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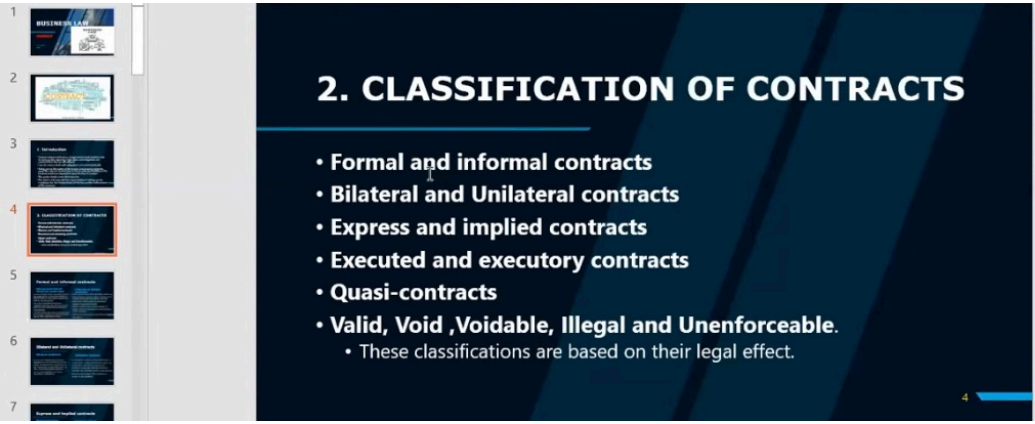
1. Introduction

- Contract may be defined as an agreement made between two or more parties, whereby, legal rights and obligations are created which the law will enforce.
- Law of contract deals with obligations assumed voluntarily.
- Today, just as the safety of the person and property depends upon the rules of criminal law, so the security and stability of the business world are dependent upon the law of contract.
- The parties freely create their own law.
- The state is left only with the responsibility of setting-up the machinery for the interpretation of the law and the enforcement of the promises.


2. CLASSIFICATION OF CONTRACTS
• Formal and informal contracts
• Bilateral and Unilateral contracts
• Express and implied contracts
• Executed and executory contracts
• Quasi-contracts
• Valid, Void ,Voidable, Illegal and Unenforceable.
• These classifications are based on their legal effect.
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Bilateral and Unilateral contracts



Bilateral and Unilateral contracts

Bilateral contracts

- *A bilateral* contract arises where a promise or a set of promises on one side is exchanged for a promise or a set of promises on the other side. In other words the parties reach an agreement whereby each party undertakes obligations

Unilateral Contract

- *A unilateral* contract, on the other hand, is a one-sided contract; in the sense that one party binds himself by a conditional promise leaving the other party free to perform the condition or not, as he pleases.
- Only one party, that is the promisor, is bound to do anything.

6

Especially.









Express and implied contracts

Express Contract

- A contract is said to be express when the intention of the parties is clearly stated in words. In other words, the material terms are usually clearly spelt out (usually in writing) after negotiations.

Implied contract

- Contracts are said to be *implied* when their terms are not so clearly stated. That is, the intention of the parties has to be inferred from their conduct and the general circumstances of the case.



Executed and executory contracts

Executed Contract

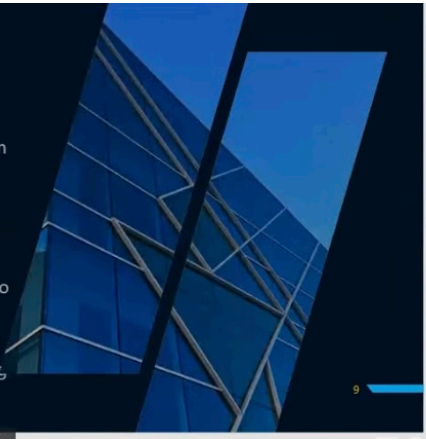
- Contract, which have been fully performed, are referred to as "executed

Executory Contract

- Contract that are partially performed or totally unperformed are known as "executory

Quasi-contracts

- These are not contracts in fact but are so in contemplation of law; i.e. the obligations arise not by any agreement between the parties but by the operation of law.
- The obligations are imposed by law on account of special circumstances which exist between the parties: based on the principle of equity that "none be allowed to enrich himself unjustly" at the expense of another.
- Eg. a repairman mistakenly does some repairs in his house should be paid according to the operation of the Law.



