COMMERCIAL LAW

COMMERCIAL LAW

I. THE DIFFERENT KINDS OF CONTRACTS

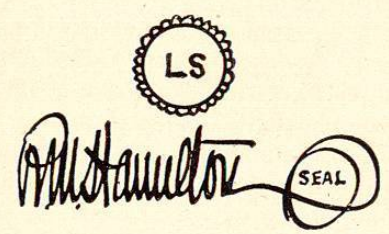
COMMERCIAL law relates to CONTRACTS. These are made by almost every one. A person cannot ride in a street-car without making a contract with the company for carrying him. If he goes into a store and buys a cigar, a stick of candy, or a tin whistle, he has made a contract with the man behind the counter, who owns the store or is his salesman. Tramps and thieves are about the only persons who live without making contracts. In that respect they are like the birds of the air, getting whatever they desire whenever the chance is seen.

A contract has been defined as an agreement to do or not to do some particular thing. These are the words used by one of the greatest of American judges. The reader may turn to his dictionary and find other definitions that contain more, if he pleases, but this will answer our purpose.

All contracts may be put into three classes, and each of these will be briefly explained. First, SEALED AND UNSEALED CONTRACTS. What do we mean by a contract that is sealed? It is one to which the person who signs it adds, after his name, a seal. But what is a seal? It may consist of sealing-wax, stamped in a peculiar manner, or a wafer made of sealing-wax, or a paper wafer. In the olden times when people could hunt and fight but

were not able to write their names, they put a seal at the end of a contract made by them; in other words, the seal supplied the place of a name. Each person's seal differed from the seal of every other. It had its origin really in the ignorance of the people. As they were unable to write their names these distinct signs or marks, called seals, were put on instead of their signatures.

With the changes brought by time the form of this device or seal, required by law, is much simpler than it was centuries ago. Indeed, in every State persons use the letters "L. S.," with brackets around them, instead of a seal. They mean "the place of a seal," and are just as good in every way as any kind of seal that might be used. Here are two of the forms of seals in most common use:



Any contract that has a seal after the name of the signer is a sealed contract, and every other is called an UNSEALED, ORAL, or VERBAL contract. If a contract was written and a seal was added after the signer's name, and there was another exactly like it in form, but without a seal, this would be called an unsealed or verbal contract, and in law would differ in some important respects from the other. This is true in every State except California, where the difference between sealed and unsealed contracts is no longer known.

The second class of contracts are called EXPRESS AND IMPLIED CONTRACTS. By an EXPRESS CONTRACT is meant one that is made either in writing or in words. But the reader may ask, Are not all contracts of this kind? By no means. Many contracts exist between people which have not been put into words. Suppose A should ask B for employment and it should be given to him, but no word should pass between them about the price to be paid. The law would *imply* that B must pay him whatever his work was reasonably worth. If A should come at the end of the week for his pay and B should say to him: "I never made any bargain with you concerning the price, and I am unwilling to pay you anything," A could, if he understood the law, say to B: "You told me to work, and the law *implies* that you must pay me whatever my work is worth." How much would the law give him for his work? Just what the employer was paying other men for the same kind of work.

Another class of contracts are called EXECUTED and EXECUTORY. An EXECUTED CONTRACT is one that is finished, done, completed. If I should go into a store and ask the price of a book and say to the salesman, "I will take it," and give him the money, and take the book with me, this would be an executed contract. An EXECUTORY CONTRACT is one that is to be completed. Suppose the salesman did not have the book and I should say to him, "Please get it for me and I will come in next week and pay you for it," this would be an executory contract; and it would remain so until I came in and got the book, as I had promised to do, and paid the price.

These are the three most general classes of contracts made by persons in daily life. Almost all persons make contracts of each kind during their lives. Sealed contracts are not as common as unsealed ones, yet they are frequently made. Every deed for the sale of land or lease for the use of it is a sealed contract.

