Principles of Civil Law

Lecture Title: Law of Obligations (Part 1): Contracts

Diploma in Law (Malta)

Lecturer: Dr. Rosanna Ciliberti

Date: 19th December 2025

CAMILLERI PREZIOSI

Obligations

- Obligations which are not created by the mere operation of law, arise from:

1.**Contracts**,

2. **Quasi-contracts**: this is like a contract, however there are not the two consents; there is one consent and a presumed consent of the other party.

3.**Torts**: there is no previous contract however the obligation results when when one causes harm to another. This gives rise to compensation, however in Malta, one has to prove fault. In some jurisdictions, there is a system of no-fault liable and so one must pay for the harm caused by him even if he not at fault.

4. **Quasi-torts:** this relates to when a person is liable for damage caused by someone else. This is most typically seen in regards to minors.

Obligations

Contracts

Definition: A contract is a legally binding agreement between two or more parties. Contracts provide a framework for reliable exchanges in civil and commercial relations.

Obligations

Essential Elements of a Valid Contract

Agreement: Offer and acceptance between the parties.

Cause: The lawful purpose or reason for the contract.

Object: The subject matter must be specific and lawful.

Capacity: Parties must have the legal capacity to enter into contracts.

Form: Some contracts require a particular form (e.g., written) to be valid.

Obligations

Pre-contractual liability

Pre-contractual liability, also known as **culpa in contrahendo**, refers to the responsibility parties may hold during negotiations before a contract is formed. Pre-contractual liability can arise when one party has acted in a way that caused another party harm during negotiations, even if no binding contract was ultimately concluded.

Pre-contractual Liability

Pre-contractual liability is essentially a German notion and invention.

The idea that one is not liable, prior to giving consent, The German jurisdictions developed this notion, and today it takes into account that damage might result even pre-contract and pre-signing, mainly at the negotiation stage. In various Continental Codes like the Italian and the German Codes, there is the idea and that if a party disrupts negotiations without justifiable cause; he would be liable for damages.

However, this is not found in the French or Maltese Codes but French courts have accepted it.

Obligations

Case, Court of Appeal 1967

Giufrida was an Italian company which wanted to build a hotel on Manoel Island and negotiations had started with the government. The negotiations were at an advanced stage. However, at some point the Maltese government stopped negotiations with Giufrida and started negotiations with another company. Giufrida sued to obtain an order from the Court to order the government to sign the contract. This plea was dismissed and the Court held that it cannot force anyone to enter into a contract since there was no promise of sale.

Obligations

Key elements of pre-contractual liability

Good Faith Requirement: law implies a duty of good faith in negotiations. This means that parties should engage in honest, transparent discussions, avoiding misleading or deceptive conduct.

Obligations: Each party should not act in a way that causes harm or misleads the other party, especially if the negotiations are advanced.

Obligations

Circumstances Leading to Liability

- **Breaking Off Negotiations Abruptly**: If one party suddenly terminates negotiations without valid reason, especially after raising the other party's reasonable expectations, this can create liability.
- **Withholding Material Information**: Failing to disclose essential facts that would impact the other party's decision can lead to pre-contractual liability.
- **Engaging in Bad Faith Tactics**: Misleading promises, failing to negotiate with intent, or using negotiation as a means to gain an advantage unfairly may trigger liability.

Obligations

Pre-contractual Liability

- **Elements Required to Prove Pre-Contractual Liability**
- **Expectation of Contract Conclusion**: The aggrieved party should prove that, based on the conduct of the other party, they had a reasonable expectation that a contract would be concluded.
- **Reliance on Negotiations**: The party claiming harm should have relied on the negotiation process to their detriment (e.g., they incurred expenses or missed other business opportunities).
- **Damage Resulting from Actions**: There must be demonstrable harm or loss that arose directly from the actions of the other party in the negotiation phase.

Obligations

- **Examples of Pre-Contractual Liability Scenarios**
- **Costly Preparations**: A business begins preparation based on a verbal agreement that is later withdrawn without reasonable explanation.
- **Induced Expenses**: A party incurs significant costs due to assurances given by the other party, only for the latter to back out without justification.
- **False Representation of Intent**: A party gives the impression that they intend to enter into a contract but withdraws at a critical point with no intention to proceed.

