



Contract Law

Educational Objectives

After learning the content of this assignment, you should be able to:

1. Contrast the following types of contracts:
 - Bilateral and unilateral
 - Executed and executory
 - Express and implied
 - Void and voidable
2. Describe the requirements of a valid offer.
3. Describe the requirements of a valid acceptance.
4. Describe the circumstances in which each of the following has the capacity to contract:
 - Minor
 - Insane person
 - Intoxicated person
 - Artificial entity
5. Describe consideration for a contract in terms of the following:
 - Types of consideration
 - Situations in which a contract is enforceable despite a lack of consideration
6. Given a contract, determine whether it has a legal purpose.
7. Explain how each of the following may render a contract unenforceable:
 - Fraud
 - Mistake
 - Duress



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Educational Objectives, continued

- Undue influence
 - Innocent misrepresentation
 - Statute of frauds
 - Parol evidence rule
8. Paraphrase the rules on contract construction that courts commonly use to interpret contracts.
 9. Describe the circumstances in which a third party would have enforceable rights under a contract.
 10. Describe the various ways in which the contractual obligations of the parties to a contract can be terminated.
 11. Describe breach of contract in terms of the following:
 - Types of breach
 - Remedies for breach
 12. Given a case, determine whether a described contract would be legally enforceable.

Outline

- ▶ **Types of Contracts**
 - A. Bilateral and Unilateral Contracts
 - B. Executed and Executory Contracts
 - C. Express and Implied Contracts
 - D. Voidable Contracts and Void Contracts
- ▶ **Requirements of an Offer**
 - A. Intent to Contract
 - B. Definite Terms
 - C. Communication to Offeree
 - D. Duration and Termination
 - 1. Lapse of Time
 - 2. Operation of Law
 - 3. Offeree's Rejection
 - 4. Counteroffers
 - 5. Offeror's Revocation
- ▶ **Requirements of a Valid Acceptance**
 - A. Acceptance by Offeree
 - B. Unconditional and Unequivocal Acceptance
 - C. Offeree's Communication of Acceptance
- ▶ **Capacity to Contract**
 - A. Competent Parties
 - B. Minors' Contracts
 - C. Insane Persons' Contracts
 - D. Intoxicated Persons' Contracts
 - E. Artificial Entities' Contracts
- ▶ **Consideration**
 - A. Types of Consideration
 - 1. Valuable Consideration
 - 2. Forbearance
 - 3. Present and Future Consideration
 - 4. Binding Promise
 - B. What Is Not Valid Consideration?
 - 1. Past Consideration
 - 2. Promise to Perform an Existing Obligation
 - 3. Compromise and Release of Claims
 - C. Exceptions to the Consideration Requirement
 - 1. Promissory Estoppel
 - 2. Charitable Subscriptions
- ▶ **Legal Purpose of a Contract**
 - A. Types of Illegal Contracts
 - 1. Contracts to Commit Crimes or Torts
 - 2. Contracts Harmful to the Public Interest
 - 3. Usury Contracts
 - 4. Wagering Contracts
 - 5. Contracts With Unlicensed Practitioners
 - 6. Contracts to Transfer Liability for Negligence
 - 7. Contracts in Restraint of Marriage
 - 8. Contracts in Restraint of Trade
 - 9. Unconscionable Bargains
 - B. Exceptions to the Legal Purpose Requirement
- ▶ **Enforceability of a Contract**
 - A. Genuine Assent
 - 1. Fraud
 - 2. Mistake
 - 3. Duress
 - 4. Undue Influence
 - 5. Innocent Misrepresentation
 - B. Statute of Frauds and Parol Evidence Rule
 - 1. Statute of Frauds
 - 2. Parol Evidence Rule
- ▶ **Contract Interpretation**
 - A. Plain Meaning
 - B. Effectuation of Intent
 - C. Entire and Divisible Contracts
 - D. Clerical Errors and Omissions
 - E. Contradictory Terms
 - F. Ambiguity
 - G. Parties' Own Interpretation
 - H. Legal and Fair Interpretation
 - I. Trade Usage, Course of Dealings, and Performance
- ▶ **Third-Party Contractual Rights**
 - A. Contract Assignments
 - 1. Rights Assignable
 - 2. Rights Not Assignable
 - 3. Forms of Assignment
 - 4. Assignee's Rights

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tips

Reduce the number of Key Words and Phrases that you must review. SMART Flash Cards contain the Key Words and Phrases and their definitions, allowing you to set aside those cards that you have mastered.



