Annexure – On Contracts

In commerce truth is sovereign and therefore the sovereign always deals in the truth in commerce! In commerce, a debtor cannot win. A creditor cannot lose. We find that there is a common thread woven throughout our entire history. That thread is commerce, the merchant, the money-changer (banks), the law merchant (i.e., the law of commerce), civil law and maritime law. This is not to say that commerce is bad. It does, however, say that commerce brings with it the laws of commerce. Wherever commerce goes, it brings laws that can bind people into slavery. This can happen only if the people agree with it, depending upon their condition of mind, either willingly, through misrepresentations or by mistake.

What is Commercial Law?
Commercial law provides the rules that merchants and others involved in commerce must follow as they conduct business amongst themselves and with consumers. It governs the sales of goods and services, negotiable instruments, security interests, leases, principal and agent relationships, contracts of carriage, and much more. In a broad sense, commercial law also encompasses related issues like business bankruptcy and tax planning.

Because various legal issues may be included or excluded from the subject of commercial law depending upon how expansively it is defined, it may be more helpful to consider the matter in terms of timing. Commercial law covers legal issues that arise prior to the initiation of a lawsuit. By contrast, once a lawsuit is filed, the same issues are more properly characterized as litigation. Thus, commercial law attorneys help their clients negotiate and enter into business deals. Litigation attorneys help their clients defend their interests in court when deals go bad.

Elements of a Contract
The ability to form contracts represents the foundation of modern commercial law. Without contracts, sellers and buyers would be unable to enter into transactions, as they would have no guarantee that the other side will honor its half of the bargain. That is not to say that contracts are based on the goodwill or trustworthiness of parties in the marketplace. Rather, contracts are based on a system of rules for forming agreements that, if followed, allows parties to rest assured that the terms of their agreements will be enforced by the legal system if necessary.

Contracts are formed when the following three elements are present: an offer, an acceptance, and consideration. For an offer to be valid, specific rules must be followed. The offer must be made to an identified party, and it must set forth definite and certain terms. The offer must also demonstrate a present intent to enter into an agreement. Similarly, the other party must properly accept the offer in order for a contract to be formed. In most situations, a valid acceptance must mirror the offer. A purported acceptance that adds new terms to the deal will not count. Instead, it will be treated only as a counteroffer.
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The final element required to form a contract is known as consideration. Consideration refers to a bargained-for exchange. It means that the person who promises to do something must receive a benefit in return. Otherwise, the promise is merely gratuitous, and there is no contract.

Commercial Contract Law

A Quick Study of Commercial Law

Commercial Law. This phrase designates the whole body of substantive jurisprudence, i.e. the Uniform Commercial Code, the Truth in Lending Act, applicable to the rights, intercourse, of persons engaged in commerce, trade or mercantile pursuits. Black's Law Dictionary, 6th Edition.

The fundamental already established principles and precepts of universal commercial law that have for millennia formed the underpinnings of civilized law on this planet are both biblical and non-biblical, i.e. their truth and validity is a function of themselves and the long-accepted usage and practice by many cultures and peoples, in diverse forms, throughout the world for thousands of years.

These fundamental Maxims of Commerce are the very foundations of truth in contracts, trusts, all commercial documents, instruments, and processes; the following maxims of equity are from the pdf King James Version 1611:

Maxims are established principles and have a much authority as a court ruling unless proven invalid. The following are maxims relating to contracts:

Consensus facit legem. Consent makes the law. A contract is a law between the parties, which can acquire force only by consent.

Contractus legem ex conventione accipiunt. The agreement of the parties makes the law of the contract. Dig. 16, 3, 1, 6.

Contractus ex turpi caus, vel contr bonos mores nullus est. A contract founded on a base and unlawful consideration, or against good morals, is null. Hob. 167; Dig. 2, 14, 27, 4.

Le contrat fait la loi. The contract makes the law.

Ex malificio non oritur contractus. A contract cannot arise out of an act radically wrong and illegal. Broom's Max. 851.
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*Ex nudo pacto non oritur action.* No action arises on a naked contract without a consideration. See Nudum Pactum.

*Ex turpi contractu non oritur actio.* No action arises on an immoral contract.

*In commodo haec pactio, ne dolus praestetur, rata non est.* If in a contract for a loan there is inserted a clause that the borrower shall not be answerable for fraud, such clause is void. Dig. 13, 6, 17.

*In conventibus contrahensium voluntatem potius quam verba spectari placuit.* In the agreements of the contracting parties, the rule is to regard the intention rather than the words. Dig. 50, 16, 219.

