LAW OF CONTRACT
(PART II)

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(3) ACCEPTANCE

• Postal Rule – an exception to the general rule that an acceptance is only created when communicated directly to the offeror.

• *Adams vs. Lindsell* – the postal rule was first established in this case. The acceptance is complete as soon as it is posted.

• Postal rule applies where it is agreed that the parties will use the post as a means of communication. Where a letter is properly addressed and stamped the acceptance takes place when the letter is placed in the post box.

• An offer cannot be revoked once the acceptance has been posted and it is generally irrelevant that it never arrives, or arrives late.

• *Household Fire Insurance v Grant [1879] 4 Ex D 216*: Acceptance is effective when it is mailed, as long as the parties consider the post as an acceptable way of communicating.

• *Henthorn v Fraser [1892] 2 Ch 27*:
  • The rule will not apply if loss or delay is due to the fault of the offeree, who has, for example misaddressed it.
(3) ACCEPTANCE

• Instantaneous communication – acceptance must be communicated.
• Non-instantaneous communication – generally, the postal rule applies.
• Telephone, face to face, fax, telex, online contracting, e-mail.
The common law doctrine of "consideration" has an economic value (the money value passed). A valuable consideration may be where each party has bought the other’s promise either by doing some act in return for it or by offering a counter promise. Consideration need not be adequate but must be of value. Examples of consideration – the act of giving, act of performance, to abstain from doing an act, to suffer detriment or loss, to assume a liability or responsibility which did not bind one before. An existing moral obligation does not constitute a good consideration.

Generally, "consideration" is not prevalent in Sri Lanka. In the Roman Dutch law, the simple requirement of “just causa” suffices and this is what is generally operative in Sri Lanka. However, in respect of contracts governed by principles of English law consideration may be required, e.g., contracts for the sale of goods and bills of exchange (which are governed by English law).

Causa denotes the ground, reason or object of a promise, giving such promise a binding effect in law. Comprises the motive or reason for a promise and also purely moral consideration.
All persons have the capacity to contract. But the law provides protection to certain persons.

- Minors (below 18 years)
- Mentally unsound persons
- Intoxicated persons
FACTORS AFFECTING THE VALIDITY OF A CONTRACT

• Mistake
• Misrepresentation
• Duress
• Undue influence
• Illegality
• Frustration
• **Conditions and Warranties**
  - **Condition** – Vital term going to the foundation of the contract.
  - **Warranty** – a term that is subsidiary – an obligation which must be performed but is not vital that a failure to perform will not affect the substance of the contract.

• **Terms and Representations**
  - Where the representee indicates to the representor the importance of the statement, this is likely to be held to be a term.
  - Terms included in the written document are terms any verbal statements will be representations.
  - If the representor has the greater knowledge, it is more likely to be a contractual term and if the representee has the greater knowledge it is more likely to be a representation:

• **Express and Implied Terms**
  - Express – expressly provided in the contract.
  - Implied – the law implies into the contract unless the parties stipulate to the contrary.
FORMAL REQUIREMENTS IN A CONTRACT

• Certain contracts must be in writing and notarially executed – S. 2 Prevention of Frauds Ordinance
  • Sale, transfer etc. of immovable property

• Contracts dealing with guarantee or suretyship, mortgage of a policy of insurance must be in writing and signed by the person undertaking liability – S. 18 of Prevention of Frauds Ordinance
PRIVITY OF CONTRACT

• Privity of contract means that only a party to the contract may sue or be sued upon it. In other words, a contract cannot confer rights or impose liabilities upon one who is not a party to the contract.

• *Dunlop Tyre Company vs. Selfridge (1915) AC 847* – third parties are not subject to liabilities or restrictions under a contract.
DISCHARGE OF CONTRACTS

• By performance
• By agreement
• Frustration
• Breach of duties – express or implied
• By operation of law (e.g. set-off, merger, destruction, prescription, death, insolvency, judgment, winding up)