IM LAWYERS



Back to basics – what is a contract?

Date: Sunday November 12, 2023

Contracts are used daily in all parts of everyday life, from business to buying groceries, and can come in many shapes and sizes. When we strip it all back down though, what is a contract? The reality is that the laws on contracts can be very complex. However, at their core, most contracts have a few essential components.

What is a contract, and how can it be legally enforceable?

In its most basic form, a contract is an agreement between two or more parties. For that agreement to be legally enforceable though, there are a few things that must occur:

Offer - one (or more) parties ('the offeror') must make an offer to the other party (or parties);

Acceptance - the other party (or parties) ('the offeree') must accept the offer;

Consideration - payment of consideration (something of value – don't worry, we'll discuss this below) between the offeror and the offeree;

Intention – both parties must have the intention to enter into a legally binding contract;

Certainty – the terms of agreement must be certain;

Capacity – both parties must have capacity to enter into a legally binding contract.

Some specific types of contracts will have other requirements imposed on them by law in addition to the above in order to be enforceable (e.g. contracts that deal with the sale of land). It's important that you understand whether there are any specific requirements or formalities required for the type of contract you are dealing with. If you're unsure about any aspects of a contract you are entering into, you should get legal advice on your own specific circumstances from a lawyer experienced in contracts law.

Call our free advice line: 1800 001 339

There are several rules within each of the six key elements referred to above and several factors that need to be considered. But generally, those elements are a contract in its simplest form.

Determining 'consideration'

Essentially, consideration is something of value. This could include goods, money or even a promise to do or not do something. The passing of consideration can essentially be seen as the thing that sets a contractual agreement apart from a gift.

Examples of consideration when entering into a contract

Jenny enjoys woodworking in her spare time. She specialises in making cheeseboards. She uses the cheeseboards she makes in a few different ways.

Jenny sells some of the cheeseboards at a local market. When she is selling these items, there is consideration passing between Jenny and her customers because:

Jenny is giving the customers the cheeseboard/s; and

her customers are paying her money.

For some cheeseboards, Jenny gives them to her neighbour Sarah, who in exchange mows Jenny's lawns. In this situation, there is consideration passing between Jenny and Sarah because:

Jenny is giving Sarah the cheeseboard/s; and

Sarah is promising to (and in fact does) mow Jenny's lawn.

For some other cheeseboards, though, Jenny gives them to her family and friends as presents on special occasions. In that situation, there is no consideration being passed back to Jenny from her family and friends as they are not paying for it or giving something to Jenny in return.

***** Please note the above scenarios may not constitute a legally enforceable contract – they are merely being used as an example of consideration passing between various parties.

Unfair contract terms

In some situations, the law prevents the contract from including unfair contract terms. You can read more about this in our earlier blog, "Changes to contract laws will make unfair contract terms illegal from November 2023".

If you are unsure if your contract terms are unfair or not, contact us to get specialised legal advice.

Call our free advice line: 1800 001 339

Do contracts need to be in writing to ensure they are legally enforceable?

No.

Verbal agreements (provided they would otherwise meet all the requirements of a legally enforceable contract) can also be considered legally enforceable unless the law specifically requires that the contract be in writing for that type of contract (for example, sale/purchase of land contracts among others).

That being said, the contract is much harder to prove if it is not written down. Therefore, if something goes wrong, it can be harder to seek a remedy for any breach of the contract.

For that reason, it is worthwhile seeking legal advice to ensure your contract can be prepared to protect you and your interests in case a breach does occur.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.