

Chapter - Two

Formation of contract

◆ Essential Validity Requirements of Contract

I. Capacity

II. Consent

- ✓ Communication of Consent
- ✓ Offer
- ✓ Acceptance
- ✓ Defects in Consent and Available Remedies
- ✓ Mistake
- ✓ Fraud
- ✓ False Statement
- ✓ Lesion

III. Object of Contract

- ❑ Freedom of Contracts and its Limits
- ❑ Clarity
- ❑ Possibility
- ❑ Morality
- ❑ Legality

IV. Form of Contract

- ❑ Consequences Validity Requirements

Essential Validity Requirements of Contract

- The essential validity requirements of contract are not the same in every legal systems.
- For instance, In common law legal system
 - 1) **Agreement:-** One party make the offer, another party accepts the offer and both achieve *consensus ad idem* (meeting of the minds)
 - Offer
 - Acceptance
 - 2) **Consideration:-** Both parties must have provided consideration, i.e. each side must promise to give or do something for the other.
 - 3) The contract must be in the **form** prescribed by law

Cont...

- 4) **Intention to create legal relations:-** The parties must have intended their agreement to have legal consequences. The law will not concern itself with purely domestic or social agreements.
- 5) **Capacity:-** The parties must be legally capable of entering into a contract.
- 6) **Absence of Vitiating factors:-** Absence of factors that are going to invalidate a contract, i.e. duress or undue influence, mistake, misrepresentation, illegality
- 7) The object, which the contract purports to effect, must be legal

Cont...

- ◆ Under Ethiopian law the essential elements of a valid contract are provided under

Art. 1678 - Elements of contract

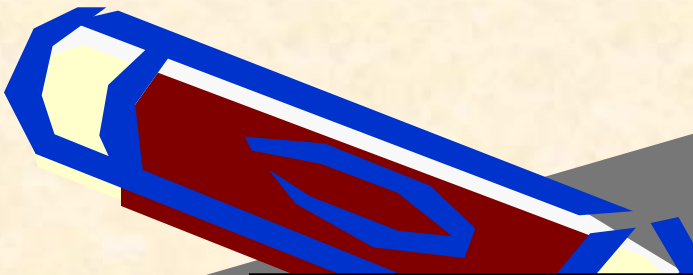
No valid contract shall exist unless:

- (a) the parties are **capable** of contracting and give their **consent** sustainable at law;*
- (b) the **object** of the contract is sufficiently defined and is possible and lawful;*
- (c) the contract is made in the **form** prescribed by law, **if any**.*

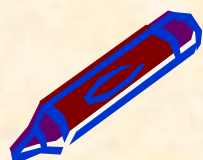
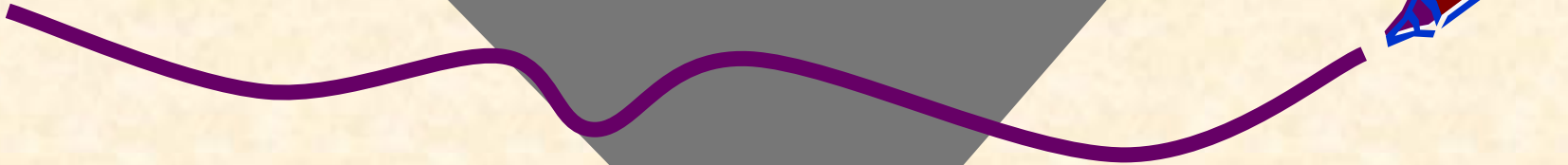
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So the essential requirements are;

- *Capacity*
- *Consent*
- *Object*
- *Form (optional) it`s only by the agreement of the parties or when the law say so*
- *Let us see each requirements one by one*



CAPACITY TO CONTRACT



Meaning & Definition

- ◆ Unlike other essential requirements of contract capacity is not governed under rules of contract in general
- ◆ Governed by Book I, Title II of the civil code which deals with capacity of persons

Art. 192. Rule of capacity.

*Every physical person is capable of performing all the acts of civil life
unless he is declared incapable by the law.*

Art. 196. - Proof of disability.

(1) Capacity is presumed.

*(2) Any person who alleges the disability of a physical person shall
prove*

that such person is under a disability.

- *The cumulative reading of these two articles leads us to the conclusion that capacity is presumed/principle / and incapacity is an exception*
- *The phrase 'unless he is declared incapable by the law' shows that there are certain category of persons who are declared to be incapable by law*

Cont...

- ◆ What are the source of disability/incapacity/ under Ethiopian law?
- ◆ It may be general or special disability
- ❖ **General disability:** this are disabilities which deepened on age, mental condition and sentences passed up on them. Art. 193.

I. Age /Minor/ Art.198 of CC—Art. 215 FRFC

`A minor is a person of either sex who has not attained the full age of eighteen years.`

- Under Ethiopian law Minors are incapable as rule and hence any contract that they make with other parties is voidable
- This is because a person under 18 years of age is supposed not to posses a mature mind and intellect to know the nature and the consequence of his acts
- a minor may, however, be authorized to enter in to certain types of contracts Art. 292 and 293(acts of everyday life), 301 (good faith of the other contracting party)

Cont...

II. Mental condition/Notoriously Insane or Infirm persons/

Insane person: Art.339

An insane person is one who, as a consequence of his being insufficiently developed or as a consequence of a mental disease or of his senility, is not capable to understand the importance of his actions.

Infirm persons: Art. 340

Deaf-mute, blind persons, and other persons who, as a consequence of a permanent infirmity are not capable to take care of themselves or to administer their property may invoke in their favor the provisions of the law which afford protection to those who are insane.