*In omnibus contractibus, sive nominatis sive innominatis, permutatio continetur.* In every contract, whether nominate or innominate, there is implied a consideration.

*Regulariter non valet pactum dare mea non alienanda.* Regularly a contract not to alienate my property is not binding. Co. Litt. 223.

*Scientia utrimque per pares contrahentes facit.* Equal knowledge on both sides makes the contracting parties equal.

**LEX FORI.** The law of the forum, or court; that is, the positive law of the state, country, or jurisdiction of whose judicial system the court where the suit is brought or remedy sought is an integral part. 2 Kent, Comm. 462. "Remedies upon contracts and their incidents are regulated and pursued according to the law of the place where the action is instituted, and the lex loci has no application." 2 Kent, Comm. 462. "The remedies are to be governed by the laws of the country where the suit is brought; or, as it is compendiously expressed, by the lex fori." Bank of United States v. Donnally, 8 Pet. 361, 372, 8 L. Ed. 974. "So far as the law affects the remedy, the lex fori, the law of the place where that remedy is sought, must govern. But, so far as the law of the construction, the legal operation and effect, of the contract, is concerned, it is governed by the law of the place where the contract is made." Warren v. Copelin, 4 Mete. (Mass.) 594, 597.

The lex fori, or law of jurisdiction in which relief is sought controls as to all matters pertaining to remedial as distinguished from substantive rights. Shimonek v. Tillman, 150 Okl. 177, 1 P.2d 154, 156; Sullivan v. McFetridge, Sup., 55 N.Y.S.2d 511, 516. See Lex Loci Contractus.


**LEX LOCI.** The law of the place. This may be of several descriptions but, in general, lex loci is only used for lex loci contractus. The "lex loci" furnishes the standard of
conduct, Russ v. Atlantic Coast Line R. Co., 220 N. C. 715, 18 S.E.2d 130, 131; it
governs as to all matters going to the basis of the right of action itself, State of
The substantive rights of parties to action are governed by "lex loci" or law of place
where rights were acquired or liabilities incurred. Sullivan v. McFetridge, Sup., 55 N.

LEX LOCI CELEBRATIONIS. The law of the place where a contract is made.

LEX LOCI CONTRACTUS. Used sometimes to denote the law of the place where
the contract was made, and at other times to denote the law by which the contract is
to be governed, which may or may not be the same as that of the place where it was
made. The earlier cases do not regard this distinction. See Pritchard v. Norton, 1
S.Ct. 102, 106 U.S. 124, 27 L.Ed. 104; Pickering v. Fisk, 6 Vt. 102; Speed v. May, 17
Pa. 91, 55 Am.Dec. 540; Hayward v. Le Baron, 4 Fla. 404; Scudder v. Bank,
91 U.S. 406, 23 L.Ed. 245.
See an elaborate collection of cases on conflict of laws, 5 Eng.Rul.Cas. 703-975.
The phrase is used, in a double sense, to mean, sometimes, the law of the place
where a contract is entered into; sometimes that of the place of its performance.
Security Trust & Savings Bank of Charles City, Iowa v. Gleichmann, 50 Oki. 441, 150
P. 908, 911, L.R.A.1915F, 1203; Farm Mortgage & Loan Co. v. Beale, 113 Neb. 293,
202 N.W. 877, 878; Bullington v. Angel, 220 N.C. 18, 16 S.E.2d 411, 412, 136 A.L.R.
1054; it is the place of acceptance. Sterrett v. Stoddard Lumber Co., 150 Or. 491, 46
P.2d 1023, 1029.

Contracts - A simple explanation:

NO CONTRACT NO CASE

LAW OF CONTRACTS

BASIC PRINCIPLES OF ENGLISH CONTRACT LAW

Extract from legal resources at the URL link: http://www.hq.org/commerc.html

The following are extracts from:

SOUTH AFRICAN LAW COMMISSION REPORT - PROJECT 47, April 1998
UNREASONABLE STIPULATIONS IN CONTRACTS
AND THE RECTIFICATION OF CONTRACTS
SUMMARY OF FINDINGS AND RECOMMENDATIONS

