

1. Law of Contracts

1.1. Definition and Forms of contracts

The law of contract is concerned about the legal enforceability of promises. In that context, a contract may be described as an agreement that the law (the Courts) will enforce. This notion of enforceability is central to contract law. If you break (breach) the contract, the other party has several legal remedies. Firstly, he can sue you for damages for breach of contract. Also, he can ask the court to order you to perform the contract. If you break (breach) the contract, the other party has several legal remedies.

Example : Mr. Fernando has agreed to sell his land to you for an agreed price. You later hear that Mr. Fernando is planning to sell the same land to another person. You can ask the court to order Mr. Fernando to sell the land to you as agreed and also for an order (injunction) to prevent Mr. Fernando from selling the land to the other party.

At the outset, it is important to note that contract law in Sri Lanka is part of the Law of Obligations and is governed by Roman Dutch Law. However, there appears to be no fundamental difference, except in one or two main areas, such as the requirement of Consideration, between the Roman Dutch law and English law in relation to Contracts.

Secondly, it should be noted that Contract law is largely based on judicial decisions (Judge made law) rather than in a single statute or code – although in some areas affecting contract law (for example Sale of Goods) and more recently Consumer Protection, legislation plays a major role.

Types of contract

There are several types of contracts. The most common types under English law are (1) contracts of record (2) contracts under seal and (3) simple contracts.

The Roman Dutch law that applies in Sri Lanka, does not recognize the above distinctions and all contracts are treated as simple contracts.

Contracts of record

Contracts of record are judgments of courts of law and other recognized tribunals.

Example : if during litigation, the contesting parties agree to a settlement of the case and the judge records that settlement in writing, such settlement is called a contract of record and is binding on both parties.

Contract under Seal

A contract under seal is also called a deed or a specialty contract. This is a contract which is in writing and signed by both parties and is formally executed by the affixing of a seal.

Example : Conveyances relating to property – If you buy or sell a land, a notary must notarially execute the contract with two witnesses. In Sri Lanka a seal is not used like in England.

Simple Contracts

Simple contracts are the most common type of contract. Most business contracts are simple contracts. A simple contract may be in writing or be made verbally or by conduct. No formalities are required for simple contracts except where required by legislation. The legal rules relating to contracts discussed below apply to simple contracts.

Definition and requirements of a contract

A contract is an agreement between two or more parties which will be enforced by law. As stated earlier, the general law governing the contracts in Sri Lanka is the Roman Dutch law which is the country's common law. Apart from Roman Dutch law, certain areas of contracts are governed by statute law and also by English law.

Requirements for there to be a contract

1. There must be an agreement between two or more persons.
2. The parties must intend that their agreement will result in legal relations
3. The contract must comply with any required statutory formalities.
4. In English law, there is a requirement that the agreement must be supported by what is called 'consideration'. However, the Roman-Dutch law which applies in Sri Lanka does not require 'consideration'. In Roman Dutch law any good or valid reason which is expressed by the Latin term *justa causa* will suffice for a contract.
5. The parties to the agreement must have 'legal capacity' to contract. For example, a contract with a person who is mentally unsound is not valid.
6. The agreement must be genuine and not be affected by factors such as mistake, misrepresentation, fraud, undue influence and duress.
7. The agreement must be for a purpose of object which is not illegal or contrary to public policy.

Intention to create legal relations

An agreement alone will not create a contract binding in law. A critical factor in the formation of a contract is the necessity for an intention *by the parties to create legally binding obligations*. Unless the intention of the parties is to constitute an agreement enforceable at law, there will be no contract.

Domestic/social agreements generally not contracts

This rule excludes agreements of a purely *social* and *domestic* nature from coming within the category of legal contracts.

Example : If Mr. Perera agrees to lend his bicycle to his friend Mr. Silva and later refuses or fails to do so, Mr. Silva will not be able to sue Mr. Perera for a breach of contract. This is because Mr. Perera's promise was of a social nature – a promise by a friend to another friend. Neither Mr. Perera or Mr. Silva would have contemplated legal action when he promised to lend the bicycle.

Example : If a father fails to pay his son the promised pocket money or a husband does not honour his promise to buy his wife a birthday present, it is clear that neither the son or the wife can sue the father or the husband. This is because both promises were of a domestic nature which courts of law will not enforce if broken.