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II. THE PARTIES TO A CONTRACT

To every contract there must be two or more persons or PARTIES. When Robinson Crusoe was on his island all alone, eating breadfruit and entertaining himself by throwing stones at the monkeys, he perhaps had a good time, but he could not make any contracts. But as soon as Friday came along they could make contracts, trade, and cheat each other as much as they pleased. A contract, therefore, is one of the incidents of society. A person sailing in a balloon alone could not make a contract, but if two were in the basket they might amuse themselves by swapping jack-knives or neckties, and these exchanges would be completed or executed contracts and would possess, as we shall soon see, every element of a contract.

Again, persons must be able, or COMPETENT, to make contracts. What kind of ability or competency must a person have? Not every person can make a contract, even though he may wish to do so. A MINOR, or person less than twenty-one years of age, though he may be very wise and weigh perhaps two hundred and fifty pounds, can make very few contracts which the law regards as binding. In fact, the only contracts that a minor can make for which he is bound are for necessaries — clothing, food, and shelter. Nor can he make contracts even for these things in unlim-

ited quantities. A minor could not go into a store and buy six overcoats and bind himself to pay for them. The storekeeper must have common sense in selling to him and keep within a reasonable limit. In one of the well-known cases a minor bought a dozen pairs of trousers, half a dozen hats, as many canes, besides a large supply of other things, and, refusing afterward to pay the bill, the merchant sued him, and the jury decided that he must pay. The case, however, was appealed to a higher court, which took a different view of his liability. The judge who wrote the opinion for the court said that the merchant must have known that the minor could not make any personal use of so many trousers, canes, and hats, and ought not to have sold him so many. In short, the court thought that the merchant himself was a young minor in intelligence and ought to have known better than to sell such a bill to a person under age.

Of course it is not always easy to answer this question, WHAT ARE NECESSARIES? Much depends on the condition of the person who buys. A merchant would be safe in selling more to a minor living in an affluent condition of life than to another living in a much humbler way. Quite recently the question has been considered whether a dentist's bill is a necessity, and the court decided that it was a proper thing for a minor to preserve his teeth and to this end use the arts of the dentist. Again, is a bicycle a necessity? If one is using it daily in going to and from his work, surely it is a necessity. But if one is using it merely for pleasure a different rule would apply, and a minor could not be compelled to pay for it. Cigars, liquors, theatre tickets are luxuries; so the courts have said on many occasions.

The courts, in fact, regard a minor as hardly able to contract even for necessaries, and he is required to pay for them for the reason that as he needs them for his

comfort and health he ought to pay for them. In other words, his duty or obligation to pay rests rather on the ground of an implied contract (which has been already explained) than of an express one. The force of this reasoning we shall immediately see.

Suppose a minor should say to a merchant who was unwilling to sell to minors,— having had, perhaps, sad experience in the way of not collecting bills of them,— "I am not a minor and so you can safely trust me. I wish to go into business and wish you would sell me some goods." Suppose that, relying on his statement, the merchant should sell him hats or other merchandise for which he would afterward decline to pay, on the ground that he was a minor. Suppose he proved that he really was one — could the merchant compel him to pay the bill? He could not compel him to fulfil his contract, because, as we have already said, the law does not permit a minor to make a contract except for necessaries. The court, then, would say to the merchant: "It is true that you sold the goods to this minor; he has indeed lied to you; still the court cannot regard a contract as existing between you and him." On the other hand, a court will not permit a person to defraud another, and the merchant could make the minor pay for the *deceit* or *wrong* that he had practised on him; and the measure of this wrong would be the value of the goods he had bought. Thus the court would render justice to the merchant without admitting that the minor could make a legal contract for the goods that he had actually bought and taken away.

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III. THE PARTIES TO A CONTRACT (*Continued*)

In the former article we told our readers that there were some persons who could not make contracts, and among these were INFANTS or MINORS. In most of the States a person, male or female, is a minor until he or she is twenty-one years old. In some of the States, among them Illinois, a female ceases to be a minor at eighteen years of age.