Obligations

Remedies for Pre-Contractual Liability

- **Compensation for Damages**: The aggrieved party may seek compensation for losses suffered due to the other party's wrongful conduct during negotiations.
- **Restitution**: If one party has unjustly benefitted at the expense of the other, the law may order them to restore the benefits.

Obligations

Limitations of Pre-Contractual Liability

- **No Automatic Right to a Contract**: Pre-contractual liability does not mean that parties are bound to conclude a contract merely because negotiations were advanced.
- **Legitimate Business Changes**: If a party ceases negotiations due to genuine business reasons or a change in circumstances, liability may not apply.
- **Proving Bad Faith**: Demonstrating bad faith or reliance on negotiations can be complex and requires clear evidence.

Obligations

Cassar v. Campbell Preston, 19th November 1971, Commercial Court

Cassar wanted to open a petrol station through BB Malta Ltd. and started negotiations with the company. BB Malta Ltd. stopped negotiations suddenly and Cassar sued for damages on pre-contractual liability. In this case the court bluntly said that pre-contractual liability does not apply because our courts follow the theory of volonta. The argument was that pre-contractual liability would be a discouragement to trade and that the idea should be, that one is free to negotiate rather than hindering negotiations.

Obligations

Grixti v. Grech, 3rd April 1998, First Hall Civil Court

This is the first time that the court said that pre-contractual liability exists under certain terms. Grech appeared for Dhalia estate agency,, who wanted to find premises in B'Bugia. Dhalia did not have premises in B'Bugia so he contacted Grixti who was a broker. Grixti started working and went into expenses in doing so. When Grixti found the premises, Dhalia told him that they had already found premises in B'Bugia and so did not need this one.

The court said that it would be prepared to accept pre-contractual liability under these conditions:

Obligations

1. the person has incurred expenses in good faith with the expectation that agreement would be reached with the other party

2. the termination of the negotiations must be in bad faith

3. an advanced stage of negotiations must be a stage when there is an agreement on the essential conditions of the agreement – what is left is for the agreement to be put in writing

Obligations

The court applied these 3 principles and said that the plaintiff had not managed to prove the case according to the conditions, especially the third one since there was not any advanced stage of negotiations. However, this judgment was a landmark one, as for the first time our Courts were willing to consider pre-contractual liability notion, subject to the satisfaction of these three requirements. The Court even went to state, what remedy it would grant; which it said would be the expenses but not the loss of future earnings.

Obligations

- Three types of Natural Obligations

1. Civil Obligations – which degenerates into a natural obligation e.g. prescription a loan has to be paid within five years, if you paid after the five years you cannot sue to recover, as you knew if had to be paid within that timeframe. (not bound by law but by natural law)
2. Duty of Conscience - things you feel you have to do. E.g. You hit a girl with your car whilst driving, but there wasn't a zebra crossing and you didn't see her. You are legally bound to decide to pay for any damages arising in the situation.

Obligations

Cont.

Debt of honour- e.g. debts incurred in gambling or bets, depending on the context, may constitute debts of honour. Or if a person supports family members beyond legal requirements or fulfill certain informal obligations may be viewed as natural obligations. No possibility of recovering.

Obligations

Contracts

A contract is an agreement or an accord between two or more persons by which an obligation is created, regulated, or dissolved.

A contract is bilateral when the contracting parties bind themselves mutually the one towards the other. It is unilateral when one or more persons bind themselves towards one or more other persons without there being any obligation on the part of the latter.

When each of the parties undertakes an obligation, the contract is termed onerous. (example a sale contract)

When one of the parties gratuitously procures an advantage to the other, the contract is termed gratuitous (example a donation contract)

A contract is commutative, when each party binds himself to give or to do a thing which is considered as the equivalent of that which is given to or done for him.

Obligations

What is required for a valid contract?

