What is the Difference between a Contract and a Deed?

Description

This is not a question about Chinese contract law, rather one I have regarding contract law in UK and USA or other common law countries.



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In China, there is only one set of rules of Contract Law, much the same principles as applicable in other major civil law countries like German or France.

When reading materials regarding common law trusts, very often I encountered words like “deed” and contract, for example, deed of variation.

I am quite familiar with the concept of contract under common law esp in that it requires a sufficient consideration to make a contract formed and valid in UK and USA.

But what does a deed entail and mean under UK laws?

I bumped onto a web page (Claric Legal Services) explaining the difference between a contract and a deed:

1. a simple contract can be entered into orally but a deed must be in writing;

2. a deed must make it clear that it is intended to be a deed. This will often mean specific wording is inserted above the signatures confirming that the document is intended to be a deed;

3. under a simple contract each party has to provide “consideration” for it to be valid. “Consideration”, in simple terms, is the price paid by each party. Often, this will be the provision of goods or services by one party and the provision of money by the other but it could be anything of value. Deeds, on the other hand, do not require consideration in order for them to be valid. It is therefore advisable, for example, that a contract for the provision of

a gift is drafted in the form of a deed or it is likely to be unenforceable due to lack of consideration from one party;

4. a deed requires additional formalities in relation to its signature/execution for it to be enforceable. Depending on whether the party signing/executing is an individual, company or other legal entity, signatures will require witnessing or more than one signatory will be required;

5. simple contracts have a statutory limitation period of six years. The effect of this is that a claimant must make a claim for breach of contract within six years of such breach. Deeds have a limitation period of twelve years.
Difference between a Deed and a Contract under UK Laws

According to this quotation, it is clear that a deed has its own role to play in legal practice. A deed is not a contract in the sense that it doesn't require consideration to be present to make it valid, and thus it is often used in making gift or donation. Furthermore, it requires more stringent formalities to be established, for example, clear wording intending for a deed, and witnesses.

Based on another website talking about deed, it said:

1. The deed must state on its face that it is a deed

It can be performed with phrases such as "executed as a deed" or "this deed." It provides clear information on the kind of legally binding instrument it is.

2. The deed must stipulate that it is conveying or awarding some kind of special rights or privileges to someone

It means that the grantor (the person granting) must have the legal right or power to grant the special rights and privileges to the grantee (the person being granted). The grantee must also have the legal capacity to receive and handle the deed and/or the conditions that may come with the rights pertaining to the asset in question.

3. The deed must be executed by the grantor in solemn form

It means that it must be executed in the presence of a stipulated number of witnesses, known as instrumentary witnesses. The deed also needs to be notarized.

Deeds can be bilateral (two parties) or unilateral (one party) and can include powers of attorney, patents, licenses, diplomas, commissions, etc.

4. A seal must be affixed to the deed

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Depending on the jurisdiction in which the deed is being executed, a seal needs to be affixed to the deed. The seals were more common in the past and made the signatures of the parties to the deed optional. At the present time, the signatures are key to the instrument.

5. The deed must be delivered, and the grantee must accept the deed to validate it

The conditions that apply with the acceptance of the deed are referred to as covenants.

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admin

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