

CONTRACT LAW

When did you last make a contract? You don't have to look far back—perhaps yesterday, or even this morning. Did you buy a sandwich? Place a coin in a soda machine? Get a haircut? These transactions involve entering into a contract.

Of course, there are more complicated contracts: the agreements signed when renting a home, buying a smart phone, or obtaining a credit card, for example.

Big or small, contracts are part of our daily lives. This issue of *The PLEA* will explain contracts, and help you understand your rights and responsibilities when entering into a contract.

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WHAT IS A CONTRACT?

A contract is a legally binding agreement between two or more persons, also called parties. One party promises to do something. The other party promises to do something in return. For example, Pat promises to cut Robin's lawn once a week and Robin promises to pay Pat \$10 per week. Pat and Robin have a contract.

More complicated contracts exist when we enter into major agreements, like buying a house or borrowing money from a bank.



For a contract to be enforceable, there must be something of value (also called consideration) exchanged. Each party must receive a benefit. In our lawn-mowing example, Pat's labour has been exchanged for a fixed sum of money from Robin.

Not all promises are legally binding contracts. For example, social engagements are not legally enforceable contracts. If Pat agrees to meet Robin for lunch tomorrow and does not show up, neither Pat nor Robin expects any legal action as a result.

Promises of a gift are also not legally binding contracts. Your uncle could promise you a trip to Europe for successfully completing high school, but he would be under no legal obligation to give you the trip when you graduate.

WHAT'S IN A CONTRACT?

A contract must contain three things:

- **offer** – a serious proposal which will lead to a contract being formed
- **acceptance** – an unconditional acceptance must be given that follows the terms of the offer: acceptance can be either spoken or clearly indicated by actions
- **consideration** – something of value exchanged to fulfil the contract

Let's see how offer, acceptance, and consideration could play out in real-life scenarios...

Pat: I'll give you \$20 for those skates. (Offer)

Robin: It's a deal! (Acceptance)

Pat gives **Robin** \$20 (Consideration) in exchange for the skates.

If the offer, acceptance, or consideration is missing, there is no contract.

Pat: I'll give you \$20 for those skates. (Offer)

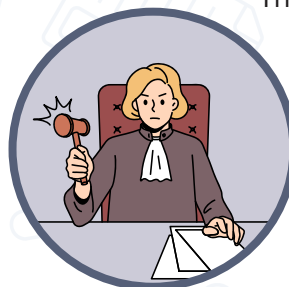
Robin: Well... I'm not sure. (No Acceptance)

Pat: On second thought, I think I'll buy a new pair instead. (Offer withdrawn)

Robin: No, don't. I'll take the \$20. (Acceptance is too late – there is no contract)



Once you have entered into a contract, you cannot cancel or alter it simply because you change your mind, unless the other party also agrees to cancel or alter it. If you refuse to perform your part of the contract, the other party can sue you in court.



The court can enforce the contract either by ordering you to perform your part of the contract or by ordering you to pay damages to the other person for breach of contract. Breach of contract is the legal term for one person failing to perform their part of a contract.

ARE PRICE STICKERS AN OFFER?

Imagine going to a store and finding a big-screen TV with a \$25 price tag stuck to it. This is probably an error. But does the \$25 price sticker mean that you can purchase the TV for \$25?

Unfortunately for you, the price sticker is not considered an offer for sale. Instead, a price sticker is considered an Invitation to Treat. In other words, the price sticker is an invitation for you to make an offer. The retailer can either accept or reject your offer. The retailer has no obligation to sell merchandise for the price on the tag.

The retailer does not necessarily have to accept any offer that you make for their merchandise. As long as their reason for refusing your offer is not in violation of human rights legislation, such as refusing to sell to you based on gender, religion, race, or sexual orientation, the retailer is within their rights to refuse the offer.

CHECK YOUR KNOWLEDGE

Decide if a contract exists in the following everyday scenarios.

1. You buy a bike for \$25 at a yard sale.
2. You invite your friend to come over to see your bike.
3. Your aunt promises to pay you \$50 to stop riding your bike in traffic.
4. You buy a bike helmet from the hardware store.
5. You bring your bike to the sporting goods store for a tune-up.



ANSWERS ON BACK PAGE

SCANNERS AND PRICE ACCURACY

Imagine going to the checkout at a major retailer. When your item is scanned, the price that comes up is different than the price tag on the shelf. You may be entitled to a discount, or may even have the item for free.

If the item costs over \$10, you are entitled to a \$10 discount. If the item costs less than \$10, you can receive it for free. The only exceptions to this rule are prescription drugs, behind-the-counter cosmetics, and items with an individual price sticker.

These rules are spelled out in the Retail Council of Canada's *Scanner Price Accuracy Code*. The code was created in 2002, to give consumers confidence that the shelf sticker price would match the price at the cash register.

The *Scanner Price Accuracy Code* is not a law. It is a voluntary agreement that many major retailers have signed onto. Shelf stickers are still considered an Invitation to Treat, just like a price tag stuck onto an item.

