



The Nature of Contract Law

DEFINITION

A contract is a voluntary agreement, whether verbal or in writing, between two or more parties, that creates a legal relationship and is enforceable by law.

ELEMENTS OF A CONTRACT

A contract is an intention to create legal relations between parties, and must include certain elements in order to meet the criteria of a contract. Along with the intention of parties to create a legal relationship, a contract **MUST** include:

- offer
- acceptance
- consideration

Offer

an offer is a specific serious proposal, that, if accepted, leads to a contract.

Acceptance

acceptance of an offer must include three aspects:

- it must be communicated clearly or indicated by action
- it must occur in a fashion specified in the offer
- it must be unconditional, without changes.

Consideration

consideration must include something of value given and received by each party.



Did you know?

Under the common law doctrine of privity, only parties to a contract can enforce a term or condition of a contract.

Under the Statute of Frauds, R.S.O. 1990, c. S.19, certain types of contracts must be in writing to be enforceable: contracts for sale of land; contracts whereby one promises to pay the debt of another; promise of an executor to pay the debts of a deceased; promises to pay or complete contracts entered into by a minor.

http://www.e-laws.gov.on.ca/home_E.asp?lang=en

SECONDARY ELEMENTS

When you look at a contract, you can usually see the primary elements of offer, acceptance and consideration. The secondary elements of consent, capacity and lawful purpose must also be present, but they are not always easy to see.

Genuine Consent

According to the common law, consent to a contract must be genuine. The common law calls this *consensus ad diem*, or a meeting of the minds whereby parties to a contract have a mutual understanding of the terms of a contract, and intend to be bound by the terms. The contract must not occur under any of the following circumstances:

- misrepresentation
- mistake
- duress
- undue influence.

When genuine consent is proven to be absent from a contract, the court may rescind the contract.

Capacity to Contract

According to common law, not all individuals are legally entitled to enter into contractual agreements. A diminished capacity to contract is applied to minors (those below statutory age of majority, which in Ontario is 18 years of age), persons with mental disability and intoxicated persons. The intent is to protect individuals who may not have the ability to make decisions in their own best interest.

Capacity to contract requires an understanding of the nature and effect of actions, as well as the legal ability to form a contract on one's own behalf.

Lawful Purpose



An enforceable contract must be made for a lawful, or legal purpose. The consideration given must be legal as well. Contracts for an illegal purpose or for illegal consideration are void.

Misrepresentation

When a statement about a material fact, or key piece of information relating to a contract, is communicated creating a false impression, misrepresentation has occurred and genuine consent has not occurred. Misrepresentation may be innocent and unintended, or may be fraudulent and intentional.

Mistake

A contract may be considered invalid in the event that any of three types of mistake occur:

- common mistake, whereby both parties to a contract are in error about the same key fact relating to the contract
- mutual mistake, whereby both parties to a contract have different understanding of the material subject of the contract
- unilateral mistake, whereby one party to a contract makes a mistake which will unfairly advantage the other party to a contract.

Duress or Undue Influence

A contract may be deemed lacking genuine consent, and be void, if threats or violence has influenced a party to the contract, or if a party to the contract has been in any other way improperly pressured into the terms of a contract.



Answer the following questions:

1. Why are contracts needed in society?

2. How might the law of contract be affected by changes in technology?

3. What is the purpose of the Statute of Frauds?

Choose A or B

A. Find and examine common consumer contracts, such as the type used by a video rental outlet, a record club, movie theatre, credit card promotion, or other contract and identify each of the three initial elements of the contract, and any additional conditions included in the contract.

OR

B. Assess common consumer contracts to determine whose interests are being protected in the contract, the consumer or the retailer.



Hey, you need to know this!

Look up the definition of the legal term "invitation to treat". What is it? How is a contract formed after someone acts upon an "invitation to treat"?