

# Contract and Procurement Management Lecture # 8

## Contracts

by

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# Chapter Description

- **Aims**
  - This chapter has discussed the basic concepts of contracts and its legal perspectives.
- **Expected Outcomes**
  - Understanding with the basic definition of contract
  - Legal aspects of contracts
  - Awareness with the types of contracts
- **Other related Information**
  - Study Guide: Project Management Body of Knowledge (PMBOK)
- **References**
  - Ashworth, Allan. Contractual procedures in the construction industry. Pearson Prentice Hall 2006.
  - Broome, Jon. Procurement routes for partnering: a practical guide. Thomas Telfor, 2002.
  - Bockrath, Joseph T. Contracts and the legal environment for engineers and architects. McGraw-Hill Science, 2000.



# Content #1

- Definition of contract
- Elements of a contract
- Types of contract
- Contractual legal terms



# DEFINITION OF CONTRACT

## WHAT IS A CONTRACT?

- The law of contract forms the core of the field of construction law & in due recognition of its significance.
- “An agreement enforceable under law. The agreement legally binding between two parties or more, provided that certain conditions are observed” (Contract Act, 1950)
- The law of contract does **not prevent action in the law of tort.**

# DEFINITION OF CONTRACT

## PARTIES OF A CONTRACT



Offeror



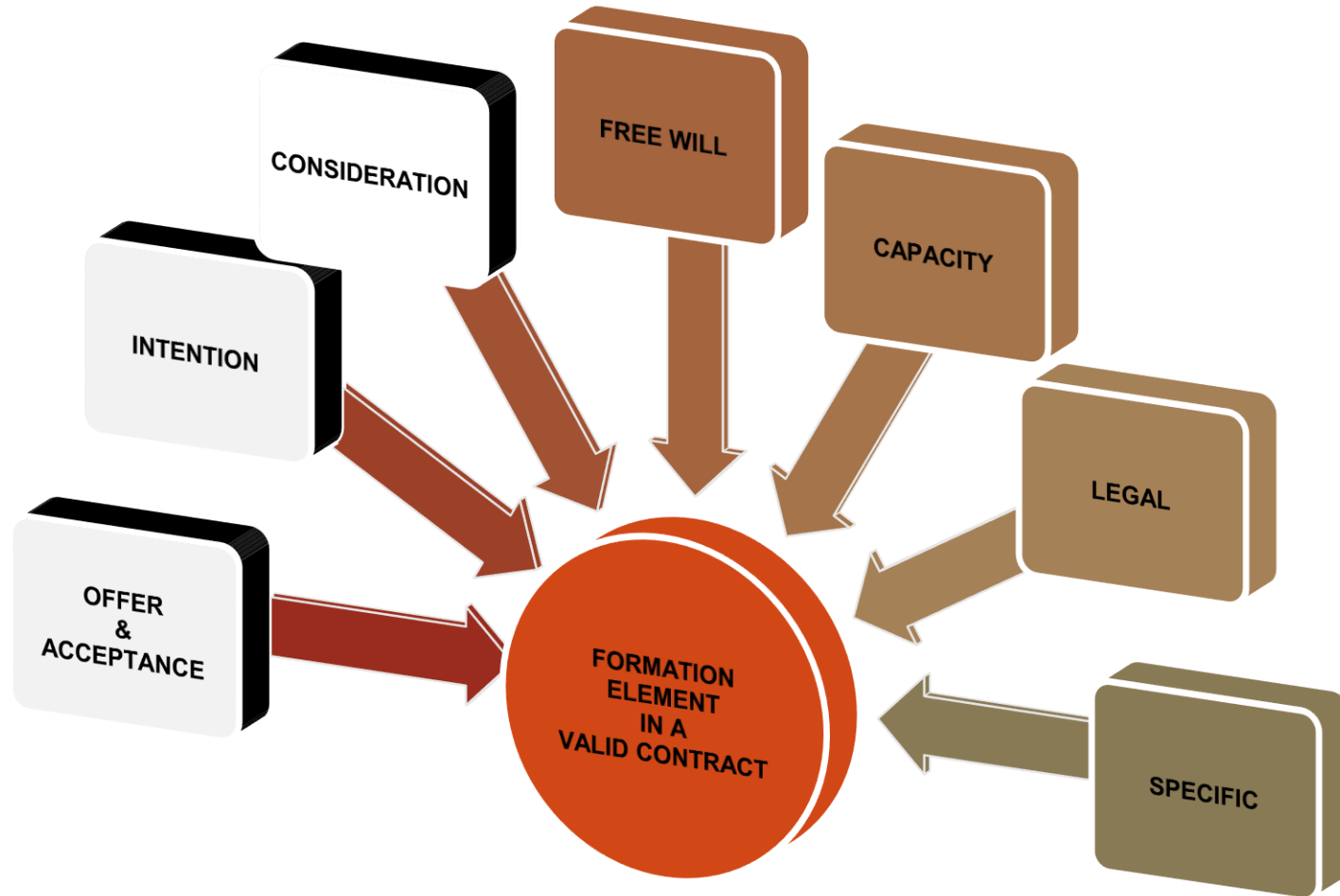
Offeree

# ELEMENTS OF A CONTRACT

The essential elements of a valid contract:

- A valid offer & an unqualified acceptance (S.2)
- An intention to create legal relation
- Consideration (S.2d)