Find full rules of the Code and a list of participating retailers at www.retailcouncil.org/scanner-price-accuracy-code/

CATEGORIES OF CONTRACTS



Not all contracts need to be in writing. In fact, it would be impractical for some contracts to be in writing. Imagine creating and signing a written contract every time you go for a haircut. It would be time-consuming and impractical.

The law recognises that it would be silly to require all contracts be in writing. This is why legally-binding contracts can be implied, oral, or written. The type of contract required depends upon the circumstances.

IMPLIED CONTRACTS

An implied contract is made when little or no discussion takes place regarding the content of the contract. The contract's content is implied by the actions of the parties.

For example, depositing coins into a Coke machine is an implied contract. While no discussion between you and the Coca-Cola Company has taken place, it is apparent that you should get a can of Coke when you deposit the coins.

Getting onto a bus and depositing the fare is also an example of an implied contract. While no negotiation takes place between you and the bus driver, it is apparent that the bus will provide you with transportation.

ORAL CONTRACTS

An oral contract is created when two parties engage in a discussion of terms and then come to a verbal agreement.

For example, imagine asking your friend if she will repaint your bike for \$25. She responds yes, but only if you purchase the paint for her. You agree to the terms, and create an oral contract.

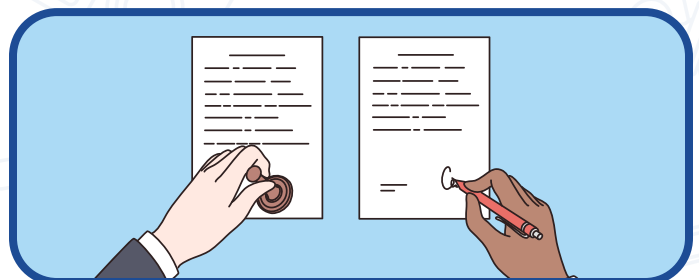
Just like a written contract, you should be sure to understand all of the terms that are included in the agreement. Oral contracts are legally enforceable. However, if you have to take the other party to court, you will have to prove the terms of the contract. This may be difficult if the agreement is not in writing.

WRITTEN CONTRACTS

By law, certain contracts need to be in writing to be enforceable.

For example, in Saskatchewan sales contracts between private buyers and businesses for more than \$50 need to be in writing for the following purchases:

- **Remote Contracts** - the purchaser and seller are not physically together, including things like phone or mail orders and catalogue shopping
- **Internet Contracts** - purchases made online
- **most Future Performance Contracts** - you agree to buy something that you will receive or pay for in the future
- **most Personal Development Services Contracts** - agreements for services related to things like health, fitness, dieting, modelling and talent, photo shoots, martial arts, sports, and dancing
- **Travel Club Contracts** - membership agreements that give you the right to discounts or other benefits when purchasing travel or vacation-related services such as transportation and accommodations





There are several other types of contracts that need to be in writing to be enforceable. These contracts are spelled out in the *Statute of Frauds*, a law that was enacted in 1677 by the English Parliament.

The *Statutes of Frauds*, originally called *An Act for the prevention of Frauds and Perjuryes*, was created because England's Court of Common Pleas became overwhelmed with dubious cases about

oral contracts. Litigants sometimes hired so-called "witnesses" to make up testimony, and the cases often turned into screaming matches. The court was left trying to determine who said what to whom. England's parliament recognised that many of these problems could be stopped by legislating that particular contracts needed to be in writing.

According to the *Statute of Frauds*, contracts that need to be in writing to be enforceable include:

- contracts that are not to be or cannot be completed in one year
- contracts for the sale of land
- contracts where an executor or administrator of an estate agrees to be personally liable
- for debts of an estate
- contracts where a person agrees to be responsible for the debt of another person

Broadly, these rules are still in effect in most Canadian provinces.

CHECK YOUR KNOWLEDGE

Decide whether or not the following contracts can be oral, or need to be in writing.

1. Tara rents a video game machine for the weekend for \$15.
2. Ahmed is offered a job in April to mow lawns for the summer.
3. Pia offers \$1,000 to anyone willing to clean out her mom's cluttered basement.
4. Virginia sells a barren plot of land to a neighbour.
5. Greg buys a leaf blower from LeafBlowerWarehouse.com.
6. Bertha buys a hot tub that will be installed at her cabin next summer.
7. Kendra agrees to co-sign her sister's car loan.
8. Hazel sells an old swag lamp for \$40.
9. Pavin agrees to buy all his carrots for the next two months from a neighbour who likes to garden.
10. Joy joins a cookbook-of-the-month club and agrees to buy 36 cookbooks over the next three years.



ANSWERS ON BACK PAGE

CAPACITY TO CONTRACT AND UNENFORCEABLE CONTRACTS

Some contracts cannot be enforced by law. For example, if you enter into a contract while under the influence of drugs or alcohol, you may not have the capacity to consent. This is because you may not be able to understand the terms of the contract. Therefore, the contract may be voidable. There are many other situations where a contract that is entered into could be voided...

MISREPRESENTATION

Knowingly making misrepresentations or false statements to persuade someone to enter into a contract can make that contract voidable.

A misrepresentation can only make a contract voidable if it is about a major part of the contract. Minor details generally will not qualify. As well, the contract must be cancelled within a reasonable amount of time.

