



CONTRACT

Law Guide



► How Can An Offer Be Terminated?

A contract is a legally binding agreement between two or more people. Contracts are used consistently throughout our life such as purchasing goods and services, using public transport, purchasing a home and more.



Rejection

If an original offer is rejected, the offeree cannot change their mind. Offers can be rejected expressly, by conduct or implied by words.



Revocation

Revocation is when an offer is withdrawn. Generally, all offers can be withdrawn before accepted and properly communicated.



Death

Death of either party will terminate an offer.



Lapse of Time

Offers are not open forever. If a date is stated for acceptance, the offer will expire if not complied with. If a date isn't stated, the law presumes that the offer is open for a reasonable period of time.

► What Is Acceptance?

This refers to the formation of a contract where the offer of one party to form a contract must be agreed by the other party (acceptance). Acceptance is made orally, in writing or by conduct. A vital element of acceptance is that it must mirror the offer, it must be valid, unambiguous and easy to understand.

► What Is The Postal Rule?

The postal rule dictates that if an acceptance is sent by post, then acceptance is complete as soon as the acceptance is posted. The postal rule only applies to letters of acceptance sent by post and telegrams.

► Inertia Selling/ Unsolicited Goods

Generally, when goods are sent to people who have not ordered them, the consumer does not have to pay for them and the consumer can keep the goods after 6 months if they are not collected by the owner.

2. CONSIDERATION



In order to have a legally binding contract, all parties give something of value to the other, called consideration. Consideration can be a promise to transfer land, a promise to deliver goods or services, and money. Courts look to establish if a promise was made, not at the amount promises.

► Rules Of Consideration

1. Consideration must not be of past
2. Consideration must not move from the promisee
3. Consideration cannot be illegal or vague
4. Consideration cannot be impossible to perform
5. Consideration does not need to be adequate, but it does need to be sufficient.

3. Intention To Create Legal Relations

All parties to the contract must intend to create legal relations. Below are some examples of the type of arrangements that are intended and not intended to create legal relations.



► Family Arrangements

There is a presumption that family and domestic agreements are not intended to become legally binding. However, this can be rebutted with evidence if either party show they are intending to create legal relations.



► Commercial Arrangements

There is a presumption that commercial agreements are intended to become legally binding. However, there are times where parties depart from this rule.



► Religious Arrangements

Religious arrangements are not intended to create legal relations.



4. Legality Of Purpose

This means that the subject of the contract must be legal , for instance it would be illegal to create a contract for the sale of drugs or fireworks. Otherwise, an illegal contract may be formed.

5. Legality Of Form

Some contracts must be in a particular form to be a legally binding, e.g., an insurance and land contract must be in writing.

► What Are The Formalities For Creating A Contract?

Contracts can be made orally, in writing, by deed, conduct, and/or electronically. It is advised that all contracts are created in writing due to the fact intention and terms cannot be derived from.

► Contracts For The Sale Of Land

The Land And Conveyancing Act 2009 states certain terms in a contract need to be in writing. S.51 of the 2009 act expresses that "no action shall be brought to enforce any contract for the sale or other disposition of land unless the agreement to which such action is brought, or some memorandum or note of it, is in writing and signed by the person against whom the action is brought or that person's authorised agent"



Other pieces of legislation that require contracts to be in writing are,

- A. The Statute of Frauds Act, 1965.
- B. The Statute of Frauds Amendment Act, 1828
- C. The Arbitration Act, 2010.
- D. The Copyright and Related Rights Act, 2000.
- E. Consumer Legislation; and, Mediation Act, 2017

6. Capacity

An element of a contract that requires that the parties to a contract have the capacity to make a legal contact. In other words, do you have the ability to understand the nature of what you are consenting to?

Minors (Under 18)

Generally, Contracts for the sale of necessary goods and services are binding on a child and seller.



Contracts for the education, apprenticeship, training or employment of the minor, or for services related to these, which are for their benefit is enforceable by and against him/her



Contracts where the minor buys and sells goods as part of his trade will not be enforceable against him just because they enable him to make a living.



Mental Capacity

Contracts for necessary goods and services are enforceable by and against the party lacking capacity.



A person who lacks capacity to enter into a contract for the sale of goods or services needs to pay the supplier a reasonable amount only if the goods or services satisfy.

1. the persons condition
- 2 the actual needs of the person



Where the contract is not for necessities it is not enough that a party lacks capacity the other party must have knowledge of it.



► Companies

Limited companies enter into contracts allowed by their company memorandum of association

► What Is Considered A Necessity?

Necessaries as “goods suitable to the condition in life of such infant or minor or other person, and to his actual requirements at the time of the sale and delivery.” For instance, the purchase of food and shelter. What is considered a necessity or luxury depends on the facts of the case itself.