The following are the conditions essential to the validity of a contract:

(a) capacity of the parties to contract;

(b) the **consent** of the party who binds himself;

(c) a **certain thing** which constitutes the subject-matter of the contract;

(d) a **lawful** consideration.

All the four conditions need to be satisfied.

Obligations

Capacity of Contracting Parties Article 967

(1) All persons not being under a legal disability are capable of contracting

The following persons are incapable of contracting, in the cases specified by law:

(a) Minors

(b) Persons interdicted or incapacitatied and

(c) Generally, all those to whom the law forbids certain contracts.

Obligations

Capacity of Contracting Parties

The law also provides that:

1. Those who have not the use of reason (which has to be proved and has to be present during the very moment of the contract e.g. heirs), or under the age of seven- null

2. Any obligation entered into by a child under the age of fourteen years is null BUT where the child has attained the age of nine years, the agreement shall be valid in so far as it relates to the oblgiations entered into be any other person in his favour. Same goes for those between the ages of 14- 18 years.

Capacity is therefore 18 years. But in commercial matters a young person can be emancipated to trade.

Obligations

With regards to a person who does not have the use of reason.

In Carabott vs Spiteri (2013) five principles where listed by the court

1. Presumption that every person is sane
2. The burden of proof is on whom is alleging it
3. A use of reason sufficient that he knows what he is doing
4. The court requires grave proof
5. Grave and serious reasons for it to establish insanity, and that it existed at the moment of contracting.

Obligations

Interdication (general) and Incapacitation (prohibited from certain acts, thus limited) both refer to a persons' ability to manage their own affairs or enter into binding agreements.

Interdiction – Is a legal measure **imposed by the court** on indivivuals considered legally incapable of managing their own affairs due to serious illness or severe impairment.

Once interdiction is declared by the court, the person losses all capacity to act independently in civil matters, inlcuding contracting.

Can appoint a curator to manage the perons's legal and financial affairs.

Usually it is long term but can be reintegrated if the court is convinced that he can manage his own affairs.

Obligations

Incapacitation is the legal status applied to individuals who may not be entirely incapable but require assistance in managing certain aspects of their life due to a milder mental or physical limitation.

Incapacitation is typically limited to specific areas where the persons' ability to act is impaired. The court can give the person back full capacity.

Obligations

Consent in Contracts Article 974 et seq

Consent is the basis of any contract because unless you give your consent you are not bound. The law does not tell us what consent is but tells us what it is not.

Article 974 – *Where consent has been given by* ***error,*** *or extorted by* ***violence*** *or procured by* ***fraud****, it shall not be valid.*

Obligations

Consent in Contracts

Error leads to relative nullity not absolute nullity.

Error – can be of person of fact or law

Error of person- One usually enteres into a contract because of the person. But what if there is an error in person?

e.g. I sold my car to my son because he is my son. Later it turns out through DNA testing that he is not my son, and hence I would not have sold the car as there was an error of person.

In an 1993 case, the court applied this same principle to a lease, whereby such lease was granted solely to British people. A couple had dual citizenship and this error of person was brought up.

Obligations

Error of Law- is when one things that the law is forcing him to do something. E.g. a person reduces the rent because he thinks that what the 'new law' says.

Error of Fact- substantive- the contract should still be valid unless it affects the substance of the contract. Referes to the substance and not to the nature. There are 2 types of error:

- *Error* which obstructs consent, which is subdivided in **error in corpore** or **error in negotio.** This gives rise to the inexistence of the contract.

Error in corpore is a mistake in the object of the contract. There is no contract because the consents have not met. *Error in negotio* is where there is a mistake regarding the type of agreement e.g. one wants sale the other wants lease. These two give rise to inexistence of the contract since this is absolute nullity and so anyone can raise the issue of inexistence, which is not dealt with in our Civil Code.

Obligations

Error *in substantia* is an error in the substance of the object e.g. buying a ring you think is made of gold, which is in fact made of bronze. Here the contract is valid but it is relatively null.

