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# WHAT IS A CONTRACT?

A contract is a legally binding agreement between two or more persons. For example, if you purchase any goods; if you buy a house; if you engage a builder to carry out work on your house; if you enter into a credit sale or other credit agreement; if you order goods or machinery from a manufacturer, these are all types of contracts.

The law of contracts is vital to the law which affects consumers. It is a complex area and is governed by both the general law that is laws which have evolved from decisions made over the years by judges in relation to contract disputes and secondly, legislation or statutory law - laws introduced by government. Examples of these types of statutory laws are the Sale of Goods Act, the Trade Practices Act, the Fair Trading Act, the credit act and the contract review act.

## **Who can make a contract?**

In New South Wales a person is able to make a contract when he or she reaches 18 years of age, however, there may be circumstances when a person which is less than 18 will be bound by a contract into which he or she has entered. Basically it depends on the type if contract and the degree of understanding that the type of person had about the contract.

In certain circumstances a person who is mentally ill or intellectually disabled at the time may not be bound by a contract entered into.

## **What makes a contract?**

A contract involves certain basic elements, namely:

- ⇒ Agreement (arising from an offer and an acceptance)
- ⇒ Consideration – an exchange of some benefit or something of value by the parties. For example a party pays a sum of money for goods supplied by another party, or money is paid for work carried out by the other party.
- ⇒ An intention to enter into legal relations – that is, the parties intended to enter into a legally binding agreement (although this is often not specifically stated this is usually implied)
- ⇒ The Parties must also have the legal capacity to enter into a contract, for example, as discussed above, in relation to age and mental capacity.

## **Who decides the terms of a contract ?**

Generally the terms of the contract are for the parties to decide. However, the law may “imply” terms into the contract.

For example there is an implied term that goods sold for a particular purpose are able to be used for a particular purpose – for example that a machine which is sold as a food processor does in fact process food. Under the New South Wales Contracts Review Act the terms of a contract may be altered or disregarded if they are unjust or result from duress or unequal bargaining power. However, the courts do not try to draw up contracts for parties.

## **What is an unjust contract**

The Contracts Review Act describes an unjust contract as one that is unconscionable, harsh or oppressive. It applies to contracts in connection with lands goods or services for personal use but not if the contract was entered into by you in the course of trade, business or profession. For instance an unjust contract could be one where one party has been tricked or pressured by the other, or where a person has been encouraged to enter a contract by another party who was aware of the persons inability to understand the terms of the contract.

Some of the things a court will look at when deciding if a contract is unjust or harsh include unequal bargaining positions of the parties; unreasonable or difficult to comply with conditions in the contract the opportunity the parties had to obtain independent legal advice.

## **Does a contract have to be in writing?**

Generally contracts do not have to be in writing, but there are particular cases when the contract must be in writing for it to be binding, for example the sale of a house, guarantees and credit sale or other credit arrangements.

However it is usually better to have the details of an agreement and variation in writing so both parties have a record of what has been agreed and are aware of what they are obliged to do, particularly when money is involved.

## **Are you bound by a clause you did not read?**

If you sign a written contract then generally you are bound by all its terms even if you did not read or understand them. There are various types of contracts which you may come across everyday like which do not require your signature, for example a parking ticket or a dry cleaning docket which has clauses printed on the back of it. Generally the rule is that you are bound by the clauses if you have read them or if you knew they were there but did not bother to read them, or if the other person took reasonable steps to draw them to your attention.

It is therefore extremely important that you read all terms of a contract before you enter into it, You should not sign any document until you are fully aware of what its terms and conditions are and what they mean.

## What happens if the terms of a contract are broken?

Once you make a contract you will be committing a breach if you do not comply with its terms, or if you change your mind and decide not to go ahead with the contract. If a party breaches a contract there are a number of remedies available including:

- ⇒ Damages ( a sum of money to compensate the innocent party for any loss suffered);
- ⇒ A court order requiring the party who has breached the contract to carry out his or her obligations;
- ⇒ An order from the court forbidding the party from breaching the contract; and
- ⇒ An order from the court declaring that the contract is at end and requiring the party who has breached the contract to put the innocent party in the position he or she was before the contract was entered into.

The type of remedy and its availability would depend very much on the type of contracts and the type of breach.



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