DO CONTRACTS AFFECT ME?

When did you last make a contract? Surprisingly, you do not have to look back too far—perhaps only yesterday, or even this morning. Did you buy a sandwich? Place a quarter in a video game machine? Get a haircut? These involve contracts. Of course there are more complicated contracts, like those signed when purchasing a house or borrowing money from a bank, but people sometimes do not realize that a contract is involved in many of their daily transactions. In this issue of The PLEA, we will look at the rules surrounding contracts, and your rights and responsibilities.
A contract is a legally binding agreement between two or more persons, also called parties. One party promises to do something and the other party promises to do something in return.

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.

To be an enforceable contract, there must be something of value (also called consideration) exchanged. Each party must receive a benefit. Generally, the courts do not care if the consideration is reasonable or not. Robin can agree to pay Pat five cents or fifty dollars; the important thing is that they have exchanged something of value: Pat's labour of mowing lawns in exchange for a fixed sum of money from Robin.

Not all promises are legally binding. If Pat promises to take Robin to lunch tomorrow and then does not show up, neither Pat nor Robin expects any legal action as a result of the broken engagement. Neither of them intended to create a legally enforceable agreement when they agreed to the lunch date. A social engagement is not a legally enforceable agreement.

Also, a promise of a gift is not legally binding. Your uncle could promise you a trip to Europe for successful completion of high school, but would be under no legal obligation to do so when you graduate.

A contract should be clear about who the parties are, what the contract is about, and what is given in exchange. There must be:

- 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, either spoken or clearly indicated by actions
- consideration – something of value exchanged to fulfill contract

Once you have entered into a contract, you cannot cancel or change it simply because you have changed your mind, unless the other party agrees to cancel or change it too. If you refuse to perform your part of the contract, the other party can sue you in a court of law. 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. A breach of contract is the legal term used when one person fails to perform their part of a contract.

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 too late – there is no contract)
**ARE PRICE STICKERS AN OFFER?**

Price stickers are in writing and placed on or beside merchandise. But does this make a price sticker an offer?

Say you went to an electronics store and found a big-screen television with a $75 price tag. While most likely an error, does this mean that you should be able to purchase the set for $75? Unfortunately for the consumer, price stickers are not considered an offer for sale. Instead, they are considered an “Invitation to Treat”. This means that it is your option, as a consumer, to make an offer that the retailer can either accept or reject. The retailer has no obligation to sell merchandise for the price on the tag.

In fact, the retailer does not necessarily have to accept any offer you make for merchandise, as long as the reasons they refuse it are not in violation of human rights legislation, such as refusing to sell to you based on gender, religion, race, or sexual orientation.

**“IS THIS A CONTRACT?”**

1. Examine the following scenarios and decide if a contract could exist in each scenario.
   
   a. You buy a bike for $25 at a yard sale.
   
   b. You invite your friend to come over to see your bike.
   
   c. Your aunt promises to pay you $50 if you quit drinking soda.
   
   d. You buy a bike helmet from the hardware store.
   
   e. You bring your bike in for a tune-up at the sporting goods store.

2. In 1996, Pepsi introduced their “Pepsi Points” promotion, which allowed people to collect points from pop bottles to earn merchandise. One television advertisement featuring items that could be purchased with Pepsi Points humorously ended with a student landing at school in a Harrier jet, with the line “7,000,000 Pepsi Points” appearing on the screen. Because additional Pepsi points could be purchased to make up for point shortfalls, one Pepsi customer presented Pepsi with 15 Pepsi Points and a cheque for $700,008.50 (to cover the excess points and shipping and handling) for the jet. Pepsi refused to give him a Harrier jet, and he sued. Did the advertisement constitute an offer?
Not all contracts need to be in writing. In fact, it would be impractical for some contracts to be in writing. For example, getting a haircut or taking a taxi does not usually involve a written contract. There are three categories of contracts:

**IMPLIED CONTRACTS**

An implied contract is made when little or no discussion takes place regarding the content of the contract. The content is implied by the actions of the parties. Depositing a quarter into a video game machine is an implied contract. While no discussion between you and the arcade owner has taken place, it is apparent that you will get to play a round of the video game for that quarter. Getting onto a bus and depositing the fare is also an example of an implied contract. While no discussion has taken place, it is apparent that the bus will provide you with transportation service.

