

follows as the consequence of the violation. All criminal code provisions are prohibitive laws.

- **Sanction:** Each and every member of a society is required to follow the law. Where there is violation the law sanction would follow. Sanction according to Black's Law Dictionary [Garner; 2004: 1368], is a penalty or coercive measure that results from failure to comply a law. The main purpose of sanction is to prompt a party (a wrong doer) to respond. In other words, sanction will make the wrong doer to think that s/he made a fault and s/he should correct it. Sanction may be criminal. Criminal sanction is a sanction attached to criminal liability [Garner; 2004: 1368]. If the fault committed is defined by criminal law, the person will be liable to a sanction provided under the criminal law.

1.3. FUNCTIONS OF LAW

Why we need law? What functions does law have in your localities? As the issue of definition of law, there is no agreement among scholars as to the functions of law. Jurists have expressed different views about the purpose and function of law. It is well known that law is a dynamic concept, which keeps on changing with time and place. It must change with changes in the society. Law, in the modern sense, is considered not as an end in itself, but is a means to an end. The end is securing of social justice. Almost all theorists agree that law is an instrument of securing justice. As Salmond rightly pointed out, "law is a body of principles recognized and applied by the State in the administration of justice." Bentham gave a very practical version for the purpose of law, which according to him, is maximization of the happiness of the greatest number of the members of the community.

The purpose or the object of law is to ensure justice. The justice may be either distributive or corrective. **Distributive** justice seeks to ensure fair distribution

Legislature is vested by the power to make the law the constitution. This source is the most important for the other sources, especially for our discussion of business law, since they provide the detailed principles of law that can be easily applied in our every day activity. The two source materials of business law namely the commercial code and the civil code fall under this category of the sources

Legislation includes activities, which result into law making or amending, transforming or inserting new provisions in the existing law. Thus, there can be no law without a legislative act.

c. Regulation

The law making power of the state is left to the legislature. But it becomes impractical and difficult for the law maker to issue laws on specific or detailed matters. This difficulty arises from shortage of time and lack of knowledge of matters to be regulated by the law. To avoid this problem, the legislature routinely delegates the authority to make the laws to the counsel of ministries. The laws issued by this organ are called regulation.

1.5. Classification of law

Substantive versus Procedural

Substantive law includes all laws that define, describe, regulate and create legal rights and obligation. For example rule stating a person who has injured another through negligence must pay damages

Procedural establishes the methods of enforcing the rights and duties established by the substantive law. Question about how a lawsuit should begin, what papers needs to be filled, which court will hear the suit, which witnesses can be called. And so on are all question of procedural law. In brief, substantive law tells rights and duties and procedural law tells us how to enforce the substantive law.

Substantive law	procedural law
Constitutional law	criminal procedure
Contract law	civil procedure
Criminal law	evidence
Taxation	
Administrative law and many others	

Public Law versus Private Law

Public law addresses the relationship between the persons and their governments, whereas private law addresses direct dealings between the persons. Criminal law, administrative law and constitutional law, are generally classified as a public law, because they deal with persons and their relation with government. For example criminal acts though some times may involve only one victim, are seen offences against the society as whole and prohibited by the government for the purpose of protecting the public. on the other hand Private law regulates or governs the relationship between the private individuals. For instance the private law governs and guides how contracts are formed, performed and remedies available in case of breach of contract, private law deals the inter-relationship between private individuals, such as in a contractual relation.

Public law	Private law
Constitutional law	Contract law
Criminal law	Corporation law and law of partnership
Law of taxation	Law of agency
Administrative law and many others	Law of contract of sale of goods

Civil cases vs. criminal cases

Actions before legal organs may be classified into civil and criminal cases. Civil cases are non-criminal cases which a private party seeks a remedy, against another private party. These actions are regulated by the civil law. The person who injured is the plaintiff and the person to whom the civil action is brought is called the defendant. In civil cases the plaintiff typically seeks damages that are some monetary amount from the defendant to compensate for the injury to the plaintiff.

Criminal case is very different from a civil case. In a criminal case the public or the society at large is deemed to be the injured, rather than individual. The person initiating criminal cases is thus the government, typically through the public prosecutor or the police. The action must be in violation of criminal law. The remedies the public prosecutor normally seeks are imprisonment, fine (money given to the government as punishment).

An important feature distinguishing criminal law and civil law is the legal consequence for the wrongdoer. Violation of criminal laws may lead to fines or imprisonment, or both, whereas violation of civil law usually involve compensating the person harmed by paying money damages

1.6. Legal personality

subject to the sanction of a court of law. Thus to determine whether there is a contract or not, then we must check or understand whether the contract has full-filled the elements of general contract, that we shall explain detail in the coming topics within this chapter

Contracts are form of everyday life. Every time you purchase a CD, ride a bus or go into a restaurant. We don't even realize when we are making into such contracts.

