

Contracts



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Introduction

- Contracts exist all around us—we enter into them on almost a daily basis.
- We rely upon courts to enforce these contracts in order to bring some order to our daily lives.
- Nevertheless, it's not always entirely clear when parties have or haven't entered into a contract or what its terms require of them.

Contracts and contract law

- Contracts are voluntary agreements between two or more individuals, businesses, organizations, or institutions
- Contract law governs the legal rights and responsibilities created by these agreements
- The essence of an enforceable contract is a mutual consent that requires an offer, acceptance, and consideration



Offers

- Offers can be expressed or implied and are valid if clear and definite, though clear exaggerations (puffery) are not enforceable
- Preliminary negotiations are not offers, and offers expire after a reasonable time
- Offers are revokable via rescission or termination at any point prior to acceptance, even with a sunset provision (but see “options”)



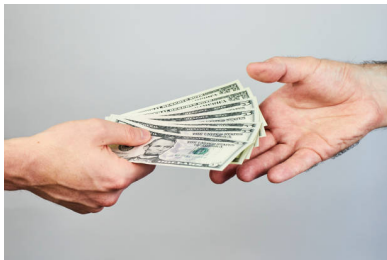
Acceptance and rejection of offers

- Acceptance and rejection of an offer can also be expressed or implied, though the offeree must be aware of an offer to accept it
- The “mailbox rule” governs acceptances in the event of revocation, even if not received
- Shrink-wrap acceptance is questionably enforceable, but click-wrap acceptances are enforceable



Consideration

- Contracts require the exchange of value, or consideration, and such a thing needn't have a defined amount
- Consideration can be an action, a forbearance, or a promise to act or forbear, though it can't be sham, token, or illusory consideration and cannot include a pre-existing duty
- Promissory estoppel is an exception to the consideration requirement



Contract enforceability

- Even with an offer, acceptance, and consideration, some contracts are simply not enforceable. Unenforceable contracts include the following situations:
 - Statute of frauds
 - Contrary to public policy
 - Unilateral mistake
 - Legal incapacity
 - Duress
 - Frustration of purpose
 - Unconscionability
 - Misunderstanding
 - Fraud or misrepresentation
 - Undue influence
 - Impossibility or impracticability

Contract terms

- A contract must include material terms to give it reasonable certainty, and the meaning of these terms are typically ordinary usage
- Under the parol evidence rule, the terms of a written contract are exclusive or completely integrated
- Exceptions to the rule:
Outside verbiage explaining contract meaning, subsequent agreements, and implied terms or warranties



Contract breach

- When a contract is breached, the non-breaching party is no longer bound to it (e.g., satisfaction clause)
- Typically, a material breach is required to void a contract via absence of substantial performance (though see the perfect tender rule)
- Repudiation of a contract could constitute a breach, and premature repudiation by the non-breacher could also be a breach



Contract damages

- When breach occurs, a damaged party can sue the breaching party for damages. These damages might include:
 - Expectation damages
 - Restitution and reliance damages
 - Specific performance
 - Consequential damages
 - Liquidation damages

Conclusion

- Contracts are an essential component of a functional society.
- Nevertheless, their existence, meaning, and enforceability are sometimes in question.
- Consequently, courts are a critical component to the enforcement of contracts in private law.