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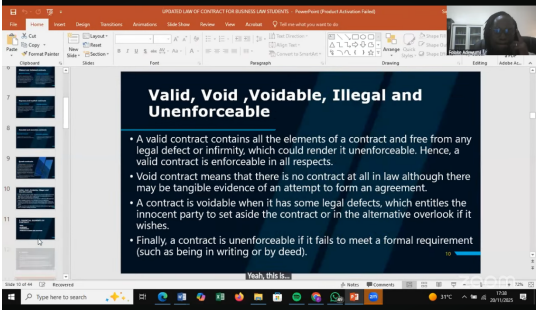
Valid, Void ,Voidable, Illegal and Unenforceable
• A valid contract contains all the elements of a contract and free from any legal defect or infirmity, which could render it unenforceable. Hence, a valid contract is enforceable in all respects.
• Void contract means that there is no contract at all in law although there may be tangible evidence of an attempt to form an agreement.
• A contract is voidable when it has some legal defects, which entitles the innocent party to set aside the contract or in the alternative overlook if it wishes.
• Finally, a contract is unenforceable if it fails to meet a formal requirement (such as being in writing or by deed).
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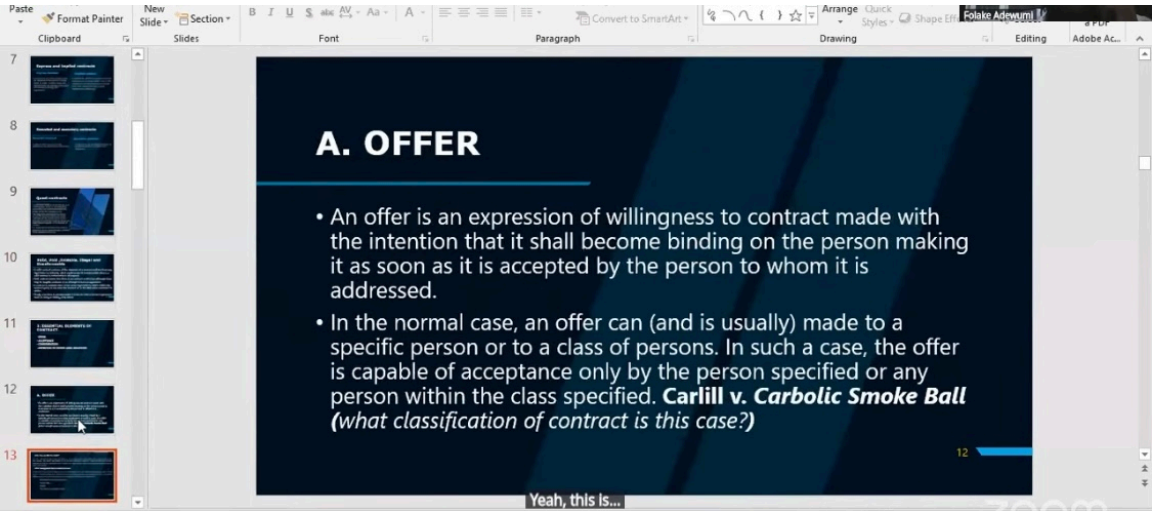
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A. OFFER
• An offer is an expression of willingness to contract made with the intention that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed.
• In the normal case, an offer can (and is usually) made to a specific person or to a class of persons. In such a case, the offer is capable of acceptance only by the person specified or any person within the class specified. **Carlill v. *Carbolic Smoke Ball***
(what classification of contract is this case?)
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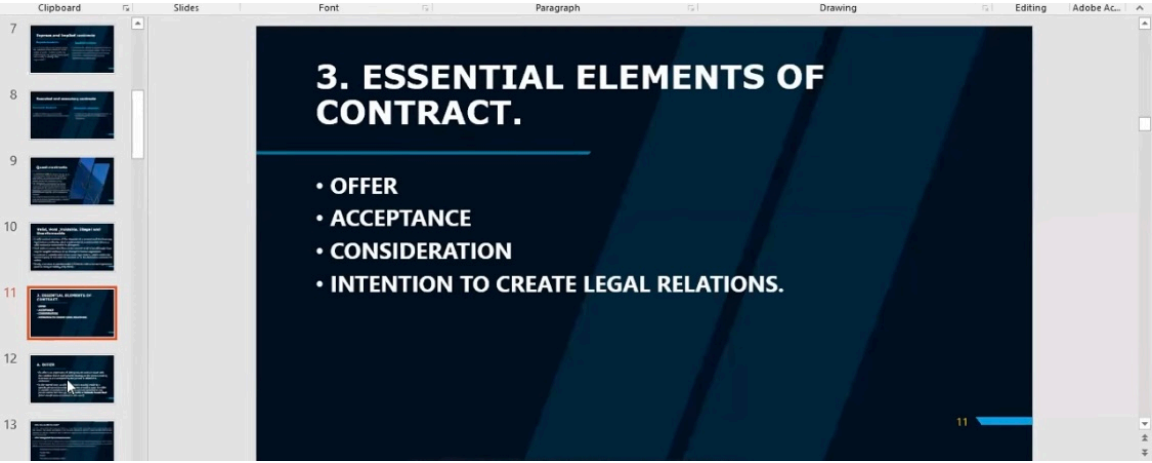
Yeah, this is...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3. ESSENTIAL ELEMENTS OF CONTRACT.
• OFFER
• ACCEPTANCE
• CONSIDERATION
• INTENTION TO CREATE LEGAL RELATIONS.
11

- **How may an offer be made?**

An offer need not be made in any particular form. It may be in writing, or by spoken word or even simply implied from conduct. The general rule however is that no matter the form in which it is made, the offer must be clear, complete and definite. A statement that is indefinite or vague is not an offer and a purported acceptance will not result into a contract.

