

Oral Contracts

Name

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In the current society of emailing, texting, and even instant global communication, entering into a contract can easily occur in as simple as making a phone call. Despite the fact that many prefer written contracts, oral contracts are also common. An oral contract refers to a contract in which the terms and conditions have been reached upon through spoken communication. This is the opposite of written contract where the terms and conditions are written in a document. In an oral contract, there may be some writing or any other physical evidence in place (Blum, 2007). For example, in a case where parties jolt down the things they have agreed upon but the contract itself is not done in writing.

In the United States, oral contracts are enforceable or binding. Oral contracts are enforceable as long as the essential terms within the contract are clear and certain. This means that the contract should be able to adequately define, as well as detailed on what specific actions all the parties were obligated to perform. The idea is that the contract has to be adequate enough in a way that the court is able to determine the resolve and intention of the involved parties to make it enforceable. In essence, verbal agreements become binding if an agreement has been reached about the services to be performed and even an agreement on the compensation that would be remitted for this service (Madhukar, 2010). For instance, if a plumber goes to a home and agrees to fix the bathtub at a fee of 10,000 dollars, and both the owner and plumber agree on the terms of the plumbing, then they have entered into a contract. According to Blum (2007), for an oral contract to be legally enforceable, the agreement made must be reached in completeness. Incomplete agreements that require further terms and conditions to be set are not considered enforceable in a court of law.

In law, a fundamental principle is that one who asserts must also prove. In oral contracts, when a dispute occurs, it is essential for the one alleging to be able to prove to the satisfaction of the court. This means the person begins providing the oral evidence of what occurred in regards to the understanding reached between the involved parties. In so doing, the terms and conditions have to be provided and also highlight the ingredients that make the understanding between the parties legally binding in a contract. In most cases, oral evidence in itself has its shortcomings and so there is a need to support such evidence with some proof. In this way, oral contracts become more binding if a witness can be called upon to support the claim (Madhukar, 2010). However, the witness must not rely on hearsay but instead having been present during the agreement or has some form of evidence to show the agreement occurred such as an email. In this way, an oral contract can be furnished with emails, memos, letters, receipts, cheques, photographs, and even recording among others to show proof of the agreement.

However, Blum (2007) notes that oral contracts become unenforceable if they fall under the Statute of Frauds. The Statute of Frauds is a law that is designed to eliminate cases of deceitful conduct when it comes to making contracts. In this case, certain contracts are expected to be done in writing to prevent deceit. In the United States, the Statute of Frauds calls for written contracts when it comes to situations such as real estate purchases and sales, real estate leases that go for more than one year, the transfer of properties in the case where the owner dies and agreements to pay another person's debt. Generally, contracts that take longer than a year to be completed or those that last longer than the life of one of the parties requires written contracts. In this way, a court cannot enforce an oral contract if it falls under such categories because a form of writing is required. All the same, there is also some expectations in regards to the Statute of Frauds. If an oral contract falls within this statute, it becomes binding if one of the parties

complied with the terms given or if the plaintiff suffered some harm after relying on the defendant's promise (Blum, 2007).

Implied contracts refer to an agreement that occurs through the actions of the involved parties even though not written or spoken. This means there is no written evidence or an oral agreement involved. For example, a type of implied contract occurs with an implied warranty as it is stipulated automatically by the law. In the implied warranty, if a person buys a product such as a fridge, it is guaranteed it will work for the ordinary purpose it is intended, in this case, to keep the food cold. Implied contracts are of two types and they are implied in fact and implied in law (Brown, 2007).

The implied in fact is based on the basis of meeting of minds, and even though, not set up in an express contract, it is inferred as a fact, from the conduct of those involved and also in light of the surrounding environment and circumstances (Brown, 2007). An example of implied in fact, is where one goes into the salon it is expected that the individual is going to pay for the services provided. Implied in law means that the law imposes the duty to form a contract and so the law will enforce that contract despite the unwillingness of the person. It is viewed that in the circumstances as these, one party may be dishonestly enriched by the actions of another party. In such conditions, one party is entitled to seek compensation for the services offered despite the fact that there was never intent by either of the parties to enter into any agreement. For example, if a person begins to choke in a restaurant and a doctor attends to him/her, after the services the doctor can ask for compensation. Despite the fact that there was never an agreed contract, if the person refuses to pay, the court can determine that he/she is enriched unjustly and so the judge demands that he/she make the compensation (Brown, 2007).

The insinuation of the mutual agreement has to be a reasonable inference given all the conditions and relations that parties anticipate as they enter into these agreements. For example, there is no implied contract that exists in a situation where the relations of the involved parties prevent the inference or suggestion of a contract. Further, no implied contract can be permitted where the result would generate inequality or harm. When there is doubts in the minds of the involved parties, the court can deduce a contractual relationship. Further, if the agreement expires and the parties keep on acting as per its terms, an implication emerges that they have agreed to form a new contract that contain similar provisions as the old agreement (Brown, 2007).

References

Brown, E. (2008). Protecting Agency Workers: Implied Contract or Legislation?. *Industrial Law Journal*, 37(2), 178-187.

Blum, B. (2007). *Contracts: Examples & explanations*. New York: Aspen Publishers Online.

Madhukar, R. (2010). *Business communication, 2nd Edition*. New Delhi: Vikas Publishing House.