

SECOND EDITION

# CONTRACT SMART

*Understanding Contract Law  
in Singapore*

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Marshall Cavendish  
Business

*To my Lord and Saviour,  
and to my mother who had always wanted to be a lawyer,  
an ambition now fulfilled by her son.*

## Preface

The first edition of this book was written in a reader-friendly style and contained numerous personal anecdotes and familiar examples of the contracts that we encounter in our daily life, such as using public transport and buying our groceries at the nearest supermarket.

In the immortal words of Albert Einstein, “everything should be made as simple as possible, but not simpler.” There is a limit to how much we can simplify a topic like contract law without “dumbing” it down or sacrificing essential concepts. One of my greatest struggles was to fulfil my mandate to streamline and simplify the first edition. While editing the manuscript, it felt almost sacrilegious every time I deleted a line or paragraph as the author of the first edition, Mr Tan Soon Meng, had gone to great lengths to make contract law as relatable as feasible to a non-lawyer. This second edition therefore retains most of the text, and many of the explanations and examples of the first edition.

As ten years have passed since the publication of the first edition, this second edition also updates the reader about the changes in contract law, which has been forced to evolve by the seismic shifts of the last decade. These significant changes include the emergence of the most disruptive technologies of our time – smart contracts and blockchain technology, the rising popularity of digital signatures, as well as the spectre of COVID-19 that has shattered social and business conventions and forever changed how we interact with other people.

– Kevin Chua

## Preface to the first edition

“So what?”

Somehow I feel this is the question that non-lawyers want to ask after they read an introductory book on contract law or business law, or after they attend a course or seminar about contracts. And if that's not a question they think to ask, well, it should be.

The typical book, course or seminar conveys knowledge about contract law but the reader or participant is often not quite sure what to do with that knowledge in actual commercial situations. But that is what the business person is usually looking for – to know what to do in practical circumstances.

In this book I have, of course, set out the fundamentals of contract law, but I have also sought to add a business focus. I am trying to show how contract law is relevant to real-life issues by citing court cases, giving hypothetical examples, highlighting real issues and suggesting practical things that might be done by a business person to take into account the law of contract. I have, simply put, attempted to raise and, if possible, answer the question: “So what?”

I hope you will receive and enjoy the benefits of practical knowledge each chapter aims to teach.

– Tan Soon Meng

# Introduction

Contract law is simple as a concept. It is that branch of law that regulates the financial and commercial transactions between people in society. What trips most people up is in the details. People like to say that the law is difficult to understand and that lawyers deliberately complicate issues and use legal jargon. The sad truth is that the law is what it is only due to how people behave. If human beings were simple, trusting and trustworthy, contract law may not even need to exist at all. Because people are different, there is no blanket rule that can apply to everyone at all times. This is also why government grants seems so overly complicated. It is not the government's fault. The government has to cater to different people at different levels, and take into account not only socio-economic circumstances but cynically, also political factors.

Contract law is the same. It has developed over the years not just as a body of rules, but also as a body of exceptions to those rules. Rules are meant to ensure that two parties in a transaction are treated fairly, yet those rules applied blindly can also end up being unfair. And so, exceptions had to be created to alleviate that unfairness.

Businessmen need contract law, whether they like it or not. When I was a young(er) lawyer, I heard sweeping comments by lawyers posted to certain developing countries in the region that "Country X has no law". What they meant was that the people and the government of that country had little respect, much less reverence, for the law in the way that we in Singapore live our lives "by-the-law". But it is a mistake to think that law, and more specifically, contract law, does not exist or is not useful even in those countries. Whether people are in a straight-laced metropolis like Singapore or a cowboy town in the Wild West, they all crave stability and predictability in their lives. And that is what the law, properly enforced, will give us.

## It's not just Business, It's also Personal

If you were asked to list the contracts you have entered into throughout your lifetime, what would come to mind?

You might probably name the contract for the purchase or sale of your home, your employment contract, the insurance contract for your vehicle, and of course the contract for that one item that you, like almost everyone else today, can't live without – your mobile phone.

If you are in a job that requires you to make sales and purchases of goods or services, you would probably also think of the contracts that you make in the course of work.

All of these contracts involve documents, signatures and formalities. They emerge now and again, but are not a daily affair.

So, most of us think of contracts as things that involve important documents and which come around once in a while in our lives. We think of them as things which are more common in the commercial world. We certainly do not regard contracts as part of daily activity.

But would it surprise you if you were told that you have most probably entered into at least one contract in the course of the last few days? Or that you might even have entered into several separate contracts, with several different parties?

These are some of the contracts you have probably entered into recently:

- when you went to a restaurant, hawker centre, coffee shop or food court to buy your lunch;
- when you went to a convenience store or a provision shop to buy a newspaper or some batteries;
- when you went to the supermarket to get your weekly groceries and supplies;
- when you boarded the MRT, a bus or a taxi;

PART I

PRELIMINARY

- when you parked your car in a shopping centre's car park; and
- when you bought this book from the bookstore.

