

English for Lawyers 3


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Contract Law



Definition of contract

Think about the following questions:

- ▶ What is a contract?
 - ▶ How does it differ from a regular agreement?
 - ▶ In what situations do we enter into contracts?
 - ▶ What are its essential elements?
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Definition of contract

A **contract** can be defined as:

a legally binding agreement between two or more parties which the courts will enforce

- ▶ In order for an agreement to be considered a contract it must meet certain essential requirements.

Elements of a contract


The four essential elements of contract are:

1. binding offer
2. acceptance
3. consideration
4. legal capacity
5. intention to be legally bound


In addition to these, certain other requirements need to be met as well.




Elements of a contract

- ▶ the object of the contract must not be in violation of the law
 - ▶ certain contracts must be made in writing
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Offer and Acceptance

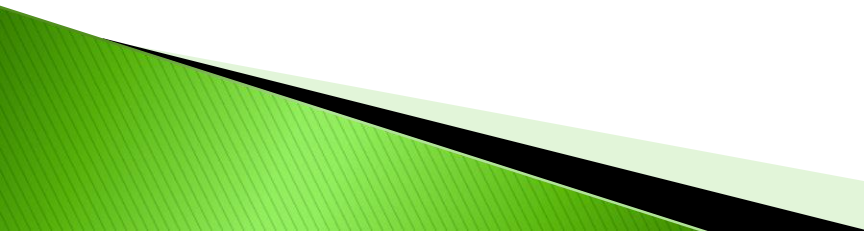
- ▶ one party must have made a **binding offer** to another, containing the **basic terms of the agreement**
 - ▶ if the other party accepts the offer with all the basic terms, a contract is formed (**unqualified acceptance**)
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Offer and Acceptance


- ▶ If the other party tries to negotiate by suggesting different terms, this is referred to as a **qualified acceptance**
 - ▶ Qualified acceptance does not result in a contract, but constitutes a **counter-offer**
 - ▶ If, in turn, the other party gives unqualified acceptance to the counter-offer, a contract is formed
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Offer and Acceptance


- ▶ Possible issues that may arise:
 - Was there unqualified acceptance?
 - Was the acceptance communicated?

 - ▶ In some cases, acceptance does not even have to be communicated by words – it is **implied from conduct** (e.g. the everyday situation of buying a product in a retail store)
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Consideration

- ▶ Refers to the promise between the contracting parties to give each other something of value
 - ▶ e.g. goods, price paid for the goods, service, etc.
 - ▶ Croatian: *(protu)činidba*
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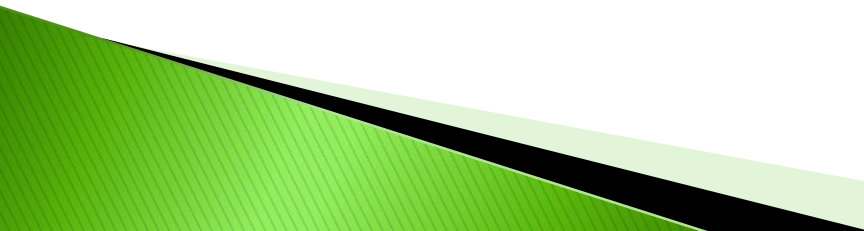
Legal Capacity and Intention

- ▶ The contracting parties must have **legal capacity to contract** (*poslovna sposobnost*)
 - ▶ Also, **intention** to create legal relations must be present (this can be disputed if there is evidence to the contrary)
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Additional requirements

- ▶ Contracts can be made orally, although some contracts are only effective if **made in writing**:
 - contracts for the sale of land,
 - contracts for transfer of shares,
 - transfer of intellectual property
 - lease contracts, etc.
- ▶ Contracts must be **enforceable** – if either party fails to perform the contract, the courts must be able to enforce it


Terms of contract

- ▶ contract contains TERMS or STIPULATIONS
 - EXPRESS TERMS – explicitly stated
 - IMPLIED TERMS – taken to be understood by the parties
 - CONDITIONS – essential terms, indispensable for the performance of the contract
 - WARRANTIES – secondary terms, promises or guarantees e.g. about quality of goods
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Some common clause types

- ▶ PARTIES
 - ▶ TERM/LENGTH OF CONTRACT
 - ▶ TERMINATION
 - ▶ CONFIDENTIALITY
 - ▶ INDEMNITY
 - ▶ FORCE MAJEURE
 - ▶ ASSIGNMENT
 - ▶ ENTIRE AGREEMENT
 - ▶ APPLICABLE/GOVERNING LAW
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Some common terms


- ▶ TERMINATION – circumstances under which a contract can be terminated
 - ▶ CONFIDENTIALITY – identifies information from the contract which is not to be disclosed
 - ▶ INDEMNITY – clause stipulating an obligation to compensate for some defined loss or damage
 - ▶ FORCE MAJEURE – protects from liability in the event of an unavoidable natural event or conflict (a.k.a. an act of God)
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Some common terms

- ▶ **ASSIGNMENT** – prohibition or permission for transferring certain contractual rights or obligations
 - ▶ **ENTIRE AGREEMENT** – clause stating that the contract represents a the sole and entire agreement, disregarding any terms not included therein
 - ▶ **APPLICABLE/GOVERNING LAW** – law/forum/court competent to govern any disputes
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Discharge of contract


- ▶ end of a contract
 - ▶ parties released from contractual obligations

 - ▶ four possible situations:
 - discharge by performance
 - discharge by agreement
 - discharge by breach
 - discharge by frustration
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Discharge of contract

- ▶ discharge by performance
 - all obligations performed
- ▶ discharge by agreement
 - mutual agreement to terminate the contract
- ▶ discharge by breach
 - a party breaches the contract and halts its performance
- ▶ discharge by frustration
 - impossible to perform the contract due to unforeseen events, no longer relevant or logical

