

## CONTRACTS

### What is a contract?

A contract is an agreement between two or more parties that gives rights to and imposes obligations on these parties. A legally binding contract is a voluntary agreement reached between the parties that is enforceable in law.

Contracts are a huge part of everyday life for most people, for instance:

- When an individual goes to the supermarket to buy their groceries, they enter into a contract with the supermarket to make payment of money in exchange for food and drink.
- Employees enter into a contract with their employer to perform their work in exchange for a monthly or weekly salary.
- When someone buys a theatre ticket, there is a contract between the theatre-goer and the theatre for the performance.
- A business enters into commercial contracts with their suppliers in exchange for money to enable them to fulfil customer orders (which will be contracts of themselves).

A good contract will set out clear expectations in a user-friendly way so that you know how to deal with potential problems or situations.

### How is a contract made?

The formation of a contract begins with an offer. This may be, for instance, an offer of money in exchange for goods, or an offer of services in exchange for other services or even the promise of a future payment of money in exchange for a service delivered now. If the other party wishes to, they must clearly accept the offer, providing the basis of the formal agreement. The other party can refuse the offer or make a counter offer, which is common in commercial negotiations.

An offer must be communicated to the other party. Someone will not be treated in law as having accepted an offer if they do not know about it.

### What is required for a legally binding contract?

A valid contract requires four elements:

- an agreement (offer and acceptance);
- an intention to create legal relations (this is an intention to form a legally binding relationship);
- consideration (payment or monies worth); and
- certainty of terms (are the details of the deal clear?).

Contracts do not have to be in writing to be legally enforceable, with one important exception:

A contract for the sale of land or property (eg buildings) must be in writing and contain all the terms agreed, otherwise it is not enforceable.

## **Certainty of terms**

An enforceable contract requires certainty of terms.

It must be clear to the parties what the terms of the contract are. If a fundamental term is not agreed between the parties, then the agreement may not be enforceable.

If the parties cannot agree on all terms, should the agreement go to court in the event of a dispute, the court will not find that there is a contract to interpret. It is not the role of the court to create the terms of the contract.

In some circumstances, the courts will imply or infer a term into a contract, particularly in circumstances where the parties have clearly relied on the agreement by performing their obligations under it. However, the courts will only infer a term into a contract where it is obviously necessary for the contract to operate. The court will not re-write a bad deal – even where the contract is disastrous for one of the parties.

## **When does a contract become effective?**

Normally a contract comes into existence when it is made – when there has been acceptance of an offer, and consideration (payment) has passed from one party to the other.

An obligation in a conditional contract will not become effective until some condition (a circumstance or action) has been met.

The acceptance of an offer can be made by words or by conduct – where the other party's conduct infers they have accepted the offer.

## **Illegal and voidable contracts**

When a contract is illegal it cannot be enforced by a party or the courts. A contract that exists for an illegal purpose is void – as if it never existed. So a contract to supply illegal drugs or to achieve a criminal purpose will be illegal and unenforceable, but assets transferred under an illegal contract cannot normally be recovered.

However, the courts will differentiate between situations where the actual purpose of the contract is illegal and circumstances where a party has accidentally broken the law while performing the contract. The innocent party may have some legal protections in the latter case. A contract may also be void if one party did not have capacity to enter into a legal agreement – such as due to illness or inebriation.

Mistakes and misrepresentations may make a contract voidable. A voidable contract is a contract which can be legally terminated. For instance, where one party enters into the contract as a result of the fraudulent acts of the other party or subject to undue influence (e.g. a threat of violence).

If you have a specific legal problem in relation to a contract for goods, works or services, it is recommended you seek independent legal advice from a solicitor.

Disclaimer: This note is provided for general guidance only and does not constitute legal advice.