

THE PRINCIPLE OF SANCTITY OF CONTRACT



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XYZ Limited in a bid to raise capital to finance its project under a Risk Service Contract (RSC) increased its share capital and offered 70,000,000 million units of its shares to ABC Limited. XYZ Limited entered into a Shareholders Agreement and Subscription Agreement with ABC Limited through which it unconditionally and unequivocally transferred equitable rights and obligations to ABC Limited. As payment for the 70,000,000 million units of shares, ABC Limited was obligated to finance the Risk Service Contract and other obligations contained in the agreement between parties. Parties agreed that their right to rescind or vary the agreement would be subject to the prior written consent of ABC Limited. While ABC Limited was in the process of performing its obligations under the contract, XYZ Limited purported to transfer the same 70,000,000 units of shares it had earlier transferred to ABC Limited to another company without the consent of ABC Limited.

In the scenario above, the law contemplates that parties would adhere strictly to the terms and significant features of the contract given that contracts are written expressions of the free will of parties. In such circumstances, parties are prohibited from unilaterally altering contractual terms even where there is a real apprehension that one of the parties may have been at a disadvantage at the point of negotiating the terms of the contract. There are other remedies the disadvantaged parties may explore but certainly not such that would permit the party to unilaterally alter the terms of a valid contract.



A contract is an agreement between two or more persons with enforceable rights and obligations which the law recognizes as binding and a breach may result in a remedy. For a contract to be valid, the following elements must be present:

- There must be an offer from one party to another.
- There must be an acceptance of the offer.
- Parties must have the intention to enter into the contract.
- There must be a consideration or something of value received or promised to convince a party to agree to the deal.
- Parties to the contract must be competent and can enter into a contract.
- The purpose of the contract must be legal and not against public policy.
- The contract must be in a form required by law (e.g., written, under seal, etc.)

Where a contract has been validly entered into, parties who have duly entered into the contract are bound by the agreement and must fulfill their contractual obligations. Thus, XYZ Limited cannot on its vary, or alter the agreement or any part of it without the consent of ABC Limited.

In interpreting or enforcing a contract, the court is solely expected to apply a literal interpretation and meaning to the wording of the agreement with no need for extrinsic evidence. In *Yadis (Nig) Ltd Vs. Great Nigeria Insurance Company Ltd*^[1], the Supreme Court held that it is settled law that where parties are ad idem on the terms of a contract,

[1] (2007) 4 FWLR (FT 391) 6177

the function of the Court is to give effect to the terms without more, as the Court has to give effect to the intention of the parties. Similarly, in *Nika Fishing Co. Ltd Vs. Lavina Corporation*^[1], the Supreme Court held that parties to an agreement retain the commercial freedom to determine their terms. No other person, not even the Court, can determine the terms of a contract between parties thereto. The Court must strictly interpret the terms of the agreement in its clear wording. Also in *Law and West Africa Nig. Ltd V. Nig. Breweries Plc*^[2], the Court of Appeal held that “a court of law is under a duty to enforce the terms of a contract which is the agreement between the parties and is not allowed to introduce fresh terms into the contract. The court is to give life to either the contract document or voice to the spoken agreement between the parties. Going beyond that, the Court becomes a busy body”.

However, contractual terms and obligations may be varied if all parties to the contract mutually agree to such variation. Hence, the rights and obligations under a contract remain so, unless legally excused from performance.

[1] (2008) 16 NWLR (PT. 1114) 509

[2] (2018) LPELR-49358(CA)

Exceptions to sanctity of contract

The principle of sanctity of the contract may be derogated in the following circumstances:

Hardship: the continuous enforceability of a contract is always contingent on the continuation of the circumstances that existed at the time of contracting and constituted the basis for the parties' bargain.

In the scenario above, for ABC Limited or XYZ Limited to rely on hardship to resile from the terms of the contract, the party must show the existence of any event of legal, economic, technical, political, financial, or similar nature;

- which is beyond the typical sphere of control of the disadvantaged party, and
- which occurs after the conclusion of the contract and whose effects could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contractor, or

- which existed at that time but was not known by the disadvantaged party and could not have been recognized by a reasonable person of the same kind as the disadvantaged party in the same circumstances, and
- which existed at that time but was not known by the disadvantaged party and could not have been recognized by a reasonable person of the same kind as the disadvantaged party in the same circumstances, and
- which causes a fundamental alteration of the equilibrium of the contractual obligations, thereby rendering the performance of the contract excessively onerous for that party, and
- for which the disadvantaged party did not assume, explicitly or implicitly, in the contract or otherwise, the risk of its existence or occurrence constitutes hardship^[1].

Other exceptions include defenses such as limitation laws, fraud, misrepresentation, mistakes, duress and undue influence to curb exploitation.

In the absence of the above exceptions and vitiating elements, a contract between two or more parties is binding, parties cannot unilaterally alter the terms and the court will not interfere or vary the terms.

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[1] Commentary to Trans-Lex Principle , <https://www.trans-lex.org/951000>