- **Offer distinguished from invitation to treat**

An invitation to treat is said to represent the process of negotiations that precedes the making of an offer. In other words, it is an invitation for offers. The precise distinction between an offer and an invitation to treat is sometimes difficult to draw, but instances of invitation to treat are seen in the following circumstances:

- ***Advertisements and display of goods***
- ***Auction Sales***
- ***Tenders***
- ***Time tables and passengers tickets***



Capacity to contract

- The general rule is that **everybody is fully capable of entering into a contract.** However, the law regards certain **classes of persons as needing protection,** so certain limitations are imposed upon their rights to contract. Persons within this category include **infants, insane persons, drunken persons, illiterate persons and corporations.**
- **A. Infants**

In contractual matters an infant in Nigeria is a person under the age of 21 years. Common law has traditionally afforded protection to this category of persons from entering into obligations that he would not have were he more **experienced.** The degree of protection depends on the category of contract involved. In this connection the following categories of contract are note-worthy.

(a) Contracts that are binding

An infant is bound by the following contracts:

(i) Contracts for necessaries

(ii) Beneficial contracts of service

(b) Voidable contracts

(c) Void contracts

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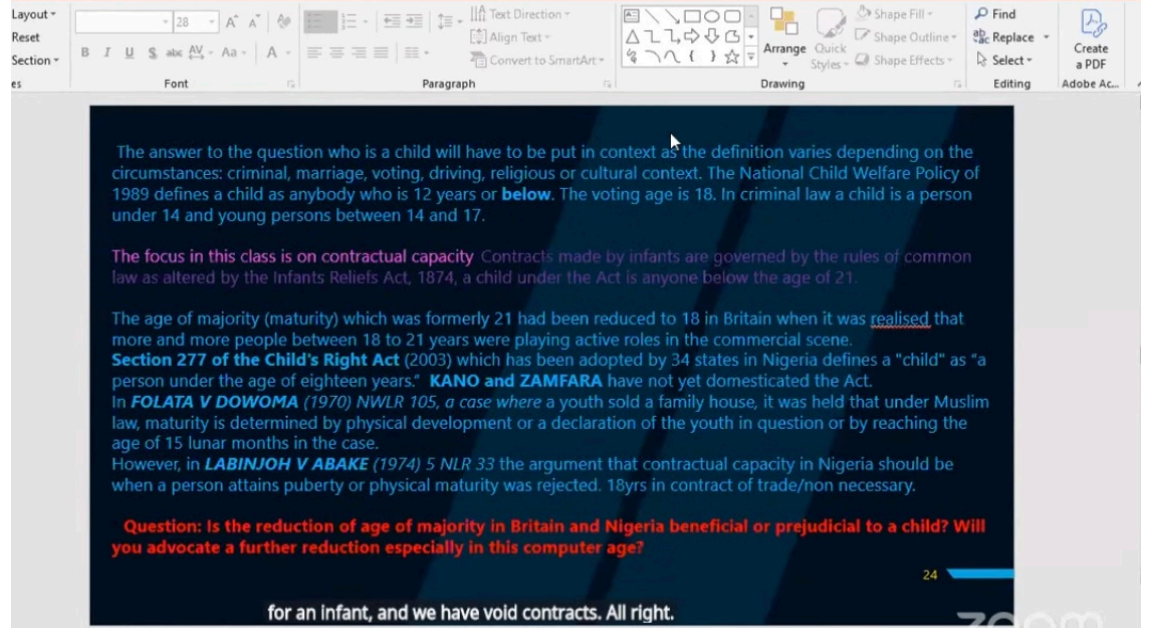
is trying to protect


The answer to the question who is a child will have to be put in context as the definition varies depending on the circumstances: criminal, marriage, voting, driving, religious or cultural context. The National Child Welfare Policy of 1989 defines a child as anybody who is 12 years or **below**. The voting age is 18. In criminal law a child is a person under 14 and young persons between 14 and 17.
The focus in this class is on contractual capacity Contracts made by infants are governed by the rules of common law as altered by the Infants Reliefs Act, 1874, a child under the Act is anyone below the age of 21.
The age of majority (maturity) which was formerly 21 had been reduced to 18 in Britain when it was realised that more and more people between 18 to 21 years were playing active roles in the commercial scene.
Section 277 of the Child's Right Act (2003) which has been adopted by 34 states in Nigeria defines a "child" as "a person under the age of eighteen years." **KANO and ZAMFARA** have not yet domesticated the Act.
In ***FOLATA V DOWOMA*** *(1970) NWLR 105, a case where* a youth sold a family house, it was held that under Muslim law, maturity is determined by physical development or a declaration of the youth in question or by reaching the age of 15 lunar months in the case.
However, in ***LABINJOH V ABAKE*** *(1974) 5 NLR 33* the argument that contractual capacity in Nigeria should be when a person attains puberty or physical maturity was rejected. 18yrs in contract of trade/non necessary.
Question: Is the reduction of age of majority in Britain and Nigeria beneficial or prejudicial to a child? Will you advocate a further reduction especially in this computer age?
24
for an infant, and we have void contracts. All right.

