

Student Name: Tomos Williams

Student ID Number: 2319571

Programme: HND Quantity Surveying

Module: Legal and contract responsibilities in the Built Environment

Module Code: ACBA4004

Lecturer: Lara Hopkinson

Assignment Title: Essential elements of construction contracts



Essential Elements of Construction Contracts

Contents

Introduction.....	3
Essential Elements That Make a Contract Valid.....	3
Offer and Acceptance.....	3
Intention to Create Legal Relations.....	4
Legal Capacity.....	4
Consideration.....	4
Legality of Purpose.....	5
Consent.....	5
Misinterpretation of Contract Elements: Implications and Impact on a Construction Project....	6
Breach of Contract.....	6
Financial Impact.....	6
Timeline Delays.....	6
Quality and Performance Issues.....	7
Disputes and Legal Proceedings.....	7
Strained Relationships and Reputational Damage.....	7
Conclusion.....	7
Reference List.....	8

Introduction

Contracts are a vital part to the success of every construction project. A contract offers a legal framework outlining the responsibilities, rights, and expectations of each party involved. To maintain clarity and reduce risks, a construction contract must carefully evaluate all necessary elements. Firstly, this report will delve into the essential elements that make a contract valid. Subsequently, I will explore into the implications of misinterpreting a construction contract, looking at the possible consequences and how it could affect the project.

Essential Elements That Make a Contract Valid

Offer and Acceptance

A contract comes into effect when one party makes an offer, and another accepts. The person that makes the offer is called the offeror, and the person who the offer is made to, is called the offeree. An offer is an undertaking by the offeror, which will be bound by the offer if there is a proper acceptance of such. It is important to test whether parties have accepted obligations to one another legally. An offer and acceptance of such must be based on the offer made with no alterations.

An important part of contract law is distinguishing the difference between an offer and the invitation to treat. Typically, an invitation to treat is a request for an offer from another person. Which could also mean that it's a sign that one side is willing to negotiate. Key distinctions of offers can be seen as a certain promise to be bound, where there are clear and specified terms, and there is no room for negotiation (Reuters, 2019).

An offer may be terminated by the death of the offeror or offeree. An offer could also be terminated after a reasonable lapse of time, what defines this amount of time varies dependant on the situation. Revocation of an offer can happen any time before the offeree accepts the offer. When an offeree makes a counteroffer in response to an offer, the terms of the offer are altered. This has the effect of removing the initial offer, making it unavailable for acceptance by the offeree (Law Teacher, 2018).

The legal case of *Carlill v Carbolic Smoke Ball Co* [1893] 1 QB 256, is an example of distinguishing the difference between an offer and an invitation treat. The Carbolic Smoke Ball Company, the defendant, advertised their products in a newspaper, promising a £100 reward to anyone who bought and use their product but still got influenzas even after following the instructions. As a result, Carlill, the claimant, bought the smoke balls. She used them properly but got the flu and tried to get the reward. The defendants argued that the advertisement could not bind them because it was an invitation to treat rather than an offer. They stated the advertisement was simply a "puff", with no true intent. Carlill had not technically accepted, and the advertisement's wording was not precise enough, meaning there was no consideration which is required to create a legally binding contract. The court of appeal ruled in favour of the claimant, concluding the advertisement formed an offer for the defendants to enter a unilateral contract (Law Teacher, 2013).

Intention to Create Legal Relations

Many agreements are not intended to be legally binding. For a contract to be enforceable, both parties must intend for the contract to be legally binding. This aspect sets the agreement apart from social or informal arrangements and guarantees that it is enforceable in a court of law.

The law establishes an assumption that parties intending to establish legal relations did so when the agreement is made in a commercial environment. The goal of establishing legal relations is to keep agreements made between friends and family outside the control of the legal system (e-lawresources.co.uk, n.d.).

Legal Capacity

According to contract law, a person or organisation that possesses the legal ability to enter contracts is said to have capacity. Since a business is thought to possess independent legal personality, it can make agreements and is accountable for its deeds. One must be competent and aware of the implications of entering a contract. Unless otherwise stated, most people who enter contracts are presumed to be able to do so. Nonetheless, some people will never be able to enter contracts, such as minors and people under a mental disability (Cull, 2023). People who are under the influence of drugs or alcohol cannot enter contracts either, as they must be of a sound mind.

