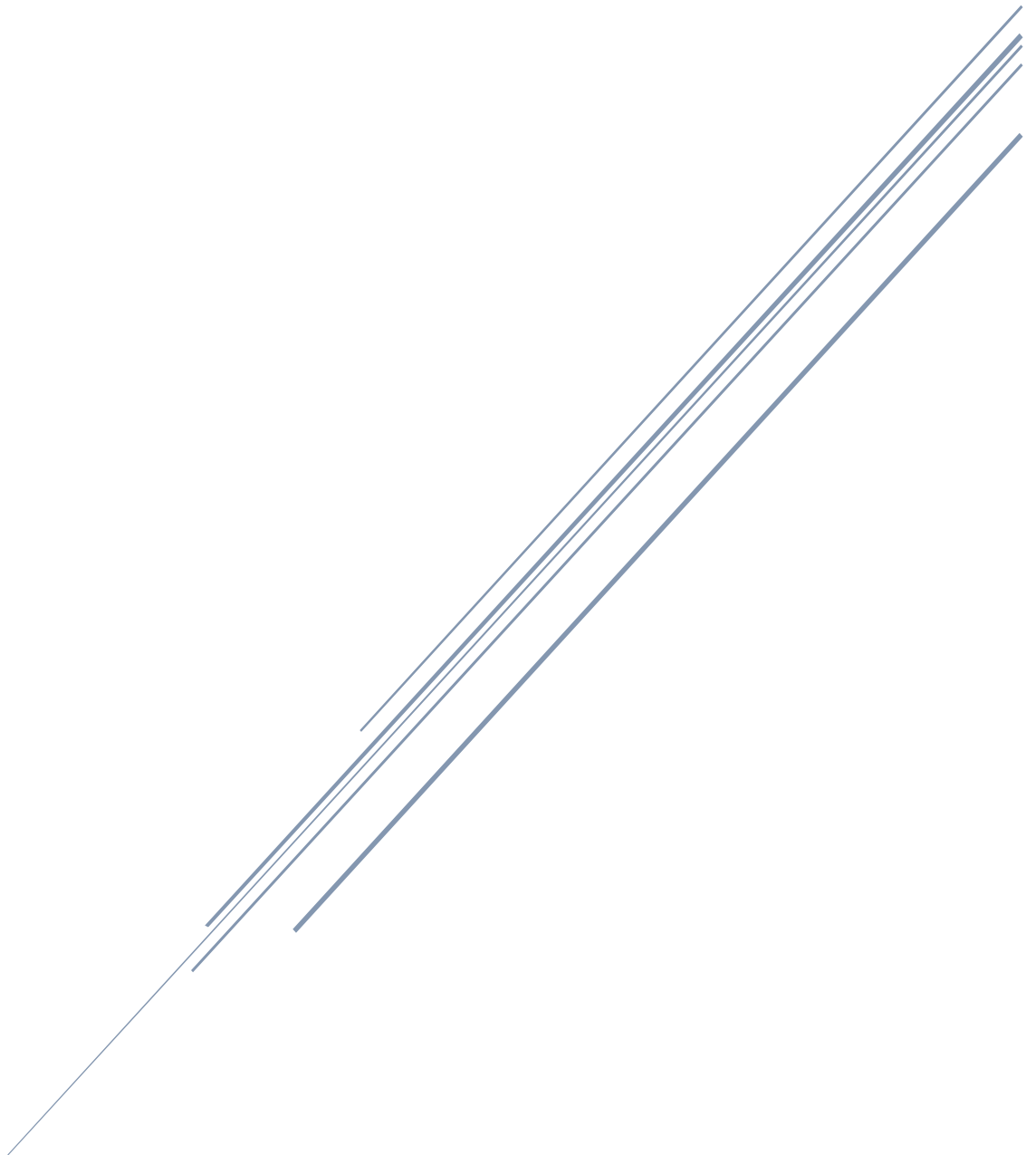


LEGAL & CONTRACTS IN THE BUILDING ENVIRONMENT

Assignment 1



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Introduction

This report will provide evidence of the candidate's justification for a legitimate building contract, they will also use various sectors as examples to interpret how contracts can be used. Along with simplifying scenarios that may have been misread and outlining the consequences if a contract is involved. They will also provide the components that constitute a valid construction contract and an overall explanation of their findings.

What is a contract?

