



Contract Law Refresher

Contract Administration Article Series

Over the course of the next six weeks, we will be covering a series of contract law and administration topics, starting with this contract law refresher, followed by variations, time, payment and security of payment, legal implications of contract breaches and post contract award contract management.

Contract Law – A Refresher

Contract law is the foundation of business and legal relationships and provides the framework for agreements between parties. Understanding the nuances of contract formation, interpretation of clauses, and how to discharge a contract is essential for those engaged in drafting or managing contracts. Contract law also has the major role to play in the tendering process. This article offers an overview of key concepts to refresh your knowledge and ensure you are equipped to navigate the complexities of contract law.

Introduction to Law and Basic Contract Law

Contracts are legally binding agreements derived from both statute and common law. In Australia, the legal system comprises a combination of federal and state laws, with contract law forming one of its core components. In essence, a contract is a promise, or set of promises, enforceable by law. This enforceability ensures that obligations are upheld, or remedies are available in case of a breach.

Essential Elements of a Contract

For an agreement to be legally enforceable, there are four elements which must be satisfied:

1. Offer: a clear proposal made by one party to another, which can be accepted to form an agreement;
2. Acceptance: an unequivocal agreement to the terms of the offer, communicated to the offeror;
3. Consideration: the exchange of value between parties, which may include money, rights, or benefits; and
4. Intention to Create Legal Relations: an objective indication that the parties intended the agreement to have legal effect.

Letters of Intent

A letter of intent (LOI) is a pre-contractual document from a prospective principal informing a tenderer or contractor of their intention to award them to contract. However, despite popular industry perception, an LOI typically does not create a binding legal obligation for the principal to proceed with the contract or compensate the contractor for any work done in reliance on the letter. Even if an LOI states that starting work means full acceptance of its terms, it may not actually be a legally binding offer. Both principals and contractors should approach LOIs with caution and avoid assuming they provide legal certainty before a formal contract is in place.

Contract Interpretation

Contract terms can be expressed orally, in writing, implied by conduct, established by legislation, or applied by common law. Courts interpret terms by considering their ordinary meaning, the intention of the parties, and the contract's overall context. To avoid disputes, clarity and precision in drafting are paramount.

Contract Discharge

Contracts can be discharged in several ways:

- Performance: completion of contractual obligations by all parties.
- Agreement: mutual decision to terminate the contract.
- Repudiation: one party's refusal or inability to perform their obligations, allowing the innocent party to end the contract.
- Termination for Breach: ending the contract due to a significant breach.
- Frustration: events beyond the parties' control that make performance impossible, such as natural disasters.

Takeaways for Practice

Effective contract management requires attention to detail from formation to discharge. Key considerations include:

- Ensuring all elements of a valid contract are present.
- Drafting clear and unambiguous terms.
- Including provisions for force majeure and termination.
- Complying with any tender process terms.

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Understanding the elements and principles which underpin contract law are essential. By mastering these principles, you can better safeguard your interests and ensure your agreements are enforceable and effective. In our next article in this series we will cover variations, one of the most common causes of contract disputes.

Muscat Tanzer offers a comprehensive contract administration training program comprised of 6 sessions delivered either remotely or in person (depending on your preference) on topics including a contract law refresher, variations, time, payment and security of payment, legal applications of contract breaches and the dos and don'ts of contract administration. Each session provides participants with practical knowledge and examples for proper contract administration and is designed to be interactive to maximise retention of the training. If you would like further information on the training program, please do not hesitate to contact us.

In the meantime, if you have any questions in relation to this article or contract law and administration generally, please do not hesitate to contact us.



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