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ARMY INDUSTRIAL COLLEGE.
Washington, D.C.

(Course, 1926 - 1927)

C O N T R A C T L A W.

Lecture

by

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Dec. 3, 1926.

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INTRODUCTORY REMARKS - COLONEL I. J. CARR.

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Gentlemen,

This morning we will touch on contract law, a subject which we will deal with later in the course and particularly in the use of problems that we will work up in our more intimate procurement planning. You must remember that contract is the basis of our war procurement, it is a very indistinguishable thing which we have to know something about in order to assure production to the Government as well as to assure protection to the manufacturer who is signing the contract in order that he will sign and also to meet the need of the flow of raw materials to that manufacturer, which supply is not under his control in time of an emergency. In time of peace it is very easy to let a contract, the contractor knows his market and knows that he can get the required material. In time of war there is an entirely different situation. The Government may control the raw materials the contractors expect to get in open market, the sea lanes may be broken and there may be a shortage of the article imported in the normal course of trade. All of these factors have to be taken into consideration in the matter of contracts.

This morning we are going to touch on the contract law in general. Mr. Raymond V. Dickey, who is a prominent contract lawyer in Washington, D.C., and who has lectured before the American Institute of Banking, the Navy Supply Officers' School and other gatherings, has very kindly consented to give us an informal talk.

Gentlemen

Colonel Carr, Assistant Commandant of the Army Industrial College, has been very kind to give me such a very pleasant introduction to this class. He said I am a prominent local lawyer. I would hate to tell this class some of the things I have been called in my practice. So far as my knowledge of law goes, I have been accused of not even knowing the fundamental principles of any of it. After some years of association with the work I, personally, am prepared to say I know very little of the subject.

I do like law contracts and in the practice of law I know of no more important subject than that of the law of contract. As I have had occasion to remark to many gatherings, it is the "warp and woof" of nearly all the law pertaining to business. If it be agency, we have a law of contract because agency is primarily created by contract. Partnership involves essentially the law of contract, also the question of corporations as negotiable instruments because every negotiable instrument is not only a contract or a sealed instrument but a highest type known as a formal contract which bears all the elements of a sealed instrument. The law of contracts is really one of the fundamental things that every student of law and practically every one in contact with business requirements should become familiar with.

It might be appropriate to first ascertain what a contract law is. Most of you gentlemen, like the rest of us, can give an answer better perhaps by an illustration. A definition is not

easy to formulate but an illustration is oftentimes much better, certainly much easier on the part of those undertaking to define. We ought to start with a fair idea of what a contract law is. One very modern text writer says a contract is a promise or a set of promises which the law enforces as binding. The average lawyer would know what that means yet it leaves out a number of things about which the student should be advised.

I know of two or three very short definitions of contract as defined by some of the best text writers which I will quote to you. For instance, Blackstone (in his Comments) expressed the sentiment "A contract is an agreement, upon sufficient consideration, to do^{or}/not to do a particular thing". That is a very short statement of a contract yet it leaves much to be desired. Anson's definition, perhaps not verbatim, is as follows "It is an agreement enforceable at law made between two or more persons by which rights are acquired by one or more to acts or forbearance on the part of other or others". Bishop gives us this "A contract is a promise from one or more persons to another or others, either made in fact or created by law, to do or perform or create some lawful thing". I omit the latter part of the definition because I do not think it material.

The definition of a contract, I think, ought to really state the essentials of a contract so in my own language and for the purpose of practical operations, I think it well to start out by

saying that there are certain essentials for every contract. To be a legal and binding obligation, first, there must be the proper parties.

