



KENYA SCHOOL OF LAW

DIPLOMA IN LAW (PARALEGAL STUDIES)  
CONTRACT LAW 1; COURSE OUTLINE  
ACADEMIC YEAR 2013/2014

LECTURER: BENARD WASONGA

1.0 COURSE DESCRIPTION:

Law as a discipline is not unique in its tendency to reflect the ideology of society at whatever place or time. It permeates in all spheres of life, and the general agreements environment itself not being an exception to the phenomena. Against this background, this course will endeavour to facilitate a clear understanding of the basic principles of law directly relating to contracts or what are generally described as the legally binding agreements. The Law of Contract is the law that regulates legally binding agreements entered into between two or more persons. This law is not concentrated within one source-it is scattered in statutes, in common law principles, and judicial pronouncements which expound both the common law and statutory modifications. Contracts are entered into by people from simple acts of buying a sweet and sending Mpesa to complex acts involving millions of shillings. Indeed, in many of the 'informal,' simple contracts parties do not even think of those transactions as involving any law. Because many contracts are faithfully implemented, not many issues actually go to court for determination. But occasionally, issues have arisen in court where the court is asked to interpret particular facts, such as whether indeed there was a contract, whether there has been a breach, whether a contract is valid, whether a contract may be enforced in law just to mention but a few.

2.0 OBJECTIVES

This course is intended to introduce the student to the basic law of contract. The student will be taken through the formalities of contracts, the types of contracts, content of contract, and factors that may vitiate contracts. In brief, the course tries to answer the question: what is a contract and how is legally valid contract constructed and the obligations and rights there under enforced?

3.0 LEARNING OUTCOMES

After completing this course, a student is expected to be able to:

- Define a contract, history thereof and its justification.
- Identify the essential elements of a valid contract and situations where the law requires the contract to be in a particular form.

- Identify the different types of contracts.
- Explain how the law determines whether negotiating parties have reached agreement and the role of consideration in making that agreement enforceable.
- Explain when the parties will be regarded as intending the agreement to be legally binding and how an agreement may be avoided because of misrepresentations.
- Identify instances when contracts are void or voidable and the consequences of each.
- Determine the parties to contracts and the effect of contracts on third parties.
- Explain how the contents and the terms of a contract are established and the possible repercussions of non-performance.
- Clearly explain how contractual obligations are enforced and the limitations on the enforcement.

4.0 COURSE EVALUATION:

The course will be evaluated as follows:-

Continuous Assessment Test(s)	30%
Final Written Examination	<u>70%</u>
Total marks	100%

5.0 CONTRACT HOURS:

The subject lecturer will deliver a three-hour lecture every week, giving approximately ten lectures for the term. Alternative arrangements will be organized for any contact hours that are lost for whatever reasons. A student must attend at least two thirds of classes to be eligible to sit examination. Further, students are encouraged to be attentive and to participate in class discussions at the beginning, during and at the end of lectures. The same shall no doubt assist the students in having an indepth understanding of this course.

6.0 STATUTES:

1. Law of Contract, Chapter 23 Laws of Kenya;
2. Trade Descriptions Act, Chapter 505;
3. The Sale of Goods Act, Cap 31;
4. Weights and Measures Act, Chapter 513;
5. Government Contracts Act, Cap 25;
6. Employment Act, 2007;
7. Hire Purchase Act, Chapter 507;
8. Interpretation and General Provisions Act, Chapter 2;
9. Contracts in Restraint of Trade Act, Cap 24;
10. The Disposal of Uncollected Goods Act, Cap 38;
11. The Public Authorities Limitation Act, Cap 39;
12. The Government Proceedings Act, Cap 40;
13. The Limitation of Actions Act, Cap 22.

Kindly note that all the above statutes are Laws of Kenya.

7.0 RECOMMENDED TEXTS:

1. Hodgkin R,W, *Law of Contract in East Africa*, (Nairobi; Kenya Literature Bureau; 2007).
2. Furmston M.P. *Cheshire, Fifoot and Furmston's Law of Contract*, (15<sup>th</sup> Ed.) (New York; Oxford University Press; 2007).
3. Treitel G.H. *The Law of Contract* (11<sup>th</sup> Ed.) (London; Sweet & Maxwell; 2003).
4. Smith S.A. *Atiyah's Introduction to the Law of Contract* (New York; Oxford University Press; 2005).
5. O'Sullivan J and Hilliard J. *The Law of Contract* (New York; Oxford University Press;
6. Laibuta K.I., *Principles of Commercial Law* (2<sup>nd</sup> Ed.) (Nairobi, Law Africa, 2006).

