

# Study Session2

## Unit 2- Rights, duties of contracting parties & Special Contracts

### Study Session Outline

- i. Rights, duties of contracting parties
- ii. Terms that determine the rights and duties of parties
- iii. Special Contracts
- iv. Contract Agency or Mandate
- v. Sales Contract

#### Study Session Duration

This Study Session needs 2 hours of formal study time.

### INTRODUCTION

This unit, deals with the rights and duties of contracting parties emanate from the free consent of parties. The rights of the parties to a contract are those entitlements that are guaranteed to the parties who have established the agreement through a valid contract. Rights in general can either be expressly provided under the contract or can be inferred from the contents of the contract itself. Moreover, the features of some special types of contract such as agency contract, sales contract are discussed briefly.

### Learning Outcomes of Study Session 2

When students complete of this study unit, they are expected to

- 
- Explain the rights and duties of contracting parties
  - Discuss the sources of the rights/entitlements and obligations/duties of contracting parties
  - Appreciate the nature and function of contract of agency
  - Identify rights and duties of parties to the agency contract
  - Illustrate the rights and obligations of parties to sales contract
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## Unit-2 Rights and responsibilities of contracting parties, & Special Contracts

### 2.1 Rights and duties of contracting parties

Rights in a contract are entitlements that a party attains via the implementation of a lawful contract. These rights may be specifically stated, for example, the exclusive right to use copyrighted material. Moreover, rights may be inferred/implied from the contract, such as the party's right to an equitable disclosure of contract information. These rights equally apply to both parties to the contract, which means that all parties to the contract are permitted certain rights. For example, one party may have the right to acquire a product, but the other retains the right to supply the commodity to the buyer. (Entehawu, 2013).

Each contract will virtually certainly handle a unique set of rights based on the demands of the parties concerned. This consequently creates obligations by which all parties are bound by the terms/contents of the contract. These are the legal obligations that each party bears. For example, in sales contract, one party is required to handover property ownership to another, while the receiving party is required to pay for the property.

#### 2.1.1 Terms that govern the rights and duties of contracting parties

**Express terms** -The term "express terms" refers to terms that have been clearly mentioned and agreed upon by both parties at the time of the contract's formation. Express contracts can be oral or written. Whereas

**Implied terms**-terms of a contract may be inferred from the context of the contract, behaviors of the parties and other circumstantial evidences.

**Good faith and fair Dealings**-The most fundamental element in relation to the rights and duties of contracting parties is that 'all parties to the agreement to act fairly and in *good faith*'. This principle is referred to as the need of "*good faith and fair dealing*", and it is encapsulated in every contract. Good faith and fair dealing require all parties to act honestly and fairly throughout the contracting process. That means, neither of the contracting parties may take any action that might endanger the contract's contentment. All parties must make a realistic effort to conduct any contractual transactions with the other party or parties in an honest manner and must disclose all material terms of the contract.

## **Exemption Clauses**

Exemption clause refers to a contractual condition that is incorporated into a contract with the aim of limiting the liability of a party to the other party (Chen-Wishart, 2012). This occurs when one party wants to restrict the extent of their contractual obligations or to limit the other party's right to remedy for a potential breach of contract.

## **2.2 Special Contracts**

Special contracts are contracts that are designed to fit in to certain specific transactions. Basically, the validity requirements of the general contracts are not different from the validity requirements of special contracts. Examples of special contracts include contract of agency, sales contract and employment and administrative contracts. Since employment and administrative contracts are covered under other modules of the course Legal Justice System, we shall deal with both contract of agency and sales contract under this topic.

### **2.2.1 Contract Agency or Mandate**

Contract of agency is a special contract which sets rules that regulates the agreements concluded between the mandate giver, the principal and the mandate receiver, the agent. In our daily lives we understand that every transaction can't be performed by an individual personally. There are always limitations of time, resource and space in order to perform transactions in person. At this moment someone may need to assign somebody else to act on his behalf. This is called agency relationship. By doing so the principal avoids the limitations mentioned above and can perform several tasks at the same time. (*Awet Hailezgi, et al,2009*)

The validity requirements for contract of agency are similar with the validity requirements needed to establish a general contract as discussed under unit one of this module. The parties to the contract of agency are mainly the principal and the agent.

