

# CATEGORIES OF CONTRACTS AND THE STATUTE OF FRAUDS

## CATEGORIES OF CONTRACTS

Not all contracts need to be in writing. In fact, it would be impractical for some contracts to be in writing. For example, imagine having to create and sign 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. Which type of contract is 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 a coin 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 coins into the machine.

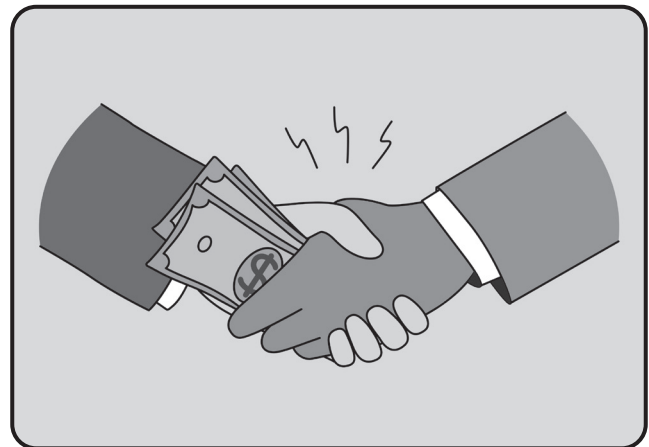
Getting onto a bus and depositing the fare is also an example of an implied contract. While no negotiation takes place between you and the bus driver, it is apparent that the bus will provide you with transportation.

## 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 more 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 goods or services 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.

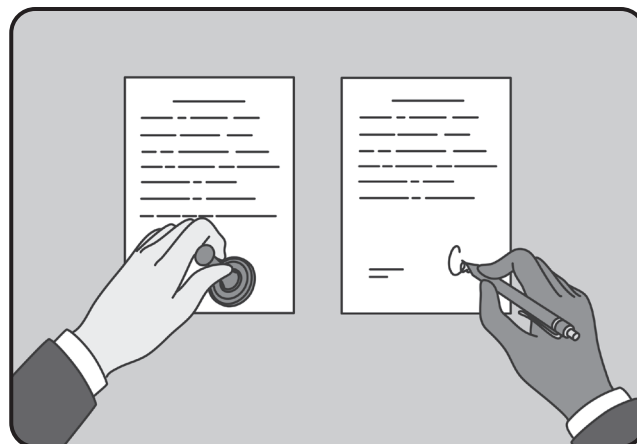
There are several other types of contracts that need to be in writing to be enforceable. These types of contracts are spelled out in the *Statute of Frauds*, a law that was enacted in 1677 by the English Parliament.

The *Statutes of Frauds*, originally called *An Act for the prevention of Frauds and Perjuries*, 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 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.



## DISCUSS

1. For the following scenarios, decide whether or not the contract in question needs to be in writing.
  - a) Tara rents a video game machine for the weekend for \$15.
  - b) Ahmed makes an agreement with John in April to mow his lawn for the summer and starts work.
  - c) Pia offers \$1,000 to anyone willing to clean out her mom's cluttered basement.
  - d) Virginia sells a barren plot of land to a neighbour.
  - e) Greg buys a leaf blower from LeafBlower-Warehouse.com.
  - f) Bertha buys a hot tub that will be installed at her cabin next summer.
  - g) Kendra agrees to co-sign her sister's car loan.
  - h) Hazel sells an old swag lamp for \$40.
  - i) Pavin agrees to buy all his carrots for the next two months from a neighbour who likes to garden.
  - j) Joy joins a cookbook-of-the-month club and agrees to buy 36 cookbooks over the next three years.
2. You receive a phone call on February 1<sup>st</sup> from Acme Corporation in Winnipeg. They guarantee to buy ten pairs of your hand-made knitted socks every month from May 1<sup>st</sup> of this year until April 1<sup>st</sup> the following year. You verbally accept that day, do not sign any agreement, and start knitting on May 1<sup>st</sup> as agreed. On December 10<sup>th</sup> they stop buying your knitted socks.

Can you demand that the contract be fulfilled and that you keep selling them your knitted socks until April 1<sup>st</sup> of the following year?
3. Martha agrees to give Tammy \$1500 a month for as long as she lives, and in exchange she will be her personal assistant. Does this contract have to be in writing?

1. For each of the following scenarios, decide whether or not the contract in question needs to be in writing.

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- b) Ahmed makes an agreement with John in April to mow his lawn for the summer and starts work. **ORAL**
- c) Pia offers \$1,000 to anyone willing to clean out her mom's cluttered basement. **WRITTEN**
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**Can you demand that the contract be fulfilled and that you keep selling them your knitted socks until April 1<sup>st</sup> of the following year?**

*The contract term is less than a year: May 1<sup>st</sup> until the next April 1<sup>st</sup> is only 11 months. However, this contract could not be completed within a year: the acceptance date is February 1<sup>st</sup> and the contract would not end until April 1<sup>st</sup> of the following year, which is 13 months. Therefore, the contract needs to be in writing to be enforceable at law.*

3. Martha agrees to give Tammy \$1500 a month for as long as she lives, and in exchange she will be her personal assistant. Does this contract have to be in writing?

*In this case, the contract falls outside the Statute of Frauds. While the promise was made for the life of Martha, there is no guarantee how long Martha will live. She may live for thirty years, or only six months. While it would be a good idea for the contract for life to be in writing, because it falls outside the statute, the contract does not have to be in writing.*