8.0 COURSE CONTENT

8.1 INTRODUCTION TO THE LAW OF CONTRACT

- (i) Meaning of contract;
- (ii) Nature and historical development of contract law;
- (iii) The role of law in contracts;
- (iv) Typology of contracts

- Written contracts;
- Contracts evidenced in writing;
- Oral or simple contracts;

Other forms of classification:

- Express and implied contracts;
- Unilateral and bilateral contracts;
- Valid, void, or voidable contracts;
- Specialty contracts (under seal) and simple contracts;
- Contracts *uberrimae fidei*;
- Executed contracts;
- Executor contracts;
- Standard form contracts/adhesion or boilerplate contracts;

8.2 SOURCES OF THE LAW OF CONTRACTS

- The Constitutional basis of statutory validity;
- Statutes – Acts of Parliament;
- Common law, including the doctrines of equity;
- Judicial precedents;
- Customary law;

8.3 FORMATION OF CONTRACTS: ESSENTIAL ELEMENTS OF A VALID CONTRACT

(i) The Offer

- ✓ Meaning;
- ✓ Offer distinguished from invitation to treat;
- ✓ Advertisement of sales/displays;
- ✓ Public auctions;
- ✓ Tenders.

(ii) The Acceptance

- ✓ Meaning
- ✓ Communicating acceptance;
  - Inference from conduct of parties;
  - Silence may not be sufficient for acceptance;
  - Counter-offer as rejection of offer;
  - Observance of written terms;
  - Retrospective acceptance;
- ✓ Cross offers.
- ✓ Termination of offer:
  - Revocation;
  - Lapse of time;
  - Failure of a condition to which the offer is subject;
  - Counter-offer and rejection;
  - Death.
- ✓ Acceptance in unilateral contracts.
- ✓ Uncertainty of contract-ambiguity, incompleteness, vagueness, etc

(iii) Consideration

- ✓ Definition of consideration;
- ✓ Sufficiency or adequacy?
- ✓ Executory consideration;
- ✓ Executed consideration;
- ✓ Past consideration;
- ✓ The flow of consideration – promisor and promisee;
- ✓ Promissory estoppels.

(iv) Intention to create legal relation

- Domestic agreements;
- Commercial agreements.

- (v) Capacity of Parties
- Infants and minors;
  - Persons of unsound minds;
  - Incorporated bodies;
  - Free consent;
  - Lawfulness of the contractual object.

8.4 PRIVITY OF CONTRACT

- Parties to contracts;
- Contracts and third parties;
- Privity of contracts and the law of agency-an overview;

8.5 FACTORS VITIATING CONTRATS (POSSIBLE FAULTS IN CONTRATS)

- (i) Mistake;
- (ii) Undue influence/duress;
- (iii) Illegality-under statute, public policy, common law;
- (iv) Misrepresentation-fraudulent, negligent, or innocent misrepresentation.

8.6 CONTENT OF CONTRACTS

- (i) Representations and contractual terms;
- (ii) Express terms;
- (iii) Implied terms;
- (iv) Conditions and warranties;
- (v) Excluding and limiting terms;
- (vi) Exclusion of parole evidence.

Date: 14<sup>th</sup> May, 2013

\_\_\_\_\_ Good Luck \_\_\_\_\_



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2.0 OBJECTIVES

This course is intended to continue introducing the student to the basic law of contract. The student will be taken through quasi contracts and definition thereof, contracts in restraint of trade and public policy against the same, illegality in contracts, discharge of contracts, remedies for breach of contract, interrelationship between contract and tort and the effect of information technology on classical principles of contract.

3.0 COURSE EVALUATION:

The course will be evaluated as follows:-

Continuous Assessment Test(s)	30%
Final Written Examination	70%
Total marks	100%



4.0 CONTRACT HOURS:

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7.0 COURSE CONTENT

7.1 QUASI CONTRACTS

- Definition of a quasi contract

- Quasi contracts

#### 7.2 CONTRACTS IN RESTRAINT OF TRADE

- Public policy against contracts in restraint of trade
- Contracts in restraint of trade

#### 7.3 ILLEGALITY IN CONTRACTS

- Illegality and public policy at common law
- Statutory illegality
- Effects of illegality

#### 7.4 DISCHARGE OF CONTRACTS

- Performance
- Agreement
- Frustration
- Breach

#### 7.5 REMEDIES FOR BREACH OF CONTRACT

- Damages
- Specific performance
- Injunction

#### 7.6 INTERRELATIONSHIP BETWEEN CONTRACT AND TORT

#### 7.7 EFFECT OF INFORMATION TECHNOLOGY ON CLASSICAL PRINCIPLES OF CONTRACT

<The End – Good Luck>

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