There are several well-known judicial decisions which have confirmed the above view.

In *Balfour v Balfour* [1919] 2 KB 571 a husband who was a British civil servant working in Sri Lanka promised, his wife who had stayed back in England, a household allowance of £30 per month. Subsequently, the couple decided to separate and the wife sued the husband for the allowance which he had stopped paying. The English Court of Appeal held that the husband was not liable to pay it because the agreement between the husband and his wife was of a domestic nature and was not a contract enforceable in law.

'Agreements' between business people are presumed to be 'contracts'

When business people or commercial institutions enter into agreements, there is a presumption that such agreements result in legally enforceable contracts.

Example : Mr. Silva and Mr. Perera are two businessmen. They are also good friends. Mr. Silva agrees to sell a property to Mr. Perera for an agreed price and executes a notarial document to that effect. Mr. Silva tells Mr. Perera, "although I agreed to sell that property to you, I have now changed my mind and I have decided to sell it to another party". Despite their close friendship, Mr. Perera can take legal action against Mr. Silva to enforce the written agreement since it was a commercial transaction.

In *Brussels Lambert SA v Australian National Industries Ltd* [1989] 21 NSWLR 502, a company gave what is called a 'letter of comfort' to a bank which the bank has asked before it gave a loan to a subsidiary firm owned by the company. 'A letter of comfort' is a written statement where a parent company states that its subsidiary is financially solvent and that the parent company feels that any loan given to the subsidiary will be repaid. The company later argued that its 'letter of comfort' did not create any contractual obligations upon it to pay the bank if the subsidiary failed to repay the loan. The Australian court held that these agreements between commercial institutions were contracts and therefore enforceable by courts.

Agreement between two or more persons

The basis of a contract is an agreement between two or more persons. The minds of both parties must agree about the subject matter of the contract.

The legal term used for a complete and genuine agreement between the parties is *consensus ad idem* (meeting of two minds). The courts have adopted the process of ‘offer and acceptance’ to see whether there has been agreement.

Example : If Mr. Silva wishes to buy a car from Mr. Perera, they must agree about the price and other terms of delivery etc. Mr. Silva the buyer will be the offeror and Mr. Perera will be the offeree. Mr. Silva’s offer to Mr. Perera is “I will buy your car for Rs. 850,000/-.” Mr. Perera the seller has to accept this offer, for there to be a contract.

1.2. Offer & Acceptance, Capacity to contract, Consideration for the contract

1.2.1. Offer and Acceptance

Statements preliminary to an offer

Often people who wish to enter into contracts make statements preliminary to the offer. These preliminary statements must be distinguished from the offer.

There are two main types of such preliminary statements that are not offers. These are;

1. An invitation to make an offer; and
2. A declaration of intention.

Invitation to make an offer

An advertisement or an invitation to make an offer is not an offer which is capable of being turned into a contract by acceptance.

Example : A shopkeeper who displays goods in his shop window with a price tag on them stating a price, does not make an offer, but merely invites the public to make an offer to buy the goods at the price stated.

The following well know case law illustrate this position.

In *Fisher v Bell* [1961] 1 QB 394, certain legislation prohibited the sale or any ‘offer to sell’ certain types of knives with long blades. A shopkeeper had displayed such knife for sale in his shop window. He was prosecuted by the police under the legislation for “having offer the knife for sale”. The court dismissed the charge on the ground that the display of the knife in the shop window was not an ‘offer’ to sell the knife but only an advertisement or an invitation to the public to inspect the knife. This was a highly technical argument but the court upheld it.

However, it is conceded that consumer protection law under our Consumer Affairs Authority Act of 2003 may cast obligations on traders, businessmen, and shopkeepers etc. which will override the above contract law rules.

Declaration of intention

A declaration by a person that he intends to do a thing gives no right of action to another who suffers loss because he does not carry put his intention. Such a declaration only means that an offer is to be made or invited in the future, and not that an offer is made now.

Example : if an auctioneer announces the holding of an auction it is not an offer but only an advertisement that an auction will take place. Thus, if the auction is cancelled or postponed at the last moment, any members of the public who came for the auction cannot claim their travel expenses from the auctioneer. *Harris v Nickerson* [1873] 1 LR 8 QB 286.