- Insane and infirm person must comply to the requirements of the law in order to benefit from the protection of the law i.e. they have to be notoriously insane (art. 347 cum. 343) or submit themselves to the procedure for judicial interdiction (351).

Cont...

III. By judicial decision /coz of sentences passed up on them/

- legal interdicted persons Art. 380(1)

A person interdicted by law is one from whom the law withdraws the administration of his property, as a consequence of a criminal sentence passed on him.

- Unlike the other grounds of disabilities mentioned here in before the incapacity here in is not based on the assumption that the legally interdicted person doesn't have sane mind to know the consequence of his act rather it is to be pronounced by the criminal law as a form of sanction for a criminal. The criminal may be deprived of his civil rights
- Art. 130 of Cri Code provides that the court may deprive the criminals civil right; not be a witness, not to perform some juridical acts

Cont...

❖ **Special Disabilities:** these type of disabilities are prescribed by law by reason of national and public interests. Art. 194(1)

Special disabilities may be prescribed by reason of the nationality of persons or of the functions exercised by them

- For the seek of protecting the national interest of the country foreigners may be excluded from participation in public administration and running for election and even owning an immovable properties Art. 389- 393
- The other important point is public officials may excluded in certain types of transactions where a conflict of interest may arise.
- Hence, foreigners and public officials are incapable of concluding a contract on the certain types of transactions

Q. What about the capacity of judicial persons

Source of disability of Judicial persons

- ◆ The source of disabilities of judicial persons springs from their nature and object, Art. 197

The capacity of bodies corporate and property with a specific destination shall be regulated, according to their nature, by the provisions applicable to them.

Nature: there are certain types of transaction by their own nature that can't be exercised by judicial persons or which are only applicable for natural persons.

Ex. Contract of marriage, proof of paternity, making a will. So in such type of scenarios judicial persons are totally disabled

Cont...

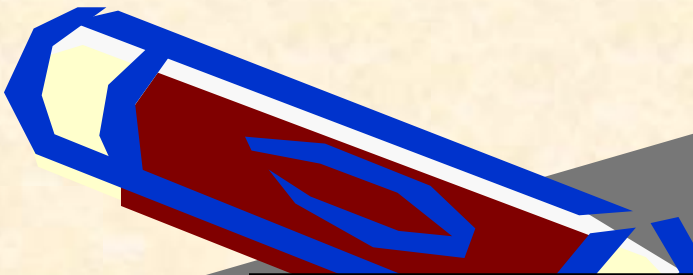
Object: it is the purpose for which the legal entity is established, usually we found it in the law or establishing documents.

- So judicial persons are incapable to perform acts other the purpose for which they are established.

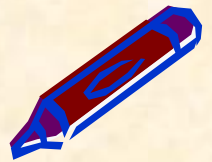
Ex. Political parties, trading organizations, cooperative societies do have their own objects, hence, political parties are totally incapable to participate in trading activities and the business organizations are also excluded from interfering in political issues

Brainstorm

- ◆ **You are participating in a race. You overtake the second person. What position are you now in?**



FREE CONSENT TO CONTRACT



Cont...

Consent Defined:

- When two or more persons agree upon the same thing in the same sense, they are said to consent.
- Consent is the meeting of minds, and it constitutes the very heart and soul of contracts
- The two parties to a contract should have identity of minds. (***consensus ad idem***) Or
- Parties must agree upon the same thing in the same sense.

Cont...

- ◆ The possible rationales behind consent are;
 - Parties must be bound by what they have willed freely to establish smooth, continuous and secured daily business transaction
 - One must morally respect his promise as though it is a rule of law (*pacta sunt servanda*)
 - A contract without free consent is voidable contract.
 - *Consent as a requirement is provided under Art.1679 of the civil code*

A contract shall depend on the consent of the parties who define the object of their undertaking and agree to be bound thereby.

Cont...

- From this provision we can single out the ff important elements
 - i. *A contract shall depend on the consent of the parties....*
This re-emphasizes the paramount importance of consent
 - ii. *`...who defines the objects of their undertakings...`*
Not only the making of the contract, but also the object (content) of the undertaking obligations must be considered
 - iii. *`...and agree to be bound thereby...`*
- ♦ The parties must not only agree, but also consent to be bound by their agreement , **Contract = [agreement (offer + acceptance)+ enforceability]**

Cont...

- ◆ So this condition excludes simulated contracts, gentlemen's agreement and other natural obligations
- ◆ So, if a contract is said to `... be completed where the parties have expressed their agreement thereto. [Art1780(1)] `other things remains constant`

Q. How do we know whether the contracting parties have agreed on the terms of the contract or not

- ◆ There are two competing arguments /theories/ in this regard

1. Theory of Will

- ❖ We have to look on the intention of the parties and external manifestation of the parties is no more important
- So in case where a conflict arise in between the intention and declaration of the parties in the performance of the contract we have to give effect for the internal intention of the parties
- Because the purpose of contract is all about meeting of the real intention of the parties
- An approach of the French Code
- It relays on moral grounds-A man shouldn't be tied by an agr't he did not will

Cont...

2. The theory of Declaration

- ❖ agreement is not a mental state but an act
- Parties should be judge not y what is in their mind but what they have said, written or done
- Social ground- Because there can be no order nor trade if men can` t relay on the expressed declaration
- An approach of Swiss code

***Q. read Art. 1680 and 1698 of the CC
and tell us which theory does
Ethiopia follows***

The Ethiopian system is a compromise: declaration alone creates a contract, but defect in consent may invalidate them subject to damages (for mistake-1703)

Mechanisms of declaring consent

- ◆ Therefore, if we say that it declaration theory the second question will be how consent is declared?
- ◆ Basically consent is communicated through offer and acceptance

What is Offer?

