

Fundamentals of Anglo-American and Polish Legal Systems – Contract Law

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Law of Obligations

- Contracts
- Torts (Delicts)
- Unjust Enrichment

Parties to the Obligation

Creditor – Debtor

Plaintiff (Claimant) – Defendant

Promisor – Promisee

Oferor – Oferee

Parties to the Contract

Buyer (Purchaser) – Seller

Lessor – Lessee

Landlord – Tenant

Lender - Borrower

Donor – Donee

Licensor – Licensee

Key terms

- **Agreement**
- **Contract**
- **Offer and Acceptance**
- **Promise**
- **Consideration**

Contract's features

- Intention to create legal relations
- Agreement (meeting of minds)
- Consideration
- Form
- Definite terms
- Legality

Two meanings of Consideration

I. Contract Formation

- Consideration as an equivalent of Roman Causa

II. Contract Performance

- Consideration as a Performance
- Total Failure of Consideration

Consideration

- *Contract as a two-sided affair / a bargain*
- *Mutuality/reciprocity of contract*
- *Consideration is an „inducement to contract, which may include money, mutual exchange of promises, or the agreement of parties to do or refrain from doing some act which they are not obligated to do”*

Consideration

- Sidenham v. Worlington (1585) :

„Some moving cause or consideration precedent for which cause or consideration the promise was made”

Consideration

- Executed consideration
- Executory consideration

Consideration which is imperfect

- Past consideration
- Hunt v. Bate (1568)
- Sidenham v. Worlington (1585)
- Eastwood v. Kenyon (1840)

Consideration which is imperfect

- Promise to perform an existing obligation
- Pinnell's case (1610)
- Stilk v. Myrick (1809)
- Foakes v. Bear (1884)

Consideration which is imperfect

- Vague promises / Love and natural affection / Moral consideration
- Eastwood v. Kenyon (1840)

Consideration

- Inadequacy of consideration
- Sturlyn v. Albany (1587): „for when a thing is to be done by the plaintiff, be it never so small, this is a sufficient consideration to ground an action”

Consideration

- Consideration and Deed
- Sharington v. Strotton (1565): “So, where it is by deed, the cause or consideration is not enquirable... For every deed imports in itself a consideration, namely the will of the maker of the deed. Therefore it shall never be said nudum pactum where the agreement is by deed...”

Privity of Contract

- Consideration must move from the promisee

Promissory Estoppel

Central London Property Trust Ltd. v. High Trees House Ltd. (1947)

- Promise must be clear and unequivocal
- Promise must be intended to be relied on
- Promisee's reliance must result in detriment
- Estoppel only suspends rights

Combe v. Combe (1951)

- Estoppel is only a shield and not a sword

Abuse of right clause

- Article 5. One cannot exercise a right in a manner which would contradict its socioeconomic purpose or the principles of community life. Such act or omission on the part of the person entitled shall not be considered the exercise of that right and shall not be protected.

Offer and Acceptance

- A mere invitation to treat is not an offer.
- A declaration of intention is not an offer.
- An offer must be communicated to the offeree.

Polish Civil Code

- Article 66. § 1. A declaration made to another party of the intention to conclude a contract shall be deemed an offer if it determines the essential provisions of the contract.

Polish Civil Code

- Article 71. Announcements, advertisements, price lists and other information addressed to the public or to particular persons shall be considered, in case of doubt, not an offer but an invitation to conclude a contract.
- Article 543. Displaying a thing to the public at the place of sale with the indication of the price shall be deemed to be an offer of sale.

Duration of the offer

1. To revoke an offer / to withdraw an offer.
 - What if time limit for acceptance has been set?
 - Routlege v. Grant (1828)

2. An offer will lapse if time limit for acceptance has been set.

Polish Civil Code

- Art.66(2) § 2. However, the offer may not be revoked if such results from its contents or a time limit has been fixed therein.

Duration of the offer

3. The death of either party.

4. Rejection

5. Acceptance subject to conditions.

6. Conditional offer.

Polish Civil Code

- Article 62. A declaration of intent which is to be made to another person does not lose its validity as a result of the fact that before it reached that person the maker of the declaration had died or lost the capacity for acts in law, unless something else follows from the contents of the declaration, statutory law or the circumstances.

Polish Civil Code

- Article 68. The acceptance of an offer made with a stipulation of change or a completion of its contents shall be considered as a new offer.
- Article 68(1). § 1. In relations between entrepreneurs a reply to the offer made with a stipulation of changing or supplementing the offer in a way that does not change its contents substantially shall be deemed its acceptance. In this case the parties shall be bound by the contract with the contents determined in the offer, taking into account the stipulations made in the reply thereto.

