

DEAL OR NO DEAL?

The four fundamentals of creating a legally binding contract between parties.



BY MOIRA WALLACE BA, MA, LLB

My daughter tries to make deals with me all the time. At the age of six, she's developed the skill of negotiating the best arrangement for herself, while recognizing there has to be something in it for me. She tries to "seal the deal" by getting me to "pinkie swear" or wrapping her baby finger with mine in a lock. If we pinkie swore, then our deal is done and I better not back out of the arrangement, unless I want to manage the consequences of one terribly upset child. She may not realize it, but she knows the four fundamentals of creating a legally binding contract between parties.

First, there must be an offer to provide goods, services or something of value to another. That offer can be made verbally or in writing. We see and hear offers all the time in audio and print advertising; buy a bed and get a free TV! But beware; the seller can withdraw the offer at any time prior to it being accepted by a buyer. Examples would include a time limited offer or a limited supply of goods, as seen in WagJag deals.

Assuming the offer isn't withdrawn, the buyer can accept it verbally or in writing. This is mostly done through an in person or online sales transaction. If the buyer tries to barter or negotiate the terms, he has not accepted, but has made a counter-offer. The seller is then in the position to accept the new offer. The deal cannot go through without acceptance of the offer or the counter-offer. It also can't be made by leaving a message, "If I don't hear back from you, I assume we have a deal." Silence is not a valid form of acceptance. Even my daughter knows enough to insist I say "yes" to her proposals.

The key element to any contract is consideration; the exchange of money or something of value between the parties. For my daughter, that's usually going somewhere, getting something or watching a movie in exchange for going to sleep without any hassle. Sometimes she claims she's been good all day and therefore should get what she's now asking for. She doesn't realize that value given in the past is not consideration or valid for a new contract. It doesn't matter what has already been done or given if it wasn't contemplated or discussed with the other party in connection with the deal.

That leads to the final element; certainty of terms. The parties must have a clear understanding of the deal and all essential terms should be included in the contract. If the arrangement is for something more than a purchase for money, having certainty of terms usually involves paperwork and may lead to further negotiations. Some terms are found in standard form contracts, in which case the person who receives the contract should ensure it reflects the deal and he understands it. The party who wrote the contract should ensure the terms are accurate because he bears the risk of any mistakes or problems with it. Do note, the terms of a contract can be relayed by email between the parties, making the arrangement enforceable.

While my daughter doesn't have the capacity to contract, as she is under 18, she does a great job of lawyering her way through a deal. At some point I have to teach her about duress and that wrangling my finger into a pinkie lock does not mean acceptance. Until then, I'm sure we'll negotiate if we have a deal or no deal. **BL**

For more information please contact Moira Wallace BA, MA, LLB, Chief Loophole Advisor and Notary Public at 905.575.0732, email moira@wallacelaw.ca or visit Moira's website at www.wallacelaw.ca.

Jo-Ann Orth awarded CCEC Staff Person of the Year



Jo-Ann Orth

PRESS RELEASE

At the 2011 Chamber of Commerce Executives of Canada (CCEC) Conference, held September 16th in St. John's Newfoundland, Jo-Ann Orth, Manager of Events at the Hamilton Chamber of Commerce, was awarded CCEC Staff Person of the Year. Jo-Ann was recognized at the Conference's gala dinner for her almost 34 years of extraordinary service in all capacities of her career at the Hamilton Chamber of Commerce but especially for 2010. Congratulations Jo-Ann! **BL**

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