- The terms of the contract must be sufficiently certain (S.30)
- The parties must have legal capacity to contract (S.11)
- Genuine consent by the parties, for example, there must be no duress involved (S.10, 14)
- The contract must be lawful (S.10(1))

# ELEMENTS OF A CONTRACT



# ELEMENTS OF A CONTRACT

- INTENT - Both parties wish to make the contract and ready to face the consequence if the contract breach
- FREE WILL – All agreement & discussion is made on free will. There are no blackmail or treats involved
- CAPACITY – Both parties involved is eligible & capable to be in a contract. The parties must have legal capacity to contract
- LEGAL – all the contract need to follow common law
- SPECIFIC – all information in the contract need to be specific. There is no room for ambiguity & unclear item



# ELEMENTS OF A CONTRACT

| Elements                           | Description  |
|------------------------------------|--|
| Offer and Acceptance               | Tender price as offer and acceptance through letter of acceptance by client                    |
| Intention to create legal relation | “Clients wants the work to be constructed” and “both parties agree”                            |
| Consideration                      | Client pays and contractor build   |
| Certainty of terms                 | All information were included in tender notice, tender document, document contract and drawing |
| Capacity                           | Naming both client and contractor  |
| Free consent                       | All information were included in tender document   |
| Legality                           | Witnesses for the agreement of contract  |