The test which the Courts normally utilise, is the subjective test, that is, what did the particular person understand at the moment of signing? However, this element of subjectivity is not absolute:

Borg v. Grima (1994): Grima wanted to take a loan from the bank, and given the fact that the loan was not huge, the bank required a personal security. Grima contacted a third party (St. John) to see whether he would give personal security. Grima and St. John had a small business in its initial status and the latter stood as a personal guarantee for the loan. Grima did not pay back and the bank sued the guarantor in order to recover the amount. St. John pleaded that the guarantee was defected by reason of error. He said that he thought that he provided the bank with a specimen signature. Thus he claimed that he was mistaken. Even though the the Court did not say that St. John was lying, the mistake was not excusable. The court said that if this was a genuine mistake, it is still not excusable and so it cannot order the nullity of the contract.

Obligations

- In *Zammit v. Fenech 04/03/2004* – the court refused to annul the contract on the fact that the person did not know how to read. The fact that one does not know how to read is not an excusable error. What is excusable or not has to be determined by the court.

- *Cassar v. Pace 1986* – The plaintiff bought a land rover with various accessories attached to it. After Cassar bought the car, he was stopped by the police and it resulted that the car with those accessories could not be driven on the road. Cassar filed an action to annul the contract. The question which the Court had to study was what was the substance of the contract? The Court held that Cassar bought the land rover because of the accessories and the way it was modified. The Court cancelled the sale.

Obligations

- Piscopo vs Filletti (2003)- the court said if the error is easily ascertainable you are not in error. A person in this case bought a second hand car, and the vendor told him it was five years old. After the purchase he realised that it was older and brought the action as error. The court noticed that the purchaser had never asked for the log book in which case he would have noticed that it was older. The court said that this mistake in error is not excusable.
- Excusability – not easily ascertained (the most difficult in error)

E.g thought it was an antique because it was in an antique shop.

Obligations

Article 974 – *Where consent has been given by* ***error,*** *or extorted by* ***violence*** *or procured by* ***fraud****, it shall not be valid.*

Violence

Article 977 *The use of violence is a cause of nullity, even if such violence is practised by a person other than the obligee.*

Violence must be:

- Unjust
- Grave
- Determining

Obligations

- Violence

Unjust: something which is against the law, and something which is unjust, against the nature of the law.

In Camilleri vs Vella (2023)- an elderly woman who went to the bank to sign some documents was taken in a room where there were a lot of managers and bank staff members. She suffered severe anxiety and there was a lot of banging and shouting. She was really threatened and she signed. She brought an action to cancel, and the court said no since there was no actual physical harm to your body or person.

Economic duress does not amount to violence. There have been cases where the person argued that they were forced to sign the contract because of their economic situation. The courts have always held that this is not a ground for the annulment of a contract.

Obligations

Article 979 *Violence is a ground of nullity of a contract even where the threat is directed against the* ***person or the property of the spouse****, or of a* ***descendant or an ascendant*** *of the contracting party.*

Where the threat is directed against the person or property of other persons, it shall be in the discretion of the court, according to the circumstances of the case, to void the contract or to affirm its validity.

Mere reverential fear towards any one of the parents or other ascendants or towards one's spouse, shall not be sufficient to invalidate a contract, if no violence has been used.

Obligations

Fraud (dolus)

The must be the intention to deceive on the part of the other party, thus the *mens rea*. Such must be grave in nature and determining. Thus elements of fraud are:

- Intention to deceive the other party
- The fraud must be grave
- The fraud must be determining
- The fraud must have taken place with the participation, active or passive, of the other party (not third party)

Obligations

- There must be shown intention to deceive on the part of the other party. Thus one must always prove that the intention to deceive on the part of the other party was there and it was not a mere mistake. If one genuinely made a mistake, there cannot be deception. This largely emerges from the facts of the case because one cannot prove a state of mind.
- Eleida vs FXB 1998- a person bought furniture from the defendant company, and was listed as solid oak, but in reality only the top part of it was. Plaintiff brought an action on the grounds of deceit. The court said not it was not deceit it was a trick of the trade.