How an offer is made

The offer may be express, or implied from conduct. The person making the offer is called the offeror, and the person to whom the offer is made is called the offeree.

An offer may be made to (i) a definite person (ii) to the world at large, which means to the general public or (iii) to some definite class of persons. An offer to a definite person can only be accepted by that person and by no one else. An offer to the world at large can be accepted by anyone. An offer to some definite class can only be accepted by a member of that class.

All offers must be communicated

All offers must be communicated to the offeree before they can be accepted. The offeree cannot accept an offer unless he knows of its existence, because he cannot accept it without intending to do so, and he cannot intend to accept an offer of which he is not aware.

Example : If A offers by advertisement a reward for Rs. 5,000/- to anyone who returns his lost dog, and B, finding the dog, brings it to A without having heard of the offer of the reward, B is not entitled to the reward of Rs. 5,000/-.

This legal position has been explained by the courts in several decided cases;

In the American case of *Fitch v Snedaker* (1868) 38 NY 248, a reward had been offered by the Police for information leading to the arrest and conviction of a murderer. The Plaintiff, who was not aware of the offer of a reward, gave information to the police as a result of which the murderer was arrested. The Plaintiff was then informed of the reward and he claimed it. The Court held that he was not entitled to the reward because he had not been aware of a reward (the offer) when he gave the information (acceptance of the offer).

Lapse of an offer

An offer lapses-

1. On the death either of the offeror or the offeree before acceptance. Death after acceptance has no effect in the majority of contracts and the executor of the deceased person will be responsible to perform the obligations of the contract unless they are of a personal nature.

Example : A agreed to paint B's portrait. A dies before he does so. The contract cannot be performed because it involves A's personal skill as a portrait artist.

2. By non-acceptance within the time prescribed for acceptance by the offeror.
Example : Mr. Silva tells Mr. Perera, "I offer to sell my car for Rs. 2 million if you buy it within two weeks." If Mr. Perera does not pay the money within two weeks, Mr. Silva's offer lapses.
3. When no time for acceptance is prescribed, by non-acceptance within a reasonable time. What is reasonable time depends on the nature of the contract and the circumstances of each case.

Revocation of offer

An offer may be revoked in accordance with the following rules;

1. An offer may be revoked at any time before an acceptance. An offer is irrevocable after acceptance.
2. Revocation of an offer does not effect until it is actually communicated to the offeree. Communication for this purpose means that the revocation must have actually come to the knowledge of the offeree.

In the case of *Byrne v Van Tienhoven* [1880] 5CPD 344, A by a letter dated October 1 offered to sell the goods to B in New York. B received the offer on the 11th of October and immediately telegraphed his acceptance. On the 8th of October, A wrote revoking his offer, and this was received by B on the 25th of October. Held, the revocation was of no effect until it reached B, and a contract was made when B telegraphed his acceptance of the offer to A. The telegraph (acceptance) has been sent before B was notified of the revocations.

The communication of the revocation need not have been made by the offeror. It is enough that the offeree learns of the revocation from a source which he believes to be reliable.

In the case of *Dickinson v Dodds* X agreed to sell property to Y by a document which states "this offer to be left open until Friday, 9 a.m.". On Thursday, X contracted to sell the property to Z. Y heard of this from B, and on Friday at 7 a.m. he delivered to X an acceptance of his offer. Held, Y could not accept X's offer because before he "accepted" he knew it had been revoked by the sale of the property to Z.

Rejection of offer

An offer is rejected;

1. If the offeree communicates his rejection to the offeror.
2. If the offeree makes a counter offer.

In the case of *Hyde v Wrench* [1840] 3 Beav 334. A offer to sell a farm to B for £ 1,000/-. B offered £ 950/-. A refused and B then said he would give £ 1,000/-. Held no contract, as B's offer of £ 950/- was a counter offer rejecting the original offer which was at a price of £ 1,000/-.

3. If the offeree accepts subject to conditions.

Jordan v Norton [1838] 4M & W 155. N offered to buy J's horse if J guaranteed that the horse was not vicious. J agreed to the price but said nothing about the condition of the horse. The court held that N's offer had been rejected because J had not guaranteed the good condition of the horse.

The Acceptance

Acceptance is only possible if the offer is still in force.

