subtle form of pressure than duress: it is exerted upon persons who are in a weaker position.
3. To be valid, a simple contract must include elements of written proof.
4. The terms of the contract determine the extent of the obligations that it creates.
5. Parties to a contract may agree on anything which does not contravene the law.
6. When a contract is enforceable the courts will lend their aid to the enforcement of the agreement.
7. Beware: an unenforceable contract is not necessarily invalid (void).
8. The contract is a specialty. (The contract was passed before a solicitor.)
9. *Le juge peut déclarer un contrat résolu pour impossibilité d'exécution.*
10. *Au-delà d'un certain laps de temps, aucune des parties ne peut intenter une action portant sur le contrat.*
11. *S'il n'y a pas accord sur la chose, le contrat est nul de nullité absolue.*
12. *Le contrat a été écarté pour vice du consentement à la demande de la partie qui est de bonne foi.*
13. *Le demandeur conclut un contrat par lequel il achetait en pleine propriété au défendeur une maison.*
14. *Les contrats formels (actes notariés ou actes authentiques) sont utilisés pour un certain nombre de transactions, tels les transferts de propriété, les baux de plus de trois ans, les contrats d'association et les donations.*
15. *Certains contrats doivent être obligatoirement conclus par acte notarié, d'autres doivent être écrits, d'autres doivent comporter des éléments de preuve écrite pour être exécutoires.*
16. *Un engagement ne sera pas exécutoire que si les parties entendent lui donner un caractère juridique.*