

Legal Issues - Contract
Creative Technologies Professionalism
(COMP09096)

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INTRODUCTION

- ❑ Contracts are agreements made by 2 persons (or more) and are legally enforceable
- ❑ Contracts feature when we purchase groceries in the local shop, phone in a takeaway order, get your hair cut – many are verbal and their terms and conditions are implied by our behaviour without particular formalities
- ❑ In your business dealings you are advised to have a set of written terms and conditions for supplying goods and services

INTRODUCTION

☐ Business contracts normally:

- ☐ in writing

- ☐ contain a number of clauses setting out the rights and obligations of the contracting parties

- ☐ are signed and dated by the parties

☐ Elements in a contract:

- ☐ Offer

- ☐ Consideration

- ☐ Acceptance

ELEMENTS IN A CONTRACT

☐ Offer occurs where

- ☐ A (offeror) makes an offer to contract on specific terms to B (offeree) on the basis that if the offer is accepted it will be binding
- ☐ A's offer by A's "words or action" must include an "objectively verifiable intention" on the part of A to form a "binding contract in specific terms" if accepted by B

☐ Acceptance occurs where

- ☐ B communicates to A an "unconditional acceptance" of agreement to the terms of the offer
- ☐ B's words or conduct must include an objective inference that B agrees to the A's terms
- ☐ B cannot try to add new terms when accepting, that's a counter offer and not acceptance

ELEMENTS IN A CONTRACT

- ❑ Consideration (normally this will be money) or something of value has to be given by the
- ❑ offeree
- ❑ If A offers to supply B with artwork for £50 and B agrees then there is a binding contract
- ❑ Something of value may not be money. If A agrees to do the artwork, instead of payment A may ask B for printed copies of the artwork

ADDITIONAL ELEMENTS

Additionally,

- ❑ Contracting parties must intend to create legal relations – covers all parties to the contract
- ❑ In the commercial context of business negotiations, there is a presumption that the parties intended to create legal relations
- ❑ If parties do not want to create legal relations then that should be stated
- ❑ Agreements made “subject to contract” normally rebut any intention to be contractually bound

ADDITIONAL ELEMENTS

Capacity

- ❑ Contractual parties require to have legal capacity to enter into the contract
- ❑ Most individuals have capacity but there are restrictions:
- ❑ Insane Persons – those of “unsound” mind (the insane) as a general rule do not have contractual capacity
- ❑ Minors – general rule that those under 16 do not have contractual capacity

FORMAT OF CONTRACTS

- ❑ No specific format for a contract and it need not be in writing
- ❑ Informal contracts can be verbal or terms may be implied through custom and practice
- ❑ Best practice, when accepting work, agree the commission and conclude the agreement on your standard terms and conditions in writing

AVOIDING PROBLEMS WITH CONTRACTS

- ❑ Having a written, signed contract helps if dispute arises at a later date and there is need to prove what was agreed between the parties
- ❑ The bigger the job the greater the requirement to have agreed and written terms and conditions
- ❑ If terms are onerous then it is possible to negotiate to agree more favourable terms
- ❑ This may work or you could refer to ts and cs

VARYING CONTRACTUAL TERMS

- ❑ If the terms of a contract are varied, variations should be agreed between the parties
- ❑ To be binding variation should benefit both parties. Party seeking the variation should provide consideration If extra publication rights are requested (e.g. for illustrations to be used online and in hardcopy format) then you may agree but will require an extra fee

BREACH OF CONTRACT

- ❑ Breach of contract occurs when one party has not complied with its contractual obligations
- ❑ If the parties go to court, the judge may order:
 - ❑ specific performance – require the party in breach to fulfill its terms of the contract
 - ❑ monetary compensation may be awarded to compensate the party bringing the claim for the loss that has been incurred

INVALID CONTRACTS

- ❑ Inequality of Bargaining Power- one party agrees to an unfair contract in circumstances where he/she “did not take independent legal advice” and is impaired because of his/her “own needs or desires”, or by “ignorance/infirmity” and “undue influence was exercised by the other party” (for the other party’s own benefit)
- ❑ Frustration – if contract frustrated because one party can no longer perform their contractual obligations (eg through illness)

PRACTICALITIES

- ❑ Draw up a set of standard ts and cs for use with clients
- ❑ These need to be incorporated into the contract so you need to draw them to the client's attention and get them agreed at the time the contract is made
- ❑ Sending out your ts and cs for the first time with your invoice is too late because the contract has already been made

EXAMPLE OF TS AND CS

Illustrators ts and cs

- ❑ <http://www.janbow.com/terms.html>

Animators ts and cs

- ❑ <http://www.mairperkins.co.uk/core-terms-and-conditions/>

Website Design & Development ts and cs

- ❑ <http://www.sck-webworks.co.uk/terms.htm>
- ❑ Useful Links and videos (**Create Ts and Cs**)
- ❑ <http://www.createtsandcs.com/>
- ❑ <https://www.youtube.com/watch?v=vPj1hMQpCc4>

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