All these are contracts which are just as legally valid as the mobile phone or insurance contracts which you signed. They confer rights and responsibilities under contract law. This means that if these contracts are breached, the relevant parties can sue in a court of law. For example, if someone eats at a restaurant and suffers food poisoning because the food was prepared unhygienically, that person can sue the restaurant for a breach of contract and claim the medical expenses incurred.

From the above, we can already recognise two things about contracts which we might not have realised before now: the first is that contracts are not uncommon events in our lives but are a part of everyday life. The second is that contracts need not be in writing and signed – they can be made orally or by conduct and still be fully valid and enforceable in a court of law.

### QUESTIONS CONCERNING CONTRACT LAW

Among the questions you may have about contracts and contract law may be the following:

- “The contract I signed seems so unfair to me – can I get out of that contract?”
- “My contract with my employer says that if I resign I can't work for a competitor company for the next five years – can I be sued if I start working for a competitor company before the five years is up?”
- “When would I be able to terminate a contract?”
- “What if I entered into a contract because of something the other person told me about the product, but it turns out what I was told was untrue – what rights do I have?”
- “If the other party breaches one of the terms of the contract first, do I have the right to walk away from the contract since he was the one who caused the problem?”

- “If a shop has a sign that says ‘Goods sold are not returnable’, does it mean I really can't return the goods even though the goods were defective?”

Essentially, the primary objective of this book is to share more about the nature of contracts and contract law. Apart from correcting misconceptions business people may have, it seeks to create greater awareness of the legal rights and liabilities under contract law.

In so doing, this book hopes to better equip you in decision-making and provide you the answers to questions like those listed above.

The two main goals of this book are:

- to explain contract law clearly and simply to those who do not have legal training, using numerous examples and actual legal cases; and
- to bring a practical business focus to the subject by highlighting key points which business people should take note of.

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# An Overview of the Contracting Process

Understanding the contracting process in our day-to-day dealings will undoubtedly prove to be rewarding. Using cases and examples, each chapter in this book is devoted to a specific area in the process and will provide you the knowledge you need to become a more confident decision-maker and critically engaged business executive and client. Essentially an overview of the process involved in making, performing and ending a contract, here is a summary of the substantive chapters of the book.

### PRELIMINARY

#### Sources of Contract Law

Contract law is found in 'case law' and 'statutes'. Case law is found in cases, which are judges' written decisions of court hearings and trials. Statutes are the laws passed by Parliament.

The contract law of Singapore is mainly found in cases. Decisions on contract law made by the Court of Appeal and the High Court of Singapore are important sources of Singapore contract law. Many English cases are also important sources of Singapore contract law because of Singapore's colonial legal history. Even current English cases can become sources of Singapore contract law if the principles in those cases are applied by Singapore judges.

Case law can change over time, although many of the basic principles of contract law have remained the same for years.

Part of contract law may also be found in the statutes of Singapore. These statutes are usually on specific areas of contract law such as the sale of goods or on frustration of contracts (this means when contracts cannot be performed due to external uncontrollable factors) rather than on the basic principles of contract law.

### FORMATION OF CONTRACTS

#### Offer, Acceptance, Consideration and Intention to Create Legal Relations

Contracts have to be formed with four necessary elements. There must be an offer, an acceptance, consideration and an intention to create legal relations.

The words 'offer' and 'acceptance' are words with specific legal meanings, but these meanings are similar to their use in everyday conversation. Offer and acceptance must match each other – in other words, there must be agreement between the parties.

'Consideration' is something of value that one party gives as his part of the bargain for the contract. It can be thought of as the price that the party is paying in order to form the contract. A party who does not give consideration for a contractual promise cannot sue in court to enforce that promise.

The 'intention to create legal relations' means that the parties must intend to be legally bound by the agreement they are making. Parties making social and domestic agreements are presumed by the law to lack the intention to create legal relations. By contrast, parties making commercial agreements are presumed by the law to have the intention to create legal relations.

This is often more intuitive than one may realise. A 'promise' by a relative to give you an *ang pow* (red packet) of \$1,000 during the Lunar New Year festivities may have been made in jest or when he was drunk from all the alcohol imbibed at the reunion dinner, and if you had any sense, you would probably not have taken him seriously. And you should not be suing him in court the next week for the money. But if the two of you had huddled together while the rest of the family were busy 'lo-hei-ing' the yusheng (hopefully during a non-COVID-19 pandemic year) and worked out a business deal for your respective companies, the intention to create legal relations would be much easier to infer.

#### Form of Contracts

Most contracts need not be written. Oral contracts are perfectly valid in most cases. Contracts can also be validly formed through conduct.



But there are certain types of contracts that, due to statutory requirements, need to be made by deed, made in writing or evidenced in writing.

## PARTIES TO A CONTRACT

### Capacity to Contract

Minors, drunken people and mentally incapable people lack the capacity to enter into contracts. The law protects such people by making certain contracts with such parties voidable at their option or void, depending on the specific type of contract. However, the contracts with such people are always enforceable by them against the other party if that other party had capacity.