(a) Contracts that are binding

(i) Contracts for necessaries

Necessaries in this context have been defined as "goods suitable to the condition in life of the infant and to his actual requirements at the time of sale and delivery. " The term therefore necessarily covers such essential things as food, drink, clothing, shelter, etc.; it also covers items which though not strictly necessary are appropriate to the infant's financial and social status.

(ii) Beneficial contracts of service

These are contracts under which an infant receives training or instruction for his future career. These are a form of necessaries in that by entering into a contract of service, apprenticeship or instruction or training, the infant receives real benefit by being equipped to earn his livelihood. The validity of such a contract is however subject to the condition that the contract as a whole is substantially to the infant's advantage and benefit. It is possible that while some of the terms may appear to exploit the infant's inexperience others may be manifestly to his benefit.

(b) Voidable contracts

These are contracts in respect of which an infant acquires an interest in property of a permanent nature to which continuing obligations attach. Examples include lease, partnership or con-tract for the purchase of shares in a company. The general rule is that such contracts are regarded as valid and binding on an infant unless they are repudiated either during infancy or within a reasonable time of reaching his majority.

(c) Void contracts

Section 1 of the Infant's Relief Act 1874 provides that the following contracts if entered into by an infant are absolutely void:

(a) contracts for the payment of money lent or to be lent; (b) contracts for goods supplied or to be supplied which are not necessaries. (c) accounts stated, i.e. an admission of debt or IOU.

For voidable contract, these are

Restitution by the infant

Equity has also developed a principle which requires an infant to give up what he has got under the contract if the contract was fraudulently induced. This is a special aspect of the equitable doctrine of restitution. This principle however operates within very narrow limits. Where the infant is still in possession of the thing transferred to him under the contract, an order for restitution can well be made. But where the infant obtains goods by fraud and then ceases to be in possession of them the position is less clear.

Insane persons

Contracts made with mentally disordered persons are prima facie valid, that is, the insane person is bound by the contract unless he can prove:
(i) that owing to his mental state he did not understand the nature of the contract, and
(ii) that his condition was known to the other party.
Where these two conditions have been proved, the contract becomes voidable and can be set aside at the option of the insane person.
However contracts entered into by a mentally disordered person during lucid intervals are valid and binding as they would be on any ordinary person. Even while suffering from the disorder such a person is also liable for necessaries goods and services suitable to his position in life. In this case his obligation is to pay a **reasonable price**.

Drunken persons

The rules governing drunkard's contractual liability are similar to those for insane persons. So where a person enters into a contract in a state of drunkenness the contract is voidable at the option of the drunkard. However, the contract can be expressly or impliedly ratified when the person returns to a state of soberness.

Corporations

A company registered under the Companies and Allied Matters Decree 1990 is recognised to have a legal personality, independent of the persons who are its memb

Ultra Vires Doctrine: Companies must operate within their stated objectives. Acts outside these objectives are void and unenforceable.

give

Illiterate persons

This law is designed to protect illiterates from being taken advantage of by being made to sign or acknowledge a written document which does not bear out their real intention. The protection therefore applies only in respect of written documents. So where an illiterate person enters into an oral contract, his position is just the same as any other adult person.

Who is an illiterate person?

a person who is unable to read with understanding the language of document made or prepared on his behalf.

Requirements of the law

1) Write his name and address on the letter or document. This is meant to show:
(a) that he was instructed to write such letter or document by the illiterate person;and
(b) that the letter or document fully and correctly represents his instructions.
(2) Ensures that the document is read over and explained to the illiterate person before he (i.e., the illiterate person)signs it, and that the signature or mark was in fact made by the illiterate person.

The consequence of non-compliance

The requirements of the law must be strictly complied with. But noncompliance may not necessarily, render the contract void. The following consequences may arise:
(a) If the document creates legal rights in favour of the writer, he (writer) cannot enforce the rights.
(b) If the document creates legal rights between the illiterate and a third party, it is enforceable by the third party if he can establish that the document contains the true intent of the illiterate person.
(c) The illiterate person can enforce the document if he can call evidence to prove what happened at the time the document was prepared by the writer. For example, where both parties to a contract are illiterates and the
(d)It is enforceable against the illiterate person if he has received some benefit from the contract, or if by his conduct to may be taken to have affirmed it in spite of the omission by the writer.
(e) A penalty of N100 fine or 6 months impriso[illegible] imposed on the defaulting writer.

