

# The Elements of a Contractual Relationship

## Weighing up all the options

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## 1. Introduction

Almost every person has entered into a contract in their daily lives. For example, in buying groceries from a supermarket, the parties agree to swap provisions with money. It is therefore important for the parties to a contractual relationship to understand their rights and obligations as this article highlights.

## 2. What is a contract?

A contract is an agreement between parties which creates mutual obligations. It is legally binding and enforceable by law. A contract is unique in the sense that unless certain exceptions apply, parties are free to agree to whatever terms they choose. This is known as the 'freedom of contract'.

## 3. Form of a contract

A contract can be in oral or written form. It can also be implied from the conduct of the parties. This means that parties intentional on forming a contract need not expressly state its existence and formation. It can be imputed to arise from the actions of the parties towards each other.

Some contracts are however required to be in writing. These include contracts of guarantee or indemnity, hire purchase and those whose subject matter exceeds UGX. 500,000/=. This notwithstanding, it is recommended that all contracts are reduced in writing since they are easy to prove this way.

## 4. Laws governing formation of a contract

The general law governing contractual relationships in Uganda is the Contracts Act. It can be supplemented by other laws that include though not limited to the Employment Act, the Sale of Goods and Supply of Services Act and the Hire Purchase Act. Where such laws make provision for the form of a contract, they take precedence over the Contracts Act.

The law of contract is mostly self-regulatory, with the majority of contracts requiring no intervention. The Courts make no consideration for whether the contract was fair or not. If agreed, it must be enforced premised on the freedom of parties to willingly contract. On some occasions, however, the Courts can depart from the principle of contractual freedom. This is often where there has been an abuse of bargaining power by one contracting party.

## 5. Capacity to contract

For a contract to exist, the parties should have the capacity to contract. Usually, a person who has the capacity to contract is of 18 years or above, of sound mind and not disqualified from contracting by any law. This stems from freedom of contract.

Consent of parties is taken to be free where it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Undue influence manifests where one of the parties is in a position to dominate the will of the other party and uses that position to obtain an unfair advantage over the other party.

## 6. Contractual terms

Contractual terms set out the rights and obligations of the parties breach of which can give rise to adjudication. The protection of parties' rights heavily leans on these terms. It is noteworthy that some terms need not be expressly included in the contract. There are terms that can be implied in a contract and are usually set out under the law.

## 7. Exclusion clauses

An exclusion clause is a term in a contract which seeks to exclude or limit the liability of one of its parties. For example, it may state that a party has no liability if the contract is breached or, alternatively, seek to limit the range of remedies available or the time in which they can be claimed. Prior to concluding a contract, one must be mindful of such exclusion clauses. However, with the enactment of the Sale of Goods and Supply of Services Act, the application of such clauses in Uganda was limited with regard to contracts of sale of goods and supply of services.

## 8. Dispute resolution

The dispute resolution clause in a contract is crucial. In the event of breach, parties look to the said clause to determine the mode of operation. Modern commercial practice relies to a growing extent on arbitration to handle disputes, especially those that arise in international transactions. There are several reasons for the growing use of arbitration. The procedure is simple and expeditious. The proceedings are private, which is advantageous when the case involves trade or business secrets.

## 9. Conclusion

Contracts are part of our day to day lives. Understanding the nature of a contract is important in order to ensure performance and obtaining remedies in cases of breach. This also provides a safe guard against fraud. However, it is advisable that one contacts a lawyer as a safeguard before signing a contract.

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## Contacts for this Publication

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**Lilian Arinda**

Author

*larinda@crystaladvocates.com*

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Lilian is a Legal Trainee under the firm's Graduate Trainee Program. She holds a Bachelor of Laws Degree from Makerere University. She is finalizing her studies at the Law Development Centre for the award of a Post Graduate Diploma in Legal Practice. ■



**Denis Yekoyasi Kakembo**

*dkakembo@crystaladvocates.com*

+256 751 834 168

Denis is the Managing Partner at Cristal Advocates where he also leads the energy and tax practice. He is qualified both as a Lawyer and Chartered Accountant with vast experience serving various industries in Sub Saharan Africa. Before joining Cristal Advocates, he had worked for close to 10 years with Deloitte and Touche where he started his career and rose to senior managerial positions.

At Deloitte, he lived and worked in Uganda, Kenya, Tanzania and the United Kingdom for over 6 years and subsequently became the firm's chief of staff for the Energy and Resources Industry Group seeing him play a lead advisory role in Uganda, Kenya, Tanzania, Mozambique, South Sudan, Somalia and Ethiopia.

Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

He holds a Master of Laws degree in Petroleum Taxation and Finance from the University of Dundee in the United Kingdom, a Post Graduate Diploma in Legal Practice and a Bachelor of Laws degree from Makerere University. ■



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## Contact us

**Cristal Advocates**  
32 Lumumba Avenue  
4th Floor, Padre Pio House  
Lumumba Avenue

P.O. Box 1769 Kampala, Uganda  
Tel: +256 (414) 671 274  
Email: [admin@cristaladvocates.com](mailto:admin@cristaladvocates.com)  
[www.cristaladvocates.com](http://www.cristaladvocates.com)