



LB 101 Juristic Acts and Contracts

Semester 2/2015

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Outline

1. General concepts of contracts
2. Essential elements of a contract
3. Formation of a contract

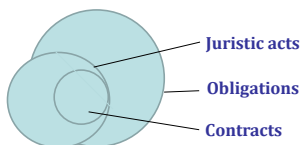


1. General Concepts of Contracts

(1) Definition

"Contract" is a juristic act formed by the agreeing of an offer and an acceptance made by at least two different parties

(2) Interrelationship between juristic acts, contracts and obligations





1. General Concepts of Contracts

(3) The Principle of Freedom of Contract

Individuals have freedom to form a contract and determine contractual terms as they wish.

General rule: s 151 “An act is not void on account of its differing from a provision of any law if such law does not relate to public order or good moral.”

Exceptions: ss 150, 152, 153, 154-166 etc.

4



1. General Concepts of Contracts

(3) The Principle of Good Faith

Section 5 “Every person must, in the exercise of his rights and in the performance of his obligations, act in good faith.”

Two main effects

- Effect on the contracting parties: the exercise of the Bad-faith party’s right may be rejected.
- Effect on a third person: a person acting in good faith may be protected.

5



2. Essential Elements of a Contract

1. Intention (consent)
2. Objects (purposes)
3. Form (formality)
4. Legal capacity

6



3. Formation of a Contract

4.1 General rules of communication of intention (or declaration of intention)

1. Modes of communication

- *Expressly communicate*- verbally or in writing
- *Impliedly communicate*- actions
- *Silently communicate*- The general rule is silence is not a mode of communication unless it is permitted by law or by customs, or by normal practice of the parties.

7



3. Formation of a Contract

2. Effects of communication

- Communication of intention which requires no addressee (or receiver/recipient) – takes effect as soon as it is communicated, for example wills.
- Communication of intention which requires a addressee
 - Face-to-face Communication takes effects when the addressee **knows** of the intention (s 168).
 - Distant communication takes effects when the intention **reaches** the addressee (s 169)

Know = The addressee's actual notice of the content of the declaration

Reach = Reach the sphere of the addressee's influence = The addressee is reasonably able to learn of it.

8



3. Formation of a Contract

3. Extinction of intention

- Revocability of intention - **General rule**: A communicated intention is irrevocable.
 - Face-to-face communication – the intention is usually irrevocable as the intention takes effect as soon as it is known to the addressee. (s 168)
 - Distant communication – the intention can be revoked before or at the same time that intention reaches the addressee. (s 169)
- The addresser is dead or becomes incompetent or quasi incompetent – no effect on the intention declared (s 169 para 2) except for the case of s 360

9



3. Formation of a Contract

4. Communication of intention to a minor or incapacitated persons

Section 170. If the declaration of intention is made to a minor or a person adjudged incompetent or quasi-incompetent, it cannot be set up against him unless his legal representative, guardian or curator, as the case may be, has knowledge of it or has given prior consent to it.

10



3. Formation of a Contract

4. 2 Offers and Acceptances

1. *Essences of an offer and acceptance*

(1) Offer must be

- expressly communicated
- Unequivocal – providing sufficient info for the offeree to make a decision and containing no conditions

(2) Acceptance can be

- Expressly or impliedly communicated
- Cannot be communicated by silence (unless permitted by customs or normal practice of the parties)

11



3. Formation of a Contract

4. 2 Offers and Acceptances

2. *Effects of an offer (ss 168, 169)*

Face-to-face communication of an offer = “knows”

Distant communication of an offer = “reaches”

12



Exercise

1. Paul, who lives in Chiang Mai, sent a letter to Andrew, who lives in Bangkok. The letter says "I would to sell my Nissan Sunny 2002, navy blue, plate number 3A 3456, to you for only 150,000 THB. I will be willing to pay you 5,000 as damages in case of breach of contract". 3 days after Andrew received the letter he sent a letter in reply. The letter says "I agree to buy your car including the offer of damages. But I would pay three installments for the price". Andrew's letter arrived 3 days later. However, Paul ignored it. In fact, he has sold the car to another person. Do you think that Andrew can demand specific performance and damages from Paul? (1/2538 Pak Bandit)