Obligations

- Cauchi v. Borg Court of Appeal 11th June 1992

The tenant was an old woman and she requested the landlord to make the necessary repairs. Under the old laws, the landlord was obliged to make structural repairs. At the time the rent was controlled and so it was minimal. Thus the landlord found himself in a very difficult position. He offered to sell the house instead to his tenant who agreed to buy it at a very small amount. She threatened that if the landlord did not make the repairs or sold her the house at Lm2,500, she would get her niece to move in with her. Thus the landlord agreed to sell the house for Lm2,500. Subsequently he discovered that the niece had no intention of moving in with her grandmother and therefore the landlord brought this action on the ground of fraud because he was deceived into selling. The court dismissed the action and said that the fraud was not serious because these are tricks that are to be expected in a commercial transaction and that it is expected that the tenant would try to maximise her position.

Obligations

Would silence amount to fraud?

Jurists have confirmed that where there is a duty to give information but don't the the person will be guilty of fraud. Thus failure to disclose a matter which the other party has an interest in knowing and which the latter would have a difficulty finding out alone constitutes fraud. But this depends on a case to case basis.

Prescription (time frame in which in can bring an action) period for error, violence and fraud is 2 years, not from contract, but from the person discovers each element.

Obligations

- Galea v. Borg Magistrate's Court of Gozo, 11th July 2008:

This case dealt with the question, whether not disclosing important information amounts to fraud.

Can one deceive someone by not saying something? The Court held that the position has always been that there is no *a priori* answer and this depends on the case. If one decided not to disclose important information, this could amount to fraud.

The principles of French law say that failure to disclose a matter which the other party has an interest in knowing and about which the latter would have difficulty in finding upon himself, this constitutes fraud. This is tied to the notion that contracts must be entered into in good faith.

Diploma in Law (Malta)

CAMILLERI PREZIOSI

Obligations

So how does consent create a contract?

A contract requires two consents, therefore, one consent cannot create a contract. One cannot consider an obligation with just one consent. A unilateral consent can never crate an obligation. There must be an offer and an acceptance, and when these two meet, there is the contract.

The process of consent can be dissected in four stages:

- Consent must exist internally
- It must be externally manifested
- There must be an identity between the acts of volition of the contracting parties
- There must exist the concourse of these acts of volition – the two consents meet, and this creates the obligation.

Obligations

Consent can be an internal act or externally manifested. Unless the consent is manifested in its proper form there is no consent.

Internal- the intention to give consent and going through with such consent.

Externally manifested- can be in a free form or solemn form.

Free form is the oral form. Sometimes the law insists on a written form not necessasarily a public deed but in writing. A writing can be prepared by the parties themselves, for it to be valid there must be both signatures.

Obligations

Oral form can also be express or tacit.

Express-Express consent occurs when a person clearly and explicitly agrees to the terms of an agreement or obligation, either **verbally** or **in writing**.

Characteristics: Express consent is straightforward and leaves little room for interpretation because the individual openly communicates their intent.

Application in Law: Express consent is commonly required for significant legal agreements, such as contracts, property transfers, or wills, where explicit acknowledgment is crucial

Obligations

Examples: Signing a contract where the parties' obligations are clearly outlined.

- Verbally agreeing to the terms of a service.
- Providing written consent in legal matters, such as a power of attorney

Obligations

Tacit consent, on the other hand, is **implied** by a person's actions, conduct, or circumstances rather than by direct verbal or written communication. This type of consent is assumed based on behavior that reasonably indicates agreement.

Characteristics: Tacit consent can be inferred when a person behaves in a way that shows acceptance or compliance with terms, even if they have not explicitly stated so. However, because it relies on interpretation, tacit consent can sometimes lead to disputes.

Application in Law: Tacit consent is generally sufficient for less formal agreements or situations where parties' intentions are evident through their actions, such as informal agreements or routine business practices.

Obligations

Examples:

1. A tenant continuing to pay rent after the expiration of a lease, thereby implying consent to extend the tenancy on the same terms.

2. An individual receiving a service and making no objection, indicating agreement to the service's terms by their acceptance and payment.

Obligations

Legal implications

Contracts: Both express and tacit consent are recognized for forming contracts, but certain contracts, particularly formal ones (like real estate transactions), require express consent due to their gravity.

