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# 70211 Contract Notes

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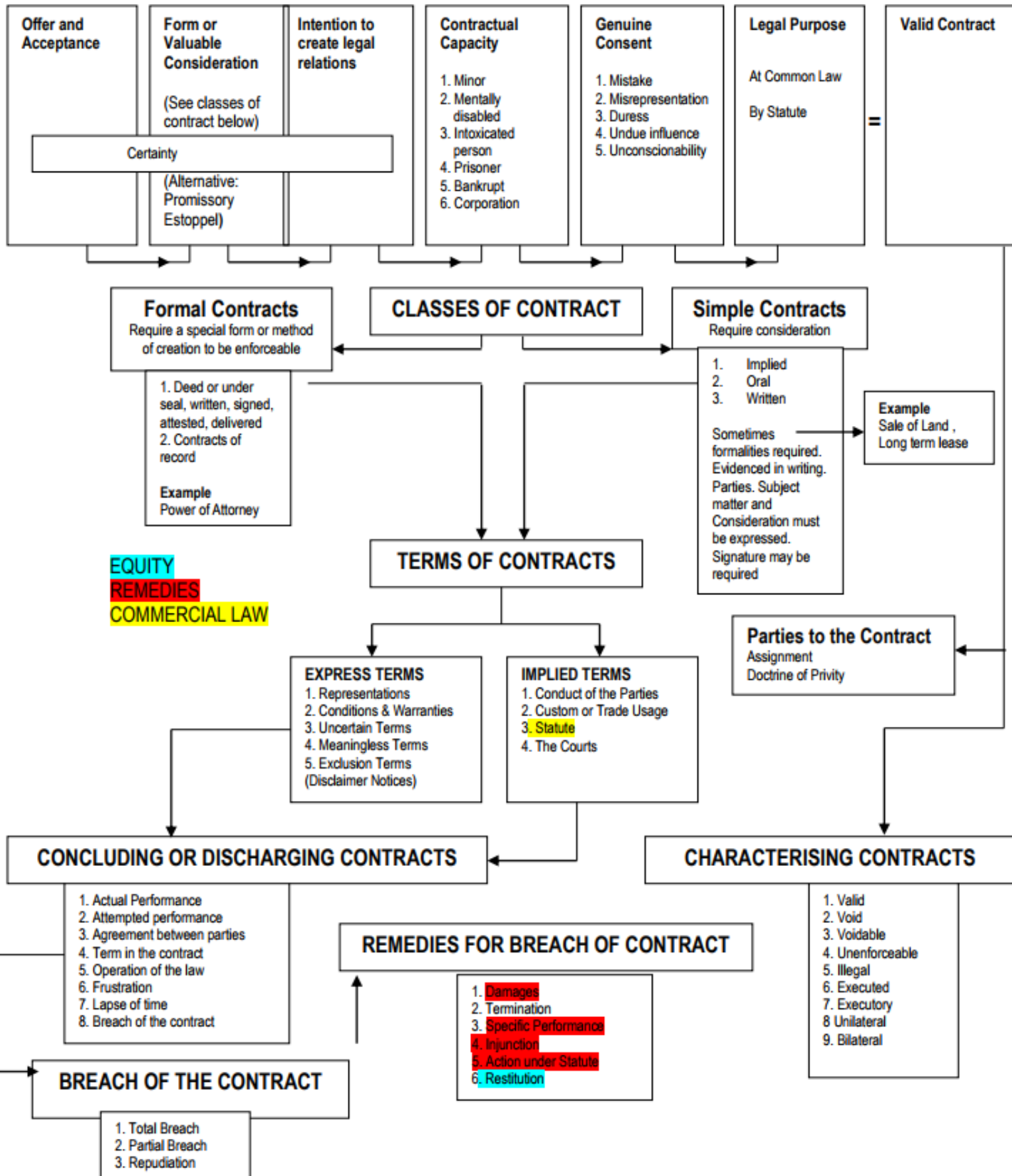
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# A CONTRACT IS AN AGREEMENT BETWEEN TWO OR MORE PARTIES IN WHICH LEGAL OBLIGATIONS ARE CREATED WHICH ARE ENFORCEABLE BY LAW

Traditional approach: There are many different theories: See Lecture 1





# 1 Intro


## 1.1 Contract Definition

1. Is a legal expression of agreement between parties
2. The parties make the rules
3. Enforceable at law
4. A mechanism to define, arrange and regulate a transaction

### 1.1.1 Key elements of a contract

1. Promise
2. Capable persons - age, mental state
3. Obligation
4. Enforcement - key boundaries of the law

### 1.1.2 Formation Requirements

1. **Agreement** – offer and acceptance
  2. **Consideration** – exchange of promises
  3. **Intention** to be legally bound
  4. Legal **capacity** to enter
  5. Genuine **consent**
  6. **Legality**
- 
7. Certainty

### 1.1.3 Key definitions

- Validity/enforceability
  - ⇒ **Valid**: the essential elements present
  - ⇒ **Void**: no legal validity → one of the elements does not exist
  - ⇒ **Voidable**: validly formed but inherent defect through undue influence etc
    - It is only voidable on the behalf of the offeree
    - i.e. right to void a contract
  - ⇒ **Unenforceable**: validly formed à but with a technical defect
    - E.g. failure to pay stamp duty
  - ⇒ **Illegal**: “the court will not lend its aid to a man who founds his cause of action in an immoral or illegal act”
    - e.g. a contract to sell heroin
- Performance
  - ⇒ **Executed**: where one party has performed their promise
  - ⇒ **Executory**: where all the parties have done is exchange promises
    - Neither party has performed anything
- Content
  - ⇒ **Express**: by written or spoken word
  - ⇒ **Implied**: by conduct
- **Formal**: some must be in writing
- **Simple**: six essential elements (can be both written or oral or both)
- Unilateral/bilateral
  - ⇒ **Unilateral**: the offeree does not undertake to *perform* anything → but accepts the offer by performing their side of the bargain
    - E.g. Carlill (1983): the plaintiff accepted the offer by using the smoke ball
    - In a reward cases, the finder accepts the offer by returning the dog
    - In a unilateral contract à the obligation of the offeree is executed
  - ⇒ **Bilateral**: where at the formation there is an *exchange of promises and* the obligations of both parties remain to be performed
    - Executory