A person who has attained the age of 21 years is able to enter into all contracts as 21 is the age of majority in Singapore, in other words, the age where one is no longer a minor. For a person below 21, there are different rules depending on whether the person is at least 18 years old or below 18.

### Privity of Contract and Rights of Third Parties

Only someone who is a party to a contract (in other words, someone who is 'privity' to the contract) has rights and obligations under that contract. Those who are not parties to the contract (often called third parties) cannot sue for benefits under the contract even though the parties to the contract had intended for them to benefit. This is the general rule, and legal experience has shown that it can sometimes be unfair. Therefore, over the years, exceptions to the general rule have developed in the law.

There are exceptions under the Contracts (Rights of Third Parties) Act and other statutes, agency law, the law of trusts, under land law and in certain cases of collateral contracts. These exceptions allow third parties to sue under contracts.

## CONTENTS OF CONTRACTS

### Terms of Contracts

The promises each party makes in a contract are called the terms of the contract. Terms are therefore the rights and obligations in the contract and they have to be performed by the parties.

If the parties make statements to each other during discussions before a contract is formed, some of these statements become terms of the contract.

Besides terms, there are other statements which are called representations or puffs. Puffs, which are just advertising hype, have no legal effect. Representations are not part of a contract and so if they are not complied with, there is no breach of contract. However, if a representation turns out to be untrue, the innocent party may have rights under the law of misrepresentation. It is important to distinguish between puffs, representations and terms because of their different legal effects on the parties.

Some of the terms of a contract are explicitly agreed to by the parties. These are called express terms of the contract.

But many rights and obligations which have not been discussed between the parties are still considered by the law to be part of the contract. Such terms are called implied terms of the contract.

Terms can be classified according to their differing importance. There are conditions, warranties and innominate terms. Some terms are so important that if they are breached, the innocent party can lawfully terminate the contract; in addition, the innocent party can claim monetary compensation (called damages) from the other party for losses suffered. Such terms are called conditions.

Warranties are less important than conditions. If a warranty is breached, the innocent party cannot lawfully terminate the contract but can only ask the court to award damages.

There is an important exception to this distinction between 'conditions' and 'warranties'. This exception is found in the law of insurance where this order of importance is reversed. A breach of a warranty in an insurance contract by the insured party allows the insurer to terminate the contract. This is a crucial rule

that people who purchase insurance policies must always bear in mind.

Innominate terms are terms which cannot be categorised as either conditions or warranties at the time the contract is made. A breach of an innominate term which results in serious consequences would allow the innocent party to terminate the contract. A breach of an innominate term which results in minor consequences would only allow the innocent party to claim damages and not to terminate the contract.

### **Incorporation of Terms**

Terms will apply to a contract only if they are properly incorporated into or made a part of that contract. Written documents and written notices become a part of a contract in four main ways: incorporation by signature, incorporation by notice, incorporation by a course of dealing between the parties, and incorporation by custom and usage.

Once a party has signed a written contract, each term in that contract becomes part of the contract, even if the person signing did not read the contract or was not aware of the term.

A second way a term becomes part of a contract is by notice. If a notice that is not part of a written contract is brought to the party's attention before or at the time the contract was formed, the notice also becomes part of the contract.

Sometimes, terms can be incorporated if the parties had contracted with each other on previous occasions and if there was consistency in their course of conduct. If a particular term was included on the previous occasions, it could be considered incorporated into a later contract despite being inadvertently excluded on that one later occasion.

Finally, a term can become incorporated into an oral contract if that term is one that is always found in written contracts of the same nature. That term must be one which is in line with universal market practice that all parties know of or should know of.

### **Implied Terms**

Sometimes, terms are put into a contract by the law even though the parties have not explicitly agreed to those terms. These are called implied terms because the law implies them into the contract.

One way in which terms may be implied is by statute. Terms may be implied by statutes such as the Sale of Goods Act which implies terms into contracts of sale in order to protect the rights of the parties, particularly consumers. For example, the Act implies terms into contracts of sale that goods must match the description given by the seller and that goods must be of satisfactory quality.

A second way for a term to be implied is by custom or usage. If there is a universally accepted market practice or trade custom, that custom could be implied as a term of the contract. However, the parties have a choice of excluding a custom by saying so in the contract itself.

A term may also be implied into a contract by being 'implied in fact' by a court. A term is implied in fact when a court decides that the term is something that the contract cannot do without; in other words, the court decides that the term is necessary for the contract to make sense.

Finally, a term may be implied into a contract by being 'implied in law' by a court. A term is implied in law if that term is a standardised term that has previously been applied by courts to contracts of a particular type, such as lease agreements and employment contracts.

### **Exclusion Clauses**

Exclusion clauses exclude a party from legal liability even though that party has breached the contract.

There are three requirements before an exclusion clause can apply: first, the exclusion clause must have been incorporated into the contract; secondly, the exclusion clause must cover the breach which has occurred; and thirdly, the exclusion clause must comply with the Unfair Contract Terms Act.