Outline

- 5. Notice of Assignment
- B. Third-Party Beneficiaries
 - 1. Types of Third-Party Beneficiaries
 - 2. Characteristics of Beneficiary Contracts
 - 3. Beneficiaries' Rights
- **Termination of a Contract**
 - A. Performance
 - B. Agreement of the Parties
 - C. Substitution
 - D. Impossibility
 - E. Fraudulent Alteration
 - F. Contractual Conditions
- **Breach of Contract**
 - A. Types of Breach
 - 1. Repudiation
 - 2. Anticipatory Breach
 - 3. Material Breach
 - B. Remedies for Breach
 - 1. Damages
 - 2. Equitable Remedies
- **Contracts Case Study**
 - A. Case Facts
 - B. Was a Contract Formed?
 - C. Is the Contract Enforceable?
 - D. Was the Contract Breached, and, if so, What Is the Remedy?



For each assignment, you should define or describe each of the Key Words and Phrases and answer each of the Review and Application Questions.

Educational Objective 1

Contrast the following types of contracts:

- **Bilateral and unilateral**
- **Executed and executory**
- **Express and implied**
- **Void and voidable**

Key Words and Phrases

Contract

Promisor

Promisee

Privity of contract

Third-party beneficiary

Breach of contract

Bilateral contract



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Unilateral contract

Executed contract

Executory contract

Express contract

Implied contract

Implied-in-fact contract

Implied-in-law contract

Voidable contract

Void contract



Review Questions

1-1. Compare bilateral and unilateral contracts.

1-2. Contrast voidable and void contracts.

Educational Objective 2

Describe the requirements of a valid offer.

Key Words and Phrases

Offer

Offeror

Offeree

Counteroffer



Review Questions

2-1. Describe the three requirements for an offer to be valid for contract purposes.

2-2. Explain how lapse of time affects an offer for contract purposes.

2-3. Under what circumstances can an offeror revoke an offer?

Educational Objective 3

Describe the requirements of a valid acceptance.

Key Words and Phrases

Acceptance

Forbearance

Substantial performance



- 3-3. Explain the different requirements for communication in unilateral and bilateral contracts.

Educational Objective 4

Describe the circumstances in which each of the following has the capacity to contract:

- **Minor**
- **Insane person**
- **Intoxicated person**
- **Artificial entity**

Key Words and Phrases

Competent party

Restitution

Review Questions

- 4-1. Explain the concept of legal capacity to contract.



4-2. Describe the four parties who typically lack capacity to contract.

4-3. Discuss the extent of a corporation's competence to enter into contracts.

Educational Objective 5

Describe consideration for a contract in terms of the following:

- Types of consideration
- Situations in which a contract is enforceable despite a lack of consideration

Key Words and Phrases

Consideration

Good consideration

Valuable consideration

Gratuitous promise



Accord and satisfaction

Promissory estoppel

Review Questions

- 5-1. Describe the five types of consideration that are sufficient to form an enforceable contract.

- 5-2. Describe three types of consideration that are insufficient for forming a binding contract.

- 5-3. Discuss exceptions to the consideration requirement in contracts.

Application Question

- 5-4. Discuss the following in a property-casualty insurance contract:



a. The insurer's consideration

b. The insured's consideration

c. Whether prepayment of premium is necessary before coverage begins

Educational Objective 6

Given a contract, determine whether it has a legal purpose.

Key Words and Phrases

Insurable interest

Usury

Negligence



Exculpatory clause (exculpatory agreement)

Noncompete agreement

In pari delicto agreement

Severable contract

Review Questions

6-1. Explain why an insurance policy not covering an insurable interest is illegal and void.

