

Basics of Contract Law

Primary Sources:

Monash University Law Department (Australia)

Legal Information Institute (United States)

What We'll Discuss

- Why Contracts are Important
- The Different Types of Contracts
- The Essential Elements of a Legal Contract
- Examine a standard form of contract for opera

Why Are Contracts Important?

1. They outline everything that you have agreed to do

You can know with certainty what everyone is supposed to do so that everything can go right

2. They outline what happens when things go wrong

You can know what to do in the event that things don't work out as planned

Why Are Contracts Important?

1. They outline everything that you have agreed to do

You can know with certainty what everyone is supposed to do so that everything can go right

It's really important that you know what you're getting yourself in for when you enter into a legally-binding agreement with someone. The Contract lists everything that you need to abide by and provide, and what the other party will do in return.

Why Are Contracts Important?

2. They outline what happens when things go wrong

You can know what to do in the event that things don't work out as planned

This is even more important.

What happens if someone doesn't do what they've agreed to do? Contracts should cover the steps to be taken in the event of things not going right so that you have some demonstrable protection if things go pear-shaped. **You should insist on this.**

Greg's Hot Tip with Contracts

CONTRACTS CAN BE BROKEN!!

There is sometimes a view that because you have signed something, you're bound to that forever and if you break it there will be consequences.

There will only be consequences to breaking a contract if those consequences are included as part of the contract.

This goes for both of the people signing the contract...

Greg's Hot Tip with Contracts

CONTRACTS CAN BE BROKEN!!

- If you think
- a) there's a chance the other person might not hold up their end of the bargain
 - b) there's a chance that you might not want to honour the contract (say, if something better comes along)

make sure you read the contract fully and understand what the consequences would be. You can always ask to amend them.

Greg's Hot Tip with Contracts

CONTRACTS CAN BE BROKEN!!

Of course, the consequences of breaking a contract might go beyond what is legally enforceable ...

The company you break the contract with may be disinclined to engage you again, depending on the timeliness and manner of the breach (eg. if you pull out of something with plenty of notice and recommend an equivalent replacement, there are unlikely to be hard feelings).

Terms Used With Contracts

A Valid Contract

is an agreement that is legally binding and whose terms can be enforced by a civil court

A Voidable Contract

is an agreement that is legally binding but which can be cancelled by one of the parties under certain circumstances

A Void Contract

is an agreement that cannot be legally enforced

Terms Used With Contracts

An Executed Contract

is an agreement that has reached its end after everyone did everything they said would

An Executory Contract

is an agreement that is currently active, and parties haven't yet done everything they've agreed to do

Types of Contracts

Express Contracts

Terms set out in a clear-cut way, either verbally or in writing

Implied Contracts

Terms established by observing patterns of behaviour

Quasi-Contracts

Terms aren't established but equity demands compensation

Types of Contracts

Express Contracts

Agreements that:

- have defined terms of action
- have defined terms of compensation

I have a signed contract with the Opera Company to sing a specific role on specific dates for this specific fee. If they don't live up to their end of the bargain, I can sue them

Types of Contracts

Implied Contracts

Agreements that:

- have no formally stated terms
- can be construed from observing patterns

I have been paid \$50 to sing at church every Sunday for a year. Last Sunday, I was paid \$20 for my work since the new Music Director thinks “that’s what soloists should be paid now”. Even though I don’t have a contract, the pattern of behaviour in the past clearly suggests that we have an implied contract that I sing for \$50, and so I should get my extra \$30 for last Sunday’s work.

Types of Contracts

Quasi-Contract

Non-Agreements that:

- have no formally stated terms
- no-one had intended entering into

My car breaks down in the middle of a storm on the way to an audition, and a mechanic passing by gets out and fixes my car so I can go on my way. The next day, he sends me an invoice. Even though we never entered into an agreement, courts of equity will use the doctrine of quasi-contract to force me to pay, because I have benefited from the mechanic who has not been compensated.

What Is A Contract?

A contract is: an agreement
 freely entered into
 between 2 or more parties
 that creates an obligation
 which is not illegal
 in exchange for something

A contract: does not need to be in writing to be enforceable

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An Agreement

A contract must be: **agreed by everyone involved**

This is shown by *mutual assent* to the terms of the contract by all of the parties who will have an obligation under the agreement

Your agent can only agree to things on your behalf if

1. you have given them **express** permission to do so; or
you have given them **blanket** permission to do so; **and**
2. you have indicated their **apparent authority**

An Agreement

Express Permission

you have **indicated**
in a **provable** manner
that in this **specific instance**
your agent can agree on your behalf

OR

Blanket Permission

you have **indicated**
in a **provable** manner
that for **all instances like this**
your agent can agree on your behalf

An Agreement

The Doctrine of Apparent Authority

An agent is empowered to bind their principal in a transaction with a third party when the principal has made a manifestation to the third party that the agent is authorized to engage in the particular transaction, although the principal has not actually delegated this authority to the agent

If you **tell the Company** with whom you are signing a contract that **your agent can agree** to things on your behalf, **your agent can agree** to things **without checking** with you first.

