





What Is A Contract?

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.

Note: People are known as offeror/offeree; vendor/purchaser; promisor/promise in Contract law.

What Are The Requirements For A Legally Binding Contract?

1. Offer
2. Acceptance
3. Intention
4. Capacity
5. Legality Of Form
6. Legality Of Purpose

1. OFFER AND ACCEPTANCE:

What Is An Offer?

An element of a contract where one party sets out what they are willing to give to the other party as part of their agreement. An offer can be made in writing or orally communicated. The offer must be communicated clearly, intended and must be agreed upon by both parties.

What Is An Invitation To Treat?

An invitation to treat is a statement communicated without intending a contract to result for instance, the display of clothes in a shop. Below are examples of what the law considers an invitation to treat.



Advertisements



Display Of Goods



Auctions



Tenders



How Can An Offer Be Terminated?



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- Revocation is when an offer is withdrawn. Generally, all offers can be withdrawn before accepted and properly communicated.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

<p>Family Arrangements:</p> 	<p>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.</p>
<p>Commercial Arrangements:</p> 	<p>There is a presumption that commercial agreements are intended to become legally binding. However, there are times where parties depart from this rule.</p>
<p>Religious Arrangements:</p> 	<p>Religious arrangements are not intended to create legal relations.</p>



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

3. Agreement

Each party agrees to end the contract

4. Breach

One party breaks a condition of the contract

5. Notice:

Certain contracts can be terminated by giving a notice period for instance an employment contract.

Why Would Breaking A Condition End A Contract?

A condition is a clause in a contract that is so important that breaking this clause is the same as breaking the contract. A warranty is a less important clause. Breaking a warranty does not break the contract itself. In the situation of a broken warranty, damages can be sought for.

What Are The Remedies For Breach Of Contract?

1. Sue for damages:

Damages allow for either party to be in the position they would be if the contract wasn't adhered to.

2. Rescind the contract

3. **Specific performance:** you can ask the court to instruct the other party to go through with the contract as agreed.

4. Injunction:

This stops either party from acting regarding the contract