A contract is a legally binding agreement which can be between a minimum of two parties or more. Contracts are used in the construction industry mostly for sub-contracting companies, employees, materials, or timescales on certain work that needs to be completed by a specific deadline. However, contracts can be used in various other sectors such as, sales, tenancy's, employment, services or lease of goods.

For instance, contracts are commonly used in sales to offer customers items like food, materials, and properly formed services. Tenancies are often agreements in which, for example, an owner of a property can rent out a space to a person for residential or commercial use. Employers and employees use employment contracts to specify the roles, responsibilities, and pay scales that each party expects the other to uphold. A car insurance policy that requires timely payments over a predetermined period, either months or years, may be included in a lease of goods contract.

What are the essential elements that make a contract valid?

Although there are many components that go into making a contract valid, three primary components must be met for a contract to be considered effective. All parties must agree, for instance, one party must make a clear offer to the other in a straightforward manner. They cannot be put into writing as a contract until an understanding has been reached by the parties. Before a contract can be made there are several items that all parties would have to consider.

All parties must consent and agree that they are happy with the terms of the agreement before the contract is officially signed. It is recommended for companies such as in the construction industry, to have written contracts in place by solicitors as professional body's so that they are covered by the law in the correct manner. If a party in the contract does implicate the valid contract, the law has the right to enforce further action depending on the contracts agreements which would then be held up in a court of law.

A fundamental concept in contract law, such as consideration describes something of value that is transferred between the parties to a contract. To put more simply, it refers to what each party offers or agrees to offer in exchange for the other's commitment. Consideration is what each party gives the other as "price" for their promise, and it is what makes a contract enforceable. By guaranteeing a fair transaction between the involved parties, it supports the legal force of the contract. All parties looking to create a contract between one and other must also have full clear knowledge of legal intent. This means that all parties involved must be aware that they are entering a serious commitment to carry out their promises in the terms of the contract. They should have a direct understanding that there would be repercussions if either party fails to carry out their promise they agreed to, unless any parties involved have agreed not to be bound by their promise. For example, consideration, or the exchange of something of value between the parties, is frequently regarded as proof of legal intent.

Other factors are highly considered when creating a contract between parties. All parties in a legally binding contract must all have capacity individually. For example, they must not be a minor, such as someone under the legal age. They must not be mentally ill or be under the influence of anything that may impair their judgement, such as drugs or alcohol. There must be true intent and consent from both parties. Meaning that all parties must be responsible, have the knowledge and are knowingly happy to enter the contract, the consent must be true and not effected by another party or person who is creating authority over another person's character to benefit one party only. This can lead to again, consequences and may even be considered as fraud in a court of law.

Representing a contract properly is crucial for clarity, understanding, and legal enforceability. To avoid misunderstandings after it has been signed, a contract should be well written. Essentially, all parties' details must be correct, like company or persons name, address and other details that may need to be included. A contract's methods of dispute clause are a

great approach to let all parties know up front what will happen, in the event that a disagreement does develop later on. In a construction contract, this could include specifying resolution methods such as mediation, the adjudication process or litigation.

Thomas Vs Thomas – 1842

Three primary parties are involved in this case scenario: Mrs. Eleanor Thomas, Mr. John Thomas, and Mr. Benjamin Thomas. Sadly, Mr. John Thomas passed away. He said directly before he died that he wanted his wife, Mrs. Eleanor Thomas, to live out the remainder of her natural life in their home. Regretfully, it was discovered after his death that Mr. John Thomas had neglected to include this information in his will. Eleanor and Mr. Benjamin Thomas, the executor of John's estate, came to an arrangement where Eleanor could live at the property for the remainder of her life if she paid a pound a year in rent to Mr. Thomas, stayed a widow, and kept the property in good condition.

Later on, Benjamin attempted to have Eleanor evicted, claiming that her rent payment did not cover the cost of a commercial rental at that time. Both sides pursued legal proceedings to determine if the arrangement they had in place was sufficient, and Eleanor won the case. The agreement was taken into consideration by the courts when they reached their verdict. They could clearly see that Mrs. Thomas was a widow, that she had maintained the property in a proper manner, and that she had paid the agreed-upon annual rental payment of one pound. This was effective because they could tell that both sides had given the agreement careful thought before signing the contract and that the amount due as the rental, was not a strong enough factor to consider for Mr Thomas.