# FORMATION OF A CONTRACT

- Orally
- By Conduct or “Implied Action”
- In Writing

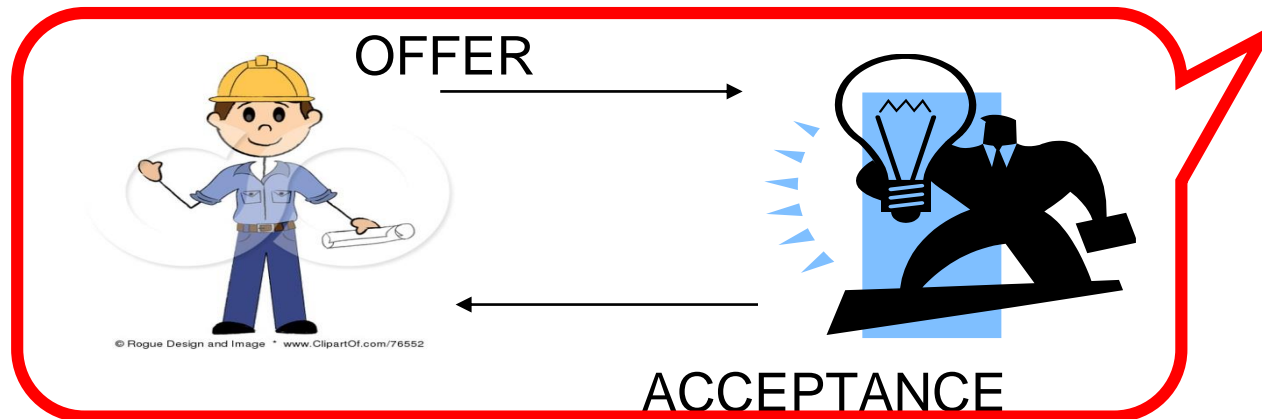
# TYPES OF CONTRACT

Contractual relationships arise through:

- The agreement between the parties (often called a **'consensual' contract**)
- One party performing some act in reliance upon a promise, often implied, by the other (a **'unilateral' contract**)
- The execution of a deed containing the promise e.g. purchasing a house (under seal)
- Consensual and unilateral contracts are called **simple contracts**
- A deed is a written contract under seal which is also called as **specialty contract**

# SIMPLE CONTRACT

- A contract will exist when:
  - the parties involved reached an agreement
  - legally recognized rights, responsibilities that arise from that agreement.
- Constituted by an offer made by 1 party (offeror) and its acceptance by the other party (offeree) supported by consideration.



**SUPPORTED BY  
CONSIDERATION**

# SIMPLE CONTRACT

- Back in 90's, most of the construction law is a simple contract
- Simple contract can be form by:
  - Written
  - Verbal
  - Action by parties involve (offer and acceptance)
- Validity for 6 years

# SIMPLE CONTRACT

WHEREAS the undersigned are the holders of all outstanding shares of the Corporation; and

WHEREAS it is in the best interests of the Corporation to nominate and elect a new Board of Directors for the Corporation.

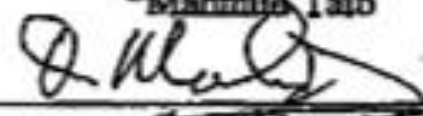
RESOLVED that Sean P. Murray is hereby elected as the sole Director of the Corporation.

Dated as of 4th Oct., 2006



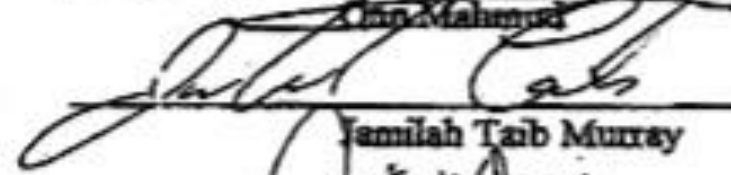
\_\_\_\_\_  
Mahmud Taib

Dated as of \_\_\_\_\_, 2006



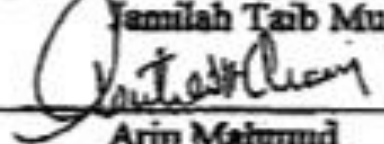
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Dated as of 27<sup>th</sup> Oct, 2006



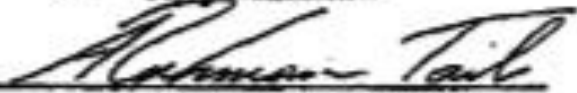
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Jamilah Taib Murray

