

# CONTRACT LAW

## Learning Objectives

- To introduce students to the nature and importance of contract law in Canada.
- To provide students with an overview of various types of contracts, the building blocks of a contract, defects in contractual relations and remedies available for breach of contract.
- To provide students with information about how the courts determine whether contracts are enforceable.

## Materials

- Copies of the student handout, *Introduction to Contract Law* (one per student)
- Copies of the case studies, *Toronto Marlboros Junior A Hockey Club v Tonelli and Carlill v Carbolic Smoke Ball Company* (one of each per group)
- Copies of the OJEN *Small Claims Court Mock Hearing: Santiago v Castillo*, available here: <http://ojen.ca/resource/4077> (optional)

## Teaching and Learning Strategies<sup>1</sup>

1. Assess students' familiarity with contract law by brainstorming some common types of contracts that people make. Some examples include employment contracts, cell phone contracts, landlord and tenant agreements, the sale and purchase of a good or service, etc. Ask students to consider the defining features of a contract and note key ideas like agreement, compensation and consequences as they emerge.

<sup>1</sup> Teachers can consider breaking down the reading into small sections and using the materials to cover a full unit on contract law.

# IN BRIEF

## TEACHER RESOURCE

2. Assign the *Introduction to Contract Law* reading and have students complete the discussion questions either in pairs or small groups. Due to the density of the reading, you might consider having students read small sections of the handout and then do only the associated questions afterwards. Take up the answers as a class.

### Teacher's Key - Discussion Questions

1. What is the main difference between a promise and a contract?

*Contracts are promises that are legally binding because they contain certain specific elements that are enforceable by courts.*

2. Trey's dog is sick so he takes her to the vet for treatment. The vet examines and treats the dog and she recovers fully. Trey is billed for the specific treatments and pays the vet \$200. What type of contract is this arrangement? What consideration was given by each party?

*This is an example of a bilateral contract whereby the parties agreed that they would exchange the veterinary services for payment. Trey's consideration is the promise to pay the \$200 fee and the vet's consideration is the promise to examine and treat the dog.*

3. Gurpreet and Anya are sisters. Anya has just been accepted into law school but is worried about how she will pay her expenses. They make an oral agreement over coffee one day that Gurpreet will pay Anya \$300 per month in order to help with her school expenses. Halfway through the year, Gurpreet decides that she would like to start saving for a down payment for a house and she tells Anya that she will no longer provide her the \$300 per month. Anya is considering suing for breach of contract. How likely is it that the agreement will be enforced by the courts?

**If it seems unlikely, what could Anya have done to ensure their bargain was legally binding?**

*It is very unlikely that this agreement would be enforceable. The general presumption in law is that family members do not intend for their promises to be legally binding. Here, there was a close familial relationship, which would call into question whether the parties intended for the arrangement to be legally binding. This presumption is rebuttable if Anya can show that despite the close relationship, they intended for the agreement to be binding. Anya could try to argue that she relied on the agreement to her detriment in that she decided to enrol in law school under the assumption that she would have the \$300 per month to help her. However, given the informality of the conversation and the vagueness of the terms, it is unlikely a court would enforce the agreement. If Anya wanted to ensure that the agreement was legally binding, she should have had a lawyer draft a written contract that both she and her sister signed.*

4. a) Efraim and Keiko make a bargain with one another that each of them will give Marla \$10. Review the general rule about consideration and determine whether there is sufficient consideration for this mutual promise to be a legal contract.

*The general rule regarding consideration is that the person who makes the promise has to get a benefit for making the promise, OR the person to whom the promise is made has to experience some detriment at the request of the promisor. Here, there is sufficient consideration because even though neither Efraim nor Keiko "gets" anything (i.e. because they are promising to pay Marla), each suffers a detriment at the request of the other. The "value" of this detriment is confirmed by the fact that each has requested it of the other. Thus, something of value has moved from each promisee to each promisor, constituting legal consideration.*

- b) If Efraim and Keiko mutually promise to abandon their agreement, can Marla sue them for breach of contract? Why or why not?

*No. Marla has not given any consideration in the bargain, and so is not a party to the contract.*

5. If a contract between two companies who often do business together includes ambiguous language that the parties cannot agree on the meaning of, what kind of other information could a court use to determine what the parties meant?

*If the terms of a contract are uncertain, and they cannot be determined by looking at the document itself, courts may consider other factors such as prior communications, past dealings between the parties and relevant industry standards in determining the specific intentions of the parties. In this case, the parties have a history of doing business together so the court may review their previous agreements to determine what the language meant in that context.*

6. Hector agrees to sell Angel a number of shirts, but prior to delivery the shirts are destroyed in an accidental fire. Will the courts enforce this contract? Why or why not?

*No. This is an instance of frustration, and the contract would be nullified by the accidental destruction of Hector's consideration.*

7. Hans, who had recently suffered a stroke, met with a local farmer named Leo who was interested in buying his land. Hans agreed to sell the land for \$70 000, a price under market value, and signed a draft agreement of purchase with Leo. Two months later, Hans passed away. When his children learned of the sale of the land, they initiated a law suit against Leo on behalf of Hans' estate. Will the courts enforce this contract? Why or why not? If not, what do you think would be an appropriate remedy?

*This type of contract would not be enforced due to the fact that the agreement was unconscionable. Hans was very ill and was incapable of protecting his own interests in such a business transaction and ensuring that the bargain was fair. It does not matter whether Leo was aware of Hans' vulnerability at the time or not. An*

*appropriate remedy in cases of unconscionability is to rescind the contract.*

8. Think of a time in your own life where there was an exchange of promises. Which of the elements of a contract were present? What consideration was involved? Were there any contractual defects that would make the contract unenforceable? If one party breached the contract, what would be an appropriate remedy?

*Answers will vary according to experience. Discussion can be steered towards the elements of contract formation, the consideration given by the parties and what should happen if either party breaches its commitment.*

3. In small groups, have students discuss the case studies, *Carlill v Carbolic Smoke Ball Company* and *Toronto Marlboros Junior A Hockey Club v Tonelli*. Before beginning, ask students to conceal the answers by folding the pages, and take time to discuss the questions first. Students should review the materials and reflect on their learning to determine whether the contract in each case is valid. Take up the answers as a class.

## Extension

Have students complete the OJEN *Small Claims Court Mock Hearing: Santiago v Castillo*, which deals with a contract dispute over the purchase of a used vehicle. It is available at <http://www.ojen.ca/resource/4077>.