

LESSON 1: CONTRACTS: KEY VOCABULARY.

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First of all, it is important to note that the nouns *Agreement* & *Contract* are used interchangeably in the English language.

The first thing we should consider when talking about contracts is **contract formation** itself. In common law countries all law students learn that a valid **binding** contract is formed when the following four elements have been satisfied: **offer, acceptance, consideration**, and the intention to enter into contractual relationship.

This will be best explained through an easy example. Imagine that I have bought tickets to a concert, however, for whatever reason, I change my mind and decide to sell my tickets to somebody else. I am therefore making an offer to sell the ticket and, as such, I am the **offeror**; the person interested in buying the ticket will be the **offeree**; if they agree to buy the tickets for the price I have offered then we can say that they have accepted my offer or that there has been **acceptance**. Once they have paid me the price of the ticket and I have given the tickets to them then we can say that there has been an exchange of **consideration**, in other words the exchange of something of value: one-party has obtained a **benefit** in terms of the receipt of the money that represents the price of the ticket, and the other suffered a **detriment**, in terms of having to pay that price in order to obtain the ticket.

However the other party may not like the price that I have offered and may suggest a different (normally lower) price. This means that they **rejected** my original offer and made a **counter offer**. My offer may also come to an end in two other ways: first of all, if I give the other party a specific period of time to either accept or reject the offer and that time expires we can talk about **lapse of time** and the offer is no longer valid. Similarly I can also change my mind and decide that I do want to go to the concert; I would therefore **revoke** my original offer and as long as I do it before the other party accepts it, there has been no **valid** contract formed.

In Common Law just as in Civil Law, in order for a contract to be legally **binding** and therefore **enforceable** in a court of law, it must fulfill certain requirements. One of these requirements is that both **parties to the contract** must have the **capacity** to enter into it; this means that they must both be of the age of majority (adults) and they must both be of sound mind; secondly neither party can exert any **duress (undue pressure)** in the process of negotiating that contract (by, for example, threatening the other party with some specific action); thirdly the **object** of the contract (also sometimes referred to as the **subject matter**) cannot be illegal (for example you cannot enter into a contract for sale of illegal drugs or to intentionally harm someone in some way).

Once a valid contract has been **entered into**, meaning signed or **executed**, it must be **performed** or **complied with**; we can also talk about the performance or compliance with contractual **terms**. The word terms refers to the **provisions** or **conditions included in the contract**; if the terms are not clear, they may have to be **construed** at a later time by a Court. The word **term** in singular refers to the length or duration of the contract; if the contract is of specific duration, in other words it contains an **expiry date**, when it reaches the date we can say that the contract has been performed or **discharged**.

Finally, there are certain standard clauses that appear in many types of contracts. One example of such a clause is an **assignment** clause where one party to the contract, called the **assignor** assigns or transfers his **rights and obligations under the contract** to a third party called the **assignee**.

Another type of a clause that appears in many contracts is called the **entire agreement clause** which ensures that any understandings, **undertakings (promises)** or arrangements that existed between the parties prior to the execution of the contract are superseded by the provisions of the contract (in other words, the terms of the contract will prevail).

Another example of a standard contractual clause is a **severability clause** which allows for the survival of the contract as a whole if one part or one specific term is declared by a court **null and void**.

Finally, **termination** clauses are also typically included in many types of contracts and agreements and they outline the circumstances under which a contract can be ended early. Most commonly, only a **fundamental or material breach** will give rise to early termination.