- ◆ It is a firm and precise proposal (arts 1714 cum.1695) to conclude a contract under specific conditions, so that the simple acceptance is suffice for formation of the contract.

Cont...

Essential features /nature/ of an offer

1. Serious intentions

- Some times it`s better to identify what is not an offer
 - ✓ Opinions are not offers; plans, request /invitation to negotiate/
 - ✓ Good Intentions are not offers.
 - ✓ Preliminary Negotiations are not offers.
 - ✓ Agreements to Agree are not offers.
 - ✓ Auctions are not offers. Art. 1688
 - ✓ catalogues, price lists, and circular letters are also not offers, Art. 1687(b)

Cont...

2. Definiteness: Offer must have reasonably definite terms so a court can determine whether breach occurred.
Art .1714 cum 1695

3. Communication: Offer must be communicated to the **specific person/s**-offeree/s. If an offer is not communicated to a specified person, it remains as a mere declaration of intention.

✓ The code recognized three kinds of declaration of intention which does not considered as offer

- a. **1687(a)- An offer failed to communicated to the beneficiary is mere declaration of intention.**

What about public promise of a reward?

- **Contract theory**
- **Unilateral act theory**

Cont...

1689

- **Q. what about simple oral declarations to larger groups of the society?**
- **Q. what if there are several simultaneous performance for a single public promise for reward?**

b. 1687(b)- Non-binding communications (e.g. catalogues, price list circular letters ...etc.) The mode of publicity is immaterial, it may be TV, radio, newspaper, or magazine.

c. 1688 - sale by auction

Cont...

4. Freedom of forms of an offer

Article 1681. - Forms of offer : It can be oral, writings, sign or conduct

The only requirement is “there should be no doubt as to the parties agreement”

5. It has a period of time: with in which the offeror is bound with his offer and the offeree may exercise his power of acceptance.

1. **offer with time limit for acceptance- Art 1690**

✓ When did the duration began to count?

Cont...

ii. Art. 1691 - Offer without time limit.

Q. What does reasonable time mean? Is it 2 sec, 2min, 2Hrs, days, weeks, months, or years?

◆ The reasonableness of the time should be decided on case by case basis, taking in to account;

- The nature of the obligation
- The pre - existing relation
- The form of the offer and acceptance
- The common usage in the sector
- The distance involved...etc.

Termination of offer

◆ Grounds of Termination

1. Rejection by the offeree: two instances

- Express rejection by the offeree before the expiry of the time limit. Art. 1690(2)
- Rejection by defective acceptance, Art. 1694

2. Laps of Time

- Lapse of the fixed time (for offer with time limit) or reasonable time (for an offer without time limit), Art. 1690(1) and 1691(1)

Cont...

3. Withdrawal /revocation/ of an offer-Art. 1693

Withdrawal of offer can be;

- (a): Before the offeree knows the offer; or
- (b): At the time when the offeree knows the offer (simultaneously)

So, withdrawal of offer is impossible after the moment the offeree has gained knowledge of the offer Art.1693

Q. How do we know the exact moment the offeree has gained knowledge of the offer?

Q. What about public promise of reward? Think contract theory (UK, France,) and unilateral act theory(Germany, Ethiopia)

Cont...

Q. What about incapacity, death, and bankruptcy of an offerer?

- The Ethiopian law doesn't say any thing in this regard
- There are two important theories

1. Subjective Theory of contract

- The fundamental aspect of a contract is the meeting of internal will of the parties
- The will of the offeree has died out with its author that makes impossible the meeting of the parties will

2. Objective Theory of contract

Meeting of minds is not the issue, rather whether it contains a personal element or not is crucial

France, German, Swiss – offer which would involve a personal performance on the part of the offer, becomes void upon the death or insanity of the offeror

Acceptance

What is Acceptance?

- It is a pure and simple agreement of the offeree to all terms of the contract. An offer can be rejected by saying **no** or through **defective acceptance**

Important features of Acceptance

1. Acceptance should not be defective – Art 1694. it shall not be:
 - With reservation
 - Doesn't exactly conform to the terms of the offer
 - Defective acceptance is counter offer
 - No exception for immaterial deviation, but CISG does-see art. 19(2) of CISG
2. Freedom of forms of an acceptance- Art. 1681 (1)-principle
 - Exception - Art. 1681(2)
 - Do we have

Cont...

3. Silence of the offeree doesn't constitute acceptance

- ♦ **It is total absence of any forms of expression**

Art. 1682. - Silence. - 1. Principle.

Silence where an offer is made shall not amount to acceptance

Q. Discuss the difference between silence Vs. tacit acceptance

Cont...

◆ Exceptions :

1. Duty to accept, Art. 1683

The duty of the organization to accept the offer emanates from the law and Concession granted by the authorities

- E.g. telecommunication, postal service, electricity service, water supply...etc.

2. Preexisting business relations, art 1684

What are the requirements?

Cont...

- a. An already established contractual relation (pre-existing business relation)
- b. A clear proposal for making a subsidiary or complementary contract has to be made
- c. the proposal must be made in a special document, and
- d. It shall contain a precaution: stating that the offer will be considered accepted if no rejection is made with in a specific and reasonable period of time.

Cont...

3. An invoices (□□□□) conform to a prior agreement, Art. 1685

- If the invoice conformed to the prior agreement, silence on the part of buyer will be considered as an acceptance. Otherwise the buyer has to expressly accept it

N.B. Invoice is a list of goods with price and charges sent to a purchaser from the seller to settle accounts on the bases of an existing contract.

Cont...

