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## Essential features of a valid contract

Contracts come in all shapes and sizes. Some are verbal, some are written. Some are formal, some informal. The use of the internet and electronic technology is also becoming increasingly common in the context of forming contractual relationships. It is, therefore, important to understand the essential features which make a contract valid, binding, and enforceable.

### What is a contract?

A contract is an agreement between two or more parties that is intended to be enforceable.

A contract may be created:

- ✦ Orally;
- ✦ In writing (including by electronic means or through a website);
- ✦ By inference or conduct; or
- ✦ By a combination of all or any of the above.

### Essential elements?

For a binding contract to be formed there must be:

- ✦ An offer which is *accepted* and for which valid *consideration* is given;
- ✦ An *intention* to create a legal relationship; and
- ✦ *Certainty* of terms.

Special rules and principles may apply to contracts that concern specific subject matter, such as employment contracts, the sale of land, and the sale of goods.

### The offer

- ✦ Must be communicated.
- ✦ Can be revoked at any time prior to acceptance.

- ✦ Must be distinguished from an invitation to treat which is where a party communicates that it is prepared to enter negotiations with a view to forming a contract.

### The acceptance

- ✦ The acceptance:
- ✦ Must be communicated.
- ✦ Must be of the offer made, otherwise it could be a 'counter-offer'.
- ✦ If posted, occurs on the date posted, if by phone, fax, or email, it occurs when received.

### Consideration

- ✦ Must be 'valuable'. Something must be supplied in return for the promise made by the offeror, eg money.
- ✦ Must not be unlawful or gratuitous.
- ✦ Must not be something already done or suffered (past consideration).

### Intention

- ✦ The parties must intend to be bound by the contract. However, performance of the contract may be conditional on other matters occurring.

### Certainty

- ✦ There must be certainty as to the parties, subject matter, and price. However, a contract that leaves terms to be determined

by a third party will not be invalid for uncertainty.

- ✦ Many contracts require parties to agree to standard terms and conditions. Make sure you read the fine print so that you understand what you are signing up to.

## Proving a contract

It may be necessary at some point to prove the existence of the contract or explain or defend its actions before a court or some other forum.

An oral contract may be difficult to prove, for example, if the parties to the contract disagree on its terms or whether it was ever formed.

A paper trail is important to proving a written or electronic contract. Care should be taken not to destroy relevant written evidence of a contract.

## Enforceability

Although a contract may have all of the essential elements, it may not be enforceable because of some other issue, such as:

- ✦ Lack of capacity of one of the parties (eg one of the parties is a child).
- ✦ Where a mistake is made about the nature of the contract. Relief may be granted under the Contractual Mistakes Act 1977 where the mistake results in a substantially unequal exchange of values.
- ✦ Where there has been misrepresentation of a particular fact or facts inducing a person to enter into the contract. Under the common law and the Contractual Remedies Act 1979 there may be a right to cancel the contract and/or claim damages.
- ✦ Where a contract is illegal or immoral or is effected by duress or undue influence of one party over another.
- ✦ Where a contract unduly restrains a person in their trade.

## Remedies for breach

Remedies for wrongful failure by a party to perform their obligations under a contract may include:

- ✦ Damages;
- ✦ Cancellation of contract; or
- ✦ Specific performance.

## Damages

Generally, damages will be awarded if the loss suffered:

- ✦ Was caused by the breach; and
- ✦ Is not too remote, ie the loss was reasonably foreseeable.

The amount recoverable is usually the amount necessary to put the party not in breach in the same position as if the contract had been performed.

## Cancellation

In addition to damages, common law and the Contractual Remedies Act 1979 may allow a party to cancel or affirm a contract where the breach is due to a misrepresentation.

## Specific performance

This is usually granted for breach of contracts for the sale of land or unique personal property.

It is not usually granted if damages are considered an adequate remedy; if they are against or for an infant; or to enforce a contract for personal services.

## Statute of limitations

The limitation period for all simple contracts is 6 years from the time the cause of action, eg breach, arises.

## Finally

Never sign a contract unless you are sure you understand it. Generally, you will not be able to get out of it later. If there are any terms you are unsure about get legal advice.

## See Us First

- ✦ Before making any financial decisions.

## Disclaimer

Important: This is not advice. Clients should not act solely on the basis of the material contained in this fact sheet. Items herein are general comments only and do not constitute or convey advice per se. Changes in legislation may occur quickly. We therefore recommend that our formal advice be sought before acting in any of the areas. We believe the contents to be true and accurate as at the date of writing but can give no assurances or warranty regarding the accuracy, currency or applicability of any of the contents. This fact sheet is made available to our clients as a helpful guide for their private information. Therefore it should be regarded as confidential and should not be made available to any person without our prior approval.

- ✦ To assist you in meeting the necessary legal or financial requirements.
- ✦ If you consider that any of the issues contained in this fact sheet may affect you.

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