Contract is agreements enforceable by law know that contract is a voluntary agreement between two or more than two parties that creates legal relationship and creates legally enforceable obligation upon the parties to a contract. Thus a contract has consists of two main elements and these as follows:

- i. An agreement
- ii. Legal obligation

Contract is a legally enforceable promise or set of promises for the breach of which the law gives a remedy or the performance of which the law recognizes in some way as a duty. However, not all agreements are contracts. but only those agreements which are enforceable by law are contracts.

2.2. DEFINITION OF OBLIGATIONS

Black's law dictionary defines obligation as 'a legal duty or moral duty to do or not to do something'. Comm

on-law scholars such as Fredrick Pollock defines obligation in its popular sense as merely synonym for 'duty'. In its legal sense derived from roman laws 'an obligation is the bond of legal necessity or *vinculum juris* which binds together two or more determinate individuals'.

Legal versus moral obligation

Consideration is termed executory, When the offer and acceptance consist of promises – the offeree making a promise in return for the offeror's promise consideration is regarded as executory. This happens very often in commercial transactions, where the delivery and payment are to be made in the future. Both parties became bound in the contract, prior to actual performance. It is the exchange of promise that constitutes the contract. The whole transaction remains in the future.

Executed consideration on the other hand is when an act is performed already in return for a promise. That means (give and take) both parties have performed according to their respective promises:

Past consideration

Promises made with the respect to events that have already taken place are unenforceable. Because the element for bargained-for exchange is missing, these promises lack legal consideration. In short you can bargain to take place now or in the future, but not for something that has already taken place. Therefore, past consideration is no consideration

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2.4.3. CONTRACTUAL CAPACITY

Capacity to a contract is the ability to make legally binding agreements. The law assumes that all parties into a contract.

Know that capacity to contract requires understanding of the nature and effect of actions, as well as the legal ability to form a contract on one's own behalf.

Not all individuals are legally entitled to enter into contractual agreements. Such like those below statutory age of majority, 18 years and persons with mental disability, this one of the essential elements of a valid contract is that the parties to the contract must be competent to the contract.

Who Are Competent To contract?

Art 112.of Somaliland civil code provides that “every person is competent to contract who is the age of majority according to the law which he is the

the same sense. When two or more persons agree upon the same in the same sense, they are said to be consent.

Example

1. A agrees to sell his house in sheik madar area for \$40.000 B. B agrees to buy the same. In this case there is a valid contract since A and B has consented to the same subject matter.
2. A, who own three villa houses in hargaisa offers to sells one, "say villa house x" to B for \$50.000. B agrees to buy the villa house for the price thinking that A is selling " villa y" there is no consent and hence no contract, because A and B have not agreed to the same thing but to different things.

For a contract to be a valid it is not only necessary that parties consents with same thing in the same sense but also it is very important that they consent freely. Without any influence, and outside pressure.

Consent is free when it is not caused, Mistake, Misrepresentation, Undue influence, duress

A. Mistake

A mistake must be fundamental we mean the mistake must be related to the terms of the contract as they existed at the time of formation. Under the law, mistakes as to identity of the subject matter and mistake to existence of the subject mater of the contract are considered to be. In this case contract may be considered invalid or void in the event that any of the fallowing mistakes occur:

- common mistake: Mistake as to the existence of subject mater, whereby both parties to a contract are in error about the same key fact relating to the contract,

(1)Common mistake: arises when both parties understand each other but they are commonly mistaken about certain facts, they are thinking of the same thing and fully intend to make the contract they have made. But unknown to both , the subject matter of their contract is in fact very different from what they believed it to be. Common mistake is a mistake shared by both parties.

Example

- 1) A agrees to buy from B his horse, it turnout that the horse was dead at the time of the time of bargain, though neither party was aware of the fact. This mistake is fundamental and the contract is invalid
- 2) A agrees to sell B specific cargo of goods suppose the goods is to be on the way from London to hargaisa, but unfortunately that goods lost, neither the party was aware of the facts.

(2) Mutual mistake: is whereby both parties to a contract have different understanding of the material subject of the contract. Dear students, mutual mistake arises when one party is thinking about one type of subject matter and the other another type of subject matter, neither party is aware that he is misunderstanding the other. In contrast to common mistake, here the parties do not understand each other.

Example

- 1) A who owns four land cruisers, offers to sell his 'car x' for 12000. B accepts the offer thinking A is selling his "car c". there is a mistake as to the identity of the subject matter hence there is no contract

(3) Unilateral mistake: is a mistake whereby one party to a contract makes a mistake which will unfairly advantage the other party to a contract. Unilateral mistake arises where one party is mistaken about an important fact/; concerning the contract.