4. General Terms of Business prescribed or approved by the authority, art. 1686

- General terms and conditions that are prescribed or approved by the authority will be accepted by silence. However, the rest others need an **acceptance** by the other party with having full **knowledge** about it.
- N.B. It is a special prewritten form prepared by one of the contracting party with the intention to apply on future contracts. It contains limits as to liability, the tariff applicable, the conditions of delivery, rate of interest in delayed performance...etc.

Withdrawal of Acceptance

- It can be, 1693 (2) cum (1).
 - (a): Before the offeror knows the acceptance; or
 - (b): At the time when the offeror knows the acceptance (simultaneously)
- ✓ **Contradiction: art 1692(1) contract formed when the acceptance is sent(dispatch theory) Vs. art.1693(2) withdrawal of acceptance is possible before/at the time the offeror knows the acceptance (Theory of Reception)**

Q. How do you reconcile this conflicting provisions

Conti...

- ◆ Battel of forms
- It comes into picture when contracting parties attempt to incorporate its own terms and conditions in the contract
- Approaches to resolve the problem
 1. **The last shot rule**
 - ★ It is an extension of the “mirror-image rule”
 - ★ The valid terms of the contract are those incorporated in the last offer submitted and fully accepted without any reservation
 2. **The knockout rule**
 - ★ Contradicting terms and conditions of the parties will be knocked out and the gap will be filled by gap filling provisions

Compilation of Contract

- ◆ **Principle:** No contract unless the parties have agreed on each and every terms of the contract, art. 1695
- ◆ **Exception:** The contract is deemed completed even if the parties have not agreed in every terms and conditions of the contract **if the parties behavior show that they intended to conclude the contract**
Art. 1695(3) cum 1714
- ◆ In such a case a law will remedy the deficiency, art. 1695(3)
- ◆ E.g. See, Art. 1747, 1751, 1755, 1756, 1760

Brainstorming

- ◆ **A beggar's brother died, But the man who died had no brother. How could this be possible?**

Contract in between absent parties

- ◆ Contract can be concluded b/n inter presents (between present parties) or b/n inter absents (in between absent parties).
 - For both of them “acceptance makes the contract”
- ◆ Unlike inter presents, in inter absents there is a **time** and **place** difference in between the sending and receiving of the acceptance.
 - This creates a controversy on the issue of **when** and **where** the contract is concluded.

Q. Why we should worry about the place and time of contract?

- ◆ They have their own implications on;
 - ✓ Place: jurisdiction, applicable laws (in case of international contracts),
 - ✓ Time: the running of interest on loan, liability for breach, risk transfer

Conti...

- ◆ Five theoretical possibilities are open as to the time and place where the contract is concluded in inter absents .
- At the time and place where:
 - n The offeror makes the offer
 - n The offeree receives the offer
 - n The offeree send his acceptance (theory of dispatch)
 - n The offeror receives the acceptance (theory reception)
 - n The offeror is cognizant of the acceptance (theory of information)
- 1. The first two are unacceptable, but the rest three have theoretical background

Conti...

1. The theory of Dispatch /emission/

- The contract is formed at the time when and at the place where the offeree sends his acceptance.
- Risk of delay and loss of acceptance relies on the offeror.
E.g. UK, USA, France

2. The theory reception

- ◆ The contract is formed at the time when and at the place where the offeror receives the acceptance.
- ◆ Risk of delay and loss of acceptance relies on the offeree.

3. The theory of information

- ◆ The contract is formed at the time when and at the place where the offeree is cognizant of the acceptance.

Conti...

- ◆ What do you think are the weaknesses of each theory?
 - Dispatch? Reception? Information?
- ◆ Which on theory you choose and why?
 - France, England and USA chooses the dispatch and Germany the reception

What about Ethiopia?

- Art. 1692(1)- Dispatch theory Vs. Art. 1693(2)- Reception theory?
- Art. 1691(2)?

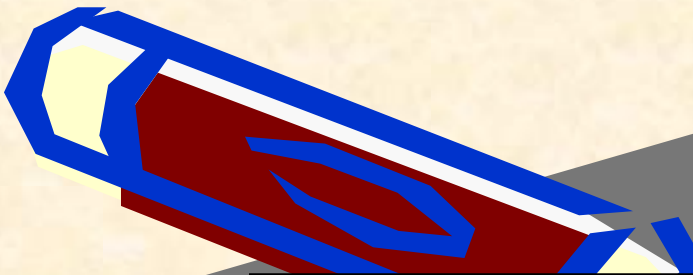
How do we reconcile these provisions?

Conti...

Contract made by telephone

- ◆ These are conversational contracts between absent parties
- ◆ No difficulty as to the time of the contract since the time of sending and receiving the acceptance is the same or no significant interval
- ◆ Place, art. 1692(2)- at the place where the party was received the call.

Q. ***What about electronic contracts made by internet (mail, chat, video call...etc.), fax, telegram...etc?***



DEFECT IN CONSENT

A contract without free consent
is voidable contract.



