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# Understanding contracts and dealing with contractual disputes



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By **CHANTEL CRONJE**

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## What you should consider before signing your name on the dotted line

What makes a contract legally binding? We provide clarity on all the terms and conditions that constitute a legal agreement and offer remedies to resolve

contractual disputes.

## A legal contract

A contract can be very helpful with providing legal enforcement of a transaction or agreement, such as the [sale of a vehicle](#).

## What exactly is a contract?

Contracts are legally binding agreements between two or more parties. A party can be made up of individuals or organisations/businesses. Contracts can be oral or written and must meet four formal requirements to ensure that they are valid and enforceable.

## The four requirements of a legally binding agreement

- An agreement is when an offer is made and accepted by all parties involved.
- Consideration is something of value that both parties agree to exchange. It comes in many forms such as goods or services, or anything with value.
- The intention is crucial, both parties must have the intention to create a legally binding agreement.
- The certainty of terms is the subject of the agreement. This includes the key promises about the subject e.g. the timing, which all parties must be specific and clear on.

## The contract

Contracts have a section known as a preamble, found at the beginning, which outlines the entire transaction. The preamble lists the details of the agreement; the who, what, when and how much. You must have all the facts before signing a contract. In the case of a dispute, you must know who you would need to address the dispute with to enforce the contract. An important question to ask is whether their operational details are laid out accurately in the agreement. If not, what would a breach of contract look like?

## Signing the contract

To make sure there are no problems if the need arises to enforce the contract, make sure that the authorised persons sign it. All parties must be of legal age and competent, meaning that they have the maturity and mental ability to enter into the agreement.

## Who can enforce a contract?

Privity, a common law principle, of the contract states that a contract cannot be enforced by anyone who is not a party to the contract. Only those parties to the

agreement can enforce their rights or claim damages. It would be up to one of the parties to enforce the contract if a third party is involved and benefiting from the contract.

## Five contractual disputes

**There are five types of violations that are considered a breach of contract:**

**Positive malperformance** – If a party did not perform as contracted.

**Mora Creditoris** – If a creditor does not co-operate, hindering the debtor's ability to fulfil a contractual obligation.

**Mora Debitoris** – If a debtor fails to make the timeous performance of a positive obligation.

**Repudiation** – If by words or by action, it is demonstrated that a party has an unequivocal, unlawful excuse to no longer be bound to the contract.

**Prevention of performance** – If by the fault of one party, the other party can no longer fulfil their legal obligations.

## COVID-19: Force Majeure

Force majeure clauses cover cases where a party deems it impossible to fulfil the legal obligations as stipulated in the contract. The provision of including a force majeure clause in an agreement is made by contracting parties and this safeguards them from the risks presented by certain economic, political or natural disasters such as the COVID-19 pandemic. If a party seeks to enforce this clause to avoid contractual obligations as a result of the [COVID-19 pandemic](#), they would need to include words that clearly describe the situation.

## Dealing with contractual disputes

The consequences of breaching a contract often come with damages. For example, if one party breaches their side of the agreement, a court can force the party to compensate the other party for damages suffered due to the breach. It is also possible for a court to order specific performance, which is the instruction to follow what is agreed upon in the contract.

Don't sign a contract without doing your homework. Document all contract negotiations in writing throughout the process; this includes history, pricing and terms and conditions. Always clarify any words/ jargon which you do not understand to prevent any possible misunderstandings. If you foresee any problems, do not enter into a contract.

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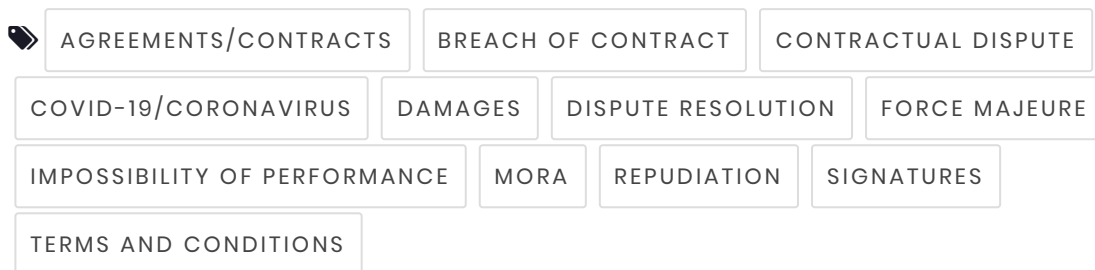
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Chantel Cronje is a Senior Legal Advisor and the Manager of the Debt Solutions Department at Legal & Tax Services. Her daily duties include giving valuable legal advice and assistance... [Read more about Chantel Cronje](#)

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