B. Misrepresentation

Misrepresentation means giving a false statement, which is regarding to the object or subject matter of the contract There are three types of misrepresentation and you should be able to distinguish their essential characteristics, as well as the respective remedies that are available to the injured party. the consequences of the type of misrepresentation may vary accordingly. Let us consider the categories of misrepresentation. They can be briefly defined as follows:

- Innocent – a false statement made in the honest belief that it is true.
- Fraudulent – 'fraudulent'. In the civil sense, it means a statement made knowingly or without belief in its truth, or made recklessly to the extent that the party does not care whether it is true or false.
- Negligent – a false statement made honestly yet without reasonable grounds for belief in its truth. As you will see later, under the traditional principles of tort law, there was no liability for negligent misrepresentation unless it could

A First one is where the contractual terms imposes on such restriction. For instance If the contracting parties has originally agreed saying that he/she by him/her self and no one else will perform the obligations he/she assumed. He must discharge his obligations personally. He can't delegate to a third party. Performance by delegation in this case is not allowed totally.

The second is that where personal performance is essential to the creditor. Personal performance of the debtor is essential where the performance of the obligation involves or special qualification, for example we can take a case of employment contract in which the worker, has employed as an medical doctor for Adna Aden hospital in return for the monthly payment of 1200\$. One day the employee may unable to do the job personally and may want to delegate his friend with the same qualification to do the job acting on behalf of him, in the case the performance is an invalid and he can't delegate his obligation or job any body and he must perform personally.

To whom shall performance be made?

The performance can be validly made to the creditor or any third person authorized by the creditor or the law. Thus, the debtor or promisor has to perform his contractual obligation to the creditor and he can't assign the performance of his obligation to a third party without the consent of the creditor. Since the creditor due to with out his consent is not duty bound to receive payment from a person not authorized by debtor or court of law, he is free to accept or reject such payment without any effect on his right against the debtor.

However; we can easily argue that in certain exceptional circumstances the creditor has a right to assign his right to a third party without the consent of a debtor.

are of necessity, applicable to the agency relationship. Accordingly, the elements required under the law for the formation of a valid contract as enumerated under the civil code are required in agency contract as well. These elements are

- A. The parties must be capable of contracting and give their consent sustainable at law.
- B. The object of the contract must be sufficiently defined, possible, and lawful.
- C. The contract must be made in the form prescribed by the law, if any.

Therefore, the formation of a valid agency relationship requires the existence of certain essential elements. If these elements are not satisfied, the agency relationship becomes invalid. Accordingly, parties to the agency relationship must have the capacity to enter into the contract, their consent must be sustainable at law, the object of the contract of agency relationship must be sufficiently defined, possible and lawful, and finally the contract of agency must be made in a prescribed form if any.

B. Agency by ratification

On occasions, a person who is in fact not an agent may make a contract a contract on behalf of another (principle). If the principle approves or affirms that a contract by word or by an action, an agency relation is created by ratification. Ratification is a question of intent, and intent can be expressed by either words or by conduct.

C. Agency by estoppel

This when a principle causes a third person to believe that another person is his/her agent, and the third persons deals with the supposed agent, the principle "estopped to deny" the agency relationship. However in such a

authority may emanate from express instructions given by the principal to the agent, or implied from the words or conduct of the principal.

Therefore, the actual or real authority of the agent described as the legal relationship which subsists between the principal and the agent created by consensual agreement to which they alone are parties. Its scope, he states, is to be ascertained by applying ordinary principles of construction of contract including any proper implication from the express words used, the usage of the trade, or the course of dealing between the parties such an authority. He went further to state that such authority may be express when it is given by express words or implied when it is inferred from the conduct of the parties or from the surrounding circumstances of the case.

Apparent authority

The apparent or ostensible authority refers to authority which in fact does not but merely appears to exist. It is essential that the appearance of such an authority emanated from an independent act of the principal manifested to a third party.

Thus, the basic difference between actual authority and apparent authority is that in the former, the expression of authority is made directly to the agent, whereas in the latter, the expression is made to a third party with whom the agent deals.

An agent who has apparent authority may or may not have actual authority, though it may coincide or sometimes exceed it. The apparent or extensible authority extends to doing all acts which a reasonable person or a person of ordinary prudence familiar with the customs and usage of the particular community, trade, business or profession where the agent is employed, would be justified in assuming that the agent has authority to perform.

Finally we might understand from the above definition that an apparent authority is not an authority arising from the consent of the principal whether express or implied according to the rules discussed in the preceding section.