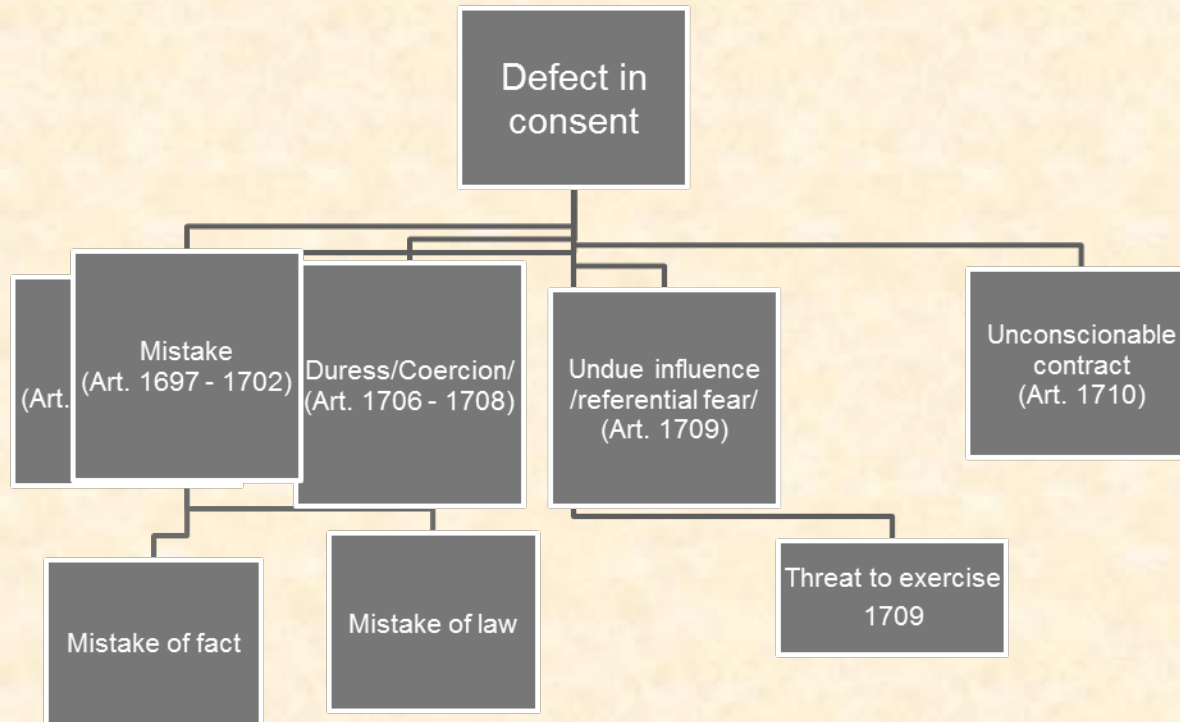
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consent is when the contracting parties agree **upon the same thing in the same sense.**
Consent shall be true (no mistake or fraud)
free (no duress, fear, want) and conscious
(have capacity)

Therefore, whenever there is something which
affect the free consent of the parties then we
say there is **defect in consent**

See art. 1696. - Invalidation of consent.

Cont...



1. Mistake

- ◆ What is mistake?
- ◆ It a false belief; a belief in something untrue
- ◆ But in the legal context only certain types of mistakes will be admissible in order to avoid too much contractual insecurity.
- ◆ Mistake are of two type:
Mistake of law & (b) mistake of fact
Mistake of fact can be: unilateral or bilateral

Cont...

To have effect of invalidation it shall be: decisive & fundamental

◆ **Decisive, see art 1697**

- ✓ The false belief must be firm and not merely a probable assumption or supposition
- ✓ The party would not enter into the contract had he known the contract

■ **Fundamental, see art. 1698**

Two types of testes are employed under Art. 1699

- ✓ (a): First the mistake has to related with the elements of the contract
- ✓ (b): Second it shall be fundamental in Subjective Test or Objective Test

(a) Mistake related with the elements of the contract:

1. Mistake as to the nature of the contract (error in negotio), see art1699(a).

e.g. **sale contract vs. donation contract**

Deposit contract vs. loan contract

Deposit contract vs. donation contract

2. Mistake as to the object(error in corpore) : Identity or quality, see art 1699(b)

e.g. **Diamond vs. artificial D.**

3. Mistake as to the person (error in persona): Qualification or Identity, see art 1700

The contract must be conclude **“intuitu personae”** (in the consideration of the person)

e.g. **Gratuitous contract, employment contract, partnership agreement**

Non - fundamental Mistake

Art. 1701 Non - fundamental Mistake

- ◆ (Mistake as to **motive** and **arithmetic error** are classified as non fundamental mistake under Ethiopian law
- ◆ Motive:- it is the driving force for the conclusion of the contract, so it is not an element of the contract b/c it is not yet declared
- ✓ E.g. 1, A traveler buys an air ticket from Ethiopian Airlines to fly to Dessie, because he thinks that lake Tana is in Wollo.
- ✓ e.g. 2, I buy a new laptop on the news that mine is damaged, which turns out to be untrue

Requirements to invoke mistake

1. The mistaken party shall be in good faith to invalidate the contract pertaining to the mistake.

See art. 1702 (1)

- See also 1702(2)

2. Reparation of damage, art. 1703

- The defense of mistake is double edged; The mistaken party can have the contract invalidated, and the other party will be compensated for any damage, unless he has bad faith

