

Forth Stage

Lecture 1

Chapter One: Contracts

Contracts can be defined as 'an agreement by which one or several persons bind themselves, in favor of one or several other persons to give or to do or not to do something'. The definition implies that the parties possess capacity and they intend to create legal obligations.

Classification of contract

1-Bilateral and Unilateral Contracts

Bilateral contracts can be defined as the contracts which normally impose reciprocal obligations upon the parties, such as contracts of sale. Unilateral contracts, on the other hand, are those which impose obligations on one of the parties only, such as donations.

2-Gratuitous and Onerous Contracts

Gratuitous contract is the one in which one of the parties procures for the other an advantage which is purely gratuitous, such as donation and loans for use. Onerous contract is one which subjects each of the parties to giving or to doing something.

3-Nominate and Innominate contracts

Nominate contracts are those which have been regulated by the code, whereas innominate contracts are those which have not been regulated by the code and are subject to general rules applicable to all contracts.

Lecture 2

The Formation of contracts

In order to form a contract there must be an offer made by one party which must be accepted by the other party. Offer and acceptance will be discussed briefly as the following:

1-Offer

It is not necessary that an offer should be addressed to a definite person known to the offeror. It may address any member of the public. For example, an offer of a reward to the finder of a lost property or the offer made by the carrier in his announcement of his charges.

2-Acceptance

A contract comes into being with the acceptance of the offer. The acceptance must meet the offer. If there are reservations or new conditions, it is tantamount to a new offer which in turn must be accepted if a contract is to emerge. In principle the acceptance will not be inferred from the silence or inaction of a person to whom an offer has been addressed.

The contract is complete when the offeror declares that he accepts the offer. The fact that the parties may intend to set out their contract in writing does not prevent its immediate conclusion.

Lecture 3

Vices of Consent

The vices of consent are:

1-error 2-violence 3-fraud and lesion 4-exploitation

1-Error

The cases of error are:

- A. When the parties misunderstand each other as to the nature of agreement, for example, a thinks that he is letting his house on a lease whereas b thinks that the house is being lent to him.
- B. When the parties have not the same object in mind, for example a thinks that he is selling a certain brown horse, whereas b thinks that he is buying certain gray hours.
- C. When the substance , the qualities of the subject matter of the contract is different, for example an error as to the age of a supposed antique.

2-Violence

Violence exists when it is of such a nature to make an impression upon a reasonable person and when it is capable of inspiring in him the fear of exposing his person or his fortune present injury.

Lecture 4

Rescission

-When does a rescission take place?

It is a fundamental principle of Iraqi law of contract that when there is reciprocal obligations and one of the parties has performed or is prepared to perform his part and the other party has failed or refuses to perform his part the contract may be set aside by the courts without prejudice to any claim for damages.

The rescission of contracts does not take place automatically by operation of law unless there is an express clause to this effect. In every other case the rescission must result from a court judgment.

Where there is an express clause providing for rescission, it operates only in favor of the party willing to perform.

As a result, the rescission takes place if one of the parties failed to perform his obligations in the contract.