By the Roman law a minor did not reach his majority until the end of his twenty-fourth year, and this rule has been adopted in France, Spain, Holland, and some parts of Germany. The French law, though, has been changed, with one noteworthy exception. A woman cannot make a contract relating to her marriage without the consent of her parents until she is twenty-five. Among the Greeks and early Romans women never passed beyond the period of minority, but were always subject to the guardianship of their parents until they were married.

MARRIED WOMEN are another class of persons who cannot make every kind of a contract like a man. Once a married woman had but very little power to make contracts. However great might have been her wealth before marriage, as soon as she entered into this blissful state the law kindly relieved her of all except her real estate, giving it to her husband. On the other hand, he

was obliged to pay her bills, which was one of his great pleasures, especially if she was a constant traveller to the silk and diamond stores. She could still keep her real estate in her own name, but that was about all. Her husband took everything else; he could claim her pocket-book, if he pleased, and was obliged to support her in sickness or health, in sweetness or in any other "ness."

The law has been greatly changed in all civilised countries in this regard, and to-day in most States she can make almost any kind of a contract. In some States, however, it is even now said that she cannot agree to pay the debt of another, but this is, perhaps, the only limit on her power to contract. She can engage in business, buy and sell, transfer notes, make contracts relating to the sale and leasing of her real estate, insure it, build houses, and do a thousand other things quite as freely as if there were no husband around. The most of these changes widening her authority to make contracts have come within the last fifty years. Of course, unmarried women can make contracts like men, and many of them know it.

Another class who cannot make contracts are DRUNKEN PERSONS. Once the law regarded a drunken man as fully responsible for his acts, and if he made a contract he was obliged to execute or fulfil it. He could not shield himself by saying he did not know what he was doing at the time. The court sternly frowned on him and said: "No matter what was your condition at the time of making it, you must carry it out." This was the penalty for his misdeed. It may be the courts thought that by requiring him to fulfil his contracts he would be more careful and restrain his appetite. Whatever the courts may have thought, they have changed their opinions regarding his liability for his contracts made under such conditions. Now they hold that he need not carry them out if he desires to escape from them. There is, however,

one exception to this rule. If he has given a note in the ordinary form, and this has been taken by a third person in good faith who did not know of the maker's condition at the time of making it, he must pay. But, we repeat, the third person must act in good faith in taking it, for if he knew that the maker was drunk at that time he cannot require him to pay any more than the person to whom it was first given.

One other class may be briefly mentioned — the INSANE. They are regarded in the law quite the same as minors. For their own protection the law does not hold them liable on any contracts except those for necessaries. These are binding for the same reasons as the contracts of minors, in order that they may be able to get such things as they need for their health and comfort. For if the law were otherwise, then, of course, merchants would be afraid to sell to them. But as merchants can now safely sell to them whatever they truly need in the way of clothing, food, etc., to make themselves comfortable, so, on the other hand, the insane, like minors, must pay for these things, and it is right that they should.

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IV. THE CONSIDERATION IN CONTRACTS

HAVING explained who can make contracts, we are now ready to take another step. Besides having parties, there must be a CONSIDERATION for every contract. This is rather a long word, but no shorter can be found to put in its place. What do we mean by this term? We mean that there must be some actual gain or loss to one or both parties to a contract, otherwise it is not valid. If, for example, A should say to B, "I will give you $100 to-morrow," B, perhaps, might go away very happy, thinking that with this money he could buy a bicycle or some other fine thing; indeed, it was just the sum for which he was longing; so on the morrow he goes to A for his money. He promptly appears, but A says to him: "I have changed my mind, and will not give you the $100." B asks: "Did you not promise to give me this money?" "Certainly." "Well, why will you not fulfil your promise?" A replies: "I was a fool when I made that promise; you are not going to give me anything for it, so I am unwilling to give the money to you." Suppose B in his sorrow should go to a lawyer, thinking, perhaps, that he could compel A by some legal proceeding to pay over the money. What would the lawyer tell him? Why, he would say: "Did you promise to give A anything for the $100?" "No, sir." "Then the law will not help you

out. You cannot get the money from him by any legal method. Perhaps you can get $100 worth of fun in licking him for not giving you the money, but you cannot get the cash. But, mind, perhaps you had better not try to get your fun in that way, for this is contrary to law, and he might get much more than $100 out of you in the way of damages for licking him."