The acceptance must be made while the offer is still in force, and before the offer has lapsed, been revoked or rejected. Once the acceptance is complete, the offer cannot be revoked. It becomes irrevocable.

Acceptance must be absolute and unqualified

Only an absolute and unqualified assent to all the terms of the offer constitutes an effective and valid acceptance. If the offer requires the offeree to promise to do or pay something, the acceptance must conform exactly to the terms of the offer. If the offer requires an act to be done, the precise act and nothing else must be done. If the "acceptance" varies the terms of the offer it is a counter offer, and not an acceptance of the original offer.

In the case of *Neale v Merrett* [1930] WN 189 M offer land to N at £ 280. N replied accepting, and enclosing £ 80 with a promise to pay the balance by monthly installments of £ 50 each. Held, no contract, as there was not an unqualified acceptance.

A mental acceptance which is not properly communicated to the offeror is not sufficient.

As a general rule, a mental acceptance or an uncommunicated agreement to an offer does not result in a contract, and the acceptance must be communicated in writing, or by words or conduct. What constitutes communication of an acceptance will depend on the facts of each case.

Remaining silent is not acceptance

Generally speaking, silence or inaction by the offeree will not amount to an acceptance.

The above legal position was established in the English case of *Felthouse v Brindley* [1862] 11 CB 869. In that case Felthouse, wrote a letter to his nephew to buy his nephew's horse for USD 30, saying, "If I hear no more about this offer, I shall consider that the horse is mine at USD 30." The nephew did not reply, but he told the auctioneer (Brindley) who was selling the horse not to sell that particular horse because it was sold to his uncle. By mistake, the auctioneer sold the horse. Felthouse then sued the auctioneer arguing that the horse belonged to him. The court held that Felthouse was not the owner of the horse because the horse had not been sold to him. His offer of USD 30 for the horse had not been properly accepted by his nephew.

Manner of acceptance can be prescribed

If the offeror prescribed or indicated a particular method of acceptance and the acceptor accepts in that way, there will be a contract, even though the offeror does not know of the acceptance.

Example : the offeror requires the offeree to accept by advertisement in a particular column of a certain newspaper, the acceptance will be communicated when the advertisement is published as requested, whether or not the offeror reads it or sees it.

Failure to accept in the prescribed method may mean that there is no valid contract.

In *Eliason v Henshaw* (1819) 4 Wheaton 225, Eliason sent a letter to Henshaw by a wagon offering to buy flour. He requested a reply by the same wagon. Henshaw agreed to supply the flour but sent his reply by post thinking the post would be quicker than the wagon. However, Henshaw's letter of acceptance arrived six days after the wagon and Eliason had purchased the flour from another party. Henshaw sued Eliason for breach of contract. The court held that there was no contract because the offeree (Henshaw) has not accepted in the manner prescribed by the offeror. (Eliason).

Where the method of acceptance is not stipulated

Where the offeror does not stipulate the method of acceptance, the offeree may accept in a reasonable manner.

Example : The offeror may accept in the same way in which the offer was made. If the offer was made by post, the reply can also be by post.

Acceptance by acting on the offer

If the offer is one which is to be accepted by being acted upon, no communication of acceptance to the offeror is necessary, unless communication is stipulated for in the offer itself.

Example : If an offer of a reward is made for finding a lost dog, the offer is accepted by finding the dog, and it is unnecessary before beginning to search for the dog to give notice of acceptance of the offer.

In the case of *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, a pharmaceutical company offered £100 to anyone who contracted influenza after using their medicine. Mrs. C. Carlill used the medicine, but notwithstanding that, she got influenza. She claimed £100, but the company argued that she should first have notified them of her acceptance of their offer. It was held that the offer was properly accepted by using the medicine without any formal notice of acceptance of the offer.

Acceptance in instantaneous contracts

The following are the main types of instantaneous communications which concern the law of contract.

1. Communications between persons present at the same place or very close to each other.

Example : In a hall or large room. In such cases, if one person makes an offer and the other person accepts the offer, the law requires certainty or confirmation that there was a valid acceptance.

2. Communication by telephone

Example : A who is in Colombo, telephoned B in Kandy, offering to sell his car for Rs. 2 million. B answering from Kandy says “yes, I accept your offer of Rs. 2 million for the car”. For there to be a valid contract A must also then confirm that he heard B’s reply accepting his offer.