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Arip Mahmud

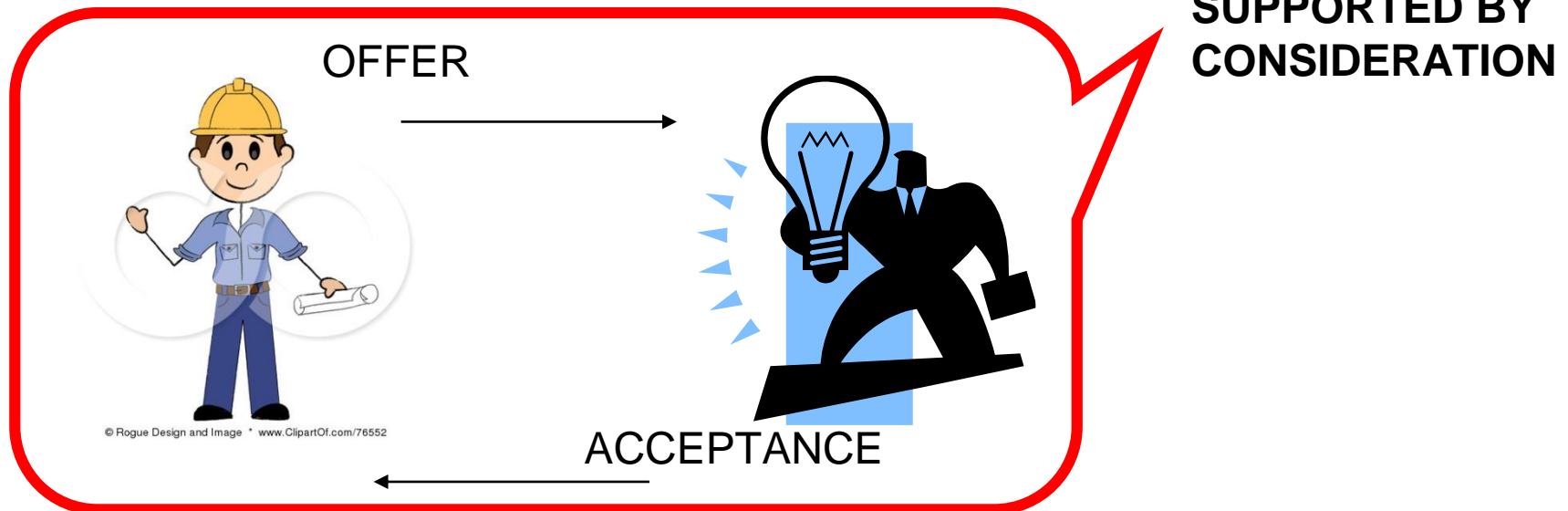
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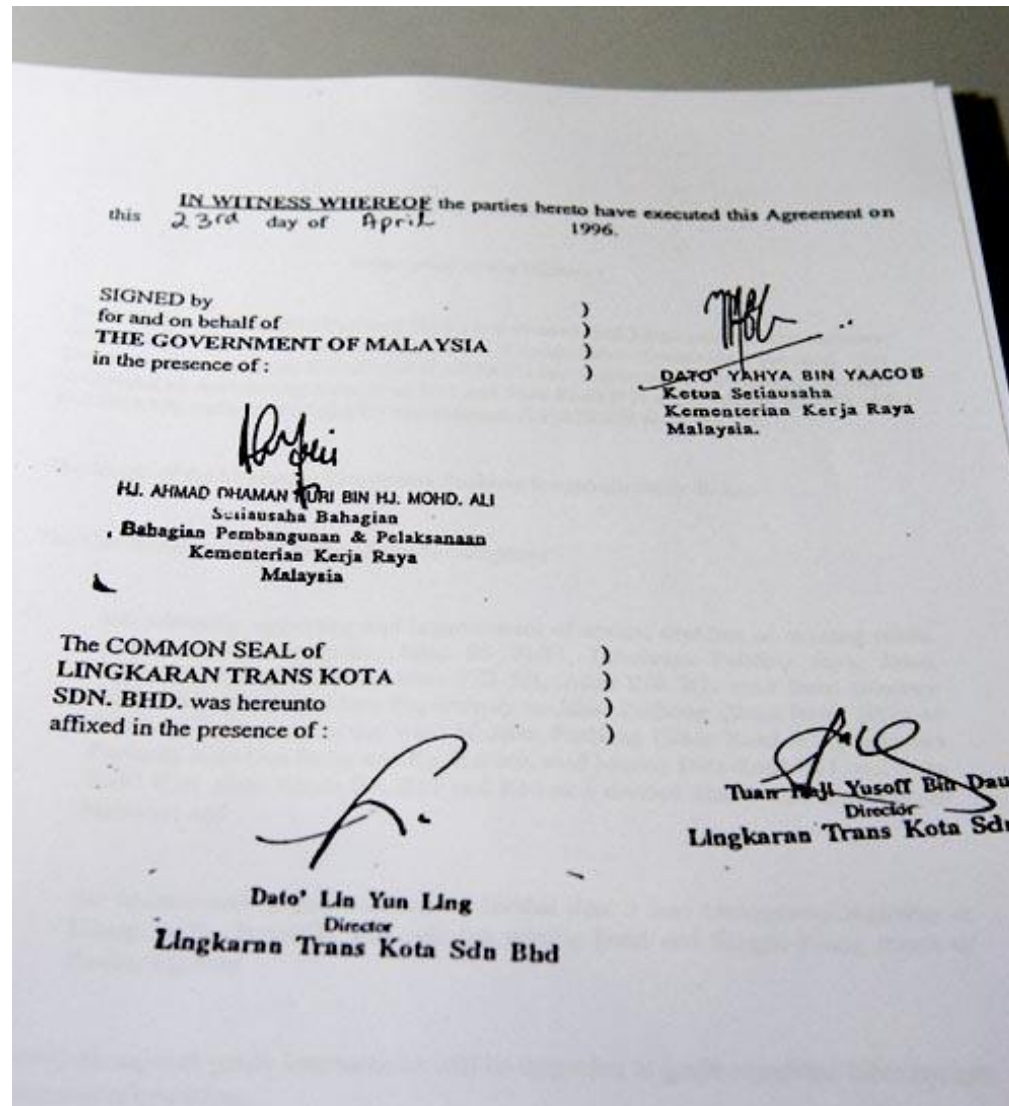
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Abdul Rahman Taib