Now, who are the proper parties? Partnerships are, of course. In the work you are doing you will find that corporations can make contracts. Authorities agree that any person, and corporations can be a person within this meaning, can make a contract except infants. Infancy in the law^{of}/contracts means persons under the age of twenty-one years, insane persons and in that category text writers include drunkards - persons whose minds cannot form the intent of the contract. Oldest text writers quote "married women, corporations to some extent, and aliens to some extent", but I assume that the modern text writers will omit this from the future text books because it is certainly not applicable in the District of Columbia. Under the laws of the District of Columbia a married woman is given every right a single woman has and every right the man of twenty-one years of age has. Up until the past year a married woman was restricted to the degree that she could not become an endorser or insurer for her husband on any paper. If a man had a wife well fixed she could not become a guaranty for his benefit. The law prohibited her^e from doing so. That worked a very big hardship and Congress repealed that Act.

Repeating, the exceptions are Infants, drunkards, insane people, aliens to some extent, and corporations being limited solely to their charters.

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We now know who can make a contract - proper parties, next a contract has to have proper subject matter. What is proper subject matter for contracts? Anything not prohibited by law or by a possible enactment of statute or does not violate a public policy is proper subject matter. We have very great difficulties at times in determining whether things do or do not violate public policy. Some we know do, for instance you may want a certain law passed, something put into a statute that would benefit you personally, and if you agreed to give a legislator five thousand dollars for getting the enactment he could not be permitted to collect from you on the ground that he is accepting an agreement diverting from his true course. Then again, if you want to tamper with our Courts or if you were making contracts for the Federal Government tomorrow and I promised that if you would get a contract through for my principle there would be some change in it for you, when you were successful in your efforts and came to me saying you would like to have the money I could smile at you and say I had decided not to pay you. The agreement even if it had been made in the presence of others or even written down would not be any good for the contract was one of those which are classified as violating public policy. It is true that I might be held as responsible for trying to involve some public status but you, at the same time, could not collect your money.

Again, some people play poker, some bridge, and other games of interest. Now supposing that while sitting in at a game last night I lost one thousand dollars and you held my I.O.U., a

gentleman's agreement, if I decided not to pay you you could not recover as that is a gambling debt. It is a principle of law that between two evils the court will chose the lesser, consequently the court would not enforce that contract.

A very important item to bring to your attention and one which is very necessary is consideration. What is consideration? I suppose there have been countless passages written by countless persons defining consideration in the law of contracts. I know I have read thousands upon thousands of words dealing with the law of consideration of contracts. It is that something which supports the obligation. That is certainly not very definite. We have exchange of promise for promise, you have agreed that if I will do a certain thing you will do a certain thing. You do not need to pay money. Every contract reads "whereas * * Therefore, this agreement witnesseth, for and in consideration of the sum of one (\$1.00) dollar" (you may be dealing with a hundred thousand dollars in actuality) "each to the other in hand paid, receipt where of is hereby acknowledged before the signing and sealing hereof, whereby the mutual promises, covenants, conditions and agreements hereinafter appear, the parties hereto agree as follows". Those mutual promises, covenants, conditions and agreements whereby you are going to change your status, give up some right or benefit and the other party is foregoing some right or benefit are called consideration of contract in law.

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I have here a good definition of consideration - consideration is that which moves from the promisee to the promisor. A private concern (the promisee) furnishes certain merchandise to the Government, if you have promised to pay money for material you are the promisor. The promise, whether one or the other, is that which moves from the promisee on to the promisor at the expressed or implied request of the latter in return for a promise. As the term is used in the law of contracts, it means a valuable consideration.

You have agreed to buy your brother a suit of clothes, he has met with some misfortune and is down and out. He says to you, "Will you stake me to a suit of clothes?" and you agree to do it. Then when the time comes to perform you say you cannot. There was no consideration emanating and you have not broken any contract, that which prompted you was "love and affection" which is not a valuable consideration in law. Consideration must have value. In the eyes of the law it may consist either in some like interest, profit or benefit accrued to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. That is probably the best definition of consideration that is to be found anywhere. That was taken from a decision of the Supreme Court of the United States, rendered by Chief Justice John Marshall.