Interpretation: Maltese courts may interpret tacit consent in light of the surrounding circumstances to determine if actions genuinely imply agreement, especially in cases where written or explicit consent was not provided.

Limitations: Tacit consent may not be sufficient in situations requiring explicit statutory requirements, such as marriage contracts, certain leases, or testamentary dispositions, where express consent is mandated for validity.

Obligations

Simulated Contracts – Two Types Absolute or Relative

Absolute Simulation- Contract is cancelled as though it never exsisted.

- **Definition**: An absolutely simulated contract is one where the contract is a complete fabrication, created solely to appear as though a certain transaction has taken place when, in reality, nothing is intended between the parties.
- **Effect**: The contract is **void** in its entirety, as there is no real agreement or underlying obligation. Since it lacks genuine consent or intention, it has no legal effect.
- **Example**: Two parties drafting a contract to transfer property for the purpose of deceiving creditors, when neither party actually intends the transfer to occur.

Obligations

Relative Simulation

- **Definition**: A relatively simulated contract is one where the contract appears to represent a particular transaction, but the parties have another, different transaction in mind (the **real agreement**).
- **Effect**: The **real transaction** may be enforceable, provided it is valid in all respects (e.g., it has lawful cause, object, and consent). The simulated contract itself has no effect in representing the supposed transaction but may be evidence of the real intent if contested.
- **Example**: A contract is drawn up to show the sale of property, but the real intent is to make a gift to a family member. If legally permissible, the real transaction (the gift) may be upheld by the court.

Obligations

Validity and Voidability

- Maltese law generally invalidates simulated contracts as they lack true consent, which is essential for a binding contract.
- In the case of relative simulation, the real agreement may still be enforceable if it meets all other requirements of a valid contract.
- **Proof of Simulation**
- Establishing a contract as simulated can require **proof** of the true intentions of the parties. This often includes witness testimonies, communications, or documentation that contradicts the written contract.
- Courts may consider surrounding circumstances, actions of the parties, and any discrepancies between the contract's terms and the actual conduct

Obligations

Simulated Contracts

Effects on Third Parties

- Simulation can impact third parties if the simulated contract was intended to deceive creditors or to create a false impression about assets or liabilities.
- However, if a third party, acting in **good faith**, relies on the simulated contract without knowledge of its simulated nature, they may have certain protections
- The prescriptive period for simulation is that of 30 years.
- The rules is that the truth always prevails over the appearance.

Obligations

The subject matter of Contracts

Every contract has for its subject-matter a thing which one of the contracting parties binds himself to **give, or to do, or not to do.**

Pacta de Re Sperata- Future things can also form a subject of a contract.

- In these contracts, the subject matter is **something that does not yet exist** or is not currently in the possession of the seller, but both parties anticipate it will come into existence or be acquired.
- This often applies to goods or events expected to materialize in the future, such as crops, stock, or items yet to be acquired by the seller

Obligations

Pacta de Re Sperata

Conditioned on Realization:

- The enforceability of such contracts typically depends on the eventual **realization of the subject matter**. If the "thing hoped for" does come into existence or is acquired, the contract becomes binding.
- If the expected event does not occur (e.g., crops fail to grow, or the seller is unable to acquire the item), the contract may be considered **void or discharged** because the anticipated subject matter no longer exists or cannot be delivered.

Good Faith and Legal Validity:

- Both parties must act in **good faith** and genuinely believe in the possibility of the event or thing occurring or existing.

Obligations

Pacta de Re Sperata

Examples

Agricultural Contracts: Agreements made by a farmer to sell a harvest before the crops have grown. This contract is based on the **expectation** that the crops will mature and be harvested.

Merchandise or Commodity Contracts: A seller might enter a contract to sell items they expect to acquire from a supplier. If the goods arrive, the contract becomes binding

Obligations

Another type of a valid contract is Pactum de Spei, refers to contracts or agreements formed around an outcome that is **highly uncertain**. It differs from **pacta de re sperata** (agreement for a thing expected) in that there is no realistic expectation that the outcome will occur; rather, it is based on mere **hope or chance**.