The Family Reform Act of 1969 identified anyone under the age of 18 as a “minor”. A minor may legally enter contracts, but they are “voidable” by the minor before they turn 18. This implies that the minor has the option to end the agreement if they choose to, but they can also enforce it. The agreement becomes legally binding on both parties when the minor turns eighteen (Laver, n.d.).

The Minors’ Contracts Act 1987 was introduced to protect people under the age of 18. Alongside the common law, this act provides guarantees for minors that contract with adults (Laver, n.d.).

Consideration

The bargain of the contract is taken into consideration in contract law. An exchange of promises forms the basis of the contract. A contract requires that each party be both a promisee and a promisor. They must gain something and lose something in common. Consideration refers to this advantage or disadvantage. A consideration needs to be something that the law deems valuable (e-lawresources.co.uk, n.d.).

Although equity sometimes upholds promises that are not supported by consideration, through the doctrine of promissory estoppel, common law rigorously abides by the requirement of consideration. An equitable doctrine known as promissory estoppel may prevent someone from breaking a promise that isn't backed up by consideration in certain situations (e-lawresources.co.uk, n.d.).

Rules of consideration are as follows: The consideration must not be past, must be sufficient but need not to be adequate, must move from the promisee, an existing public duty will not amount to valid consideration, an existing contractual duty will not amount to valid consideration, and part payment of a debt is not valid consideration (e-lawresources.co.uk, n.d.).

The legal case of *Thomas v Thomas* (1842) 2 QB 851; 114 ER 330 is an example of consideration. Mr. Thomas expressed his desire for his wife to inherit their home and live out her remaining years there, but his will made no mention of this. Following his passing, his executors made an agreement with

Mrs. Thomas “in consideration of such promise” to pay a fee of £1 annually in exchange for being allowed to keep the residency of the house. Later, they tried to get her to leave the house. It was contended that there was no contract in place, as Mrs. Thomas provided inadequate consideration since the rent she paid was so little. However, Mrs. Thomas maintained that she was showing adequate consideration as she was keeping her promise to pay rent and keep the property in good condition. The outcome was decided that the rent paid was recognised as good consideration, and the contract was enforceable (Law Teacher, 2013).

Legality of Purpose

Legality of purpose means that the purpose of contract must be lawful. Contracts involving criminal activity or illegal objectives are unenforceable. Even when the performance of the contract would not ordinarily be illegal, it is nonetheless possible for a contract to be declared illegal. Even though they may not be against the law, some acts are still disapproved by the public. Such actions can potentially make a contract unlawful (Up Counsel, 2019).

Consent

Without consent, a contract cannot be deemed valid or legally binding. In basic terms, consent is the result of two parties agreeing to enter a contract with one another and knowing the full terms and conditions of the contract.

When a contract is signed under pressure that does not reach the limit of duress, it is considered to have been entered under undue influence. When a relationship between parties is present and one has taken advantage of it to obtain an unfair advantage, that relationship is considered to be under undue influence (e-lawresources.co.uk, n.d.).

Duress refers to situations which someone enters a deal after being threatened. The common law originally only recognised threats of illegal physical violence, but more recently, the courts have acknowledged that economic duress can also give rise to a legitimate claim (e-lawresources.co.uk, n.d.).

Entering a contract under undue influence and duress can cause a contract to be void.

Misinterpretation of Contract Elements: Implications and Impact on a Construction Project

Breach of Contract

A misinterpretation could be considered a breach of contract if it causes an infringement from the planned scope. Damages might be imposed on the person who caused the misunderstanding. When one of the parties to a contract breaks an agreement, it is considered a breach of contract. They were expected to comply, but they failed to do so (Viator, 2023).

Some breaches of contract aren't as significant as others, and do not require legal action. However, some major contract breaches such as using a different material that is not up to standard as required in the contract. Other major breaches maybe be failing to make payments on time. The three most common breaches of contracts in construction are defective performance, schedule and delay issues, and failure to perform (Viator, 2023).