3. The above rules relating to confirmation of acceptance in the case of contracts between parties also applies to contracts entered into by (a) telex (b) fax and (c) email.

In *Entores Ltd v Miles Far East Corporation* (1955) 2 QB 327, a company based in London (offeror) telexed an offer to a company based in Holland. (offeree). The company in Holland accepted the offer and telexed their acceptance from their office in Holland. The Dutch company argued that since acceptance was done on their fax machine in Holland, the contract was concluded in Holland and the Dutch Court will have to decide any dispute. The English company argued that although the acceptance originated from a fax in Holland, the acceptance had to be confirmed by its receipt of the fax in London and until such time the contract was not concluded. The Court agreed with the latter argument and held that an acceptance that is faxed is only concluded only when it is received by the other fax machine. Therefore, it was the English Court that had jurisdiction to hear the dispute.

Acceptance in contracts by post

Postal contracts are made by letter, telegram or cable. The telegram or cable are now rarely used for contractual negotiations and have been replaced by the telephone, fax or email.

When contracts are made by letter, the acceptance is treated as complete from the date when it is posted.

The rules applying to postal contracts may be stated as follows;

An offer by post may be accepted by post, unless the offeror indicates another means of acceptance. Even if the offer is not made by post the acceptance can be made by post if the circumstances show that the parties must have contemplated that the post may be used

An offer by post is only made when it actually reaches the offeree and not when it would have reached him in ordinary course of the post.

In the case *Adams v Lindsell* [1818] 1B & Ald 681, A by letter dated September 2 offered goods to B saying "I expect to receive your answer in the course of the post." The letter was misdirected and did not reach B until the 5th, when the offer was immediately accepted. The acceptance reached A on the 9th, but on the 8th A had sold the goods to X. Held there was a good contract between A and B, because the offer was immediately accepted on its receipt by B. Therefore, A was liable to B for breach of contract.

Acceptance complete on posting of letter

An acceptance by post is complete as soon as the letter of acceptance is posted, prepaid and properly addressed, whether it reaches the offeror or not. If the letter is lost or delayed in the post the contract is nevertheless made, although the offeror may be quite ignorant of that fact.

If the acceptance, instead of being posted, is handed to a postman to post, the contract is not complete until the acceptance is actually received by the offeror.

A revocation by post is not complete until it actually reaches the offeree

In the case of *Henthorn v Fraser* (1982) 2Ch 27, Fraser handed to Henthorn a written option on some property at £750. The next day Fraser posted a withdrawal of the offer. This was posted between 12 and 1 and did not reach Henthorn until after 5 p.m. In the meantime Henthorn at 3.50p.m. has posted an acceptance. The court held (1) although the offer was not made by post, yet the parties must have contemplated the post as a mode of communicating the acceptance (2) Fraser's revocation was of no effect until it actually reached Henthorn and did not operate from the time of posting it; (3) a binding contract was made on the posting of Henthorn's acceptance.

The post as a medium of communication in Sri Lanka

In Sri Lanka, the matter of the post as a medium of transmission has been considered in the Courts in connection with the transmission of a notice of application for conditional leave to appeal to the Privy Council.

In this case of *University of Ceylon v Fernando* [1957] 59 NLR 8, a Bench of five judges of the Supreme Court held that where the post is used as a medium of transmitting the prescribed notice, the applicant for leave to appeal was required to do no more than send, in due time, a properly addressed prepaid letter containing the name and address of the opposite party. Chief Justice Basnayake observed : Where a letter, fully and particularly directed to a person at his usual place of residence, is proved to have been put into the post office, this is equivalent to proof of delivery into the hands of that person; because it is a safe and reasonable presumption that it reached its destination”. The Chief Justice also observed that although the law does not require that the registered post should be used, it is the practise for certain persons to adopt the safeguard of registering the letter so that proof of its delivery at its destination could be adduced should it become necessary to do so.

Acceptance subject to contract

An acceptance subject to contract means that the parties do not intend to be bound until a formal contract is prepared and signed by them.