Imagine that you are thinking of buying a duplex from Diana, and renting it out. Diana tells you that the rent is enough to cover the mortgage payments. In fact, Diana says, the rental income last year totalled \$24,000. (Diana's representation to you of the rental income.)

You buy the duplex and then find out that the suites were vacant most of last year. Further, you discover that last year's rents were only \$10,000. (Diana's representation to you was a misrepresentation.)

Because the misrepresentation was a major part of the contract and because it convinced you to enter into the contract, you have the option to either continue the contract or cancel it.



MISTAKE

There are three types of mistakes that can void a contract.

Common Mistake – If both parties make the same mistake regarding the subject matter.



You agree to buy a car from a dealer. As you sit in the dealer's office, the car catches on fire. You sign the contract, pay for the car, and walk out to the lot to find the car a smouldering heap. This contract would be void, because each person was mistaken about the condition of the car.

Mutual Mistake – If both parties have a different subject matter in mind, the contract will be void.

You are negotiating a car purchase, and you think it's the red Ford but the seller thinks you are dealing on the blue Kia. This contract would be void, because both parties made a mistake as to the subject matter.

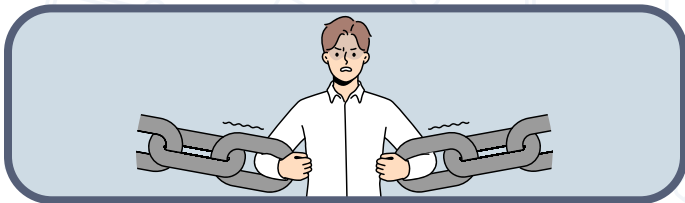
Unilateral Mistake – An error is made by one party. The other party knows that this is a mistake, but makes no attempt to fix this error.

Tyler sells you a vase that you believe is an ancient Roman artifact. In fact, Tyler bought the vase at Zellers. If Tyler knows that you think it's an ancient artifact, it is a unilateral mistake. This contract would be void.

DURESS

Genuine consent does not exist if a person agrees to a contract under the threat or use of physical violence.

You tell a friend that if they do not buy your skates, you'll kidnap their dog. This contract would be void because your friend would be entering the contract under duress.



UNDUE INFLUENCE

Genuine consent does not exist if an improper use of power has been used by a person to form a contract. Generally, a court would need to decide if a situation involved the improper use of power. The burden of proof would rest upon the person alleging undue influence.

You entered into a contract with the mayor of your town to buy his lawn mower. You later wanted to void the contract because you said the mayor exerted undue influence on you to buy the lawn mower. For the contract to be void, you would have to prove to the court how the mayor exerted undue influence.

However, in some relationships, undue influence is presumed to exist when alleged. Undue influence is presumed to exist in the following relationships:

- Parent contracting with child
- Teacher contracting with student
- Doctor contracting with patient
- Lawyer contracting with client
- Accountant contracting with client
- Clergyman contracting with parishioner

Because of the power imbalance and emotional influence in the above relationships, any contract made between these people would be voidable at the option of the individual alleging undue influence.



A KILLER DEAL!

A contract killing is when one person is hired to murder someone. Since 1917, it is estimated that the Chicago Mob has ordered over 1100 contract killings. Among these murders, mob boss Sam Giancana was murdered while frying sausage in his home, FBI informant Richard Cain was shot in a sandwich shop, and Al Capone's chief hit man Jack McGurn was gunned down in a bowling alley.

One commonality of all these crimes is that the elements of a contract exist. There was the offer to pay someone to commit a murder, the acceptance, and the consideration of payment for the killing.

However, the contract is not enforceable. This is because any contract for an illegal activity is not a legally binding contract.

YOUNG PEOPLE AND CONTRACTS

Contracts that take unfair advantage of minors, or are not in their best interests, have no legal effect. Generally, individuals under the age of 18 cannot be held liable for contracts that they enter into, unless the contract is for the “necessaries of life” or the minor has derived a real advantage from it.



“Necessaries of life” takes into account many circumstances in one’s life, and may differ from person-to-person. Necessaries usually include things such as food, shelter, education and medical services. Saskatchewan law defines necessaries as goods suitable to the condition of life of the minor and the minor’s actual requirements at time of sale and delivery.

Minors have the option of cancelling contracts for non-necessaries. This affords minors some protection against reckless or imprudent acts. It also helps protect minors from adults who may wish to take advantage of a minor’s imprudent acts and have them enter into contracts for things they simply don’t need.

Regardless of your age and your position in life, read all pages of a contract, including the fine print. Never...

- sign a contract you do not completely understand.
- sign a contract simply because you want to get rid of a salesperson.
- take a salesperson’s assurances that part of the contract is unimportant and you do not need to worry about understanding it.
- sign a blank contract and allow someone else to fill in the details later.

If you still are uneasy about a contract, simply do not go ahead with it.

ANSWERS PAGE 3: 1.Y 2.N 3.N 4.Y 5.Y PAGE 5: 1.O 2.O 3.W 4.W 5.W 6.W 7.W 8.O 9.O 10.W



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