Acceptance

- Express or implied
- Acceptance must be officially communicated to the offeror by the offeree.
- The offeror may dispense with communication.
- Posting rule / Mailbox rule

Polish Civil Code

- Article 60. Barring the exceptions provided for by statutory law, the intention of a person performing an act in law may be expressed by any behaviour of that person which manifests that intention sufficiently, including the fact of revealing this intention in electronic form (declaration of intent).

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Polish Civil Code

- Article 70. § 1. In case of doubt, a contract shall be considered concluded at the moment when the maker of the offer receives the declaration of its acceptance, and if it is not required that the maker of the offer receive the declaration of its acceptance, at the moment when the other party proceeds to perform the contract.

Polish Civil Code

- Article 61.§ 1. A declaration of intent which is to be made to another person shall be deemed made at the moment when it has reached that person in such a way that he could have acquainted himself with its contents. The revocation of such declaration shall be effective if it reached the person concerned simultaneously with that declaration or earlier.

Defective contracts

- Null and Void / Invalidity / Nullity / to nullify
 - Voidable / To avoid
 - Unenforceable / Unenforceability
-
- Valid and enforceable

Matters which Affect the Validity of Contract

- Mistake
- Misrepresentation
- Duress
- Undue influence
- Incapability

Mistake

- Rule: does not affect the validity of contract.
- Mistake of law and mistake of fact

Exceptions that render the contract void:

1. Fundamental mistake concerning subject matter of the contract
2. Mistaken signing of written document
3. Mistake as to the identity of the party

1. Fundamental mistake concerning subject matter of the contract

- A mutual contract as to the identity of subject matter (always void):
 - The Peerless case (1864).
- A fundamental common mistake about the subject matter (exceptionally void):
 - Couturier v. Hastie (1856),
 - Galloway v. Galloway (1914).

2.-3. Other exceptions that render the contract void

2. Mistaken signing of written document
(exceptionally void); non est factum defence;
 - a. fraudulently induced,
 - b. fundamental mistake,
 - c. signer non negligent;
3. Mistake as to the identity of the party
(sometimes void)

Other consequences of mistake - rescission

- Mistake as to subject matter of the contract
- Mistake not so fundamental
- Mistaken party not at fault
- Equitable right of rescission
- Cooper v. Phibbs (1867)
- Grist v. Bailey (1967)

Misrepresentation

- False representation of fact
- Made by one party to the other
- Before concluding the contract
- Intended to induce to enter into contract
(intended to be acted upon)
- Actually acted upon

Misrepresentation

- False representation of fact
- Fact: - not of law
- Fact: - not opinion,
- False: including half-truth
- Sometimes: also a promise incorporated into the contract
- Silence: excluded

Duty to disclose

- 1. If circumstances change during negotiations.
- 2. In contracts of utmost good faith:
 - a) insurance
 - b) sale of land
 - c) shares subscription
 - d) family arrangements

Remedies to misrepresentation

- Damages
 - - if innocent -> not available
 - - if fraudulent -> also damages in tort of deceit
- Rescission
 - - the contract is voidable even if misrep. is innocent
 - - when the right to rescind is lost?

Remedies to misrepresentation

- Rescission
- - when the right to rescind is lost?
- If restoration impossible,
- If too much time lapses,
- If party affirms contract.

Duress

- If force or threat of force induces to enter into the contract.
- Voidable contract.
- Also economic duress/coercion
 - Universe Tankships Inc. V. ITF (1982)
 - D&C Builders v. Rees (1966)
 - Pao On v. Lau Yiu Long (1979) [Fu Chip Ltd 😊]

Undue influence

- Only in confidential or professional relationship
- Voidable contract
- Presumptions:
 - doctor and patient, lawyer and client, priest and disciple, parent and child

Lack of capacity to contract

- Minor (under 18) may avoid contract, may recover damages, can sue but cannot be sued

Exceptions:

- Minor must pay for necessities,
- Court may call for restoration,
- Money lent cannot be recovered.
- Minor can ratify the contract after 18.

Lack of capacity to contract

- Insane person – contract void
- Temporarily insane person or intoxicated person – contract voidable (if was incapable of understanding; if other party was aware; in reasonable time).

How the contract discharges?

1. Performance
2. Breach of contract
3. Agreement
4. Frustration

How the contract discharges?