In the case of *Chillingworth v Esche* [1924] 1 Ch 97, C and D signed an agreement for the purchase of a house by D “subject to a proper contract” to be prepared by C’s solicitors. A contract was prepared by C’s solicitors and approved by D’s solicitors, but D refused to sign it. Held there was no contract as the agreement was only conditional.

Conditional Acceptance

A conditional acceptance occurs where the offeree appears to agree to the offer made by the offeror but has certain reservations.

In the leading Australian case of *Masters v Cameron* (1954) 91 CLR 353 a buyer of a property had agreed on the purchase price but had said, “this agreement is made subject to the preparation of a formal contract of sale acceptable to my lawyers.” The court held that no contract had been established and that the agreement had been subject to contract.

Agreement to agree in future

If the parties have not agreed upon the terms of their contracts but have made an agreement to agree in the future, there is no contract. Similarly, there is no contract if a material term of the future contract has not been agreed to expressly or by implication. The terms must be “definite or capable of being made definitive without further agreement of the parties.” There cannot be a contract to make a contract.

In the case of *Scamwell v Ouston* [1941] AC 251, Ouston agreed to buy from Scamwell a motor van giving another van in part exchange. The contract provided, “this order is given on the understanding that the balance of the purchase price can be had on hire purchase terms over a period of two years.” Held no contract as the words “on hire purchase terms” were too vague to be given a definite meaning.

On the other hand, if the contract contains sufficient facts for ascertaining the terms of the future contract, then there is a binding contract. The required facts may be provided either by allowing the court (the Judge) to fill the gaps in the contract or by giving an Arbitrator the power to do so. *Sweet & Maxwell Ltd v Universal News Services Ltd.* [1964] 2 QB 699.

1.2.2. Capacity to Contract

The law recognises that there are in every society persons who neither have the maturity nor the capacity to fully understand contractual rights and obligations. Such persons may also be incapable of giving a true consent to a contract. The law provides protection to such persons by saying that any contracts entered into by them are unenforceable against them. We now discuss the following persons to who fall within this protection of law, namely;

- i. Minors – those under 18 years of age
- ii. Mentally unsound persons
- iii. Intoxicated persons

Contractual capacity of minors

The term ‘minor’ is given to a person who has not attained “full age” or the “age of maturity”. IN England the term ‘infant’ was also used for the term ‘minor’ but in modern times, the term commonly used is ‘minor’. In most, if not all countries, the age of majority is now 18.

In Sri Lanka also under the Age of Majority Ordinance No. 7 of 1865 (as amended by Act No. 17 of 1989), the age of majority is 18 years. A minor is a person under 18. Prior to the age of 18, a minor may attain majority by (a) Marriage (b) by what is called ‘emancipation’ and (c) the grant of letters of Venia Aetatis. Venia Aetatis meant the benefit of full legal capacity. This was a privilege which the Sovereign (The King, later the Governor-General and now the President)

could grant to a minor to attain “legal majority”. Although recognised by law, in practice such letters of Venia Aetatis have not been issued.

Emancipation (whereby a person under 18 can become an adult) is of two types. Express and Tacit. Express emancipation takes place on the minor’s marriage or on the receipt of letters of Venia Aetatis. Tacit emancipation takes place when a minor with the consent of his parent or guardian carries on a trade or occupation on his own. This is a question of fact to be proved by evidence in each case.

Minors’ contracts are governed in Sri Lanka by Roman Dutch law principles which are substantially the same as the English law on the subject. Under both the Roman Dutch Law and English Law, a person who supplies necessaries to a minor is entitled to receive a reasonable price for the goods so supplied. This rule is also found in Section 3 of our Sale of Goods Ordinance. ‘Necessaries’ should be given a broad meaning and will include items supplied to the minor as food, clothing, shelter (eg, boarding fees) and education (eg. Books, uniform, tuition etc.) and medical expenses. Section 3 of the Sale of Goods Ordinance defines “Necessaries” as – goods suitable to the condition in life of such minor and to his actual requirements at the time of the sale and delivery.

If the item purchased by the minor is not a necessary item, he cannot be sued if he fails to pay for it.

In the English case of *Nash v Inman* (1908) 2 KB 1, an undergraduate studying at Cambridge University in England had bought several expensive suits on credit. The court held that the shopkeeper could not sue for non-payment because they were not ‘necessaries’.

