

Introduction

A contract is an agreement between two or more persons. In a contract, one person offers to do something and the other person accepts the offer. For example, Amy offers to sell her car to Surin and Surin accepts the offer. A contract may be in writing but most contracts are verbal. A person makes a contract every time he or she purchases a soft drink or a burger. If one person does not carry out the promise, the other person may have a claim against the first person. Consumers should understand how a contract is made and how it may affect their rights.

Requirements for a contract

For a proper contract, there must be an agreement between more than two persons about what each person must do under the contract. This means that there must be an offer by one person and an acceptance by the other. The offer must be serious and definite and not vague. It must be made to a particular person or a group of persons. Sometimes, it can take the form of an offer of reward to anyone who does what is required (for example; finding a lost child or animal). Furthermore, a person accepting the offer must let the other person know that he or she is accepting it. Sometimes, a person making the offer says how it must be accepted (for example; in writing or by doing something).

The person making the contract must have the legal power to enter into it. For example, children or people who are mentally ill, a person drunk or under the influence of drugs cannot enter into a contract. Contracts cannot be made for something illegal (for example; helping someone commit suicide). Immoral contracts or contracts against public policy will not be enforced by the courts (for example; an agreement to prevent a person from marrying). The courts will not enforce contracts that are impossible to carry out. For example, where the item to be sold had been destroyed at the time the contract was made, there is no proper contract (for example; a person makes a contract to sell a car that had been stolen before the contract was made). An advertisement is not an offer to contract. It is just an invitation to do business. Consumers should not rush into contracts. They must understand and agree with all the terms before they accept an offer. Otherwise, it may be too late for them to change their mind.

Who can contract?

Section 11 of the Malaysian Contracts Act 1950, provides that every person is competent to contract, who is of the age of majority (18 years according to the Age of Majority Act 1971) according to the law to which he is subject and who is of sound mind and is not disqualified from contracting by any law to which he is subject.

Minors may enter into contracts but the contracts are not legally enforceable against them. Usually the parent or guardian becomes liable, in which case the parent or guardian becomes responsible for obligations under the contract.

Wives can enter into contracts which will indirectly bind the husbands. Although the wife is the legal party to the contract, the husband is morally bound to honour commitments. This is different from some countries where the wife has no right to enter into any contract.

What happens when a contract is broken?

If a contract is broken, it is known as a breach of contract. A breach of contract happens when one person fails to do what he or she promises to do under the contract. The other person may then choose to end the contract. The person who breaches the contract is known as the guilty party. The other party is referred to as the innocent party.

A person may breach a contract by carrying out the contract too late. For example, if a seller does not deliver goods to the buyer on the agreed day and the delay is not due to the buyer's fault, the seller has then breached the contract. A breach may also happen where a person says or does something which makes it clear that he or she will not carry out his

Written by

Tuesday, 05 October 2010 00:07 - Last Updated Tuesday, 05 October 2010 00:10

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or her part of the contract. For instance, where a person promises to sell something to one person but sells it to another instead. There may also be a breach where part of the contract takes place but something else agreed to is not carried out. This might happen, for example, where certain goods are ordered by a customer and the seller sends poor quality goods.

Most contracts need not be in writing and nearly all daily contracts are entered into merely by using words (for example; buying goods from shops, using a public transport, eating at restaurants or going to the movies). Certain contracts have to be in writing in order to be enforceable in a court of law (for example; sale of land, long leases, credit agreements including hire purchase).

A written contract is much easier to prove than a spoken or verbal contract. Therefore, it is always better to put a contract in writing. If it is not in writing, it is difficult to prove that a person promised to do something. Usually, if there is a written contract, the court will not listen to evidence of promises made before the contract was signed. The court will, however, hear evidence if the contract is not clear or where one of the persons was tricked into signing it by the other.