- **Highly Speculative Subject Matter**:
- The subject matter of a pactum de spei is **extremely uncertain**, relying on an event or outcome that is based purely on hope or luck rather than a likely occurrence.

Obligations

Pactum de Spei

Binding Even in Uncertainty:

•Unlike contracts where performance depends on reasonably expected events, a pactum de spei is **binding despite the inherent uncertainty**.

•If the contract is agreed upon, the parties are bound by it, even if the hoped-for outcome does not materialize. The risk is fully assumed by the party entering into the agreement

Example: I will buy all the produce of your field, if the field does not bare any fruits the contract is still valid and I would still need to pay for such.

Obligations

Object of a contract four elements:

1. Lawful
2. Specified
3. Possible
4. Causa (consideration)

Obligations

Lawful

The subject matter must be **lawful**; it cannot involve activities or items that are illegal or contrary to public policy.

Contracts with illegal objects—such as those for committing a crime, defrauding the government, or engaging in prohibited activities—are considered **void and unenforceable**.

For example, a contract for the sale of illegal substances or fraudulent financial schemes would be void due to the unlawful subject matter.

Or I cannot agree on a rate of interest higher than 8% as it would be illegal.

Obligations

Specified

The object must be specified i.e. the agreement must clearly identify the object of the contract.

The subject matter must be **certain** or at least **determinable**. This means that it must be clearly defined or capable of being determined when the contract is executed. If the subject matter is too vague, the contract may be declared void due to **lack of clarity** about the obligations of the parties.

Example: Buying a dog, cannot just say 'any dog' but one would need to specify which dog in order for the 'object' to be clear.

Obligations

Possible

The subject matter must be **possible**; it cannot require performance that is inherently impossible or objectively unattainable. If a contract's subject matter is impossible to perform at the time the contract is entered into, it may be deemed **void**. However, if the impossibility arises after the contract is formed, this may lead to different remedies, such as rescission or compensation.

Example: a contract to sell a property that has already been destroyed or to perform a service that cannot physically be done would be void for impossibility

Obligations

Causa (consideration) Article 987 et seq

The law provides that every contract must have a consideration and in each agreement it is presumed that there is a consideration. If there is no consideration there is no contract and thus it is null and void.

The object of one party is the causa (consideration) of the obligation of the other.

Case Law (1980)-A couple were expecting a child and they had booked a room at a private hospital. Due to complications she gave birth at the Government Hospital. The private hospital sued to get paid for the room that the couple had reserved. The court went into what the 'causa' was, and the consideration was the booked room. The couple had to pay for the reserved room even though they didn't make use of it.

Obligations

Case Law (2003)- AZ was a publishing company and they published a magazine every month. B wanted to adertise his buisness on the magazine published by AZ, but B never actually sent what we wanted to publish on the full page. AZ sued B to pay for the page, but B insisted that he should not pay since AZ never published anything of his and instead they left a blank page. The court decided in favour of B, since the consideration was for AZ to publish B's advertisment, but B failed to provide AZ with such.

Obligations

The considertaion cannot be contrary to law, moraltiy of public policy.

The question of cause may be raised by the court ex-offico, in cases of illegality.

Obligations

Effects of Contracts

Contracts create binding obligations between parties, who should honour their commitments as agreed.

Binding Force of Contracts (Pacta Sunt Servanda)

- Contracts have a **binding effect** on the parties who enter them. Once validly formed, they are enforceable, and each party is obligated to perform as specified.
- This principle, known as **pacta sunt servanda** ("agreements must be kept"), holds that contracts are legally binding and cannot be unilaterally altered or disregarded without the consent of both parties or without a legal reason for doing so.
- Parties can only be released from a contract under specific conditions, such as **force majeure**, **mutual agreement to rescind**

Obligations

Obligations and Performance

- **Obligation to Perform**: The primary effect of a contract is to create specific obligations that must be performed as per the terms of the contract. If one party fails to fulfill their contractual duties, they may be liable for breach of contract.
- **Remedies for Non-Performance**: If a party fails to perform, Maltese law provides various remedies:
  - **Specific Performance**: In cases where monetary compensation is inadequate, a court may order the party to fulfill their contractual obligations.
  - **Damages**: The non-breaching party may seek compensation for losses incurred due to the breach.
  - **Rescission**: The contract may be rescinded, releasing both parties from their obligations if performance is no longer possible or if mutual consent is given.