As an example, if Eleanor had not abided by her promises to Mr Thomas, to keep the house in good condition, decided to re-marry, or not pay her rent when promised, then the scenario would be a completely different outcome. However, the contract would still stand as it was, and they would have to find a way such as mediation or adjudication to provide an agreed outcome on the matter. This would entail bringing a mutual third party in, such as the court of law, which they would then aim to find an acceptable resolution for both parties.

Vinci Construction UK Ltd Vs Beumer Group UK Ltd

Beumer Group UK Ltd was subcontracted by Vinci Construction UK Ltd to do maintenance on the baggage handling system at Gatwick Airport's south terminal. Beumer informed as time went on, that there might be setbacks in finishing the job by the prearranged deadlines.

Vinci chose to obtain the 9.7 million in liquidated damages specified in the contract as a result of the delay. Beumer, on the other hand, didn't agree with this and went ahead and had the dispute resolved by an adjudicator.

Beumer objected to Vinci Construction's decision to collect liquidated damages because it was unclear which delays were covered by each section of the NEC3 contract, and the Subcontractors were unable to complete the works agreed upon on the original dates from two different sections. Consequently, making the case that the uncertainty renders this claim inaccurate. At first, Beumer argued that the adjudicator's decision was "unenforceable" due to the lack of clarity.

Vinci chose to ask the court for additional declaratory relief since he didn't agree with the decision made throughout the adjudication process. Declaratory relief is used when two disputing parties are unable to reach a settlement and seek the higher court, through Part 8 of civil procedures, for a clarification of the terms of the contract, the requirements of the contract, etc. Due to the information presented by O'Farrell, which showed that both parties had specifically agreed for the completed work to be separated into multiple pieces, the court in this instance chose to side with Vinci. Additionally, they had talked about and agreed upon completion deadlines for each segment, detailing the liquidated damages for each section as well. This was produced as motivation for the sub-contractor Beumer to work punctually. As a result of this, Vinci had diminished the original decision of the adjudicator.

The adjudication process is a form of alternative dispute resolution specifically for construction. This can take less time overall but would have seen additional costs arise for both parties, even more so by appealing further to the courts in this case. The original adjudication process has several stages that need to be done before a decision can be made.

Another method of resolution within the construction sector is mediation. Mediation would be beneficial for parties who are looking to find a resolution quickly and cost effectively. However, there are steps both parties would have to take to be able to go through this process correctly. For example, all parties must voluntarily agree to participate in the mediation process, but they must be made aware they can withdraw at any time. The parties must then agree to choose a neutral mediator. The mediator can communicate between both parties but is not initially the decision maker in this process.

The mediator would then call meetings to establish a setting where everyone is comfortable speaking, and rules are established by agreement. Subsequently, each party would alternately raise their points of disagreement, and the mediator would give them space and make sure they understood each other's perspectives. This is a good method to list all the issues in the dispute. Afterwards, they would talk and work through several possibilities that would be interesting to both parties to consider finding a solution that they could all agree on. Following the conclusion of negotiations, each party is required to voluntarily accept the terms of the agreement.

Conclusion

As a result, a legally enforceable agreement that specifies the rights, obligations, and responsibilities of two or more parties is known as a contract. Several key elements, including as an offer, acceptance, consideration, legal intent, legal capacity, and a legitimate purpose, define it. Contracts can be basic agreements for everyday use or complicated corporate arrangements covering a wide range of transactions, especially in the construction industry.

"Thomas v. Thomas" (1842) is a significant legal case that established the principle of consideration in contract law. It shows that an official rent promise was included in this agreement. No matter if it was below the current market value at that time, Mrs Thomas had promised to pay the rent, maintain the property and be a widow which does show the exchange of value in this scenario. The decision in "Thomas v. Thomas" contributed to shaping the modern understanding of consideration in contract law, emphasizing the importance of mutuality and exchange in the formation of legally binding agreements.

As shown, Vinci Construction UK Ltd and Beumer Group Ltd could not reach an agreement on their own. Having processes in place like adjudication and mediation are very useful for companies in the construction industry to make sure problems are addressed effectively and that businesses can work together moving forward. It shows us how effective it is to go through these. Additionally, laws that must be followed guarantee the security of a person or people working in the building sector, ensuring the safety of all parties and demonstrating the efficiency of the construction process.

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