# SPECIAL CONTRACT

- A document signed, stamping and given to all the parties involved
- Start widely used in the Government Sector
- Need to be in form of written
- Validity for 12 years



# SPECIAL CONTRACT





# VALIDITY OF CONTRACT

- Valid. Satisfy all the requirements for a legally binding contract
- Void. A contract which is of no legal effect between the parties and thus does not create legal rights or obligations. For example, a contract is lacking in proper acceptance. Neither party can recover from the other on a void contract.

# VALIDITY OF CONTRACT

- Voidable. A contract which appears to be valid but can be disclaimed (made void) at the option of one of the parties. For example, a contract which is induced by fraud can be avoided by the party deceived.
- Unenforceable. The contract is valid but neither party can sue for breach. For example, by reason of technical defect.

# VITIATING FACTORS

- If a vitiating element is present, it renders the contract void or voidable at the option of the aggrieved party or the courts may choose not to enforce it.
- The vitiating factors include duress, undue influence, illegality, mistake and misrepresentations.

# DISCHARGE AND REMEDIES

| Methods of terminating the contract | Remedies for breach of contract          |
|-------------------------------------|--|
| By performance/tender               | Refusal of further performance           |
| By agreement/mutual consent         | Bring an action for damages              |
| By frustration                      | Bring an action for specific performance |
| By breach of contract               | Action for an injunction                 |
| By operation of the law             | Action on a quantum meruit               |

