

**COURSE UNIT : PROCUREMENT LAW**

**SEMESTER : TWO**

**YEAR : TWO**

What are the essential of the purchasing and supplies contracts?

**Answers**

Purchasing and supplies contracts are essential in business in the following ways;

Contracts are binding obligations between two parties which in enforceable in the law

The following are some of the essential of the purchasing and supplies contracts which includes elements of contract for sale of goods

**Contract of sale**

Is a contract where by the seller transfers or agrees to transfer the property in goods to buyer for a price

**Goods**

The subject matter of a contract of sale must be goods, a case in point Jeesa diaries goes into contract to supply milk which is the good to Mestil hotels so the subject matter here is milk.

**Price**

The buyer pays some price for goods in form of consideration for sale of goods. For example pearl diaries has a contract with Nakasero hospital to supply milk in return has to pay pearl diaries some price for the good.

**Two parties**

A contract of sale of goods is between two different parties for example steel and tube supplies goods to Mbarara a referral hospital which are two different parties

### **Transfer of ownership**

Transfer of property in goods is also integral to contract of sale. Here goods or property is transferred from one owner to another.

For example; Uganda Roads Authority buyers and fro RUBA properties there will be transfer of ownership to URA as stated in the contract.

### **Possession**

The evidence for which is such that the law will uphold it unless a better claim is proven for example. In a contract for sale James has two possess or be the owner of the vehicle that he is selling to Namuddu

However, there are other factors besides the sale of goods contract as analyzed below;

### **Capacity to contract**

Both parties involved in a contract should be of sound mind for examples parties to enter into the contract should be 18yrs and above according to the constitution of republic of Uganda.

There should be an offer and in a contract of sale of goods

An offer this is made by the seller to buyers and in return the buyer makes acceptance for example James beverages makes an offer of his drinks and buyer who is Jolline and sons whole sale agrees to buy that acceptance.

### **Destination of goods/supplies should be in contract of sale of goods**

Here should be movement of goods form one place to another between the contracting parties. For example supply of milk products form Amos Diaries to Muhago hospital these are two different destination and products are transferred from one location to another.

## **No.2**

Contract is a binding obligations between two contracting parties which the subject matter is lawful.

The intervening factors beyond and the control of the contracting parties are both long termed and short termed as analyzed below;

### **Duress influence**

This is when one of the contracting parties is forced into a contract by the other party. Furthermore duress is a thre at of harm made to compel a person to do something against his or her will judgment which is wrong. For example famous case of Barton Us Armstrong 1976.

### **Undue influence**

This is when one of the parties improperly uses his/her power out the others power for example the managing director of Ankole Golden Hotel uses his power to influence the procurement departmental manager to award a contract to Akahama enterprises who products are not of the quality standard of the company.

### **Misrepresentation**

Here is when a false statement or law which induces the other party to enter into the agreement. For example signing a contract with a drunkard, minor all there is misrepresentation. For example James holdings signed a contract of sale and bought land from victoria who has 164 yrs and her uncle who is a drunk signed her behalf hence a void contract.

### **Mistake**

Is arises when one of parties especially the seller fails to disclose the relevance information about the subject matter which is a good for example Mr. Francis who sales a plot of land to Mr. Hakim and did not disclose that this land belonged to her wife.

### **Illegality**

When a contract contains some illegal issues for example contracts to commit crime, agreement to promote corruption in public life, agreement to promote sexual immorality, an agreement to defraud revenue all these may lead to nullifying of a contract.

### **Death/insane**

When one of the contracting parties dies or runs made more especially in agency other parties

### **Insolvency**

When one of the parties declares its self-bankrupt it's self-bankrupt and it is confirmed by the courts of law. In case of a contract of sale of goods & contract made by this party is invalid.

### **No.3**

Battle forms re disagreements between contracting parties which is caused by breach of contracts by one of the parties

The following are some of the remedies after the outbreak of disagreements between contracting parties as analyzed below;

#### **Suit for damages for non-acceptance**

If the buyer neglects to accept and pay the seller can be sued for damages for example James && son workshop enters into a contract with Muteesa I Royal University to supply white boards and James supplies and he is not paid he can sue for damages.

#### **Suit for price**

This is when the buyer refuses to pay the as stated in the contract for sale for example Jeesa dairies ltd gets a contract to supply milk to Entebbe hospital and payments are made at end of the every month not on delivery of goods on such the hospital may be sued for not paying the price

#### **Suit for specific performance**

If the seller commits a breach of contract, the buyer can approach the court to ask the seller for specific performance. For example RUMA stationary fails to supply answer booklets to be used in final exams the court may focus them to supply.

### **Suit for interests**

This states that when a buyer performs and the seller breach the contract in terms of and stated in the agreement for example costs incurred in transport of supplies for example Francis supplies Hilda with furniture and Hilda does not fulfill his obligation court can decide to say the buy pay.

### **Punitive damages**

These are terms included in contract for any party which fails to perform its obligation. A case in a point when a supplier deliveries product damaged or late may be forced to pay some changes the contract states.

### **Suit for breach of warranty**

This is especially for suing the seller for example Mr. Hakim buys a new techno spark 10 phone from with battery warranty of 12 months after two months of wise he goes back for warrant and he goes not get can go to court and sue the seller.

### **Nominal damages**

These are some of penalties paid by any of the parties which breaches the contract. For example delivering poor quality producers among others by the suppliers.

Revocation of contract by the seller before due date. The seller nullifies the contract before its expire data for example Amos dairies is contracted to supply milk to hotel triangle and in the process of the contract the Amos revocates in the contract to supply before due date the hotel has sue in the contracts.

### **No.4**

Contract terms these are any provision forming part of a contract. Each term gives rise to contractual obligation the breach of which may give rise to litigation.

The following are some of contractual obligation the breach of which may give rise to litigation.

The following are some of contractual terms analyzed below;

### **Express terms**

Form of binding obligation which are either written or orally expressed in a contract for example Mr. Ivan buys land from Mrs. Nakaye only if he complete payments to Mrs. Nakaye.

### **Implied terms**

These are legal bidding obligations which are not written and non-verbal. For example employees in the ware house should not steal anything there.

### **Legal capacity**

The supplier and buyer who are entering into the contract should of sound mine or about 18yrs of age in Uganda for example rook constructions and ham enterprises entering into contract of constructing a stadium.

### **Lawful**

The subject matter of the contract should be lawful for example contrast to make crime or sale illegal products which are not allowed by the law are prohibited.

### **Offer and consideration**

This refers to a promise that one party makes in exchange for another party's performance and consideration refers to performance by a promisor in exchange for their promises. For examples Nakiende and son retail shops offers goods and students from Kisubi S.S. purchases from the shop.

### **Acceptance**

Refers to one person's compliance with the terms of an offer made of the seller for example case clinic places an order to buy an oxygen machine at a certain price and the seller who is china responds by shipping the goods the seller's actions signal acceptance of the offer.

However, there as one essential clause which should be involved in a contract;

### **Force majeure**

This unforeseeable circumstances that prevent someone from fulfilling a contract for example occurrence of floods, earth quake, wars, among others all these must be anticipated for

Payment terms to one or the parties. This should be spelled out during the process of the contract when to pay on delivery on or on completion for example Roke contracts gets a contract to construct some roads form ministry of works because most government bodies they pay on completion of a given task. So all must be spelled out in the contract.