An Agreement

The Four Corners Rule

Doctrine that states: the complete totality of an agreement is contained within the four corners of the paper the contract is written on

Which means that: If you later change the agreement verbally or via email and do not indicate that change on the original contract, a court will not consider the change if there is a dispute

An Agreement

The Four Corners Rule

So if you need to: change an aspect of the contract (*NAs*)
amend a section (*because of error*)
add a section (*to account for new things*)
remove a section (*because it doesn't apply*)

You must ask for: the original contract to be amended (*and any changes initialled or signed, and dated*)

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Freely Entered Into

There must be an **Offer** of a good, service, action, inaction, or money

There must be an **Acceptance** of that offer

All parties agreeing must have the **Capacity** to make the agreement

Freely Entered Into – An Offer

There are 2 parts to an **Offer**

- **The Expression**

You must articulate that you all agree to enter into a binding agreement where one party will provide a good or service in exchange for payment in the form of money (*engagement*), or another good or service (*barter*)

- **The Intention**

You must articulate that you all agree that what you decide is a serious agreement (*legally binding*), and that none of you are entering into the discussion without the intent to live up to your side of the bargain (*good faith*).

Freely Entered Into – An Acceptance

There are 2 parts to an **Acceptance**

- **A “Meeting of the Minds”**

A reasonable person with the range of knowledge that the parties to the contract possess would look at the agreement and conclude that everyone knew what they were getting themselves into, and had agreed to it (***reasonable man test***)

- **An Assent**

There is clear and obvious evidence that the discussion has been settled and the parties have indicated their agreement

Freely Entered Into – Capacity

All the people who enter into an agreement must have the **Capacity** to agree to it

Certain classes of people **cannot** enter into agreements

1. **Minors** (*anyone under the age of 18*)
2. **People Not of Sound Mind** (*the insane, the mentally infirm*)
3. **People Under the Influence of a Drug** (*including alcohol*)
4. **The Bankrupt** (*in specific circumstances*)
5. **An Enemy Alien** (*you can't do business with a declared enemy*)

Freely Entered Into – Capacity

Minors

If you sign a contract with a minor and there is a dispute:

the Minor can elect either to honour the deal or void the contract

If you sign a contract with someone under 18, and when they turn 18 they haven't done anything to void the contract:

the contract can be legally enforced as normal

(some American jurisdictions require the contract to extend for a certain amount of time past the 18th birthday)

Freely Entered Into – Capacity

People Not of Sound Mind

1. **Mental Capacity Test**

Does the person entering into the agreement have the ability to understand the meaning and effect of the words contained in the agreement?

2. **Cognitive Test (aka Affective Test in some parts of the USA)**

Did one party know that the other party was unable to act in a reasonable manner, but entered into the agreement anyway?

3. **Motivational Test**

Was there a factor that might have impacted one party's ability to judge whether or not to enter the agreement (eg. bipolar disorder)?

Freely Entered Into – Capacity

People Affected by Drugs (including alcohol)

- In America** If you have become voluntarily intoxicated, that is not a reason to avoid your contractual obligations
- unless** you are so intoxicated that you would fail the Mental Capacity Test (ie. are unable to understand the nature and consequences of the agreement)
- In ROtW** If you become voluntarily intoxicated, and the other person uses that to their advantage, the contract may be declared void by the intoxicated party

Freely Entered Into – Capacity

The Bankrupt

In America A **Chapter 11 Bankruptcy** allows the company to continue trading as it engages outside consultants to re-organise the company, which means that they can continue to offer contracts even while technically ‘bankrupt’

the company can elect either to affirm or reject your existing contract as part of its re-organisation

A **Chapter 7 Bankruptcy** means that the company is being liquidated and will be forbidden to offer new contracts

the company will not honour your contract and, if you are owed any money, you will be added to the list of creditors

Freely Entered Into – Capacity

An Enemy Alien

It is not a test of nationality, but a question of where you live

If you sign a contract with a person or company based in a country which subsequently becomes subject to a formal declaration of war, the contract you hold with them will immediately become void

In the United States, seeking to make a contract with a company or person which is in a country subject to a declaration of war is an offence under the Trading With the Enemy Act.