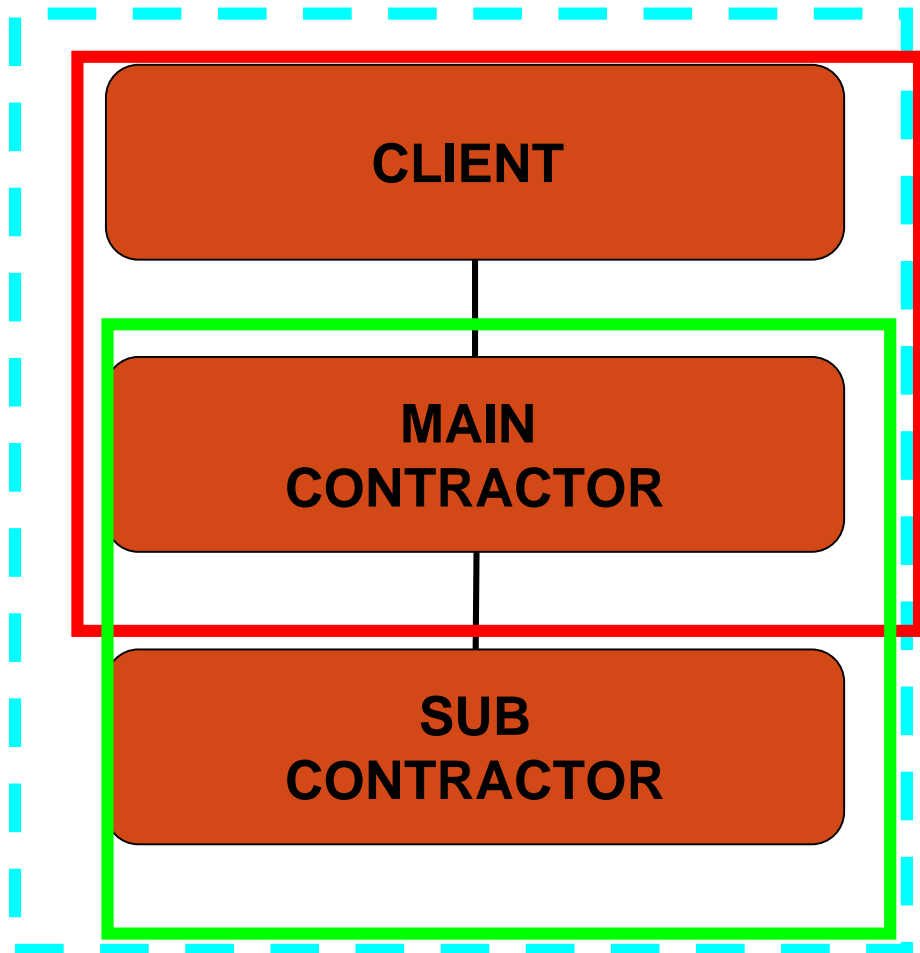
# PRIVITY OF CONTRACT

- As a general rule, contractual rights and liabilities affect only the parties to the contract and a person who is not party can neither sue nor be sued on the contract.
- The doctrine of 'privity of contract' is the rule that anyone who is not a party to a contract cannot seek to enforce it or be made liable under it. Thus, a contract made between A and B cannot be enforced by or against C, D or anyone else.

# PRIVITY OF CONTRACT

*“As a general rule, contractual rights and liabilities affect only the parties to the contract and a person who is not party can neither sue nor be sued on the contract.”*

- Only parties to a contract can sue or be sued.
- A person who is not a party (3<sup>rd</sup> party) to a contract has no right to sue on the contract.
- *Donoghue v Stevenson, 1932*
- *Tweddle v Atkinson (1861)*



# PRIVITY OF CONTRACT

- This a continuation of the ‘consideration’ principle that a person (such as C or D above) who has not supplied ‘consideration’ could not be a party to a contract.
- This rule operates in two ways:
- It prevents a ‘stranger’ to a contract from seeking to take any benefit under it; and
- It prevents such a ‘stranger’ to incur any liability under it.

# CONTRACT SUCCESSFUL, THEN...?

- Challenges:
  - Fragmentation (disconnect) of critical procedures.
  - Labour-intensive (expensive, time-consuming) processes.
  - Poor visibility into contracts (lack of key intelligence).
  - Ineffective monitoring and management of compliance.
  - Inadequate analysis of contract performance.



# Conclusion of The Chapter

- **Conclusion #1**
  - A legal contract must incorporate all the essential requirements as per the contextual law and regulations.
- **Conclusion #2**
  - Selection of an appropriate type of contract is a pre-requisite for a successful contract management.



# Author Information

## Other relevant information (if any)

#author may apply your own creativity and innovation where it is appropriate