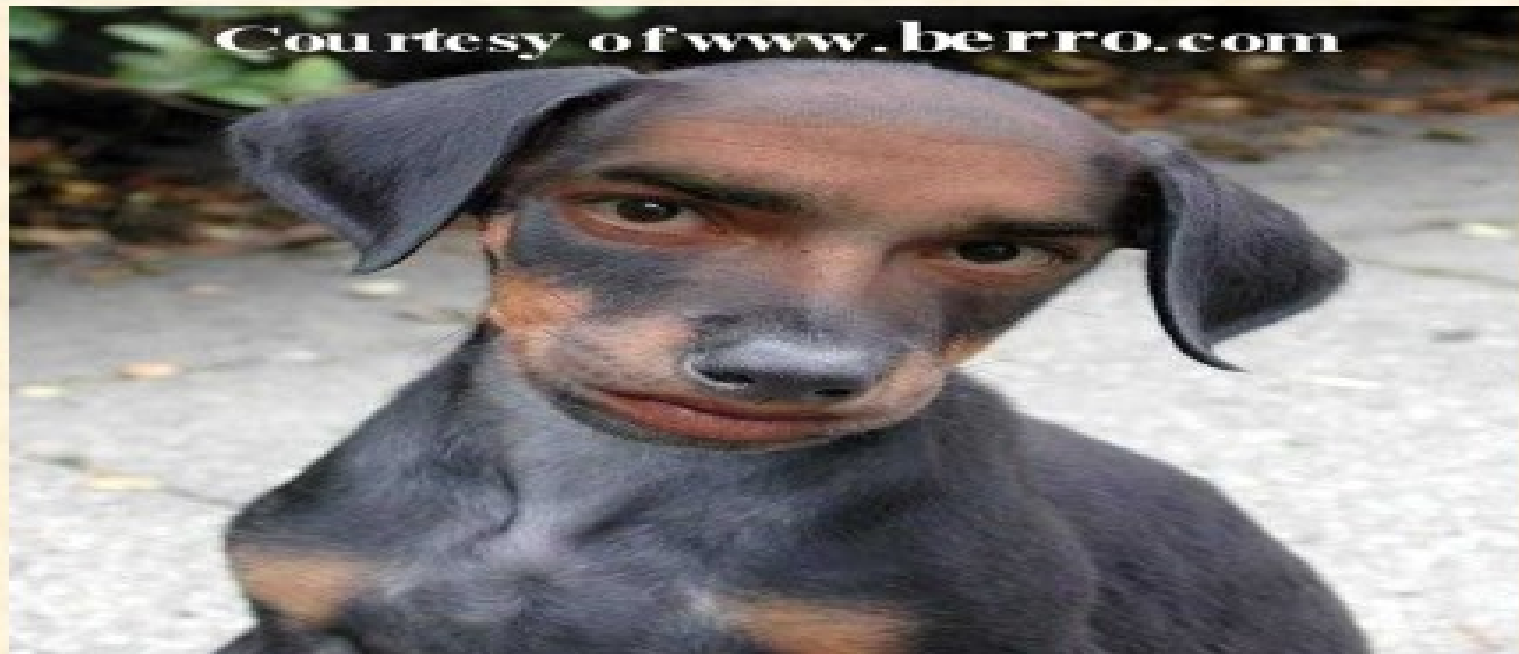
2. Fraud



Meaning of fraud

- ◆ Misrepresentation of facts may be intentional or innocent. Intentional misrepresentation has been termed as Fraud and innocent misrepresentation has been termed simply as 'misrepresentation'

Misrepresentation



Difference between fraud and misrepresentation

Misrepresentation	fraud
There is no intention to deceive or to gain any undue advantage	The false statement is made deliberately with a clear intention of deceiving the other party
It makes the other contract only voidable at the option of the party whose consent has been so caused	The injured party besides avoiding the contract may also claim the damages.

Q. What about misrepresentation under Ethiopian Law? 57

Cont...

- ◆ In literatures fraud define as;
 - All deceits practiced at the time of conclusion of a juridical act.
- ◆ In Ethiopia it is deceitful practice,. See 1704
- ◆ **Requirements: 1704**
 - ***Deceitful practice is needed***, unlike French and Swiss, false statement is not suffice
 - ***It must be decisive and***
 - ***It must be done by the contracting party***
 - ✓ ***What if done by 3rd party? See art. 1704(2)***

- ◆ False statement (see art. 1705): As a principle it does not amount fraud but exceptionally does when:
 - a. False statement (can be through silence, see art 1705(2))
 - b. Done with bad faith or negligently
 - c. Special pre-existing relation b/n the parties which command special confidence or loyalty
e.g. employee-employer, client-advocate...etc.

3. Duress



Conti...

Requirements, art. 1706:

- a. **There must be coercion**- it need not be real so far as the party believed it real
- b. It shall be imminent: little time left for its realization
- c. *It must be serious*
- d. *It shall be targeted against himself or his ascendants, descendants, spouse's: life, person, honor or property*

How do we measure duress?

- i. **Objective standard (art. 1706(2))**
- ii. **subjective standard (art. 1706(3))**

Which one shall prevail: art. 1706(2) vs. art. 1706(3)

Cont...

Q₁. *What about brothers, sisters and close friends?*

Q₂. *Is Threat to commit suicide a coercion?*

Duress by third party

- ◆ Art. 1707(1), duress by third party can be a ground for invalidation of a contract as a rule
- ◆ It's immaterial, whether the party who was not compelled knew or should have known of the duress, but mandatory in other legal systems. The justifications are;
 - ❖ One could not require the victim of the violence to designate its author, because he often did not know his name;
- ◆ Duress, whoever committed it is dangerous to the social order
- ◆ Art. 1707(2), if the benefited party did not know or should not have known about the duress exercised by a third party, the victim should make good the other party for the damage he suffered out of the invalidation of the contract

Cont...

- ◆ Art. 1708. - Threat to exercise a right.
- ◆ a threat to exercise a right is not a ground to invalidate a contract
- ◆ It`s when the person uses his/her legitimate right to force the other party to conclude a contract.
- ◆ This is entirely logical because the principle is that where a person has a right to exercise, he should be presumed to use it legitimately
- ◆ however, if the threat is used with a view to obtain an excessive advantage; the threat to exercise a legal a right can be a ground to invalidate a contract

3. UNDUE INFLUENCE /Referential Fear/

- ◆ Undue influence is the improper use of any power possessed over the mind of the contracting party.
- ◆ The relations subsisting between the parties are such that one of the parties is in a position to dominate the will of other.
- ◆ Uses that position to obtain an unfair advantage over the other.
- ◆ Ex. The following are parties can be affected by undue influence
 - Doctor and patient
 - Lawyer and client
 - Guardian and ward
 - Trustee and beneficiary
 - Teacher and student

Example of undue influence



Cont...