► Undue Influence And Contracts:

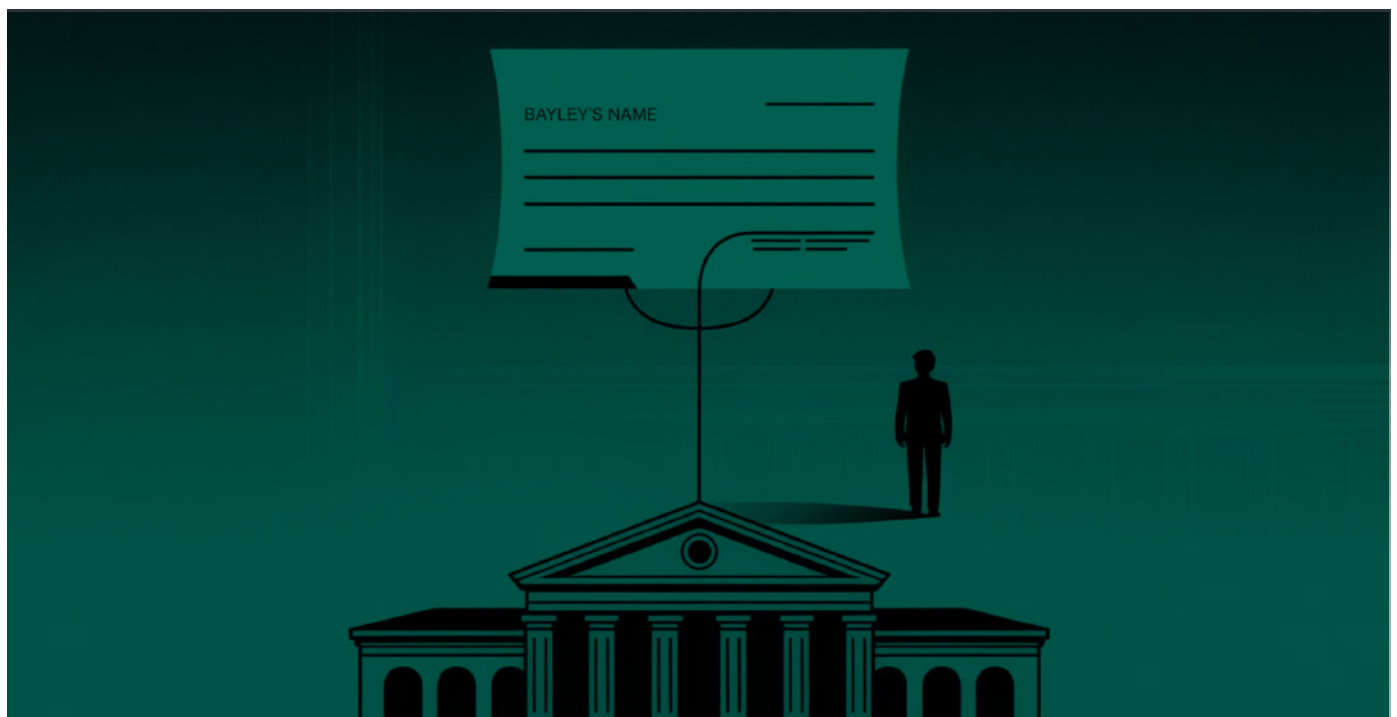
The law protects people who are subject to undue influence. Both parties must enter the contract honestly and freely. The parties must agree to the contract without undue influence for it to be legally binding.

There are two categories of undue influence:

- (1) Actual undue influence,
- (2) Presumed undue influence.

In the instance of a successful claim, the transaction will be considered void. Examples of relationships that are presumed of undue influence are,

- a) Religious associations - devotee,
- b) Trustees -beneficiaries,
- c) Doctor – patient,
- d) Solicitor – client
- e) Parent – child



► Duress And Contracts

Sometimes parties are pressured or forced into entering contracts. When investigating a claim for duress, the courts examine causation, the nature of the force/pressure and who caused the force/pressure. In the instance of a successful duress claim, the court will order that the agreement is put to the side.

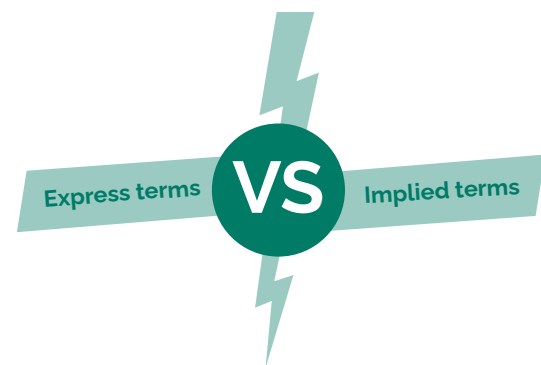
7. Terms

► Express terms

Express terms are expressly stated in a contract.

► Implied terms

An implied term is implied by the law or implied by the parties themselves.



► Exemption Clauses

Exemption clauses remove liability of either party to the contract. In contrast, a limitation clause limits the parties liability. Parties can incorporate exclusion clauses by the following ways.

1. Signature
2. Notice
3. Previous course of dealing



► Misrepresentation

A false statement of fact made by one party to induce another into a contract. Generally, damages, court orders and rescission are the remedies available for misrepresentation of contract.



► Mistake

1. Common mistake:

This happens when parties share the same mistaken perception as to an issue of fact.

2. Mutual mistake:

This is where the parties are mistaken but not about the same thing. They are at cross purposes.

3. Unilateral mistake:

This is where only one of the parties are mistaken.



8. Termination And Remedies

► How Is A Contract Terminated?

1. Performance:

Each party does what they are contracted to do and once performance is complete, parties can get rid of their obligations.

2. Frustration:

Some foreseen event occurs which makes it impossible to carry out the contract for instance the death of one party or bankruptcy.

