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Six Principles of Contract Law

BY NADIA MACLEOD / GENERAL LEGAL /  0

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A financial agreement is like any other contract and subject to the normal principles of Australian Contract law.

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A contract is a legally binding promise or a set of promises between two parties. In this context a promise is an undertaking by one person to do something or refrain from doing something if another person does something or refrains from doing something or makes a promise in return.

In order for a contract to be valid, the six principle of contract law must be met. These are:

1. Agreement
2. Consideration
3. Intention
4. Capacity
5. Genuine Consent
6. Legality

1. Agreement

There must be an offer and an acceptance with a definite agreement between the parties. In simple terms, one party must make a clear offer, and the other party must accept it.

2. Consideration

Except in very limited circumstances there can be no contract or agreement without consideration.

Consideration is the exchange of promises by the parties to the contract or agreement. It can be the payment of money, the delivery of equipment, the promise to do or perform a service or work, the promise not to take an action or not to take or enforce a right.

4. Capacity

Both parties in a contract must have the necessary mental capacity to understand what they are doing. Under common law, anyone has the right to enter into a contract but the following groups of people are considered likely to lack the necessary capacity to a certain extent:

- young people (persons under the age of eighteen);
- people who have a mental impairment (including an intellectual disability); and
- people under the influence of drugs or alcohol.

For a person to avoid a contract on the ground of their incapacity, they must also show that they lacked capacity to enter into a contract and that the other party knew or ought to have known their incapacity.

A contract is voidable at the option of a party who, as a result of mental disorder or intoxication, is unable to understand the nature of the contract being made – provided that the other party knew, or ought to have known, of that person's disability.

The party seeking to withdraw from the contract has the onus of proving both these requirements – that is;

(a) that they were suffering from such a disability and

(b) that the other party was – or ought to have been – aware of it.

5. Genuine consent

Both parties agree to the contract of their own free will; a party's genuine consent is an essential element of a legally binding contract.

aside the contract;

- Mistake as to the terms and identity of the person;
- Misrepresentation is the giving of false information by one party to the other before the contract is made, which induces them to make the contract. If you make a contract in reliance on a misrepresentation and suffer loss as a result, you can cancel the contract or claim damages;
- Duress; Duress is defined as 'actual or threatened violence to an individual to obtain a contractual promise'. If it is established that consent is obtained through duress then the weaker party may choose to avoid the agreement;
- Unconscionable conduct; Unconscionable conduct also deals with transactions between dominant and weaker parties; it therefore overlaps with duress and undue influence;

Each of these factors or events may mean that consent was not freely given by one of the parties and that party may therefore be able to avoid their contractual obligations.

6. Legality

All of the parts of, or the subject matter of the contract must be legal.

When considering Financial Agreements, sections [90G](#) and [90UJ](#) of the Family Law Act are particularly relevant as they require each party to the financial agreement to receive independent legal advice and meet certain requirements before a financial agreement is binding on the parties.

Following these six principles will ensure your agreement is legally binding and provides the protection and outcome you expect.

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About the author

Nadia MacLeod

Director of RP Emery Legal Kits. As a non-lawyer herself, she understands the confusion and unease that many people experience when confronted with a legal issue. That's why she works to make legal matters simpler and more easily understood. The bottom line is that there are many common legal transactions that you can handle yourself quite comfortably.

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