5. Intention to be legally bound, formalities, and capacity to contract

Course-focused and comprehensive, the Textbook on series provides an accessible overview of the key areas on the law curriculum. This chapter examines the requirement that there must be an intention to create legal relations and specific requirements of form, such as writing, for an agreement to be enforceable as a legally binding contract. Traditionally, this intention to create legal relations is determined objectively using two presumptions that can be rebutted on the evidence. First, it is presumed that there was no intention to be legally bound in the context of social or domestic agreements. Second, it is presumed that the parties to commercial agreements intended to be legally bound unless there are clear words indicating the opposite, such as the existence of an honour clause. In addition, some contracts require particular formalities to be binding. The chapter outlines some examples of these and discusses the consequences of non-compliance with the formality requirements. It also
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considers the capacity rules in contract (that is, a party's ability in law to contract) and the effect of incapacity on a contract, focusing on contracts made by minors (persons below eighteen years old). The chapter concludes by discussing electronic signatures and the implications of e-commerce for formality requirements in contracts.