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What is Contract Law?

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Imagine a world without legally enforceable contracts. Could such a world function? Well, even if it could, commercial life in particular would be much less certain. Let's say that you ordered a book from a website. You gave the seller your credit card details, they charged the agreed amount to the account, but did not send you the book. In a world without legally enforceable contracts there would perhaps be little you could do about it.

Fortunately, there is no doubt that Australian law (just like the law elsewhere) recognises the importance of legally enforceable contracts. But how are such contracts formed? Can anyone enter into a contract? How do we know the terms of a contract? Are all contracts treated equally? Are there ways to get out of a contract? How does a contract come to an end?

Let's start by discussing how a contract is formed. Most people enter into contracts on a daily basis, for example when buying a bus ticket, when buying lunch and even when buying a drink from a vending machine. Even though most people would not go to court if the bus did not take you to your destination, the lunch was uneatable or the drink was undrinkable, these are still examples of legally enforceable contracts.

There are certain requirements for a contract to be formed. First of all, there must obviously be at least two parties to a contract – so if you promise yourself to lose 10kg before the beach season, there is no contract being formed. Second, both parties must intend to enter into the contract and the terms of the contract must be sufficiently clear. This ensures that contracts are not entered into accidentally, for example, due to miscommunication. Third, both parties must have legal capacity to enter into the contract. This requirement is important because not every member of society is equipped to look after their interests. For example, the law imposes restrictions on the circumstances in which children and mentally disabled people can enter into contracts. Fourth, due to its origins, Australian law includes a quirky requirement that, as a general rule, a contract is only legally enforceable if both parties provide something of value (consideration). That means that if one person promises to give a car to the other person, that promise does not amount to a legally enforceable contract, because the person who is to receive the car is not giving anything in return. Finally, there must typically be what is referred to as an offer and an acceptance. That means that one person must have indicated to the other that she/he wants to enter into the contract (the offer), and the other person must have agreed on the terms stated in the offer (the acceptance).

Summarising this, it could be said that:

A legally enforceable contract is formed if the party

making an offer, with the intention that it be an offer, receives the acceptance of that offer from a party intending to make an acceptance and being in a position to make an acceptance, and the following requirements are met: (a) the contract is for consideration by both parties; (b) both parties have capacity to enter into a legally enforceable contract of the kind entered into; and (c) the terms of the contract are certain.

Above, I mentioned that the terms of the contract must be sufficiently clear for a contract to be formed. But how do we determine the terms of a contract? Sometimes, the parties to a contract take great care to write down exactly everything that their contract is meant to achieve. They may include things such as from when the contract takes effect, when and how it comes to an end, what goods or services should be provided under the contract, how much should be paid for the goods or services provided under the contract, when payment should be made, what is to happen if either party does not meet its obligations under the contract and so on – this list can go on forever.

Where the parties have made clear the terms of the contract, we can speak of express terms of the contract. However, often the parties are not so careful to state the terms. For example, if you buy a car from a friend, you may just decide on the price, ignoring things such as when the car should be delivered, how much petrol should be in the tank at the time of delivery and whether a spare tyre should be included in the deal. In some such situations, terms can be incorporated into the contract, for example, based on what it objectively seems the parties agreed upon. But terms can also be included into a contract on many other grounds. For example, terms may be implied into a contract either because the law requires it, or due to the facts of the case.

Problems can arise even where the parties agree upon which terms are part of the contract. This is because, sometimes people have different views about what a particular contractual term means, that is, how a particular term is to be interpreted.

In some situations, it would be unfair to hold a party to be bound by a contract that party has entered into. For example, if someone threatens to kill you if you do not sign a particular contract, it would of course be wrong for the law to uphold that contract. A similar reasoning can be applied where a contract is created by a serious mistake, where a contract is a result of a misrepresentation or of misleading or deceptive conduct, and where a contract comes about through conduct that the law regards as unconscionable.

Most contracts come to an end due to the fact that both parties have performed their obligations under the contract. For example, a contract where A sells a bicycle to B for \$100, may come to an end when B receives the bicycle and A receives the \$100 – the contract has achieved what it set out to do. But a contract can also come to an end in a number of other ways. For example, a contract may come to an end if the object of the contract is destroyed (frustration), because the parties agree that the contract is to be ended or because one party acts in breach of the contract.

Finally, it is worth thinking about who benefits from having a solid understanding of contract law. The obvious answer is that, since we all enter into contracts, we all should understand contract law. In other words, contract law has a very practical use for us all. This distinguishes contract law from, for example, criminal law (most of us do not commit

crimes) and torts law (most of us do not commit torts, and hopefully most of us avoid being victims of torts).

Contract law is also important for the reason that it is the foundation for, or at least a key component of, many other more specialised areas of law. For example, anyone involved in land law, sports law, commercial law, e-commerce law, international trade law, environmental law, intellectual property law and franchising law will deal with contract law on a daily basis.

Further discussion

A typical day in the life of a teenager includes going to the shops, buying McDonalds, and doing jobs around the house. Looking back over your day so far, are there any contracts entered into when you undertook these activities?

If you did enter into a contract today, did you have the opportunity to negotiate any of the terms of the contract, or was the contract one in which the terms were not able to be negotiated?

In order to enter into a contract, both parties must have legal capacity. What is legal capacity?

Do you have the legal capacity to enter into a contract? Does this capacity include all contracts, or is it confined to only some contracts?