

Contract Formation, Construction & Interpretation
in
Commercial contracting

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Contract Formation:
Freedom of Contract

✘ In the absence of some ground for declaring a contract void or voidable, parties may make such contracts as they choose.

Contract Formation:
Contractual capacity

Contractual Capacity is the ability to understand that a contract is being made and to understand its general meaning

Contract Formation:
Contractual capacity

In Common Law, everyone to have contractual capacity unless proven otherwise

Contract Formation:
Contractual capacity

Contractual capacity to exist even though a party does not understand its every provision of the contract.

Contract Formation:
Contractual capacity

- Not all persons have contractual Capacity:
 - to form a contract or
 - to enter into a contractual obligation.

Contract Formation:
Contractual capacity

- Contract Law allows anyone to be in contractual privity due to **Freedom of Contract**.
- Risk

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Contract Formation:
Contractual capacity

- Such persons suffer contractual incapacity
 - Status Incapacity
 - Factual Incapacity

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Contract Formation:
Status Incapacity

- **Minors:**
 - Avoid or disaffirm contract:
 - Minors to get consideration back
 - Minors to acquire what remains of consideration
 - Minors may disaffirm if nothing remains
 - Minors may refuse to pay back consideration

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Contract Formation:
Factual Incapacity

a) Mentally Incompetent Person

- Avoid like minor
- Ratify again upon recovery
- guardian by court - voidable – rendered void

Contract Formation
Factual Incapacity:

b) Intoxicated Person

- Intoxication - voidable
- Insane – void
- Unreasonable delay to disaffirm may reduce the privilege to avoid contract

Contract Formation:
Mistake

- Validity of a contract may be affected by a mistake made by both the contracting parties

Contract Formation
Mistake:

- Party is bound even if signor has not read the terms.

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Contract Formation
Mistake

- ❑ Contract voidable - mistake adversely affects
- ❑ Mistake in Transcription or Printing
 - Printed vs oral - court to reform contract
 - Burden of proof on the affected party

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Contract Formation
Deception

- ❑ One of the parties misled by the other:
 - by a fraudulent statement or
 - by a failure to disclose information (duty-bound)

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Contract Formation
Deception

- Intentional Misrepresentation: Fraud (Tort)
 - affects genuineness of assent
 - conceals intention of one party

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Contract Formation
Genuine Assent

- Statement of Opinion or Value:
 - Building was very good,
 - Deal was excellent

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Contract Formation
Genuine Assent

- Statement of fact:
 - Building for sale is free from litigation

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Contract Formation
Genuine Assent

To determine genuine assent to form a contract

- Statement of Opinion vs statement of fact

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Contract Formation
Genuine Assent

Statement about future expectations:

- Statement if not true – fraudulent
- becomes fraudulent only when other party relies on it

e.g., advertisements

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Contract Formation
Genuine Assent

To determine extent of fraud, Court considers:

- sophistication of statement
- expertise of parties and
- commercial setting of transaction

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Contract Formation

Non-Disclosure of information:

Under certain circumstances, non-disclosure of information may make a contract voidable

Contract Formation

Non-Disclosure of information:

General Rule of Non-liability:

- Non-disclosure of information that is not asked for, does not impose fraud liability

Contract Formation

Exceptions to General Rule of Non-Disclosure

- Confidential relationship – failure to disclose regarded as fraudulent
- Active concealment
 - ✓ positive act of hiding information
 - ✓ Furnishing wrong information

Parol Evidence Rule

□ **The Parol Evidence Rule:**

governs the admissibility of evidence other than the actual written agreement than a dispute arises over a written contract.

Contract Formation Case Study

- Lester purchased a used automobile from MacKintosh Motors. He asked the seller if the car had ever been in a wreck. Salesperson who never saw the car stated that it never had an accident. Infact the car had an accident and its worth was much less. When Lester came to know the fact, he sued Mackintosh Motors which defended by saying that the salesman did not know the statement was false and did not intend to deceive Lester. Did conduct of sales person constitute fraud?

Contract Formation Case Study

Alama & Richard make a contract for the sale of an automobile. They orally agree that the price Richard is to pay is \$2000 but when the written contract is typed, amount is wrongly stated as \$3000. The contract is signed before anyone notices the mistake. Alama then claims that written contract is binding and that Richard is to pay her \$3000. Richard claims that he is required to pay her only the originally agreed-on amount of \$2000. Is he correct?

Contract Formation

Case Study

Adams claimed that Boyd owed him money but was under impression that Boyd did not have much money. On the basis of this impression, Adams made a settlement agreement with Boyd for a nominal amount. When Adams later learnt that Boyd was in fact reasonably wealthy, Adams sought to set the Agreement aside. Was Adams entitled to do so?

Thankyou
Q & A