The agent's authority here is the product of the principal's conduct, his conduct that the agent is authorized to act on his behalf. It is an authority which apparently exists, having regard to the conduct of the parties. In fact/reality, it does not exist; but as a matter of law arising out of the factual position of the parties in the eyes of third parties. In these circumstances

A franchise is any arrangement in which the owner of the trade mark, trademark's name or copy right has licensed others to use it in selling goods or services.

A franchisee (purchaser of a franchise) is generally legally independent but economically dependent, on the integrated business system of the franchisor (the seller of the franchise). In other words the franchisee can operate an independent business person. Well known franchises include Hilton hotels and burger king and many others

TYPES OF FRANCHISES

Franchises can take the form of distributorship, chain style business operation and processing plant arrangement

A distributorship is established when manufacturing concern (franchisor) licenses a dealer (franchisee) to sell its product, often a distributorship covers an exclusive territory, an example of this type of franchise is an automobile dealership

A chain style business franchise results when a franchisee operates under the franchisor's trade mark name and is identified as a member of select group of dealers that engages in the franchisor's business.

Generally the franchisee is required to follow standardized or prescribed methods of operation. Often the franchisor requires the franchisee maintain certain standards of operation.

Processing-plant franchise is created when the franchisor transmits to the franchisee the essential ingredients' or the formula to make a particular product. The franchisee then markets either at whole sale or retail in accordance with the franchisor's standards'. Examples of this type of franchise are Coca Cola and other soft drink bottling companies.

THE FRANCHISE AGREEMENT

The franchise relationship is created by contract between the franchisor and franchisee. To avoid future problems arise from relationship, prospective franchisees should obtain all of the relevant details of the business and scrutinize carefully agreement in its economic and legal implication.

BUSINESS ORGANIZATION AND QUALITY CONTROLS

the memorandum is, as it were, an area beyond which the actions of the company cannot go.

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CHAPTER SIX: NEGOTIABLE INSTRUMENTS

Def: The word negotiable means ‘transferable by delivery’ and the word ‘instruments’ means a written document by which a right is created in favor of a person. Thus, the term negotiable instrument literally refers to a document containing rights that can be transferred by delivery.

Negotiable instruments also represent one kind of contract as every instrument embodies a contract or promise to pay a certain amount of money or to deliver goods according to terms agreed up on.

6.1. COMMERCIAL INSTRUMENTS

(C)CHECKS

A check is the most widely used form of commercial instrument. The check is an unconditional order in writing, addressed by one person, the drawer, to a banker, signed by the drawer, requiring the bank to pay, on demand, a sum certain in money to or to the order of specified person or to bearer. The following are the main differences between checks and bills of exchange. A check is always drawn on a banker and is always payable on demand while a bill of exchange may be drawn on any one and may be made payable on demand or at fixed or a determinable future time and a check can be crossed in several ways but bills can not be crossed. Acceptance is not necessary for a check since it is payable on demand as opposed to bills of exchange which may be made payable at fixed or determinable future time presentment for acceptance may be necessary.

CROSSED CHECKS AND CHECKS PAYABLE INTO ACCOUNT

A crossed check is a check containing two parallel lines drawn across its face by the drawer or holder. A check may be crossed generally or specially. A check is crossed generally where it bears the two parallel lines only or where the word "bank" or "banker" is inserted between the lines. The crossing shall be special where the name of a specific bank is inserted between the lines.

A check crossed generally can only be paid to a bank, which is the banker of the payee or holder, or to a person who is the customer of the drawee. A check crossed specially can only be paid to the bank specified in the crossing. Such bank may have the check collected by another bank. Where the bank whose name appears in a special crossing is the drawee itself,

the check may be paid to a person who is the customer of the drawee. However, a bank may not collect crossed checks on behalf of persons other than their customers or other banks.

The whole purpose of crossing checks is to make sure that the check is paid to the intended person by preventing payment to other persons into whose hands the check might fall. It also helps to avoid or at least minimize risks associated with loss or theft of checks i.e.

However, the fact that a check is crossed does not mean that it cannot be negotiated as open checks. Negotiation of crossed checks shall have the same effect as the negotiation of open checks and the person to whom such check is transferred shall have the status of a holder in due course if the requirements are fulfilled. However, the drawer or holder may prohibit negotiation by inserting words such as 'not negotiable' or 'not transferable' in the same manner as the drawer or endorser of an open check. A person to whom a crossed check containing such a provision is transferred shall not acquire a status of a holder in due course and does not acquire a better title than the transferor, which provides for the effect of transfer a non negotiable open check.

(D) CERTIFICATES OF DEPOSIT

A certificate of deposit is a form of commercial instrument issued by a bank. It is an instrument containing an acknowledgement by a bank that it has received a sum of money on deposit and a promise to repay the sum of money. When a person deposits money in a bank he will be given the document showing the deposit of money which could be withdrawn by the depositor or the holder of the certificate.