When a claimant takes legal action upon another for a breach of contract, damages are usually their main concern and are likely the most popular solution for such a case. Damages essentially means money. The exact details will determine how much money is owed to the harmed party in terms of damages, there are several methods to determine such damages (Viator, 2023).

Financial Impact

Misinterpretation of contract elements could result in extra work or specification changes that weren't included in the original budget. This could lead to cost overruns, which would negatively affect the financial viability of the project. This could prove costly for both the contractor and the client, affecting profitability. According to (Blundell, 2021), "poorly written contracts can raise a project's costs by up to 20%".

Timeline Delays

Project delays may result from misinterpretation-related disputes. The project timeline may be impacted by the time needed to fix the problem and maybe review the design and construction plans. This can lead to an increase in costs as the project will be ongoing for longer and could also carry penalties if the programme is over run.

Contractors sometimes operate on multiple projects at once, and poor weather conditions or delayed material deliveries might cause one project to be delayed while advancing others. If one party believes they are being unfairly penalised for events beyond their control, this may lead to contract conflicts (Bennett Legal Group, P.A., 2022).

When clients make changes that affect the project's timing, they run the risk of creating yet another kind of delay. This could happen if the client adds additional requirements that weren't in the original contract or modifies the project after it was signed (Bennett Legal Group, P.A., 2022).

The average delay of construction projects due to legal disputes is around 6-9 months (Utilities One, 2023).

Quality and Performance Issues

Misinterpretation of contract elements can have an impact on construction projects by affecting the quality of the work performed. This can compromise the overall performance and functionality of the project. This can potentially lead to work needing to be re-done, which adds to extra costs.

The Supply of Goods and Services Act 1982 and the Consumer Rights Act 2015 protects customers from poor workmanship. The law dictates that: “Goods must be correctly installed, work must be carried out within a reasonable timeframe with reasonable care and skill, materials must be fit for purpose and of satisfactory quality, and as described and agreed upon”. Simply this law means that if a tradesperson breach any of these terms they’re legally responsible to amend their mistakes (Jones, 2022).

Dispute and Legal Proceedings

Contract misinterpretation often causes disagreements and lead to disputes between numerous parties such as owners, contractors, or subcontractors. To resolve the disputes, legal action may be taken, which would require time and money that would be better used finishing the project.

The number one cause for legal disputes in the construction industry was failure to understand contractual obligations, according to the 2019 Global Construction Dispute Report by Arcadis (Stonemark, 2020).

Strained Relationships and Reputational Damage

The reputations and relationships of contractors and clients may be harmed by project delays, cost overruns and disagreements. Future business opportunities may be impacted by this, and negative publicity could follow. As legal disputes develop, a company’s reputation for timely delivery, standards of workmanship, and professionalism may suffer a great deal (Utilities One, 2023).

Conclusion

To conclude, the essential elements that make a construction contract valid are the foundations of a well-executed project. Misinterpreting any of these elements, can have a significant impact on a construction project. By being aware of the consequences and learning relevant case law, contractors and clients can manage contractual commitments better and work towards successful project outcomes. To reduce the risks of misinterpretation in construction contracts it is crucial to have legal expertise, pay close attention detail, and maintain clear communication.

Word Count (excluding headings and reference list): 2135 words.

Reference List

Bennett Legal Group, P.A. (2022). Top 10 Issues with Construction Contracts. [online] Available at: <https://www.bennettlegalgroup.com/top-10-issues-with-construction-contracts/>. [Accessed 13th December 2023].

Blundell, S. (2021). Construction contract issues & what to do about them. [online] Planning, BIM & Construction Today. Available at: <https://www.pbctoday.co.uk/news/planning-construction-news/construction-contract-issues/87454/>. [Accessed 12th December 2023].