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Between 2 or More Parties

The parties to a contract

- must be clearly identified

If an individual

- must be named
- often further identified by residential address

Between 2 or More Parties

If a corporate entity

- the person signing must have the legal authority to enter into contracts on behalf of the corporation
- the agreement is then with the corporation, not with the individual signing the agreement on behalf of the corporation

If you're signing a contract with a small company or start-up, it may be better to have them sign as individuals rather than as representatives of the company so you have a clear path to remedy

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Obligation

The thing that you are agreeing to do must be:

- something possible to achieve
- something that an ordinary person could reasonably expect you to be able to do or not do

Reasons to release everyone from their obligations:

1. Impossibility of Performance
2. *Force majeure* (Act of God)

Obligation

Impossibility of Performance

If something unexpected occurs that removes the basis of the agreement completely, the contract may be rendered void

If you agree to perform at the Opera House, and before you arrive it burns down, the contract becomes unenforceable.

You can't then sue them for the money you're owed, because it's not their fault that the Opera House no longer exists.

Obligation

Force Majeure (Act of God)

If something extraordinary and unexpected occurs that prevents one of the parties from completing their side of the bargain, the contract will become void, unless:

- there is some element of negligence or malfeasance that one party has engaged in that would have affected their ability to hold up their end of the bargain
- the unexpected event is a result of the normal and natural consequences of external forces

cancelling because of COVID = force majeure

cancelling because of rain = normal and natural forces

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Not Illegal

A contract will not be enforceable if:

- it is requiring you to do something that is not allowed under State or Federal laws or ordinances
- it does not adhere to legislated fair dealing principles or public policy

It is your responsibility to make sure that what you are signing up for doesn't fall foul of any laws, regulations or ordinances.

"Ignorance of the law is no excuse"

Not Illegal

You also need to make sure that you don't fall foul of the Doctrine of Clean Hands when trying to seek a remedy

Doctrine of Clean Hands

Doctrine that states if you come to a court to get help, you must not yourself have acted in any way with bad faith or unethically

If you have not been paid what you're owed for a gig, and you unethically try to inflate your expenses in order to recover some of that unpaid money, you will not be helped by the court later on

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In Exchange for Something

A key component of a contract is that you are agreeing to provide a good or service in exchange for **Consideration**.

Consideration can be:

- money (a contract of engagement)
- other goods or services (a contract of barter)

Important to Note a contract of ***engagement*** is not the same as a contract of ***employment***

In Exchange for Something

Consideration **must** be:

- something considered of value to both parties
- something considered of equitable value to the task

Consideration **can** be:

- doing something you don't have to do
If you paint my house, I'll fix your car
- not doing something you have the right to do
If you give me your car, I'll forgive your debt

In Exchange for Something

Consideration **cannot** be:

- something you were already obliged to do

A police officer can't claim the reward

- something intended as a gift

If someone promises to make a gift to you and then changes their mind, you can't sue them

- something you have already done

Since I paid you more than everyone else last time, you can sing for free this time

In Exchange for Something

Consideration can **never** be:

- something that forces physical proximity between people, or relates to intimate or sexual proximity

A court will never enforce a contract that would require one party to provide physical proximity (this can include performing)

If you pay for a lap dance but don't receive one, you can get your money back but you can't elect instead to receive the lap dance ... same with being forced to perform a sex scene in a play

In Exchange for Something

If you get asked to do something more than you originally agreed to do, the other party must provide **Additional Consideration** to cover that.

The consideration negotiated in the contract was considered fair by everyone as compensation for what you originally agreed, not for any additional duties that are introduced later.

Always insist on a 1:1 ratio between additional work and additional consideration (each extra thing requires extra pay)

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Doesn't Need to Be In Writing

So long as an agreement meets all the other criteria, a **verbal agreement** carries exactly the same amount of weight as a written contract

The only exceptions to this rule (in the USA) are:

- when you're buying a house
- when you're buying a car

Doesn't Need to Be In Writing (But Should Be)

Verbal Agreements can be difficult to prove because:

- if you both disagree on the exact terms, it's hard to know who's right
- if neither of you recorded the conversation, it can be difficult to prove
- if something comes up that wasn't discussed, it can be tricky to identify the intent of the agreement

Doesn't Need to Be In Writing (But Should Be)

People can also feel “put on the spot” in a verbal communication, which might lead to feeling pressured to make an agreement (which impacts **Freely Entering Into a Contract**)

The safest course of action is to always have a written contract

Once a written contract exists, **it supersedes anything you agreed verbally**, so make sure the written agreement covers everything you discussed in person (and leaves out anything you may have discussed that you don't feel comfortable agreeing to)

Reading your contract

There may be terms that are difficult to understand, especially if the contract is from a different country.

International contracts will almost always say which country's rules will apply if there's a dispute...

Reading your contract

You're basically looking for two key bits of information:

What happens when the contract goes right?

What happens when the contract goes wrong?