**ORAL CONTRACTS**

An oral contract is created when two parties engage in a discussion of terms and then come to a verbal agreement. Oral contracts are legally enforceable. Just as much as a written contract, you should be sure to understand all of the terms that are included in the agreement. If you have to take the other party to court, you still will have to prove the terms of the contract. This may be more difficult if the agreement is not in writing.

**WRITTEN CONTRACTS**

Certain contracts, such as landlord and tenant agreements, and sale agreements of over 50 dollars need to be in writing. As well, contracts that are not to be or cannot be completed in one year and contracts for the sale of land need to be in writing.

**ACTIVITY**

**DOES THIS CONTRACT NEED TO BE IN WRITING?**

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

1. Tara rents a video game machine for the weekend.  **Oral**
2. In April, Scott is offered a job for the summer mowing lawns.  **Oral**
3. Uncle Bernie offers $50,000 to anyone willing to marry his son Maurice.  **Oral**
4. Virginia sells a barren plot of land to a neighbour.  **Oral**
5. Colin rents an airplane for a two-year term.  **Oral**
6. Bertha is buying a hot tub to be installed at her ski chalet.  **Oral**
7. Kenny agrees to co-sign his sister’s car loan.  **Oral**
8. Hazel sells an old swag lamp from her basement for $40.  **Oral**
9. Marlin agrees to buy all his bread for the next two years from an elderly neighbour.  **Oral**
10. Joy joins a DVD club and agrees to buy five movies over the next three years.  **Oral**

**CAPACITY TO CONTRACT**

To enter into a contract, an individual must have the capacity to do so. Generally speaking, everyone is capable of entering into a contract, although exceptions are made for minors, those with mental disabilities and intoxicated persons. This is because contracts must be performed “consensus ad diem”, meaning there must be mutual understanding of the terms of a contract. With the above exceptions, the individuals may be entering into a contract while not having the capacity to do so. Therefore, consensus ad diem may not exist.
While there is no automatic right to cancel a contract, not every contract can be enforced by law. Contracts may be voided in the following situations:

**Misrepresentation**

Knowingly making misrepresentations or false statements to persuade a consumer to enter into a contract can make that contract voidable. This means that either party can cancel the contract if they want to. But the misrepresentation must be about a major part of the contract, not some minor detail, and the contract must be cancelled within a reasonable amount of time.

For example:

Pat is thinking of buying a duplex from Dale and renting it out. Dale tells Pat that the rent is enough to cover the mortgage payments. In fact, Dale says, the rents last year totaled $24,000. (Dale’s representation to Pat)

Pat buys the duplex and then finds out that the suites were vacant most of last year because of the poor location of the building, and last year’s rents were only $10,000. (Dale’s representation to Pat was a misrepresentation)

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

**Mistake**

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

- **Common Mistake** – Both parties make the same mistake regarding the subject matter. For example, if you agree to buy a car from a dealer, but unbeknownst to you, the car burns down in the car lot while you are striking the deal. The court would see this contract as 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. For example, if you’re negotiating a car purchase, and you think it’s the red Ford on the lot but the seller thinks you are dealing on the blue Chevy. This contract will be void because both parties made a mistake as to the subject matter.

- **Unilateral Mistake** – An error made by one party to a contract that is known to the other, and the knowing party makes no attempt to fix this error. For example, Tyler sells Jon a vase which Jon believes to be an ancient Roman artifact. In actuality, the vase is a reproduction. If Tyler is unaware of Jon’s erroneous belief, the case is one of mutual mistake. But if he knew that Jon thought it was an actual ancient artifact, it is a unilateral mistake.