1.1 The Commission notes the concerns raised by a substantial number of respondents, particularly in respect of the possibility that foreign investors and contracting parties might be discouraged from concluding contracts in South Africa should the law enable courts to review contracts in order to determine whether they comply with principles of contractual fairness. The Commission notes that apart from there being local calls for the recognition of fairness in contracts, measures have lately been adopted and existing ones extended in foreign jurisdictions who have recognised the need to regulate unfair contracts. In view of this factual situation it seems to the Commission that the argument raised by some respondents that the introduction of measures against unfair or unconscionable terms would isolate South African contracting parties and inhibit foreign investment and trade, should be critically evaluated. It seems to the Commission that South Africa would rather become the exception and its law of contract would be deficient in comparison with those countries which recognise and require compliance with the principle of good faith in contracts. Furthermore, the Commission accepts on the question whether the proposed legislation will create unwarranted legal uncertainty, that any change effected by the proposed legislation, will produce a measure of legal uncertainty and consequent litigation, at least in the short term when many contracts are challenged. The Commission is, however, of the view that this is a price that must be paid if greater contractual justice is to be achieved, that certainty is not the only goal of contract law, or of any other law, and lastly in any event, that the fears provoked by the proposed Bill are exaggerated, in the light of the experience of countries that have already introduced such legislation. The Commission furthermore considers that the issue of unfair contracts or terms has to be addressed in a more fundamental and less fragmentary way than ad hoc reform to specific Acts, as some respondents proposed, would mean. The Commission is finally of the view that reform is called for and that legislation is the most viable and expedient method to effect legal reform. The Commission is of the view that there is a need to legislate against contractual unfairness, unreasonableness, unconscionability or oppressiveness in all contractual phases, namely at the stages when a contract comes into being, when it is executed and when its terms are enforced. The Commission consequently recommends the enactment of legislation addressing this issue. (See par 2.2.3.1 to 2.2.4.1.)

1.4 The Commission is of the view that it is understandable that considerable concern were raised that conferring wide-sweeping powers to the courts may lead to legal uncertainty. The Commission is, however, of the view that there is a need to confer wide powers to the courts to effect justice to contracting parties, especially when considering the wide-sweeping powers conferred by legislation in other jurisdictions. The Commission is of the view that the wide powers it proposes to
confer to the courts should and can be balanced by confining the proposed criterion of fairness to unreasonableness, unconscionability and oppressiveness. The Commission furthermore agrees with Professor Kerr that there is a need to redraft the clause governing the powers of the courts to set aside contracts along the lines he proposes, and also agrees with the Supreme Court Judges that any court sitting on appeal on that issue, shall be at liberty to approach the matter as if it were a court of first instance. (See par 2.4.4.1.)

1.6 The Commission is of the view that its respondents did not raise valid arguments for the reconsideration of the Working Committee's proposed criteria for determining fairness in contracts. The Commission therefore considers that the fairness criterion to be included in the proposed legislation should be based on the determination of the question whether contracts or terms are unreasonable, unconscionable or oppressive. The Commission recommends that unreasonableness, unconscionability or oppressiveness should be the yardstick to be applied in determining fairness in contracts. (See par 2.5.4.1 and 2.5.5.1.)

1.7 The question whether there should be guidelines also led to diverging comments from the respondents: some are totally opposed to guidelines whereas others are strongly in favour of guidelines. The Commission is of the view, upon reflection, that there is a need to provide some definition to the concept of unreasonableness, unconscionability or oppressiveness by setting out guidelines in the proposed legislation. The Commission considers that legal certainty and predictability can be effected by including guidelines in the proposed legislation. The Commission is of the view that an open-ended list of guidelines will not have the effect of unduly limiting judicial discretion. Moreover, the Commission takes note once again of the numerous comments stating that courts are inaccessible, that providing for curial intervention only will not effect relief and that provision should therefore be made for preventative action. The Commission supports the view that no preventative action is possible without guidelines and that informed self-control by drafters of standard and model contracts, action by representative bodies, negotiations with a view to settling disputes, etc, are all heavily dependant upon there being a large measure of predictability regarding the question of what will be acceptable and what not in regard of contracts. The Commission therefore recommends that guidelines be included in the proposed legislation. (See par 2.6.4.1 and 2.6.5.1.)

1.8 The Commission has duly noted the mixed reaction of its respondents on the question of the scope of the proposed legislation. In the first instance the Commission considered the suggestion that only the High Court should have jurisdiction to entertain applications under the proposed legislation. The Commission notes the concerns which a number of respondents have raised on the question of the accessibility to justice and to the courts. The Commission considers that granting jurisdiction to the High Court only would mean that the proposed legislation would be available to an exclusive minority of the South African community and this would
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mainly defeat the purpose of the proposed legislation. The Commission therefore does not support the suggestion concerning the exclusive jurisdiction of the High Court. (See par 2.7.4.1.)

