

## CHAPTER 4: CONTRACTS

A contract is a binding legal agreement that is enforceable in a court of law or by binding arbitration. More simply put, a contract is an exchange of promises with a specific remedy for breach.

Contract law is largely based on:

1. Common Law
2. Uniform Commercial Code Article 2 – governs sale of goods

### CONTRACT FORMATION

**Express:** Actual contract formed by language, either oral or written.

**Implied-in-fact:** Conduct creates an implied-in-fact contract.

**Quasi-contract:** Not an actual contract. This is a court substitute when a contract should have been formed to avoid injustice and ensure fairness from unjust enrichment.

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### CONTRACT EXCHANGE

- Unilateral contract exists when there is one promise made in exchange for performance
- Bilateral contract exists when two promises are made. Simply, a promise is exchanged for another promise.

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### OPEN OR COMPLETE

- Executory contract is a contract whereby duties are open and have yet to be performed or completed
- Executed contract is a contract whereby all duties are completed

- Unilateral contract – one party promises to complete an act
- Bilateral contract – both parties exchange promises

## CONTRACT FORMATION

The key requirements for formation of a contract are:

1. Mutual Assent
2. Consideration
3. No Defenses to Formation

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## MUTUAL ASSENT AGREEMENT

Mutual Assent refers to an agreement through an offer and acceptance

### **Offer**

- Intent to enter into a contract
- Definite and certain in its terms
- Communicated to offeree prior to acceptance

### **Acceptance**

- Acceptance made by communication of acceptance by offeree
- Only person whom offer is addressed can accept offer
- Acceptance must be unequivocal and unconditional
- If terms are changed it is a counteroffer and not an acceptance
- Mailbox Rule – Upon dispatch (e.g. mail, fax), effectively accepted

### **Termination**

- If an offer is terminated before accepted, a contract cannot be formed
- The following are different methods of terminating an offer:

### **Offeror Revocation**

- Direct Communication – Communication made verbally or in writing.

- Indirect Communications – Must actually be received by the offeree, be from a reliable source, and must reasonably convey the revocation.
- Effective Publication – Deemed to be effective when the revocation is published and/or received

### **Exceptions to Revocation:**

1. Unilateral contracts where performance has begun
2. Option contracts with consideration to keep open offer – eg – real estate options
3. Written merchant firm offers

### **Offeree Rejection**

- Express rejection
- Counteroffer
- Rejection effective when received
- Rejection effective due to lapse of time (pursuant to offer)

### **Operation of Law**

- Death or insanity
- Subject matter is destroyed
- Law enacted that makes subject matter of contract illegal

## **CONSIDERATION**

- Contracts are only enforceable if they are supported by bargain for legal value

**Bargain:** Negotiation of process whereby a person agrees to act or not act presently or in the future.

This is expressed through the following:

1. Payment amount
2. Property to be delivered
3. Time to be devoted
4. Actions to be taken

**Legal Value:** Incurring of detriment or legal obligation to perform

## VOIDING THE CONTRACT

There are a number of circumstances which may make a contract void under common law including fraud, duress, misrepresentations and lack of capacity

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### FRAUD

**Scienter** – intentional misrepresentation

**Fraud in execution**

- Deceitful execution of contract
- person did not know that they were signing a contract
- contract is void

**Fraud in inducement**

- Terms are materially misrepresented
- Contract is voidable

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### CAPACITY

- If one party to the agreement lacks capacity to form the contract, the contract is voidable

**Minors Status**

- Persons under the legal age of an adult (age 18)
- Many states have laws that make certain contracts enforceable – education loans, medical care etc.

**Insanity** – Mental state inhibits one's understanding of nature and significance of contract

**Intoxication** – Must prove other party knew of impaired judgment and intoxication impaired one's understanding of nature and significance of contract

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## LEGALITY

- The contract will be void if the subject matter of the contract is illegal
- Eg – contract to commit a crime or tort
- Eg – contract to perform services where a license is required – eg – can't sell booze without a liquor license

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## MISREPRESENTATION OF MATERIAL FACT

- Misrepresentation is not fraud if no intent to mislead
- To void contract need knowledge of falsity with intent to mislead or reckless disregard for truth
- Reasonable reliance by one party resulting in damages

### **Mistake**

1. Mutual – Both parties are mistaken over a basic assumption – to void contract it has to be about material characteristics of subject matter
2. Unilateral – Only a defense if one party is aware of the other party's mistake – otherwise can't void contract