
Fact Sheet LP06

Contracts



What is a contract?

A contract is formed when one party (**the promisor**) makes a promise that the law will enforce because certain conditions have been met. The party to whom the promise is made is called **the promisee**.

When parties enter into a contract, they do not necessarily have to put their agreement in writing for the contract to be enforceable in law.

However, if the agreement is not in writing, it is much harder to prove that promises were made unless witnesses can substantiate.

When a contract is put in writing it must be signed ("executed") by both parties to be legally binding.

Categories of Contract

There are three broad categories of contract:

Simple contracts

In simple contracts there is an "exchange" i.e. one party provides goods or services and the other party pays money. The payment of money is called in the eyes of the law – "**consideration**".

Deeds

A deed is a special type of contract where there is **no consideration**. The deed arises usually for the transfer of ownership of property from one person to another by a gift. Deeds have special rules because of the lack of consideration.

Negotiable instruments

A negotiable instrument may be viewed as a piece of paper used in financial transactions instead of currency (notes and coins). It is an unconditional promise to pay a certain sum of money on demand. It is effectively an instrument of **credit**. Negotiable instruments include:

- Cheques
- Promissory notes
- Bills of exchange.

Essential elements of contract law

It is important to have a working knowledge of the essential elements that make a contract enforceable in law. These are:

Element 1: AGREEMENT

One party must make an **offer** and the other party must **accept**.

Element 2: CONSIDERATION

Consideration is the value of the bargain made between the parties i.e. the price paid.

Element 3: INTENTION

Both parties must have an intention that the agreement they enter into is legally enforceable.

Element 4: PROPER PARTIES

Each party must have the capacity to enter into a legally binding agreement. The following are categories of persons who do not have capacity:

- Minors (people under the age of 18)
- People with a mental disorder, mental disability or senility who lack competence to understand decisions.
- Intoxication/drunkenness may be a defence if the individual repudiates the contract as soon as sober.

Element 5: NO DEFECTS

Defects include:

- Mistakes
- Misrepresentations
- Duress – One party is pressured to agree or sign
- Unconscionable conduct (see section below)
- Illegality
- Failing to comply with Statute of Frauds (see below).

Mistakes

A mistake in an incorrect understanding of one or more parties to the contract. The parties may each have a different view of the terms of the contract.

Misrepresentation

A party must not make a false or misleading statement that has the effect of inducing the other party to enter into a contract.

Unconscionable Conduct

An unconscionable contract is one in which one party has acted in an unscrupulous or unprincipled manner. Usually, one party has superior bargaining power which they use to take advantage of the weaker party.

Statute of Frauds

Contracts do not need to be in writing to be valid and enforceable. However under the rule known as the "Statute of Frauds" certain types of contracts are unenforceable unless they are evidenced in writing. They are contracts:

- For the sale or disposition of land
- Contracts that cannot be performed in one year
- Involving a person acting as guarantor
- For the exchange of goods

Discharge of contracts

The contractual obligations of parties in a contract can be discharged by the following methods:

Performance

The promises made by parties to the contract have been fulfilled i.e. satisfactorily completed.

Agreement

The parties mutually agree to terminate the contract

Election after breach

Upon a breach of the contract by one party, the other party elects to terminate the contract.

Frustration

Due to circumstances beyond anyone's control, the contract can not be completed e.g. long-term sickness.

Contingent conditions

The contract specifies the circumstances in which the contract is terminated due to a condition or event arising, e.g. the contract may be terminated if it rains.

Contractual right of termination

The contract specifies the circumstances in which a party can terminate the contract e.g. an employee can terminate an employment contract by giving notice.

Remedies for breach of contract

The main remedies available upon breach of contract, or in respect of defective contracts, are:

Damages

Financial compensation paid to the innocent party as ordered by the court.

Specific performance

A court order directing a party to fulfil their obligations.

Injunction

A court order that compels a party to do, or not to do

something.

Rescission

One party rescinds (takes back) their promises because they have been deliberately or unintentionally deceived by the other party.

Interesting Cases in Sport and Recreation

Agreements Between Competitors

Agreements made by sporting competitors to be bound by competition rules may be enforceable. If a competitor breaches a contract made in such a way other competitors who suffer loss can sue for breach of contract.

Clarke v Dunraven (1897) - In this case two yacht owners entered a regatta, agreeing in writing to be bound by all the yacht club's rules. Importantly, this included an agreement to pay any damages caused to another yacht by **fouling**. D's yacht caused C's yacht to sink and C sued.

Inducing a Breach of Contract

Superleague v Australian Rugby League 1995 - Organisations, agents, promoters and others must not induce a person to breach his or her contract in order that they might enter another agreement.

Restraint of Trade

Everyone has the right to work. The law deems that all restraints of trade are not permissible unless in the public interest or beneficial to the contract. This includes preventing athletes from earning a living. Examples:

Hughes v WACA 1986 - In this case Kim Hughes, former captain of Australian cricket team was banned by the State Cricket Association from club cricket in Perth for taking part in a rebel tour of South Africa. The court found that the ban was a restraint of trade.

Unfair Contracts

A contract may be said to be unfair (thus damages may be awarded) if it places a heavy burden without adequate remuneration.

In the case of **Sulkowicz v Parramatta RLC 1983**, Sulkowicz was a player contracted by Parramatta RLC for two years. He was promised \$15,000 per season once he was graded. However at the start of the second year the club refused to grade him. Sulkowicz saw the failure to grade him as an avoidance of their contractual obligations.

The court found that Sulkowicz had been treated unfairly in terms of his contract with the club. In particular, it was unfair he be caused to complete heavy off-season training and then denied grading, thus preventing remuneration.