Cull, T. (2023). Legal Capacity in Contract Law | Definition & Examples. [online] Study.com. Available at: <https://study.com/academy/lesson/legal-capacity-to-enter-a-contract-definition-examples.html#:~:text=A%20legal%20capacity%20example%20would,a%20contract%20and%20understand%20it> [Accessed 9th December 2023].

e-lawresources.co.uk. (n.d.). Contract consideration. [online] Available at: <https://e-lawresources.co.uk/Consideration.php>. [Accessed 10th December 2023].

e-lawresources.co.uk. (n.d.). Duress. [online] Available at: <https://e-lawresources.co.uk/Duress.php>. [Accessed 11th December 2023].

e-lawresources.co.uk. (n.d.). Intention to create legal relations. [online] Available at: <https://e-lawresources.co.uk/Intention-to-create-legal-relations.php>. [Accessed 9th December 2023].

e-lawresources.co.uk. (n.d.). Offer and acceptance. [online] Available at: <https://e-lawresources.co.uk/Offer-and-acceptance-contract.php>. [Accessed 8th December 2023].

e-lawresources.co.uk. (n.d.). promissory estoppel. [online] Available at: <https://e-lawresources.co.uk/Promissory-estoppel.php>. [Accessed 10th December 2023].

e-lawresources.co.uk. (n.d.). Undue influence. [online] Available at: <https://e-lawresources.co.uk/Undue-Influence.php>. [Accessed 11th December 2023].

Jones, K. (2022). Poor Workmanship - What are my rights? [online] Gocompare.com. Available at: <https://www.gocompare.com/household-tips/poor-workmanship/#:~:text=Goods%20must%20be%20correctly%20installed> [Accessed 12th December 2023].

Laver, N. (n.d.). Capacity in Contract Law. [online] claims.co.uk TM. Available at: <https://www.claims.co.uk/knowledge-base/contract-law/capacity-in-contract-law>. [Accessed 9th December 2023].

LawTeacher. (2013). Carlill v Carbolic Smoke Ball Co - 1893. [online]. Available from: <https://www.lawteacher.net/cases/carlill-v-carbolic-smoke-ball-co.php?vref=1> [Accessed 8th December 2023].

LawTeacher. (2013). Kleinwort Benson v Malaysian Mining Corp. [online]. Available from: <https://www.lawteacher.net/cases/kleinwort-benson-v-malaysia-mining-corp.php?vref=1> [Accessed 9th December 2023].

LawTeacher. (2013). Ruxley v Forsyth - Case Brief. [online]. Available from: <https://www.lawteacher.net/cases/ruxley-v-forsyth.php?vref=1> [Accessed 13th December 2023].

LawTeacher. (2013). Thomas v Thomas - 1842. [online]. Available from: <https://www.lawteacher.net/cases/thomas-v-thomas.php?vref=1> [Accessed 10th December 2023].

LawTeacher.net. (2018). Certainty in Contract Law Lecture. [online]. Available from: <https://www.lawteacher.net/lectures/contract-law/formation/certainty/?vref=1> [Accessed 11th December 2023].

LawTeacher.net. (2018). Formation of Contract - Offer Lecture. [online]. Available from: <https://www.lawteacher.net/lectures/contract-law/formation/offer/?vref=1> [Accessed 8th December 2023].

Pease, C. (2013). Illegality in contracts – The In-House Lawyer. [online] www.inhouselawyer.co.uk. Available at: <https://www.inhouselawyer.co.uk/legal-briefing/illegality-in-contracts/>. [Accessed 11th December 2023].

Reuters, T. (2019). Practical Law UK Signon. [online] Thomsonreuters.com. Available at: [https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/4-107-6271?transitionType=Default&contextData=(sc.Default)). [Accessed 8th December 2023].

Stonemark (2020). How to Avoid Legal Disputes in the Construction Industry -. [online] Stonemark Construction Management. Available at: <https://stonemarkcm.com/blog/how-to-avoid-legal-disputes-in-the-construction-industry/> [Accessed 12th December 2023].

UpCounsel. (2019). Illegality in Contract Law: Everything You Need to Know. [online] Available at: <https://www.upcounsel.com/illegality-in-contract-law>. [Accessed 10th December 2023].

Utilities One. (2023). The Impact of Legal Disputes on Budgeting for Large-scale Construction Projects. [online] Available at: <https://utilitiesone.com/the-impact-of-legal-disputes-on-budgeting-for-large-scale-construction-projects> [Accessed 13th December 2023].

Viator, M. (2023). Breach of Contract Explained for Construction Contractors. [online] Procore. Available at: <https://www.procore.com/library/breach-of-contract>. [Accessed 12th December 2023].