

Contract Law

Basic Concepts in Contract Law:

- 1) **Contract**: Are agreements between parties who have the intention to create legal rights and duties between them which are binding upon them.
- 2) **Animus Contrahendi**: A contract is legally binding when the parties intended to create the legal rights and duties between them. Agreements lacking intention cannot be legally binding.
- 3) **Performance**: A contract involves performance between one or both of the parties. Performance can be **dare** (to give something), **facere** (to do something) or **non-facere** (to not do something).
- 4) **Obligations**: A legal obligation is a legal tie (vinculum iuris) between two parties. This means that one party has a duty to give a certain performance while the other party has a right to receive a performance. The party who has the duty is called the debtor and the person who is owed the performance is the creditor.
- 5) **Nature of rights created**: The right to claim performance from the debtor is a personal right. This is to be distinguished from a real right, which is the right to claim a particular object.
- 6) **Privity of contract**: Personal rights can only be claimed from people who were a party to the contract.
- 7) **Terms**: Obligations created by a contract are determined by the terms. Terms can be written, oral, tacit or implied.
 - **Essentialia**: Terms that identify the type of contract.
 - **Naturalia**: Terms that are automatically attached by law to a specific type of contract without the parties having to specifically include them.
 - **Incidentalia**: Terms that cover the residual matters for which the parties wish to make special provision or that alter or exclude the naturalia.
 - **Express terms**: Terms that the parties agreed on expressly.
 - **Implied Terms**: Terms that become part of a contract by operation of law. Naturalia will usually be the implied terms.
 - **Tacit terms**: Terms on which the parties did not agree, but are read into the contract because of the parties actual or imputed intentions.

Cornerstones of contract law.

- The cornerstones of the law of contract are **freedom to contract** and **good faith**.

Theories of contractual liability:

- 1) **Declaration theory**: The parties are bound to the contract because they declared their intention to enter into a binding contract, usually in a formal way. The emphasis is on their conduct and is viewed objectively.
- 2) **The Will theory (consensual theory)**: The parties are bound to the contract because they intended to be bound to it. This is called consensus. If the parties reach consensus, then it does not matter whether their declarations are

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