Contract of agency is significant in that it can facilitate economic growth and business by bridging the limitations in expertise, space, resource etc. For example, when a client concludes a contract with an attorney, the client(principal) is avoiding the limitations in legal skills. Similarly, a man(principal) can conclude agency contract with a construction company(agent) in order to construct a house on behalf of the principal. We can also provide examples of agency contract that

bridges the limitations in space. For example, a trader in Somalia or Sudan can agree to delegate another trader in Ethiopia to act on his behalf. In business world, this relationship is commonly known as **commission agency**.

An agent to the contract of agency is appointed to act on behalf of the principal according to the specific or implied mandate given to the agent. Exceeding the power of mandate may go *ultra-virus*, and may make the agent responsible for any acts done in excess of the power of the agency except in exceptional circumstances which can be justified for reasons of necessity. When we say acts of necessity, for example an agent may mortgage the car of the principal in order to save the car from damage. In this case the principal may not claim that such acts were not included under the contract of agency.

*Dear learners* can you discuss the significance of agency contract? Can you give examples of agency contract from your experiences?

### 2.2.2 Sales Contract

Contract of sale or sales contract is a contract where by the offeror, the seller enters in to an agreement with the offeree, the buyer to buy or sell goods or services. The contracting parties to a sale contract are commonly known as the *seller* and the *buyer*. Like any valid contract, contract of sale also confers rights and duties on the parties to the contract. Let us see some of the rights and duties of the parties to the contract of sale under the following sections.

#### **Rights of a buyer**

- He/she has the right to have the property delivered to him/her pursuant to the agreement.
- If the seller fails to deliver the property according to the stipulations of the contract, the buyer may not accept the goods.
- The buyer has the right for evaluations of the quality of the goods before taking delivery.
- If the seller, without good reason fails to deliver the goods to the buyer as per the agreement, the buyer is entitled to bring an action against the seller for damages for non-performance.
- When the buyer has already done the payments but the seller failed to deliver the item, the buyer can recover the amount paid.

- The buyer has the rights to sue the seller for compensations sustained as a result of breaking any implied warranty as per the stipulations of the contract.

### **Duties of a Buyer**

- The buyer is duty bound to pay and take delivery of the goods.
- Unless otherwise stipulated under the contract the buyer has the obligation to take delivery of the goods.
- In case the buyer refuses acceptance of the products, he has the duty to notifying the seller.
- If the buyer doesn't accept the item and doesn't pay for the items in error, he has the obligation to compensate the seller for non-acceptance damages.

### **Rights of a seller**

- The seller has the right to get the amount paid as per the agreement
- To a charge or lien on the property in the event that ownership of the property is moved to the buyer prior to the seller receiving the complete sale price for the property.

### **Duties of a seller**

- To effect delivery of the goods according the stipulations of the contract
- To transfer unalienable rights over the property to the buyer
- To disclose to potential purchasers of the property all material defects that they may be unaware of or unable to identify in the normal circumstances of business.
- Up on request of the buyer to show all title documents pertaining to the property
- To pay and clear any governmental charges (property tax) and other encumbrances accrued on the property up to the date of sale (home loan, for example).
- To take reasonable care of the property after the date of concluding of the contract of sale and before the time of delivery.
- To transfer possession of the property to the buyer or any other person designated by the buyer upon the conclusion of the sale.
- To deliver to the buyer all documents pertaining to the title that you hold or have the authority to access.

## Unit Summary

Dear learners, under this unit, we have discussed the special types of contracts. Special contracts are contracts that deal with specific issues. For example, contract of agency, sales contract, employment contract and Administrative contracts can be categorized under special contracts. The validity requirements for the formation of special contract is the same as the general contract. Among the special contract, agency contract is a contract concluded between a principal and an agency in order to perform acts on behalf of the principal. The mandate to act on behalf of the principal is limited by the principal. If the agent acts in excess of his power, the principal may hold the agent liable for exceeding power.

Similarly, sales contract is categorized as one type of special contract where the buyer and seller enter in to agreement in order to buy or sell goods or services. Contract of sale establishes rights and duties on both contracting parties. The duties/obligations and rights of a seller and buyer can also be stipulated under the sales contract of the law of the nation applicable on the sales contract.

### Quizzes

1. What are the rights and duties of contracting parties and from where do those rights and duties emanate?
2. What is the primary purpose of an agency contract?
3. Can agents act beyond the scope of their authorization? Why?
4. What is the main purpose of sales contract?
5. Mention the rights and duties of buyers and sellers in a sales contract?