Any contract other than contracts of loan and suretyship (guaranty) entered into by a minor who falsely represents that he is of full age and thereby deceives the other party may be binding on the minor. The ‘fraud supplies the want of age’.

However, contracts that involve an obvious detriment or disadvantage to a minor should be avoided.

Example : Contracts of loans to lend money to minors or get them to sign as guarantors or sureties for the debts of others.

Such contracts would be void because prejudice or detriment to the minor may be presumed in such contracts.

As regards bank accounts, there is no problem about minors having bank accounts in their own names as long as the account is in credit. Some legislation relating to our State Banks makes special provisions for minor’s accounts.

Ratification of Contract by Minors

Under Roman Dutch law, which applies in Sri Lanka, a minor can ratify such contract after he attains majority. On such ratification, that contract is binding on him as if it had been executed after his majority and it is effective from the time the contract was made.

In the case of *Raman Chetty v De Silva* (1912) 15 NLR 286, the Supreme Court held that Roman Dutch law rule that a minor can on becoming a major, ratify a contract that he had entered into as a minor, is part of our law.

Contracts relating to land and Minors.

The law treats contracts with minors relating to immovable property with special caution. Normally, all such contracts should receive the approval of a Court of law. Our Civil Procedure Code provides for the applications to be made to the District Court of the area where the minor resides and such Courts are always regarded as the Upper Guardian of all minors.

In *Wickremasinghe v Corrine de Zoysa* (2002) 1 SLR 33, the plaintiff – while she was a minor had executed a deed relating to land. She later filed action to set aside the deed on the basis that as a minor she did not obtain the sanction of a Court of law to execute the deed. The defendant argued that the plaintiff (the minor) had however ratified the deed after she attained majority and therefore the deed was valid. The Court of Appeal agreed and held;

- i. The Roman Dutch law relating to ratification is in force in Sri Lanka, The Roman Dutch law permits ratification after majority, of an invalid contract of a minor and differs from the English Law, which denies to a minor the right to ratify certain classes of contracts.
- ii. In our law a contract upon ratification by a minor after attaining majority becomes binding upon him as if it had been executed after his majority and it is effective from the time the contract was made.
- iii. Ratification may be express or implied from some act by the minor manifesting an intention to ratify.

In this case, the facts clearly established that there was implied ratification of the deed, by the plaintiff after attaining majority.

Mentally unsound Persons (Lunacy)

As a general rule, under both Roman Dutch law and English law, if a party to a contract was of unsound mind (insane) at the time of contracting, the contract is null and void, even though the other party to the contract had entered into it without knowledge of the insanity. *Soysa v Soysa* (1916) 19 NLR 314. The test of insanity for this purpose is the inability to understand the nature

and effect of the contract in question. In *Hamid v Maarikar* (1951) 52 NLR 269 the Supreme Court was of the view that a contract of a person of unsound mind could be valid if it can be shown by evidence that at the time the contract was entered into the person was of sound mind and understood the nature of the transaction.

A contract entered into during lucid intervals of sanity is perfectly valid. A lucid interval as understood in law means a perfect restoration to reason or a temporary cessation of the insanity. Any physical disability (deaf, dumb, blind etc.) unrelated to the issue of mental incapacity has no bearing to contractual capacity. If the person under the physical disability was aware of the contract he was entering into the contract is perfectly valid.

In *Sapapathipillai v Thirumanchanam* (1913) 17 NLR 146, on the facts of the case, the Supreme Court held that a deed of sale of a land executed by a deaf and dumb person was valid.

Contracts of Intoxicated Persons

According to both Roman Dutch law and English law, intoxication will affect a contract only if the party claiming relief was so badly intoxicated at the time he entered into the contract that he was unable to realize the seriousness of his actions and the other party knew of it.

A court of law recognizes that intoxication unlike mental incapacity, is a self-induced state. Accordingly, mere drunkenness will not be a ground to refuse to enforce a contract. Also, a contract made by a person when intoxicated can be ratified by him when he becomes sober.

Contracts of Married Women

Today in Sri Lanka, married women are no longer under a disability to contract as the result of their marriage; they have the same contractual capacity as an unmarried woman and a man. The legal position of married women are equated to the above position by the Married Women's Property Ordinance of 1923 which came into effect on 1st July 1924.

