

## Essential Elements of a Valid Contract ( 2003 (30) mark question)

The law of contract affects every single transaction between buyers and sellers. It is a legally binding relationship between two or more people that is enforceable by law.

Essential Elements of a contract( Must be learned)

1. **Offer**
2. **Acceptance**
3. **Consideration**
4. **Intention to contract**
5. **Capacity to contract**
6. **Consent to contract**
7. **Legality of form**
8. **Legality of purpose**

**Offer:** An offer is a proposal to give or do something and, when accepted, there is said to be an agreement. It must be clear and may be implied by conduct e.g. taking goods to the checkout.

**Acceptance:** This is a positive unqualified assent to all terms of the offer e.g. a house buyer makes an offer of price for a house and seller is happy to accept.

**Consideration:** This refers to whatever is exchanged between the parties.

-It must be real

-It need not be adequate

-It must be legal

e.g. The staff at the Beckham wedding signed a contract of silence in which the consideration was agreed at a €1. This was never paid which means a valid contract did not exist.

**Intention to Contract:** The Person must want to create legal relations. Therefore the parties signing a contract must know that they are entering a legal agreement that cannot be broken

**Capacity to contract:** This is the power of a natural person to enter into a contract.

The following parties do not have the capacity to enter a contract.

1. Minors- people under 18 except for necessities e.g. food
2. Persons under the influence of alcohol or illegal drugs
3. Persons of unsound mind.

**Consent to Contract:** A person must enter into a contract of their own free will.

There should be no use of force or lies. e.g. a groom only married his pregnant wife

after he was threatened by her father. One month later the marriage contract was cancelled.

**Legality of Form:** This refers to the manner in which the contract is made. It can be oral (simple contract) or written. E.g. when buying a house a contract must be written.

**Legality of Purpose:** This means that legally binding contracts can only be for legal transactions. E.g. a judge will not award compensation to a bank robber whose getaway driver did not show up as agreed!!

**NB: Invitation to treat** is not the same as offer- An invitation to treat invites a person to make an offer to buy something. E.g. a price tag on a pair of jeans is an invitation to buy the jeans. If the customer decides to buy the jeans, this is an offer. If the shopkeeper accepts the offer, this is acceptance, therefore a contract has been made.

### **Termination of a Contract (2005 15 marks)**

A contract can come to an end when all the responsibilities and obligations that arose under the contract are no longer required. All rights that may have existed are no longer exist when a contract is discharged (ended). A contract may end by the following

1. **Performance-** This is the most usual way and there must be complete and exact performance by the parties involved. E.g. A two year work contract between an employer and an employee comes to an end at the end of the two years.
2. **Agreement-** Both parties agree to end the contract early therefore they are free from any legal obligations. E.g. A premiership player is not scoring enough goals and is under pressure from his fans. He agrees with his clubs decision to release him from his contract
3. **Frustration** – Due to unforeseen circumstances, it has been deemed impossible to complete the contract. E.g. The planned Michael Jackson concerts planned to go ahead in London could not take place due to the unforeseen death of the artist.
4. **Breach of Contract** – a condition has been broken by one of the parties. E.g. A professional footballer fails to turn up for training and is seen partying instead.

(Selected examples taken from Fallon LC Business Magazine)

## Remedies for Breach of Contract (1999 20 marks)

The remedies for breach of contract are

1. **Damages** – Monetary compensation is awarded to the injured party. A court decides on this figure. E.g. Robbie Williams sacked his manager and the manager was awarded €1.7million because he had honoured the terms of the contract.
2. **Specific Performance**- A judge orders that certain orders are carried out. It is a suitable means if damages are not important. E.g. A builder and a client disagree on the standard of workmanship carried out on a house. The builder is ordered by the judge to upgrade the work.
3. **Rescind the contract**- A judge attempts to place both parties back in the same position as they were before the contract. The purpose of this is to release the parties from the contract. E.g. Failure to obtain planning permission on a site.