Breach of contract

- ▶ occurs when a party fails or refuses to perform an obligation under the contract, or performs it defectively
 - ▶ the breaching party / the non-breaching party
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Breach of contract

- ▶ five possible remedies in breach of contract lawsuits:
 - compensation/damages
 - specific performance
 - injunction
 - rescission
 - contract modification
- ▶ breach of a condition – right to terminate
- ▶ breach of a warranty – right to compensation

Breach of contract

- ▶ compensation/damages
 - monetary sum to compensate for losses, not stipulated in the contract (as opposed to indemnity!)
- ▶ specific performance
 - a court order requiring the breaching party to perform the contract
- ▶ injunction
 - a court order prohibiting certain action to the breaching party
- ▶ rescission (verb: to rescind)
 - termination, undoing of a contract
- ▶ contract modification
 - rewriting of the terms in order to clarify them

Defective contracts

- ▶ Contracts which do not meet the requirements can be:
 - void
 - voidable
 - unenforceable

Void contract


- ▶ A void contract is one lacking one of the essential elements, i.e. a contract is not formed at all
- ▶ Examples:
 - the object of the contract is illegal
 - consideration is missing
 - no binding offer or acceptance

Voidable contract

- ▶ A voidable contract is a contract which has a defect in its formation and can be rescinded (avoided) by one of the parties if they choose
- ▶ Examples:
 - terms agreed under duress
 - there was fraud or misrepresentation
 - there was a mistake
 - there was undue influence

Unenforceable contract

- ▶ An unenforceable contract is valid but will not be enforced by the court

 - ▶ Examples:
 - the limitation period for bringing action against the breaching party has expired (six years after the breach)
 - evidence of a contract is lacking
 - lack of signature
 - ambiguity
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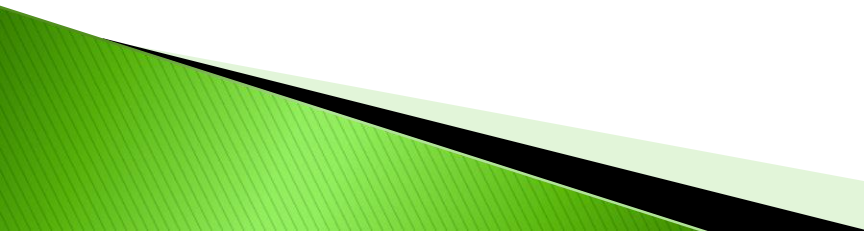
Case studies




Davis v. General Foods Corp. (1937)

- ▶ **Facts:** Ms Davis had an idea for a new food product. She wrote a letter to General Foods offering to reveal such idea. They responded with a letter stating that they would consider her idea, "but only with the understanding that the use to be made of it by General Foods, and the compensation, if any, to be paid therefor, are matters resting solely in our discretion." Ms Davis revealed her idea, which General Foods used, and paid her no compensation. Ms Davis sued.


Davis v. General Foods Corp. (1937)

- ▶ **Issue:** Was there an implied promise to pay a reasonable value for the P.'s recipe?
 - ▶ **Holding:** Where the buyer retains an unlimited right to determine the price of goods, and the seller acts relying upon the good faith and sense of fairness of the buyer to provide reasonable value for the goods, the courts cannot enforce a payment by the buyer.
 - ▶ **Reasoning:** The court reasoned that the wording of the letter was too vague to consider a contract, and that the P. acted voluntarily at the mercy of the D..
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Austin v. Burge (1911)

- ▶ **Facts:** Mr Burge received and read a newspaper over the course of several years. He had at one time subscribed for a two-year period, but claims that after the expiration of those two years, he requested that service be stopped. Mr Austin is the newspaper owner, who claims he never received notice of stoppage.
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Austin v. Burge (1911)

- ▶ **Issue:** Was there a contract implied by the conduct of the Defendant in reading the newspaper?
 - ▶ **Holding:** One who accepts an unsolicited newspaper, and reads it, is liable for the cost of the newspaper subscription if it is understood that the newspaper is not free.
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Austin v. Burge (1911)

- ▶ **Reasoning:** The court stated that although one cannot be forced into a contract unilaterally by the newspaper company, the Defendant's actions of reading the newspaper, which he knew was not free, implied that he had to pay for it. The court constructed a quasi-contract due to the Defendant's deriving benefit, and held the Defendant liable for the subscription price.
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Krell v. Henry (1903)

- ▶ **Facts:** The Claimant owned a room which had windows that looked out over the area where the King's coronation was to take place, and put up signs in his window offering the use of the rooms for people to watch the coronation. The Defendant paid a down payment to use a room for the days of the coronation, but the King became sick and was unable to be coronated. The Defendant refused to pay the balance of the money for the room, and the Claimant brought this suit.
- ▶ **Nature of the Risk:** The Claimant risked that he could get more money for his room. The Defendant risked that he could have better spent his money than on the Claimant's apartment.

Krell v. Henry (1903)

- ▶ **Issue:** Is the fact that the coronation did not take place sufficient to release the parties from their contractual obligations?
- ▶ **Holding:** Yes. Where from the nature of the contract, it can be objectively determined from the parties' conduct that both parties meant to be released from liability upon the failure of a certain event to happen, even if it is not expressly stated by the parties, it is an implied condition of the contract.
- ▶ **Reasoning:** The court reasoned that the "foundation" of the contract was that the room could be used to view the coronation. Thus, the happening of the coronation was an implied condition of the contract. They reasoned that the non-happening of the coronation was of such a character that it cannot reasonably be supposed to have been in the contemplation of the contracting parties when the contract was made.

Thank you for your attention!