**Duress**

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

**Undue Influence**

Genuine consent does not exist if an improper use of power has been used by a person to form a contract.
LIFE INSURANCE – EVERYBODY IS ACCEPTED
BUT IS EVERYBODY PAID?

A frequent claim in life insurance advertisements is that no applicants will be turned down. However, this claim does not necessarily mean that benefits will be paid if that person should die.

For example, if a man knows that he is on his deathbed, says nothing, and enters into a life insurance contract, chances are the benefits will not be paid out if he dies shortly thereafter. This is because remaining silent about a terminal health condition is considered a misrepresentation on behalf of the individual. Had he revealed this information, the man on his deathbed may have only been eligible for a small insurance payout. Misrepresentation can work both ways, and as an individual entering into a contract, you have responsibilities to the person you are contracting with.

CONTRACT KILLINGS - A KILLER DEAL!!!

A contract killing is when one person is hired to murder a third party. Since 1917, it is estimated that the Chicago Mob has ordered over 1100 contract killings. Among these murders, mob boss Sam Giancana was killed 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 murders is that the elements of a contract exist (the offer of murdering somebody, the acceptance, and the consideration of payment for the killing). However, the contract is not actually enforceable at law if one side or another reneges on the deal. This is because any contract for an illegal activity is not a legally binding contract.

ENDING A CONTRACT

In general, all contracts have an ending point. This will occur when both parties complete or “discharge” their obligations under the terms of the contract. It is otherwise known as “performance of contract”. However, this is not the only way contracts can end. Other ways of terminating contracts include:

1. Agreement. When contracts are discharged through agreement, it simply means that all parties came to an agreement as to the terms of ending a contract.
2. Impossibility of Performance. If events occur beyond a party’s control, such as a tornado destroying the workplace and equipment of one of the parties, then the contractual relationship can be ended.
3. Bankruptcy. If one of the parties declares bankruptcy, generally speaking, the contract will end.

Breach of Contract

Contractual relationships can also be terminated through a breach of contract. A breach of contract occurs if one party fails to perform their part of the agreement. In this case, the other party is no longer obliged to perform their obligations under the contract. However, unlike the above ways of ending a contract, in a breach of contract situation the innocent party to the contract may be entitled to compensation. Options for the court could include:

• payment of damages for losses realized from not fulfilling the contract; or
• an order of specific performance, requiring the offending party to fulfill the original contract.
Young people have a unique place in law. They are not yet adults, but they are developing many of the skills and abilities of adulthood. They are entitled to many of the same rights as adults, and can be held to many of the same responsibilities. They will not, however, always be treated in the same way as adults. This unique belief in law is generally founded on two beliefs:

- that children do not have the ability to properly evaluate their options and make sound decisions
- that it is the parents’ role in the family to guide and make decisions for their children

In Saskatchewan, “the age of majority” (the age at which people become adults in the eyes of the law) is 18. Each province determines its own age of majority, and can restrict the rights and responsibilities that go along with it. In Saskatchewan, upon reaching the age of majority, a person generally has the right to vote, get married, enter into contracts, and otherwise fully participate in society.

Contract law provides special protection to minors. 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. Contracts that take unfair advantage of minors, or are not in their best interests, have no legal effect.

Necessaries usually include things such as food, shelter, education and medical services, but can include a host of other things, depending on the minor’s circumstances. 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, but the law balances this special protection for minors against legitimate business interests.

For example, a minor may be tempted by a rent-to-own offer for a CD or video game player. The minor may come up with the required down-payment and take the equipment home after entering into a contract that requires payments, plus interest, over time. After using the equipment for a week, the minor might regret the purchase for any number of reasons. While the minor cannot be held to the contract, he or she must return the merchandise if they want to cancel the contract. And, the seller may have a right to keep some or all of the down-payment to compensate for the benefit the minor obtained during the time he or she had possession of the merchandise.

