



Economic and Management Sciences: EMSC4 LESSON 5

Unit Standard: 13995 – Different types of contracts are discussed and compared.

At the end of the lesson learners must be able to:

- Name and discuss different kinds of contract.
- Define a breach of contract.
- Debate the role of government in government.

NB: A contract is a verbal or written agreement between two or more parties with the intention of satisfying each party's needs.

Below are different kinds of contracts to choose from.

1. DIFFERENT KINDS OF CONTRACTS ARE DISCUSSED AND COMPARED

1.1 Personal contract - is a contract that binds an individual (person) without affecting their heirs.

1.1.2 Kinds of personal contracts

- Insurance - arrangement with an insurance company to pay a fee so that in case of an unforeseen event the insurance company reimburses you.
- Marriage - contract between 2 people for the purpose of living together as a couple (legally)
- Marriage in community of property means that the partners have equal share and both have full contractual capacity but in certain contracts they need to both agree.
- Marriage out of community of property is where the partners have separate estates meaning that they have full contractual capacity and they act independently when entering any contract.
- Assurance - insurance against events that are certain to happen e.g. life insurance
- Loan agreement - borrowed money.

1.2 **Business contract** - is a legal agreement between an individual and businesses and may be used in situations where services are rendered for a fee or specific duties are performed.

1.2.1 **Kinds of business contracts**

- Lease/Rental is an agreement to enjoy the use of property or land for a fee (rent). There are two parties involved (lessee and lessor) tenant and landlord.
- Credit sales - a contract for sale of goods where the buyer pays instalments and ownership is obtained when the contract start or immediately after the full amount is payed this depends on the terms agreed.
- Employment contract is an agreement between an employee and an employer, whereby the employee perform work and is remunerated according to their agreement. This contract must include remuneration, allowances, bonuses, structure of salary/wage increment, working hours (45 per week),overtime, tea and lunch times, Sunday work, public holidays, annual leave (15/21/30 days),maternity leave (4 months),family responsibility leave (5 days per annum), union activities (reasonable time depending on type of employment), adoption leave (4 days), sick leave (36 days in 3 year cycle),study leave (1 day before writing and the day of writing/depends on supervisor),paternity leave (3 days)etc.
- Tender - a written offer to supply goods or services at a stated cost or rate. This contracts are available at Government institutions and companies.
- Licensing - an agreement that allows an individual or business to earn money through their invention or creation by allowing someone else to use it. E.g. Franchise, copy-rights, patents, trademarks etc.
- Promissory note - a legally binding promise of payment which must include the amount and the deadline in the contract. It can be used both in business and as a personal contract
- Non-disclosure/Confidentiality - is an agreement between two or more people to share certain information themselves and it is not allowed to share the information with a third party.

2. BREACH OF CONTRACTS AND REMEDIES

2.1 Breach of contract - is when one party does not do or perform as agreed/when one of the parties does not honour and uphold their responsibilities/ or when one party does not deliver on what was/is agreed upon.

2.2 Remedies - are steps taken to compensate the wronged party or the party that has suffered because a breach of contract has happened and the remedies can be included in the contract (clauses).

2.2.1 Clauses that may be included in a contract for remedy

- Acceleration clause - allows the lender to enforce certain regulations on the borrower pay their credit in full when they do not meet certain requirements/agreements of the contract.
- Cancellation clause - this allows the wronged party to cancel the contract. However a notice must be given of the intension to cancel if the following occur:
Cancellation of contract may be verbally, in writing or by the actions of the cancelling party
A mal performance-it takes place when the quality of the work done is below the agreed work due to poor performance.
- Cancellation of contract due to undue influence - when one person affect how others think and behave (exacting influence)
- Duress - is when someone has to do things they would not have done and they did it because they have been threatened.
- Kinds of threats - threat to property, threat to life of the other party, threat to harm the freedom and honour of the other party.
- Penalty clause - is a provision that levies (charges a certain amount) a monetary penalty on the defaulting party which is out of proportion to the loss suffered by the innocent party.

3. The role of government in contracts is debated

The government tries to protect the rights and interest of all parties to a contract through the constitution and other laws it has. The government puts in place the good system of courts and judges, which includes the following:

3.1 CONSTITUTIONAL COURT- this is the highest court in the country that deals with cases that needs interpret, protect and enforce the constitution of the country.

3.2 APPELLATE DIVISION of the High court of South Africa - it is the Supreme Court (highest court) of appeal dealing with final appeals in all matters.

3.3. HIGH COURT OF SOUTH AFRICA - it hears cases where there have been appeals from the magistrate courts. It also has the power to develop common law which the magistrate courts have to follow.

3.4 THE REGIONAL MAGISTRATE COURTS - these courts hears the same type of cases as the Magistrate courts but can impose higher sentences and fines.

3.5. THE MAGISTRATE COURTS - it deals with all civil and criminal cases e.g. murder, theft, rape etc.

3.6 THE OMBUDSMAN - the Ombudsman looks into complaints received from the public about the justice system.

3.7 THE PUBLIC PROTECTOR - the public protector looks into government conduct, especially where it is thought that the public money it is not spent as it should be.

3.8 THE SMALL CLAIMS COURT - claims of not more than R20 000 are heard in this court by a Commissioner and no Attorneys are present and there is no possibility of appeal to a higher court.

Activity 5

Read the case study below and answer the questions.

Mr. and Mrs Mokone are both employees of the Department of Higher Education and Training in the finance department. Mrs. Mokone is about to give birth in the next coming two weeks and she is preparing all the necessary documents with the Human Resource Department before she goes on leave. They both have been working for more than three years and Mr. Mokone has been absent from work the beginning of the last month to date and he did not bother to inform his employer as per his contract regulations or Basic Conditions of Employment Act requirements.

- 1.1 What type of contract does Mr and Mrs Mokone have with the department of Higher education? (2)
 - 1.2 What type of contract is Mr Mokone and Mrs Mokone involved in? (2)
 - 1.3. Name two remedies that can be used in a situation where by there is a breach of Contract. (2)
 - 1.4 Name any other 3 types of contracts that you know. (3)
 - 1.5 Name and explain any two roles of government in contracts. (4)
 - 1.6 What is meant by breach of contract? (2)
- Total (15)