In every case, therefore, there must be *something for something*. Now this something may be a thousand things. It may be money or merchandise or work. In short, there is no end of the things that may serve as a consideration of a contract. An example may be given to explain what is meant by this. A man had been speculating in stocks, and one of the rules of the stock board is that a margin or sum of money that is to be paid for stock must be paid in every case. It may be that an additional margin or sum must be paid under some circumstances. The speculator in this particular case was unwilling to pay this margin, and he said to the broker: "If you will do as I wish, and not put up this margin, I will save you from any loss that may result from such conduct." It was contrary to the rules of that stock exchange for the broker not to put up the margin, and the consequence was that he was put off the floor; in other words, the board would not permit him to act as a member. Of course, as he could not buy and sell any more stock, he lost money; and he went to his customer, the speculator, and told him that he was losing money in consequence of carrying out his order about the margin. The speculator said he was sorry, but he could not help it. The broker then insisted that the speculator must make good his daily loss in consequence of doing as he had promised. This the speculator would not do. The broker then sued him for the amount of his loss. The speculator defended on the ground that there was no consideration for the agreement he had made with

the broker about the margin. The court said that the loss which the broker had suffered in consequence of carrying out his contract with the speculator was a good consideration for the contract and must be made good.

When a contract is sealed the law implies that there is consideration, and there need not be an actual one consisting of money, labour, or any other thing. This seems like an exception to the rule requiring a consideration in all cases, but the reason is this: When a sealed contract is made, the law supposes or assumes that each party made it, clearly knowing its nature — made it carefully, slowly, and, consequently, that either a consideration had been or would be given. If, therefore, one of the parties should refuse to fulfil it the other could sue him in a court of law. The person who sought to have it carried out would not be obliged to show that he had given any consideration on his part for the undertaking, because the seal appended to his name would imply that a consideration had been given. A deed for a piece of land is a good illustration of a sealed instrument. The law assumes whenever such a deed is given that the seller received a consideration for his land. The money paid was a consideration received by the seller, and the land was the consideration received by the buyer. Each gives a consideration of some kind for the consideration received from the other; and this is true in all cases.

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V. THE ESSENTIALS OF A CONTRACT

In our last paper we told our readers that there must be a *consideration in every contract.* Sometimes this is *illegal*, and when it is the effect is the same as would be the giving of *no consideration.*

Suppose a robber having stolen money from a bank should afterward offer to return a certain portion if he is assured that he will not be arrested and compelled to change the style of his clothing and his place of residence for a season. He cannot endure the thought of missing a game of football; and as for striped clothes, though very comfortable, perhaps, he is sure they would not be becoming. Suppose this agreement to return a part should be put in writing, and after fulfilling it he should be sued by the bank for the remainder, and also prosecuted by the State for committing the theft. Very naturally he would present the writing in court to show that he had been discharged from the crime and also from the payment of any more money. But this writing would not clear him either from prosecution for the criminal offence or from liability to return the rest of the money. The bank would say that although he had returned a part, this was not a proper consideration for its agreement not to sue him; it had no right to make such an agreement, and consequently it could sue the

robber for the remainder of the money just as though no agreement had ever been made.

Another illustration may be given. Suppose a person having made a bet and lost is unable to pay the money and gives his note for the amount. When the note becomes due the holder or owner sues him for the money. He defends, as he is unwilling to pay, by saying there was no legal consideration for the note. The money he promised to pay was only a wager, which the law regards as illegal. And this would be a good defence.