1.2.3. Consideration

In English law, another essential requirement for a contract is what is called consideration. Fortunately, since contracts are governed in Sri Lanka by Roman Dutch law, the English concept of consideration has no application to contracts in this country. On the other hand, the requirement of consideration will apply in Sri Lanka to contracts governed by English law. For example, bills of exchange and negotiable instruments.

Why English law required Consideration

English law recognized the concept of consideration to distinguish serious promises from promises based on moral obligations or motives. The purpose of consideration is to treat a

contract as a bargain between two persons. In English law, for a contract to be formed a mutual benefit and detriment to the parties to the contract was considered essential.

Example : If Mr. Silva offers to give his valuable car to his nephew Martin because Martin is Mr. Silva's favorite nephew and Martin accepts the offer, Martin cannot sue Mr. Silva if he does not honour his promise.

This would have been the position in English law because under English law there was no consideration for the promise to give the car. At most, Martin being Mr. Silva's nephew, the promise may have been based on Mr. Silva's natural love and affection for his nephew or because of some special motive. However, this natural love and affection constituted only a moral obligation and did not amount to consideration in English law.

Under English law if the nephew Martin had given Mr. Silva Rs. 10/- when he accepted Mr. Silva's offer of the car, that Rs. 10/- although it was a very small sum compared to the value of the car – would have constituted sufficient consideration to legally enforce Mr. Silva's promise to give the car.

In English law the adequacy of the consideration was never an issue.

In *Chappel & Co Ltd v Nestle Co* (1960) AC 87, Nestle Company's chocolate wrappers which had a very small monetary value was considered as part of a 'consideration' for a contract.

Roman Dutch law requirement of 'reasonable cause'

The Roman Dutch law recognized what is legally called '*causa*' (a reason) or '*justa causa*' (just reason) as sufficient for a legal contract to be formed between two or more persons. *Justa causa* means that if a promise was made voluntarily, deliberately and seriously, it was enforceable as a contract. If the above factors could be proved it was sufficient. In this sense, the Roman Dutch law concept of '*causa*' or '*justa causa*' is far wider than the concept of consideration in English law. Unlike consideration, '*causa*' extends to and covers the motive or reason for a promise and includes a purely moral obligation.

Two well known Sri Lankan cases which are referred to as authority for the statement that the English law of consideration has been replaced by the Roman Dutch law concept of '*causa*' when dealing with normal contracts are given below;

In the case of *Lipton v Buchanan* (1904) 8 NLR 49, Sir Thomas Lipton who was a famous planter in Sri Lanka had promised Buchanan not to sue him for a debt due to Lipton from Buchanan's former partner until Lipton exhausted all his remedies to recover that debt from that partner. The Supreme court held that the matter should be governed not by English law but by Roman Dutch law under which Lipton's promise was legally enforceable because it was made voluntarily and seriously.

In the case of *Jayawickrema v Amarasuriya* (1918) 20 NLR 289, the plaintiff stated that the defendant had got property from his mother which was meant to be held in trust for both the plaintiff and the defendant in equal shares. The plaintiff had wanted to sue the defendant to implement that trust but the plaintiff had not done so because the defendant had promised to pay him Rs. 150,000/- each year for five years. The defendant did not pay this sum and when the plaintiff sued, the defendant argued that there had been no consideration for the undertaking. The privy Council held that the concept of '*causa*' in Roman Dutch law applied and that the plaintiff undertaking not to sue the defendant on the earlier occasion was sufficient to pay the plaintiff the Rs. 150,000/- for five years as promised. Hence the plaintiff was entitled to sue the defendant for breach of contract.

Two other concepts of English law of contract which are associated with Consideration are

1. Privity of Contract and
2. Promissory Estoppel

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.

Example : If there is a contract between A and B for B to pay Rs. 10,000/- to C, Bs obligation can be enforced only by A. C for whose benefit the Rs. 10,000/- was paid cannot enforce the contract because the contract was between A and B and C was a third party.

Promissory Estoppel

The doctrine of Promissory estoppels is a rule of English law. Promissory estoppels applies where one of the parties to a contract gives an assurance to the other party which is intended to be binding and is relied upon by the other party. In such a case, because of the element of unconscionability, the law prevents such promisor going back on his promise.