You must have the proper parties, proper subject matter and consideration to have a contract. Contracts are normally divided into expressed contracts and implied contracts. I take it this

class will have practically no need for implied contracts because every governmental contract will be an expressed one - a contract in writing. The Government does not ordinarily do business in any other way. In the general law of contracts we have expressed, implied, verbal and written contracts. There is a mistaken idea on the part of many that a written contract can be enforced where a verbal one cannot. Subject to certain exceptions, if you have your proof and can establish the terms of your contract satisfactorily, a verbal contract is just as binding and forceable as though it were written on paper. A verbal contract entered into between two or more parties certainly can be enforced.

An expressed contract is a verbal one. I agree to employ you for a year, commencing today, at a salary of five thousand dollars per annum. You are to have charge of certain work, your salary to be paid at regular monthly installments. After you have worked four or five months I discharge you. You can sue me for breach of contract. It is an expressed contract, the terms of which are distinctly set forth between the contracting parties. That is all you have to have in your written contracts. Every contract you will be called upon to approve or disapprove will be an expressed one where the Government agrees to certain things and other contracting parties agree to do or perform certain things.

We have implied contracts. You are in a hurry to get to the Union Station, you get into a taxi, not asking the charges, the

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driver takes you there and on time, you get out and he tells you how much the charges are and you pay him. Why? You did not have any agreement as to what he would charge or what you would pay. There was no expressed contract but there was an implied contract

Again, you may employ me to dig a well and you are satisfied with the work. You disagree with the price however, which I tell you is two hundred and fifty dollars. No agreement was made prior to the work and you have to pay the money. Why? We did not touch upon an agreement concerning the price, a service was performed and the law implies that you will pay me so much as that service was worth, the quanto merit. I will recover so much as the job was worth and if I can bring in some experts to testify the work was worth the money asked the jury will give me the money, or vice versa.

We have contracts divided into formal and informal contracts. A formal contract is a contract under seal. Negotiable instruments are formal contracts, checks, drafts, trade acceptances, promissory notes, etc., because under a negotiable instrument consideration is presumed and under the law of contracts a seal attached to a contract involves consideration.

What are informal contracts? By the process of exclusion every other kind is an informal contract. I have no personal knowledge but I take it the Government does fifty percent of its business in its contractual lines by informal contract. I know in the com-

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mercial world about ninety percent of our contracts are informal ones. We have all the language you can think of in writing but we do not always put a seal on, usually "have set their hands * *" etc., appears but omit the seal. Deeds, releases, etc., must be under seal, however, but the greater mass of our commercial activities are under the informal contract classification.

We have in the division of contracts (and lots of lawyers have trouble with this feature) nonlateral and bilateral contracts. Bilateral contracts are those where each person agrees to do something in consideration if the other person will do something. It is an exchange of promise for promise. If you break yours and I observe mine I can sue you or you can sue me for breach of promise. Ninety-nine percent if not one hundred are bilateral contracts. I again speak from experience, I have seen quite a number and they were all that type.

We have an everyday practice dealing with unilateral contracts, those where only one person agrees to do. Every promissory note is a unilateral contract, the bank does not agree to do a thing. Your note reads "thirty days after date I promise to pay to the order of the National Banking Institute five hundred (\$500.00) dollars, value received with interest at the rate of six (6%) per cent per annum". That is a unilateral contract, you have your money, the bank does not agree to do anything but you agree to pay.

One of the most natural ways in the business world of making contracts is by offer and acceptance. I dare say two-thirds of

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the contractual relations grow out of offer and acceptance.

It has been a great pleasure to talk to this class. I am sorry that I have been only able to touch two or three high spots of the subject, the field of law is so big and broad that the law schools have something like twenty-five lectures on the subject of enforceability of contracts alone, our Institute of Banking has fifteen lectures on contracts alone. You see how impossible it is to get in very much before this class.

It has been a pleasure and I am under obligation to you, Col. Carr, for inviting me down here.