3. Discharge by agreement

If the original contract provides so.

New agreement – Accord and satisfaction
(consideration needed).

Deed (without consideration)

How the contract discharges?

4. Discharge by frustration

Old law (absolute duty) – Paradine v. Jane (1647)

New law (doctrine of frustration) – Taylor v. Caldwell (1863)

If some outside event occurs for which neither party is responsible and which makes total nonsense of the original contract.

How the contract discharges?

4. Discharge by frustration

Consequences:

The contract discharges.

The sums already paid – recoverable.

The sums not yet paid – cease to be due.

How the contract discharges?

4. Discharge by frustration

Examples:

Subsequent physical impossibility – *Paradine v. Jane* (1647), *Taylor v. Caldwell* (1863)

Subsequent illegality – *Fibrosa case* (1943)

Basis of contract removed – coronation cases, e.g. *Chandler v. Webster* (1904)

Frustration of commercial purpose of the contract – *Suez Canal cases*, e.g. (1962)

Art.357(1) of Polish CC

- If, following an extraordinary change of circumstances, the performance would be faced with excessive difficulties or threaten one of the parties with substantial loss, which the parties did not foresee when concluding the contract, the court may, after considering the interests of the parties, define the mode of performing the obligations and the degree of the performance, and even decide upon termination of the contract, in accordance with the principles of community life.

How the contract discharges?

2. Breach of Contract

- Failure to perform a promise which forms the whole or part of a contract.

Remedies

- Rescission / To rescind
- *I require/demand/request that the contract (should) be rescinded.*
- Damages (Compensation)
- *I require that Def repair/redress the damage / pay damages / pay the compendation*

Remedies

- Rescission (to rescind)

Avoidance (to avoid)

Termination (to terminate)

- Damages (=Compensation)

Breach of Contract

- Failure to perform a promise which forms the whole or part of a contract.
- You can sue for the rescission of the contract.
You can sue for damages.

Contract terms

- Express terms and implied terms
- Conditions
- Warranties
- What to do if a contract is breached?

Caveat Emptor

- = Buyer beware!
- Source: Case law & Statutory law: Sale of Goods Act 1891
- Implied Warranties
- Express Warranties

Related concept:

- In American „Uniform Commercial Code”
- Implied warranty of merchantability
- Apply if the seller is a merchant in respect to the goods of that kind

Merchantable if

- conform to the standards of the trade as applicable to the contract for sale,
- fit for the purposes such goods are ordinarily used,
- uniform as to quality and quantity, within tolerances of the contract for sale,
- packed and labeled per the contract for sale,
- meet the specifications on the package labels,

The doctrine of unconscionability

- Protection of a party from being victimized by the overreaching of a stronger one.
- The limitation on freedom of contract.

The doctrine of unconscionability

- Campbell Soup Co. v. Wentz (1948)

Wentz tried to back out the deal.

Campbell had struck too hard a bargain.

Equity does not enforce unconscionable bargains.

- Vokes v. Arthur Murray Inc. (1968)

Unconscionability (art. 388 CC)

- If one of the parties, taking advantage of the state of necessity, inefficiency or inexperience of the other party, in exchange for its own performance shall accept or reserve for itself or for a third party a performance whose value at the moment of the conclusion of the contract glaringly exceeds the value of its own performance, the other party may demand a reduction of its performance or an increase of the performance due to it, and if both are excessively difficult it may demand that the contract be declared null and void.

Statute of Frauds

- The limitation on freedom of contract.
- Legal forms: Oral contract and Written contract
- Deed / written form / note or memorandum needed
- Doctrine of Part Performance.
- *An Act for prevention of Frauds and Perjuryes (1677)*

Polish Civil Code

- Art.73.§ 1. If statutory law stipulates that an act in law be in a written form, that act performed without observance of the stipulated form shall be null and void only if statutory law provides for the pain of nullity.
- § 2. If statutory law stipulates for an act in law to be in another special form, the act performed without the observance of that form shall be null and void. However, this shall not apply to the cases in which the observance of the special form is reserved only for definite effects of that act in law.

Polish Civil Code

- Article 74.§ 1. The prescription of the written form without stipulating the pain of nullity shall have the effect that, if the prescribed form had not been observed, in the case of a dispute, the evidence by witnesses and the evidence in the form of statement by the parties concerning the performance of the act shall not be admissible. This provision shall not apply where the written form is reserved only in order to bring definite effects of the act in law.