



**Canadian Law 15**

# **Elements of a Contract**

# What is a Contract?

- A **contract** is an agreement between two or more parties that is enforceable by law.
- In order for a **contract** to be considered **valid**, there must be:
  1. Offer and acceptance
  2. Consideration
  3. Capacity
  4. Consent
  5. Lawful purpose

# Offer, Acceptance, Consideration

- In every valid contract, **offer**, **acceptance** and **consideration** are vital aspects.

First: An **offer** is made that contains all of the important and relevant terms of the contract.

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Second: Another party agrees to, or **accepts**, the offer.

Third: After the offer is accepted, something of value (an item or service) is *exchanged* between the parties involved in the contract. This is called **consideration**.

# Capacity, Consent, Lawful Purpose

- In every valid contract, both parties must have the ability, or **capacity**, to understand the terms and nature of the contract.
- Each party involved in the contract must also freely **consent**, or agree, to the terms in the agreement.
- Finally, every contract that is negotiated in Canada must have a **lawful purpose** or objective; in other words, no contract can violate any law.

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# Types of Contracts

- An **express contract** is a legal agreement in which the terms are transparent and known to all the parties involved (e.g. a mortgage with a bank)
- An **implied contract** is a contract that is **implied**, or *inferred* by the parties' conduct. (e.g. at a restaurant, it is *implied* that after eating dinner the customer will pay the bill)
- Most contracts are **under seal** – a formal, written contract that is signed, witnessed, and marked with a seal.
- A **simple contract** is a contract that is *not* under seal (verbal, written, or implied).

# Elements of a Contract

- In an **offer and acceptance**, the party who initiates, or makes the offer, is known as the **offeror**; the party to whom the offer is made is known as the **offeree**.
- In valid contract offers, there must be **serious intent** on the part of the offeror.
- The offer must also contain definite **terms**, or details. Some terms are clearly defined while others are implied.
- When a company or business encourages the purchase of a product or service through advertising, this is an **invitation to treat**. A contract occurs when the product or service has actually been purchased.

# Communicating & Terminating

- Part of an offer includes **communicating** the proposed contract to the **offeree**.
- Common methods include communicating in person, by mail, courier, fax, and e-mail.
- Communication is not successful unless it is *received* by the offeree.
- An offer can be terminated, or cancelled, for various reasons.
- A **lapse** occurs when an offer is not accepted within a period of time and the **offer** ends.
- An offer may also be **revoked**, or cancelled, by the **offeror** before it can be accepted.

# Acceptance

- Similarly, the **offeree** has a responsibility to clearly communicate its **acceptance** of the proposed agreement.
- Offers may be accepted using the same methods of communication (e.g. mail, courier).
- An acceptance must occur before a specified time limit on the offer expires.
- The offeree may decide to make a **counteroffer**, which is a **new offer**, or amendment to the original offer.
- Any counteroffer ends the original offer.

# Consideration

- After an offer is accepted, something of value must be exchanged between the parties who are involved in the contract.
- The actual value or amount exchanged between the two parties (**consideration**) does not matter to the courts. A contract can appear to clearly favour one side over the other.
- A court simply wants to see that there is some degree of exchange or **consideration** involved in the contract.

# Capacity

- A contract will only be considered valid in court if the **offeror** and **offeree** had the **capacity** to understand what they were agreeing to.
- Anyone with a developmental disability, impaired judgment, or who is under the age of majority in Canada (18 or 19 years) does *not* have the capacity to enter into a valid contract.
- A **minor** may enter into a valid contract if it is considered necessary to ensure his or her health and welfare (e.g. an employment contract).
- If a contract is *not* considered to be in the minor's best interests, it is declared **void**.

# Consent

- In general, each party in a contract must freely agree, or **consent**, to the contract.
- An **offeree** must completely understand the terms of the contract.
- There are some situations that may prevent **consent** from occurring:
  - misrepresentation
  - mistake
  - undue influence
  - duress

# Misrepresentation

- **Misrepresentation** is a false statement about a material fact that is so important that it causes the other person to enter a contract.
- It makes genuine consent impossible.
- **Innocent misrepresentation** occurs when a person incorrectly believes something to be true. (e.g. a sales clerk repeats a manufacturer's false claim about a product).
- **Fraudulent misrepresentation** occurs when one party tries to deceive the other on purpose. (e.g. a person intentionally lies about his or her car in an effort to sell it.)
- Both types of **misrepresentation** allow a buyer, or offeree, to back out of a contract.