Therefore!

Notes Comments

PRIVITY OF CONTRACT

- A and B enter into an agreement in which they confer benefits or obligations upon C, a stranger to the agreement. Can C receive the benefits or incur the obligation? The general rule, known as the doctrine of privity of contract, is that a person who is not a party to a contract cannot sue or be sued on it. So in our example C cannot enforce the agreement against A or B because he was not a party to the agreement.
- **Exceptions to the doctrine of privity of contract** Strict adherence to this doctrine has been found to cause some hardship especially in commercial practice, so the following exceptions have been recognized.

this rule of

(a) Agency
A principal may under certain circumstances sue or be sued on a contract made on his behalf by his agent with a third party.

(b) Trusts
A trust may arise where two contracting parties enter into a contract for the benefit of a third party known as the beneficiary. The beneficiary is usually not a party to the original agreement but he may nevertheless enforce rights against the original parties or trustees. Trust is a creation of equity and so they are governed by equitable principles.

(c) Assignment
An assignment is the transfer of the benefit of a contract, by the party entitled to that benefit, to a third party. The effect of the transfer is that the third party becomes entitled to sue.

(d) Covenants relating to land
According to the rule in *Tulk v. Moxhay*, a restrictive covenant voluntarily accepted by a purchaser of land as part of a contract of sale will in certain circumstances bind persons who subsequently acquire the land.

(e) Statutory exceptions
By virtue of some statutes a third party may take the benefit of a contract of which he was not a party. The law of insurance provides an excellent example of such a statutory exception. Section 6(3) of the Motor Vehicle (Third Party)Insurance Act2 is to the effect that a person indemnified in the policy can bring a claim against the insurance company, even though such a person was not a party to the insurance contract.

(f) Bankers' commercial credits
This is a device developed to expedite international trade by facilitating prompt payment. Buyer opens an account at a bank for the benefit of seller. Seller can in his own right enforce the contract against the bank, even though he was not a party to the original arrangement between buyer and bank.

And, um, an insurance policy with an insurance company.

VITIATING ELEMENTS

- The VITIATING ELEMENTS are *mistake, misrepresentation, duress* and *undue influence and illegal contracts.*

Mistake

A party to a contract may make all manner of mistake.

For example, A contracts to buy B's car. A thinks he is getting a good bargain. Later, A discovers that the facts are not as he thought them to be. The car is a 1980 model not a 1990model as he thought. A has paid the price of a 1990 model.He would certainly not have paid that price if he had known the fact that the car was a 1980 model. In general usage, A made a mistake, but in law there is no mistake in that situation. **He wanted a car and he got one.**

Mistake in the legal sense is thus **more limited in meaning than in general usage**. Mistake in the legal sense would arise in our example if B had two cars and A intend to contract about the 1990model whereas B intends to contract about the 1980 model. This is a mistake in law and the effect is that no contract may have resulted.

- In the law of contract, mistake can manifest itself in three forms, namely, **common mistake, mutual mistake and unilateral mistake.**

Common mistake

This arises when both parties share the **same mistake**. In this case the intention of the parties are known to each other; i.e. they have reached an agreement, but each is mistaken as to some fundamental fact which is the basis of the contract, e.g. A contracts with B for the sale of a house but unknown to both of them the house has been destroyed by fire. **Here both parties make or share the same mistake.**

Mutual mistake

Mutual mistake occurs where the parties misunderstand each other. In other words, they are at cross-purposes and there is no correspondence of offer and acceptance, e.g. A makes an offer to B about his Peugeot 504, and B accepts thinking that A is referring to the Peugeot 505. There is no *consensus ad idem*.

Unilateral mistake

Here one party enters into a contract under the mistaken belief about some material fact and the other party is aware of the mistake but still exploits the situation.

Mistake at common law

Common law takes the view that where a mistake is such that it prevents the formation of a contract then the purported contract is void *ab initio*. This kind of mistake is known as "operative" mistake. Operative mistake can arise in a contract in respect of either **the subject-matter, the terms, or the parties to the contract.**

Mistake in equity

In cas[illegible] where a person enters into a con[illegible] the mistaken party may obtain [illegible] **of specific performance**

And remember, when we started, we... I started by taking you what common law means and what equity means

Documents mistakenly signed

As a general rule, a person who puts his signature to a document is bound by the terms of that document whether he read the document or not. So a signatory has an obligation to satisfy himself as to the contents of a document. If he signs without reading what the document contains then by the general rule, he is bound to accept any liability that may arise therefrom.