If the consideration is partly legal and partly illegal and can be divided then there can be a *recovery of the legal part.* Suppose a man owed another $1000 for borrowed money and also a wager for the same amount, and had given his note for $2000. When it became due if the owner sued him he could recover only the $1000 of borrowed money; this much and no more, for the reason that the consideration could be divided, the legal part from the illegal part. If no separation was possible then the note would be void and the owner could get nothing.

A person cannot recover for a *voluntary service* that he has rendered to another. A man would be very mean indeed who refused to pay another for any service rendered to him that was truly valuable; yet if he would not do so the man rendering the service could get nothing through the law. Suppose that a person when walking along a road should see some cattle astray in a corn-field having a good time with a farmer's corn. He knows they are in the field for business and in a short time, unless driven out, will get the best of nature and down her efforts in corn-raising. In the kindness of his heart he jumps over the fence and succeeds in driving them away. Suppose there happens to be among the number an unruly animal which is unwilling to leave such a tempting field of plunder and turns on him and gores him, and he is taken to a hospital. The farmer finds out who drove out the animals, and of his injury, but declines to give him any reward whatever. Can the man recover anything? The law says not, because the service is purely voluntary.

The question has often been asked whether a person who has made a contract to work for another and has broken it can recover for the worth of his service during the period he was employed. Some courts have said that a person thus breaking his contract cannot afterward recover anything, because he does not come into court with clean hands. Other courts have said that though he can recover nothing on the contract he has broken, he can nevertheless recover on a contract which the law implies in such a case for the worth of his service during the period of his employment. On the other hand, the employer can set off against his claim any injury that he may have sustained. Suppose he could show that the service was of no worth to him; that he was injured rather than benefited by what he did; then the employé could get nothing. The courts have been inclined of late years to uphold an employé in recovering whatever his service was worth — not, however, as done by virtue of an express or actual contract with the employer. He cannot sue on that; in other words, he cannot take advantage of his own wrong to recover anything from his employer, but he may recover on the contract which the law implies, as we have explained, as much as his service was worth to his employer, and no more.

Another element in a contract is the meeting of minds of both parties. *Both must understand the matter in the same sense.* For example, a person offered to sell another "good barley" for a stated price, and the other offered to buy "fine barley" at the price mentioned.

There was no contract between these persons, because it was shown that "good barley" and "fine barley" were different things in the trade. This, therefore, is one of the essential elements of a contract — the meeting of the minds of the contracting parties. Whether they have assented or not is a question of fact, to be found out like any other question of fact.

Sometimes offers are made on time, and when they are several interesting questions may arise. Suppose A and B are negotiating for the sale and purchase of a piece of land. A says to B: "I will give you a week to think the matter over." Soon after parting A meets C, to whom he mentions his offer to B. C says: "I will give you a great deal more for the land and pay you now." "Very well," says A; "the land is yours." And he at once writes a letter to B saying that he has withdrawn his offer, as another person has offered him more for the land and that he has sold it to him. Now B might be very much surprised by this letter. Very likely he would think A was a hard man and perhaps a dishonest one. Perhaps he would go to a lawyer and ask him if he could compel A to sell the land to him if he accepted his offer within the time mentioned and paid to him the money. The lawyer would tell him — if he understood his business — that A had a perfect right to withdraw his offer, even though it was made on time. This would probably be brand-new knowledge to B, but he would know what to do on the next occasion.

Is this true in all cases? It certainly is of all offers made in that manner. How, then, can a person who makes an offer to another on time be compelled to regard it? The way is simple enough. The person to whom the offer is made should give something — a consideration — to A, who makes the offer, for the delay. Then he would be bound by it. But the courts would say to B, if

nothing were given: "Why should A's offer bind him so long as he is to get no compensation or consideration for it?" And we shall see again and again in these papers *this element of consideration is ever present, and must be to make transactions legal.* So with respect to an offer on time — if the person to whom it is made is really desirous of having it continue, in order to find out whether he can raise the money to pay, or for some reason, he can make the offer binding by giving to the offerer a consideration for the specified time, whatever that may be.