

Invalidity of the Contracts

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The contract law governs oral and written agreements which related with exchange of goods and services, money and properties. As we know the contract is very important to society, because it simplify relation between the parties. Without contracts would be much more misunderstanding, forgetfulness and etc. The contract an agreement with specific terms between two or more persons or entities which there is a promise to do something in return for valuable benefit known as a consideration. The contracts is important thing in business dealings. The contracts are the main document which promises that the law will enforce. A contract binds one or several persons themselves, towards one or several others, to transfer, to do or not to do something.

The parties can sign and determine context of the contract by themselves. If this countries have imperative norms which governs contracts the parties should sign and determine the contract confirm to this norms. USA gives parties more independence to sign the contract there is not much imperative norms comparison with Azerbaijan legislation and Europe. The contracts differ with their complexities. Under this legislation the contracts have various types. The contracts can be bilateral or multilateral. Also we can divide written and oral contracts, under USA legislation there are also express and implied contracts.

In USA the contracts are governed by state statutory, common law and private law. Statutory law can require that some contracts be put in writing

and executed with particular formalities. Except sale agreements the contracts in USA most of all governed by Common Law. Sale agreements are governed by Uniform Commercial Code. Private law contains terms of the agreement between the parties. Under Azerbaijan legislation contracts are governed by Civil Code and private law. This private law same with the USA private law. In Europe which law will be applicable to the contract is one of the main and important questions.

Under Azerbaijan law, European law and USA law there some main elements for valid and enforceable contracts. This elements are essential for a contract to exist. That elements are following:

1. Mutual assent:

- offer (a promise to perform an act conditioned on a return promise of a performance by another party)
- acceptance (agreement by the other party to the offer presented);

2. Consideration or exchange of value (money or something of interest being exchanged between the parties);

3. Capacity (age and mental ability),

4. Legality (legally enforceable terms and conditions);

5. The intent of both parties to carry out their promise.

Consideration is important element of the contract under USA law, because without it the signed contract is not valid. Offering party is bound to its terms if the other party accepts. Offering party can stipulate certain terms such as time limit that other party can accept the offer during this time limit. When other party accepts the offer he/she accepts the conditions of offeror. If the offeree makes changes and

sends it to the other party this is counteroffer. Under common law consideration is a price of the promise and is the requirement for the contracts. As we know some common law and civil law does not require any consideration. But it is important under USA law. Because without consideration there is no valid agreement under USA law. In some states it can be as a valid substitute.

If the contract is breached the law provides remedies. There main circumstances which are breach of the contract. They are followings:

1. General damages;
2. Consequential damages;
3. Reliance damages;
4. Specific performance.

Specific performance is important under Azerbaijan law. But under USA legislation the party cannot demand specific performance from other party. The contracts can also be categorized by the following:

- valid;
- unenforceable;
- voidable;
- void.

If there are all legal requirements for the contract exist this is valid contract. In unenforceable contracts we can see the basic requirements but failing fulfillment some other laws. For example if state has some special requirements to the certain contract failing to comply them make the contract unenforceable. If one or both parties have a legal right to cancel their obligations this are voidable contracts. The contracts entered into under duress or unvoluntarily, are voidable. The contracts would be voidable at the request of the injured party. Contracts are void if they involve a promise that is illegal or violates public policy. That is why there is not contract at all. Contracts don't have to be written to be enforceable in court. Most oral contracts are legally enforceable but it is difficult to prove. If one of the parties doesn't have mental or legal capacity to enforce the agreement such agreement also void. In USA for the valid contract we need that the relationship between parties must be the intent, also it should be lawful object. The other essential think as we mentioned former is offer, acceptance and consideration. Also we need that the meaning in the contract must be clearly defined and the parties free consent. And the last one the performance of contract

should be possible.

Under USA law the contracts are invalid under following circumstances:

1. If the contract is illegal;
2. If the offer, acceptance or consideration calls for action that violates the law;
3. If the contract is against the public policy;
4. If the purpose of the contract is illegal

Under Azerbaijan legislation contracts are invalid under following circumstances:

1. Unconsciousness
2. Misrepresentation
3. Hiding (or concealing (keep silence))
4. Duress
5. Sham transactions:

- false
- visionary
- 6. Non-serious
- 7. Material mistake
- 8. Incapacity:

Under above mentioned circumstances the contract can be determined as invalid.

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Xülasə

Açar sözlər: müqavilə hüququ, əsas elementlər, oferta, aksept, etibarsız əqdlər, müqavilələrin etibarsızlığı, qanunsuzluq, qanun pozuntusu, hüquq sistemlərinin müqayisəsi, müqavilələrin növləri.

Məqalədə Azərbaycan, Avropa və ABŞ qanunvericiliyinə əsasən müqavilə hüququ və müqavilə anlıyışı, həmçinin müqavilənin bağlanması üçün əsas şərtlər və bağlanması qaydası təhlil olunmuşdur. Məqalədə həmçinin bağlanmış müqavilənin etibarsız hesab oluna biləcək halları barədə ətraflı təhlil aparılmışdır. Qeyd olunan məsələlər bir neçə hüquq sisteminə əsasən müqayisəli şəkildə izah olunmuşdur.

Резюме

Ключевые слова: контрактное право, основные элементы, предложение, принятие предложение, недействительные договоры, недействительность контрактов, незаконность, нарушение закона, сравнение правовых систем, виды договоров.

В данной статье был проведен анализ понятия контрактного право контракта, основные условия для заключение и процедуры закрытие контрактов. А также в статье подробно проанализированы обстоятельства недействительности контрактов. Вышеуказанные обстоятельства объясняется сравнительно в соответствии с нескольких законодательств.

*“At his best, man is the noblest of all animals;
separated from law and justice he is the worst”*

-ARISTOTLE