Obligations

Interpretation of Contracts

- Contracts to be interpreted **according to the intentions of the parties** and the context in which they were made, especially if terms are ambiguous.
- The **plain language of the contract** generally governs interpretation, but if there is ambiguity, courts may consider the overall purpose and objectives of the contract.

Obligations

Special Effects Based on Contract Type

Bilateral Contracts: Obligations are mutual, meaning both parties owe something to each other.

Unilateral Contracts: Only one party has an obligation (e.g., a promise to pay for certain actions without expecting anything in return).

Onerous Contracts: Each party must confer a benefit on the other (e.g., sale contracts).

Gratuitous Contracts: One party provides a benefit without expecting any return (e.g., donation)

Obligations

Extinguishment of Contractual Obligations

- Contractual obligations can be **extinguished** through various means, including:
- **Performance** (completion of obligations)
- **Novation** (substitution with a new contract)
- **Set-off** (mutual debts cancel each other out)
- **Rescission** or **Termination** (through mutual agreement or by operation of law if specific conditions are met

Obligations

Novation- concept in contract law that allows for the alteration of existing contractual obligations. It involves replacing an old obligation with a new one, either by modifying the terms, substituting a party, or changing the nature of the commitment. Novation effectively extinguishes the original contract and creates a new contractual relationship, ensuring that all parties consent to the changes.

Obligations

Set-off -allowing one party to offset a debt it owes with a counterclaim or credit it is due from the other party. Essentially, when two parties owe each other debts, set-off allows for these debts to cancel each other out to the extent that they overlap, reducing the amount payable by the party with the larger debt to the net difference.

Example Scenario in Set-off

- Imagine a supplier and a buyer in Malta:
- The supplier owes the buyer €5,000 for a product refund.
- The buyer owes the supplier €8,000 for other goods purchased.
- Using set-off, the buyer would pay only €3,000 to the supplier (€8,000 - €5,000)

Obligations

Private Writing (scrittura privata)

Requirements

Parties' Signature: A private writing is typically signed by the parties involved in the agreement or transaction. It may or may not require witnesses, depending on the specific legal requirements.

Flexibility: The content and form of a private writing are flexible, as long as it is clear and the necessary parties sign the document.

Evidence in Court: A private writing can be used as evidence in court, but its **authenticity** may be challenged if disputed. The party seeking to rely on the document may need to prove that it was duly signed and executed.

No Public Official Involvement: There is no involvement of a notary or other public official in the creation of a private writing.

Use in Certain Agreements: Commonly used for contracts or agreements that do not require a notary (e.g., leases, loans, and personal transactions).

Obligations

Public Deed

A **public deed** is a **formal document executed before a notary or other authorized public official**. It carries a higher level of authenticity and legal weight than a private writing. Public deeds are governed by the **Notarial Profession Act** and are used for transactions or agreements that require formal legal recognition and the involvement of a public officer.

Obligations

Characteristics of a Public Deed

Notary's Involvement: A public deed must be executed in the presence of a notary, who ensures that the document complies with the law, verifies the identity of the parties, and authenticates the document.

Formality: The creation of a public deed follows a strict legal format. The notary prepares and drafts the deed, which is signed by the parties involved.

Legal Proof: Public deeds have a strong **presumptive value of truth**. In other words, the facts and content contained in a public deed are presumed to be accurate, and the deed has a higher evidentiary value than a private writing.

Registration: Public deeds are often registered in the **public records** (e.g., property register, commercial register), making them publicly available and giving them legal effect toward third parties.

Required for Certain Transactions: Public deeds are required for certain legal transactions or transfers, such as the transfer of immovable property (real estate), marriage contracts, and other matters that involve significant rights or obligations

21 ACADEMY

Diploma in Law (Malta)

CAMILLERI PREZIOSI