Generally, when young people are considered mature enough (by law) to engage in “adult” activities, they will be subject to the same rights and responsibilities as adults. However, these rights and responsibilities may be modified by the underlying principle of the law that states that young people require special guidance and protection. The special protection that contract law provides to minors is just one such example.
### Word Jumble
Unscramble the following terms related to Contract Law and find the hidden word.

**Answers Online at www.plea.org/yas**

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### Clues

1. A legally binding agreement between two or more parties
2. A serious proposal which will lead to a contract being formed
3. Spoken words or actions that indicate a contract will be entered into
4. Something of value exchanged to fulfill a contract
5. An area of contract law that takes effect when offers are sent through the mail
6. A proposal for a consumer to make an offer on a product
7. Made when little or no discussion takes place regarding the content of a contract
8. Created when two parties engage in a discussion of terms and then come to a verbal agreement
9. A legally binding agreement on paper
10. False statements designed to persuade a person to enter into a contract
11. Threat or use of physical violence
12. Improper use of power
13. The age in which people become adults in the eyes of the law
14. Goods suitable to the condition of life
15. Completing obligations of a contract
16. If a party fails to perform their part of an agreement

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1. Examine the following scenarios and decide if a contract could exist in each scenario.

   f. You buy a bike for $25 at a yard sale. **YES**
   g. You invite your friend to come over to see your bike. **NO** – this is a social invitation
   h. Your aunt promises you $50 if you quit drinking soda pop. **NO** – this is a promise of a gift
   i. You buy a bike helmet from the hardware store. **YES**
   j. You bring your bike in for a tune-up at the sporting goods store. **YES**

2. Amongst many reasons given by the courts (Leonard v. Pepsico, 1996), this contract was not valid because the advertisement was not deemed to be a serious offer, and therefore not valid.

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Page 4 - “Does This Contract Need to be in Writing?” - Activity

ANSWER KEY

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

1. Tara rents a video game machine for the weekend. **Oral** Written
2. Scott is offered a job for the summer job mowing lawns. **Oral** Written
3. Uncle Bernie offers $50,000 to anyone willing to marry his son Maurice. **Oral** **Written**
4. Virginia sells a barren plot of land to a neighbour. **Oral** **Written**
5. Colin rents an airplane for a two-year term. **Oral** **Written**
6. Bertha is buying a hot tub to be installed at her ski chalet. **Oral** **Written**
7. Kenny agrees to co-sign his sister’s car loan. **Oral** **Written**
8. Hazel sells an old swag lamp from her basement for $40. **Oral** **Written**
9. Marlin agrees to buy all his bread for the next two years from an elderly neighbour. **Oral** **Written**
10. Joy joins a DVD club and agrees to buy five movies over the next three years. **Oral** **Written**
Page 8 - Word Jumble - Answers

CORTNACT  <  CONTRACT
OERFF    <  OFFER
AAECCPCNT  <  ACCEPTANCE
CINTRANSODIOE  <  CONSIDERATION
LXBEOTERT LRUE  <  LETTERBOX RULE
IIIVNNTNATO OT TERTA  <  INVITATION TO TREAT
IDIMLPE CONCRATT  <  IMPLIED CONTRACT
LORA NCTCTRAO  <  ORAL CONTRACT
TWNTIRE CACOTNRRT  <  WRITTEN CONTRACT
NEOMEASIRPSIRNT  <  MISREPRESENTATION
SDESRU  <  DURESS
UNLUDE INFLUEENC  <  UNDUE INFLUENCE
GAE FO MOITJAYR  <  AGE OF MAJORITY
ECSSSRANEIE  <  NECESSARIES
EDHRCGSAI  <  DISCHARGE
EBCAHOF RCOTCANT  <  BREACH OF CONTRACT

CONSENSUS  AD  DIEM
1  2  3  4  5  6  7  8  9  10  11  12  13  14  15