6-2. Describe the recourse for an individual receiving services from an unlicensed professional.



- 6-3. Explain why common carriers are generally restricted from limiting their liability for negligence unless permitted by statute, administrative agency ruling, or international agreement.

Educational Objective 7

Explain how each of the following may render a contract unenforceable:

- **Fraud**
- **Mistake**
- **Duress**
- **Undue influence**
- **Innocent misrepresentation**
- **Statute of frauds**
- **Parol evidence rule**

Key Words and Phrases

Genuine assent

Fraud

Representation

Material fact



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Rescission

Mistake

Unilateral mistake

Bilateral mistake

Duress

Undue influence

Statute of frauds

Real property (realty)

Uniform Commercial Code (UCC)

Condition precedent



Review Questions

- 7-1. Describe the two remedies available to the plaintiff if fraud is proved in a given case.

- 7-2. Identify two requirements for an insurer to assert the concealment defense to an insurance contract.

- 7-3. Distinguish between unilateral and bilateral mistakes in a contract.

- 7-4. Explain why a person who has reasonably relied on an innocently misrepresented material fact can later avoid a contract.



7-5. Describe the purpose of the parol evidence rule.

Educational Objective 8

Paraphrase the rules on contract construction that courts commonly use to interpret contracts.

Key Word or Phrase

Parol evidence rule

Review Questions

8-1. Explain how courts apply established maxims of construction to interpret ambiguous contract language.

8-2. Contrast entire contracts with divisible contracts.



8-3. Explain why courts prefer to interpret contracts as divisible.

8-4. Describe the system of priorities courts apply to resolve contradictory contract terms.

Educational Objective 9

Describe the circumstances in which a third party would have enforceable rights under a contract.

Key Words and Phrases

Assignment

Assignor

Assignee

Third-party beneficiary contract

Creditor beneficiary



Donee beneficiary

Incidental beneficiary

Review Questions

- 9-1. List the most common situations in which contract rights are not assignable.

- 9-2. Describe an assignee's right under a contractual assignment.

- 9-3. Explain why the legal distinction between creditor and donee beneficiary contracts is becoming less important.



Educational Objective 10

Describe the various ways in which the contractual obligations of the parties to a contract can be terminated.

Key Words and Phrases

Tender

Novation

Condition concurrent

Condition subsequent

Review Questions

10-1. Explain how contracts promising or guaranteeing satisfaction are discharged.

10-2. Describe the elements required for a novation to be effective.



10-3. Distinguish between frustration and impracticability as related to contract performance.

10-4. Identify four circumstances that may make performance of a contract impossible.

Educational Objective 11

Describe breach of contract in terms of the following:

- **Types of breach**
- **Remedies for breach**

Key Words and Phrases

Repudiation

Anticipatory breach

Material breach of contract

Compensatory damages



Consequential damages

Punitive damages (exemplary damages)

Bad faith (outrage)

Extracontractual damages

Mitigation of damages

Liquidated damages

Specific performance

Injunction



Review Questions

- 11-1. Compare material breaches of contract with minor breaches of contract.
- 11-2. Contrast compensatory damages and punitive damages in breach of contract lawsuits.
- 11-3. Explain when courts would order the equitable remedy of specific performance.

Educational Objective 12

Given a case, determine whether a described contract would be legally enforceable.

Application Question

- 12-1. Louis has been in negotiations to purchase Ed's yacht. Based on these negotiations, a price of \$750,000 is established. Ed's attorney prepares the agreement indicating that the yacht will be conveyed at the stated price within sixty days.



- a. Have Louis and Ed formed a contract?

- b. At the closing, Louis inquires about the fishing gear and a large plasma television in the main cabin. Ed responds that these items are not included in the sale. Louis produces a letter from Ed dated one month prior to the agreement stating that all fishing gear is included in the sale of the yacht. Louis also maintains that Ed orally agreed to leave the plasma TV, as it would be very difficult to move. How do the statute of frauds and the parol evidence rule apply to this situation?

- c. Describe the five factors that would need to be proven to establish that Louis did not give genuine assent to the contract and to determine the enforceability of this agreement.