1.10 The Commission does not believe that the arguments raised by respondents for exempting categories of contracting parties from the application of the proposed legislation are persuasive. The Commission supports Prof Hein Kötz's view that the distinction between consumers and other contracting parties are mostly arbitrary and difficult to maintain. The Commission concurs with Prof Hein Kötz that a court would apply more flexible criteria when a contract concluded by so-called business people is being considered than would be the case where other contracting parties are involved. (See par 2.7.4.4.)

1.11 The Commission considers that the arguments raised by Professors Van der Merwe and Lubbe and the Unfair Contract Terms Committee on the question of changed circumstances after concluding a contract, particularly in view of the position in other jurisdictions, are persuasive. One must agree with the Commission on European Contract Law that this is a vexed question. However, the Commission is of the view that the provision adopted by the Commission on European Contract Law seems to provide a fair solution to the issues involved in changed circumstances after conclusion of a contract. The Commission therefore recommends that the proposed legislation should provide that in the application of the legislation the circumstances which existed at the time of the conclusion of the contract should be taken into account, and that where there is a reasonably unforeseeable change of circumstances which makes performance under the contract excessively onerous, the parties to the contract should be bound to enter into negotiations with a view to adapting the contract or terminating it. (See par 2.8.4.1 and 2.8.5.1.) [Emphasis added]


Constitution is a contract:
The word “constitution” applies to a whole range of contracts involving indebtedness—in this case, the debt the States incurred when they mutually contracted for services from the new company they created. Look up the word “constitution” in any legal dictionary. That would be a real good place for any “constitutional scholar” to start.

CONSTITUTION. The organic and fundamental law of a nation or state, which may be written or unwritten, establishing the character and conception of its government, laying the basic principles to which its internal life is to be conformed, organizing the government, and regulating, distributing, and limiting the functions of its different departments, and prescribing the extent and manner of the exercise of sovereign

In a more general sense, any fundamental or important law or edict; as the Novel Constitutions of Justinian; the Constitutions of Clarendon.

CONSTITUTIONAL. Consistent with the constitution; authorized by the constitution; not conflicting with any provision of the constitution or fundamental law of the state. Dependent upon a constitution, or secured or regulated by a constitution; as "constitutional monarchy," "constitutional rights."

There are “constitutions” all over the planet— they all revolve around indebtedness. That’s why it was called a “Constitution”— It’s a business contract— a commercial contract, nothing more or less, split into two distinct parts— a public trust indenture and a commercial services agreement.

The only sense in which The Constitution is the “Supreme Law of the Land” is that it is NOT the Supreme Law of the Sea.

The landed (E)states agreed to delegate enumerated “powers” to the government— “powers” in the sense of “mandates to perform” functions normally reserved to sovereign states and to receive and pay for these services.

It also limited the powers of the government at the same time, mandating a separation of powers between land and sea.

Most of what is being done is without “Delegated Authority” and again is “Null and Void” from the time it was done. Please read –

PDF page 108 or Document page 92 states the following:

No one in government is allowed to do anything unless they have been given specific written authority by law, or unless someone who has been given authority in the law gives that person a delegation of authority order spelling out exactly what they can and cannot do under that specific order.

What we are learning is that those that are doing things unconstitutional are operating under the government de facto. Read our research here –

To explain every detail would take up the Internet!
Annexure – On Contracts

The following is an important maxim of contract:
‘ALL COMMERCE IS LAW, ALL LAW IS CONTRACT. NO CONTRACT, NO LAW’

Hold corporations, courts and governments accountable to the basics of contract and contract law!!!

At contract law, these eight elements are essential to the creation of a contract:
1) Offer
2) Acceptance
3) Intention
4) Sufficient and equal consideration,
5) Mental and lawful capacity to contract,
6) Legality of purpose,
7) Gave genuine consent (knowingly, willingly and voluntarily)
8) Certainty of terms and conditions.

And if a party to a contract knows something the contracting party does not and they do not disclose it, it constitutes fraud; period.

Truth as a valid statement of reality is sovereign in commerce;

An un-rebutted affidavit stands as truth in commerce;

An affidavit must be re-butted point-for-point;

An un-rebutted affidavit is acted upon as the judgment in commerce;

And that a rejection of a contract constitutes a complete rebuttal;

And whereas,
NOTICE TO PRINCIPLE IS NOTICE TO AGENT AND NOTICE TO AGENT IS NOTICE TO PRINCIPLE;