Do I need a contract?

By Vyvyan Tsui

A contract is an agreement between two or more parties which sets out the terms and conditions by which the parties will engage in business. A simple contract between a supplier and a customer may stipulate the type and quantity of goods that are to be sold and the expected price to be received by the supplier for selling such goods. A more comprehensive (and better) contract will also specify the minimum standards for the quality of such goods and the payment terms, and provide for contingencies in the event that goods cannot be delivered on time or are defective upon delivery.

Contracts are important because they provide individuals and businesses with a legal document stating the expectations of each contractual party and how problems may be resolved if they arise. They are legally enforceable in a court of law and ensure each party has the ability to sue the other for monetary damages or specific performance if the other party "breaches", or fails to abide by the acts promised in the contract. In general, a good contract should protect parties from surprises by clearly setting out the obligations of each party and the remedies that would follow should either party fail to fulfill their obligations.

The three basic elements of a contract are: Offer, Acceptance, and Consideration. Offer and acceptance are self-explanatory — one party makes an offer for an arrangement that another accepts. Consideration is something of value given by one party to the other in exchange for receiving something else for value. For example, Mary agrees to pay John $80 in consideration of John's lawn mowing services.

In addition to the three basic elements, the following factors are required for a contract to be valid:

- Consent / Intention: the parties must mutually intend to be legally bound by the contract and enter into the contract freely, voluntarily, and without duress or undue influence. Consent does not exist unless there is a "meeting of the minds" — i.e. the parties must agree on the same thing in the same sense.
- Capacity: a contract may be found void if a party lacks the necessary capacity to enter into a contract. Minors, persons who are intoxicated, or persons with mental disabilities are examples of this.
- Certainty of terms: the terms of the contract must be relatively clear and certain from an objective standpoint. If Mary agrees to pay John $80 to mow a lawn, but the contract does not state which lawn is to be mowed and for how long, the contract will likely be void for uncertainty.

Contracts can either be oral or in writing. Although oral agreements can still form a binding contract, it is significantly more difficult to prove the terms of an oral contract than those of a written one. Usually the terms of an oral contract can only be recounted by the parties themselves, other witnesses, or other circumstantial evidence, and often becomes a case of "he says, she says" when it goes to court. As well, an oral contract will almost never be as comprehensive as a written agreement. The mere exercise of having the parties sit down and put their agreement in writing help the parties go through the thought process to include more details about their agreement, making disputes later on far less likely.

Before entering into any business relationship, it is always preferable to negotiate a written contract and seek independent legal advice from a lawyer to safeguard your best interests. Contracts often contain complex legal terms that many business owners fail to appreciate. As well, many standardized "boilerplate" contracts that are found on the internet or at the local bookstore claim to offer "one size fits all" provisions which are often one-sided (beneficial for one contractual party only), or may even be inapplicable for the jurisdiction in which the contract is to be made. Lawyers can assist with drafting and interpreting such terms and advising on whether specific contractual term is beneficial or detrimental to your particular business needs.

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