The law however developed the defence which may possibly be open to a person who may have signed a document mistakenly. This is what is called the plea of *non est factum* (it is not my deed). If such a person had a deed "read over" to him and the "reading" did not correctly state what was in the writing he could raise the defence of "non *est factum*" and would not be bound if successful. This defence is with some restrictions to avoid hardship on a 3rd party.

There are three such restrictions namely:

i) Restriction relating to persons who can invoke the plea
ii) Nature of the mistake
iii) Negligence

MISREPRESENTATION

The conclusion of a contract is often preceded by negotiations between the parties. In the course of these negotiations the parties make statements which more or less induce the parties to enter into the contract. Such statements are representations which may or may not be incorporated as terms of the contract. If such preliminary statements are false they are known as misrepresentations. A misrepresentation may affect the agreement and render it either void or voidable.

However for a misrepresentation to have an operative ef-fect on a contract it must satisfy the following: 32

(a) **Inducement**

The statement must You know, in contrast, we always have some things. nt.

(b) **Fact, not law**

The misrepresentation must be one of fact and not law. In this connection, a mere "boast" or expression of opinion is not a statement of fact and so no liability may arise.

(c) Fact, not intention

A promise or statement of future intention does not constitute a representation of fact.

(d) The statement must have been addressed to the person misled

(e) Silence

As a general rule mere silence is not misrepresentation. But in certain circumstances silence does amount to misrepresentation. These circumstances are:

i) *Contracts of the utmost good faith*

There are some contracts technically called *"contracts uberrimae fidei'* in which there is a duty to disclose all material facts. The reason is that in such contracts one party is in a particularly strong position to know the facts than the other party. Examples of contracts *uberrimae fidei* are insurance, contract for the sale of land, contracts to buy shares in a company, contracts involving family arrangements, etc.

(ii)Fiduciary relationships

This is where the parties ae in such a relationship wherein confidence is reposed on one of them, e.g. guardian and ward or principal and agent. A duty to disclose is imposed on the party on whom confidence is reposed.

(iii)Change of circumstances

Where a party makes a statement which is true at the time but a subsequent change in circumstances renders it to be untrue, the party who made the statement must not keep silence. He is under an obligation to disclose the change of circumstances. Failure to do that will amount to misrepresentation.

(iv) *Full disclosure*

A party is not obliged to speak, but where he speaks he must not withhold anything. There must be full and frank disclo

In cases, there should be nothing like abrupt. So let me give you an example of

Types of misrepresentation

Fraudulent

It is fraudulent where a false statement is made

(a)knowingly,or

(b)without belief in its truth; or

(c) recklessly, careless whether it be true or false.

Innocent

This arises where the party making the statement has no intention to deceive, i.e. made with an honest belief in its truth.

Negligent

At first a misstatement was either fraudulent or innocent. But in the famous tort case of *Hedley Bryne & Co v. Heller &Partners Ltde* the concept of negligent misrepresentation was developed. In it responsibility is extended to careless statement made in breach of a duty of care owed to the representee.

Remedies for misrepresentation

Rescission

A misrepresentation renders the contract voidable. The innocent party has a right to rescind, that is, set aside the contract if he so wishes. The right to rescind will however be lost in the following circumstances:
Affirmation, Restitution impossible and third party right.

Damages

The misled party can also recover damages for loss suffered.But no right for damages is available in the case of innocent misrepresentation. The victim in this case can only rescind or affirm the contract.

INDEMNITY

you know, in love, we have something called damages

Duress and Undue Influence

Duress

This is a common law doctrine covering situations where one party has coerced the other into a contract by actual physical force or threats. The violence or threat of violence must be directed to the contracting party or a close relation like wife or child. In this event, consent is not considered to have been freely given. The contract is therefore voidable at the option of the party under coercion.

There is hardly a situation where a contract can be obtained in these circumstances nowadays. Nevertheless other means of coercion which do not necessarily involve force or the threat of force are being used to pressure people into making contract. English courts following developments in American law are ex-tending the traditional doctrine of personal or threatened violence to provide remedy in the event of **"economic duress" (i.e.commercial pressure).** This may occur where for example A and *B* have made a contract but B refuses to execute his obligations unless A agrees to revised terms. English courts have recently held on such facts that "economic duress"existed. This is capable of vitiating A's apparent consent to the second agreement *(Atlas Express Co. v. Kafco (Importers & Distributors) Ltd.*

Undue influence

The principle of undue influence was designed to give relief where in circumstances not amounting to duress, a person enters into a disadvantageous contract. This is common in situations where one party exercise some dominance over the other. Examples include the situations of relationship between:

(a) parent and child;
(b) doctor and patient;
(c) solicitor and client; and
(d)religious adviser and disciple.

A contract induced by undue influence is voidable.