# Mistake

- Certain types of **mistakes** can make a contract unenforceable by law.
- A **common mistake** occurs when an error is made by both parties in the contract. (e.g. an agreement is made to purchase a product that is out of stock indefinitely).
- A **unilateral mistake** is when one party to the contract made a mistake, and the other party knew of it but did not try to correct it. (e.g. buying a product to use for a purpose it was not intended for; the clerk is aware the product will not work for that purpose but does not say anything).
- A **clerical mistake** is an error caused by a clerk or store employee. Clerical mistakes often involve numbers, such as incorrect prices.

# Undue Influence & Duress

- When one party applies pressure on the other (e.g. an aggressive salesperson) to form a contract, this is **undue influence**.
- Any contract that is formed with undue influence lacks proper **consent** and will be declared **void**.
- **Duress** is similar to **undue influence**. When one party uses threats, such as blackmail, or violence to intimidate the other party into forming a contract, that agreement would also be cancelled.

# Lawful Purpose

- No contract can violate any provision of the *Criminal Code* in Canada, as well as any provincial law or municipal bylaw.
- Any contract that is found to break the law will be declared void immediately.
- Each contract must have a **lawful objective or purpose**.
- Certain contracts require special rules or restrictions, as well as government intervention (e.g. betting, gaming, and gambling).

# Discharging a Contract

- Once a contract has been successfully agreed upon, there can be several different ways to **discharge**, or end it:
  - Performance
  - Mutual agreement
  - Impossibility of performance
  - Breach of contract

# Performance & Agreement

- The most common way to discharge a contract is through **performance**.
- Simply put, one or both parties fulfill their part of the contract.
- A contract may also be discharged if the parties involved **mutually agree** to end it.
- Various factors may exist for the parties to end a contract through mutual agreement. For example, they may agree to terminate the current contract in favour of a newer one with different or additional terms.

# Impossibility

- **Frustration of contract** occurs when the terms of a contract become **impossible** to fulfill.
- Over the years, Canadian courts have excused one or both parties from contracts if it can be proven that certain circumstances prevent them from performing their part of the agreement.
- For example, a music promoter may have to cancel or reschedule a concert if it is rained out.

# Breach of Contract

- Failing to perform an obligation owed to another party is a **breach of contract**. It is the direct opposite of performance.
- The failure to perform a specific and essential term of a contract is called a breach of condition or a breach of warranty.
- Any **breach** allows the other party to cancel or end the contract.
- If one party has fulfilled *most* of its terms, this may be looked at as **substantial performance**, and the party may avoid being found in **breach**.

# Remedies

- If a **breach of contract** occurs, the following **remedies** are available.
  1. Damages: awarded to compensate the injured party in the contract. This may take the form of liquidated damages—a sum of money specified in a contract to settle a breach.
  2. Specific performance: the court may *order* a party to fulfill the terms of a contract.
  3. Injunctions: the opposite of performance; one party is ordered *not* to fulfill the terms of a contract.
  4. Privity of contract: in a lawsuit, the plaintiff proves that it had a contractual relationship with the defendant.
  5. Rescission: the court may order the contract to be cancelled.

# Selling Goods

- In Canada, the **sale of goods** is a specific area of contract law.
- An **absolute sale** occurs when the ownership of a product passes to the buyer. For example, a person buys a car from a dealership and becomes the owner of that car.
- In order for this sale to be valid, the car buyer must **pay** for the car, which must be **delivered** to within a specified time, and then the buyer will gain **title** of the car as well.

# Conditions and Warranties

- Sales contracts can have **express** or **implied** conditions and warranties.
- Express conditions: conditions that are essential to the contract and are clearly outlined in it.
- Express warranties: specific promises that manufacturers and sellers make about the standards of their goods and services.
- Implied conditions and warranties: promises that sellers make to buyers that are not explicitly stated, but are presumed by law.
  - e.g., that the seller has title to the goods and has the right to sell them.
- Many sellers add **disclaimer clauses** to contracts to lessen the risk of being sued for breach of implied warranties. These clauses are often in the “fine print” and are carefully regulated by most provinces and territories.