- ◆ Art, 1709. - Reverential fear.
- ◆ (1) Fear of an ascendant or a superior & shall be a ground for invalidating a contract where no duress was not used
- ◆ Hence, as a principle undue influence is not a ground to invalidate a contract
- ◆ But, sub-art (1) would be no more applicable, if the contract was made with the person inspiring the fear and such person derived an excessive advantage from the contract, Art. 1702(2)
- ◆ Fear of descendants or inferiors can't be a ground to invalidate a contract, though the latter has obtained an excessive advantage



Difference between coercion and undue influence



Coercion /Duress/

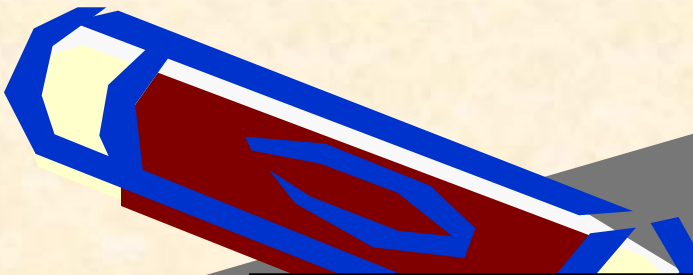
- The consent of the aggrieved party is taken by committing or threatening to commit an act forbidden by law.

Undue Influence /referential far/

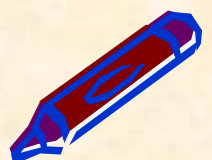
- The consent of the aggrieved party is obtained by dominating the party by taking an unfair advantage of his position.

4. Unconscionable Contracts, Art. 1710

- ◆ The rule is that a contract may not be invalidated on the ground that there is a substantial disproportion in the value of performance owed by the parties to each other
- ◆ the fact that the terms of the contract are more profitable to one party is not considered as a cause for the invalidation of the contract
- Nevertheless, the contract may be invalidated if the consent of the injured party was obtained by taking advantages of his;
 - want,
 - simplicity of mind,
 - senility or
 - manifest business inexperience



OBJECT OF THE CONTRACT



Cont...

**THE OBJECT MUST BE
DEFINATE, LEGAL,
POSSIBLE & MORAL**

Cont...

- ◆ No given definition of object in d/t legal systems, but they simply just define it as;
- ◆ a thing which one party binds himself **to give, to do or not to do**, things, which are objects of commerce, and things of future
- ◆ Krzeczunowicz defined “object of contract “ as obligation to perform some thing.
- ◆ In other words, the object of a contract is an obligation the contract produces
- ◆ **Jurado** as: “... of all the requisite elements of a contract, the object is, if not the most fundamental, the most indispensable in order to have at least the shadow of a contract.
- ◆ without consent it is possible at least to have the appearance of a contract, but without an object there is nothing

Object of a contract Vs. Object of an obligation

- ◆ Different legal systems uses pareses like object of a contract and object of an obligation
- ◆ **Object of an obligation:-** it refers the object to which an obligation relates
- ◆ Ex. the obligation to give has a **thing** as its object, while the object of an obligation to do or not to do is **an act**.
- ◆ So it`s the thing or the act which is considered as an object
- ◆ **Object of a contract:-** is the obligations undertaken by the parties, not the thing or the act to which these obligations relate. It`s the obligation **to give, to do or not to do, Art. 1712**
- ◆ The **obligation to give** includes delivery of a thing, for the fact that one cannot liberate himself from his obligation without delivering the thing to be given

Cont...

- ◆ ***The obligation to do:-*** includes all obligations the object of which is an act, which the debtor has bound himself to perform.
- ◆ Obligation to do like obligation to give is a positive obligation
- ◆ Obligation to do may be obligation of result or obligation of means
- ◆ ***Obligation not to do:-*** includes those obligations in which the debtor is bound to abstain from doing an act, which otherwise he could have a right to do

Cont...

- Requirements for Having a Valid Object of Contract

1. The rights and liabilities given and imposed must be definite and certain so as to enable courts to enforce the performance of the obligation of the parties

Art. 1711 Determination of object

- ♦ **The object of a contract shall be freely determined by the parties subject to such restriction and prohibitions as are provided by law**
- ♦ contracting parties are given the right to define the object of their contract, as to its *kind, quantity and quality*

Cont...

- The parties should also determine the **price of things, time of performance and other obligations**
- the object of a contract should be reasonably and adequately defined or should be ascertained with a sufficient precision

Art. 1714. - Object must be defined.

- ***(1) A contract shall be of no effect where the obligation of the parties or one of them can not be ascertained with sufficient precision.***
- Art 1713. If there is a lacuna as to the objects of a contract it can be filled in through a reference made to **custom, good faith, and equity.**

2. Art 1715(1), the object of the contract must be possible for execution

- its performance must not be absolutely impossible
- The impossibility must be considered at the time of the contract
- If it is after the conclusion of the contract unilateral cancellation, Art 1788 and 1790 or to implement the rules applicable where the restoration of the previous position is impossible according to Art 1817 of the Civil Code
- the impossibility must exist in itself, and not depend on a party
- the performance of the contract would be impossible even if someone other than this particular debtor were obligated

Cont...