The next one is durous and undue influence. And I think this is very clear

Illegal contracts

This is a situation whereby a contract may be said to exist but by reason of its conflict with a legal rule, such a contract is illegal. A contract may be rendered illegal either because:

(a) it contravenes a rule laid down by statute, or

(b) it contravenes a rule of common law.

Contracts illegal by statute

A statute may either expressly or impliedly prohibit the making of certain kinds of contracts. "Statute" in this context includes Acts of National Assembly or law of State House of Assembly, or Decrees or Edicts signed by the Head of a Military Government, ministerial rules and regulations and even Local Governments rules and regulations. The statute may declare the contract illegal either as formed or as *performed.*

i) Illegal as formed

This is when the very formation of such a contract contravenes a statute, ie., the statute may declare that that type of contract is prohibited. For example, in *Re Mahmoud & Ispahani,* a statutory order prohibited the buying or selling of linseed oil without obtaining a licence.

ii) Illegal as performed

in this case the contract in itself is legal yet it becomes illegal by reason of the way in which it is performed. The party performing the illegality cannot enforce the contract. Eg Artificial fertilizer seller to state/list the proportion of chemical in the invoice.

Contracts illegal at common law

These are contracts which for public policy reasons are condidered illegal by common law. These include the following:

a. Contract to commit a crime or a tort. E.g contract to kill another. An agreement to make a defamatory statement against another.

b) A contract to defraud the revenue. Eg evation of tax.

c) A contract that tends to disturb a country's good relations with a friendly country

d) A contract involving trade with an enemy nation

e) A contract **prejudicial to the administration of justice**

f) A contract that tends to promote corruption in public

g) A contract to oust the jurisdiction of the courts This rule does not however make void "honour pledge clauses"

h) A contract tainted with sexual immorality

i) A contract that is prejudiced to the status of marriage

The effect of illegal contracts

Where the contract is illegal, then it is void ab initio and without any legal effect. In other words, it is treated as if it had never been made at all.

Exceptions to the in *pari delicto* rule

The rule as seen above is to the effect that property and other rights transferred under an ilegal contract is vested in the transferee and cannot be recovered. To this rule are three exceptions:

(a) A party can recover money or property which may have been transferred if he is not in *pari delicto*.

(b) a party can recover what he has transferred to the other if he repents before the contract is performed.

(c) a party can recover property or money if he can establish his case without reliance on the illegal contract; that is,the action must be independent of the contract.

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country, alright? So, um, we

Contracts in restraint of trade

The principle of restraint of trade is to the effect that a contract which restricts the liberty of a person to carry on his trade, business or profession in any manner he chooses, is contrary to public policy and so void. So if A agrees with B to restrict his (A's) liberty in the future to carry on trade with other persons in such a manner as he (A) chooses,then the agreement may be in restraint of trade and so *prima facie* void.

However, such a contract can be saved if it is reasonable. To pass the test of reasonableness the restraint must be shown that:

(a) It is reasonable as between the parties: e.g. restraint will be reasonable in this case where it seeks to protect some propriety or other legitimate interest of the party for whose benefit the restraint was made;

(b) It is reasonable as regards the interest of the community: i.e., not injurious to the public. For example, a restraint which deprived the public of the skilled services of a covenantor was held to be invalid on the ground of public interest *(Bull v.Pitney-Bowes Ltd).13*

THE TYPES OF RESTRAINTS ARE NAMELY:

(a) Restraints in a contract of employment

(b) Restraints in a contract of sale of a business

(c) Restraints in other contracts: Manufacturers or traders to form an association to protect their common trading interest by restricting output, determine prices and other restraints. Such restraints are also prima *facie* void unless reasonable.

Uh, did you need to...

Discharge of contract

- When parties enter into a binding agreement, the agreement does not last forever. It must at one point come to an end. There are four ways in which a contract can come to an end, namely; performance, agreement, frustration and breach.

1. Discharge by performance

The usual method by which a contract is discharged is by its performance. The general rule is that performance must be exact and precise if it is to discharge a contract. However, strict application of this rule can sometimes lead to injustice. The law has come to recognise four exceptions, which we will now consider in turn.

(a) Severable (or Divisible) Contracts

(b) Partial performance

(c) Substantial performance

(d) Prevention of performance

2. Discharge by frustration

When a contract becomes impossible to perform it may be said to be frustrated. Frustration of a contract arises where one or both parties to the contract without the fault of any of them, are prevented from performing their obligations by some event beyond their control.

The doctrine of frustration is confined to a number of recognised situations some of which are:

(a) Destruction of the Subject-Matter. Eg Burnt hall
(b) Non-occurrence of an event e.g coronation of the king.
(c) A change in the law. Eg a lawful contract made unlawful
(d)Personal incapacity. Eg death, illness, national service.
(e) Government interference
f) Outbreak of war. Eg pandemic

The limits to the doctrine

A court faced with the question whether or not frustration exists, has to consider amnongst other things the terms of the contract and the whole circumstances which are alleged to constitute frustration. In doing this the courts have over the years limited the application of the doctrine in the following circumstances: self-induced events, express provisions of the contract, more burdensome obligation, temporary impossibility, lease.

