

LEAKE ON CONTRACTS.

PART I.

FORMATION OF CONTRACTS.

CHAPTER I.

SIMPLE CONTRACTS.

(1) The modes of formation of contracts distinguish them as Simple Contracts ;

(2) Contracts Under Seal, and

(3) Contracts of Record.

Simple Contracts again are divided into contracts formed by agreement, and contracts arising independently of agreement, or contracts implied by law.

Agreement between two persons implies not only the same mind or intention, but communication of that intention to each other. Acts are sufficient evidence of intention, and if inconsistent with words are accepted as the more reliable of the two. No contract is made by a promise which reserves an option as to performance.

To create a legal contract, an agreement must include *consideration* for the promise, *i.e.*, anything accepted or agreed upon as a return or equivalent for the promise made. Consideration is required in order to show that the parties intended the transaction to be binding, and may be *executed* when something is given or done at the time of making the promise and in return for it, or *executory* when a promise is made in return for the promise of the other party. But a promise given in respect of something *previously* done, given, or promised, is not binding.

An *express* contract is proved by words, written or spoken, showing agreement of the parties; that is to say,

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