- ◆ The impossibility which annuls the contract should be an absolute and insuperable not a relative impossibility or it has to be completely impossible for anybody to overcome
- ◆ Art 1715 (2) of the Civil Code, the absolute and insuperable impossibility may relate to a **thing** or a **fact**
- ◆ contract is not void, if the obligation of one of the parties is relatively impossible

3. Art. 1716, the object of a contract should be lawful

- The object of the contract should not be contrary to the law or public order, such as constitutional law, administrative law, criminal law, family law, and mandatory provisions of private law are lawful

Cont...

4. Art. 1716 (2) The object of the contract not be immoral

- ❑ morality does not have a general yardstick for what is moral or immoral in one place may not be in another place
- ❑ ***Art. 1717, In PP the motives for which the parties entered into a contract shall not be taken into account in determining the unlawful or immoral nature of their obligations. Example;***
 - ❖ if a person buys a bus to carry illegal immigrants over the border, the contract of sale is valid, even if the motives of the buyer are unlawful.
 - ❖ if a person buys a kitchen knife to kill his neighbors, the contract will not be invalidated

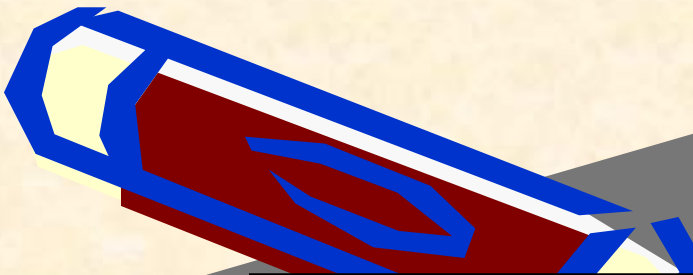
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- ♦ But under exceptional circumstances the contract may be invalidated because of the unlawful or immoral nature of the object, when conclusive proof is available as to the unlawful or immoral motive

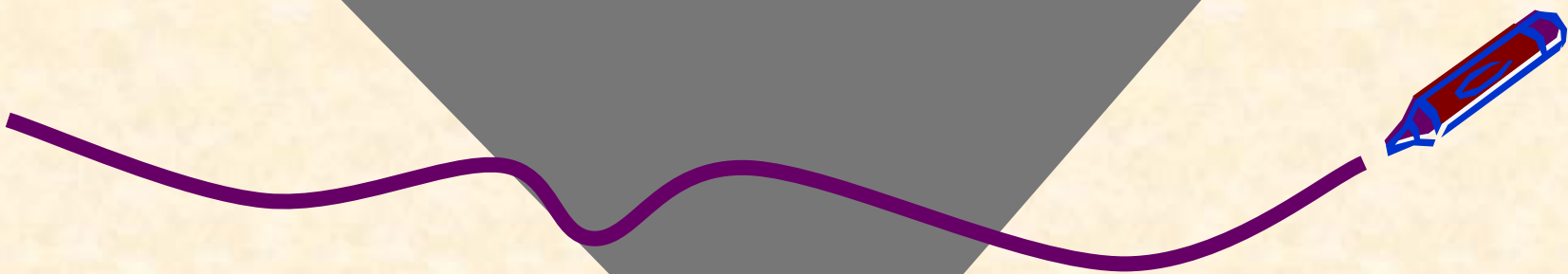
Art. 1718 - Exception.

The court shall not order a contract to be performed where:

- (a) the terms of the contract denote that the parties or one of them have an unlawful or immoral purpose in view; or***
- (b) the party who requires the performance of a contract produces a document denoting such purpose.***



FORM OF THE CONTRACT



4. Form of Contract as a Validity Requirement

- ◆ Formality is defined as “the conditions, in regard to method, order, arrangement, use of technical expressions, performance of specific acts, etc., which are required by the law in the making of contracts... to ensure their validity and regularity.”
- ◆ It does not refer to kind of contract or the requirement of writing of contract for the purpose of evidence.
- ◆ Therefore, formality (form) should be understood to mean conditions that are required by law for making valid contract by being attached to the agreement of parties
- ◆ Art. 1678(c) – form is a validity requirement not for proof

Sources of Forms

- ◆ As a principle there are no formal requirements for the conclusion of a contract Art 1719 cum 1678 (c) , it is only under exceptional circumstances;
 - where the law requires as per Art 1719(2)
 - where the parties themselves have provided as per Art. 1719 (3)
- where the law requires as per Art 1719(2)
- It has to **expressly** provided by the law, no analogy and in case of doubt the freedom of contract prevails
- we are not legally obliged to apply form where the law requires evidence of a contract be in writing, Art. 2472

Functions of Form

- ◆ evidentiary function
- ◆ cautionary function
- ◆ form has channeling function
- ◆ form promotes certainty
- ◆ form has a protective function
- ◆ , form has a function of facilitation of judicial diagnosis

Types of Contracts to be made in Special Form

1. Art 1721 of the Civil Code preliminary contracts
2. Art. 1722 variation of a contract

Q. 1. what is the fate of the written subsequent contract, which is made by the help of preliminary contract that is made not in a special form?

Q. 2. what would be the fate of the prior contract and the varied contract when the variation is not made in special form?

3. contracts related to immovable, Art. 1723
4. contracts made with public administration, Art. 1724
5. long term contracts, Art. 1725

Formal Requirements to be fulfilled for Written Contracts

- ◆ Art 1727, contract required to be in writing needs satisfaction of three elements
- ◆ special document:- the document has to be an instrument that is exclusively concerned with a single contract
- ◆ signature of parties bound:- not all the contracting parties, in case of unilateral contracts
- ◆ attestation by witness
 - Only attestation Vs. attestation + signature
 - Capacity of witness
- ◆ Effects of the non – fulfillment, Art 1720(1) and Art. 1726

Assignment I

**Title: - The effects of non -
fulfillment of Essential
Requirements of a valid contract
under Ethiopian Law**



End
10 Q