The effects of frustration

Where frustration occurs the contract comes to an end at the moment of the frustrating event. The contract is automatically discharged. The common law rule in *Chandler* v. *Websteri5* applied and the parties were discharged only as to their future obligations. Any rights or obligations which accrued before the frustrating event remained enforceable.To use the classic phrase, "the loss lies where it falls"; for example payment made before the frustrating event was irrecoverable. This rule caused injustice in many cases.

The Fibrosa case," overruled *Chandler v. Webster* and introduced some changes.. They however succeeded to recover the £1,000 since they had received absolutely nothing in return for their £1,000, that is, there was a total failure of consideration. This was rather harsh on the sellers, as such the law was still far from perfect.

We were not allowed to leave

Further developments on this aspect of the law were made by the United Kingdom Law Reform (Frustrated Contracts) Act 1943. This Act was reproduced in Nigeria and applicable to the Federal Capital Territory of Lagos as the Law Reform (Contracts) Act 1961. The Law gives the courts greater discretion in certain circumstances to apportion loss on an equitable basis.

3. Discharge by breach

A breach of contract occurs where a party fails to perform or shows an intention not to perform one or more of the obligations laid upon him by the contract. A breach can be *actual* or *anticipatory.*

Actual breach arises when a contract is still not performed on the date agreed by the parties.

Anticipatory breach is one that occurs after the agreement but before the date of performance laid down by the parties. In an *anticipatory breach* the innocent party has a choice open to him in seeking redress. He may there and then accept the breach and immediately commence proceedings for breach of contract. He need not wait until the time for performance.


Remedies for breach of contract
• An innocent party has several remedies available to him against the defaulting party. Some of these are damages, injunction, specific performance or rescission.
1. Damages
he course frequently adopted by an innocent party to a breach of contract is to bring an action for damages. The object of awarding damages for breach of contract is to put the innocent party, as far as money can do it, in the same position as if the contract had been performed. The injured party must never get more in damages than the loss which he actually suffered. Therefore where he has suffered no loss he may still win his action because there has been a breach; but he will get only nominal damages, i.e., a small token amount.
Remoteness of damage
A breach of contract may result in far more consequences than could have been anticipated. It is not possible or practicable to award damages to every consequence.So the first task of the court is to determine what kind of damage will be paid for. This is the issue of remoteness of damage. A line has to be drawn somewhere between loss which is a direct consequence of a breach and that which is too remote.
Performance, but thank you very much. Along fam, Emmanuel. Thank you. Any other

Measure of damages

Having decided which consequence should be compensated for, the next question to consider is: "how much?" This is the problem of *measure* of *damages*. How do you quantify the loss? How do you translate the loss into money? This is usually a much difficult problem for the courts. However no matter the difficulty, the courts are not to be deterred from making an award of damages.

The problems of remoteness and measure of damages are easily determined if the damages are *liquidated*. *Liquidated damages* are damages which the parties agree in advance as payable in the event of breach. This is usually done by the parties by providing in the contract itself that a specified sum shall be payable, in the event of breach. The plaintiff can recover the specified sum even if his actual loss may be less; but if his actual loss is more than the specified sum he will only recover the specified sum.

Where damages are not *liquidated*, they are said to be *unliquidated*. *Unliquidated damages* are damages which have not previously been assessed or provided for in the contract.

Mitigation of loss

There is a common law rule that an injured party must take all reasonable steps to mitigate (minimise) the loss that may be occasioned by the breach. The injured party is not permitted to exploit his misfortune. If he fails to do what is reasonable to minimise his loss, he may not claim compensation for loss which is due to his failure. If for example a buyer is faced with a seller's failure to deliver goods, the buyer must take steps to purchase substitute goods as soon and as cheaply as possible. Loss arising from failure to take such steps is not recoverable.

2. Injunction
This is a decree of the court directing a party to refrain from a particular conduct or action that might constitute a breach of contract.

3. **Specific performance**
This is also a decree of the court directing a defendant to perform the promise that he has made in the contract.

Quantum meruit
This Latin phrase simply means *so much as the thing is worth.* It is thus a claim made where a contract makes no express or implied provision for remuneration. For example a person may perform a service for another, or bestow a benefit upon him without being under any contractual obligation to do so; or a party to a contract may be unable to fulfil the entire obligation. He may have a claim in *quantum meruit*. *Quantum meruit* is based on the fact that something has been done.

Rescission

In our earlier consideration of rescission we saw that it amounts to setting aside of a contract by one of the parties if the contract has been induced by misrepresentation. The right to rescind is also available as a remedy for breach of contract, where the injured party can treat the contract as discharged.

And we have it under equity as well. So what decision does is just to pay back