

Chapter 8—Principles of Contract Law

Offeror—a person who makes an offer

Offeree—a person to whom an offer is made

Bilateral contract—a type of contract that arises when a promise is exchanged for a return promise

Unilateral promise—a contract that results when an offer can only be accepted by the offeree's performance

Express contract—a contract in which the terms of the agreement are fully and explicitly stated in words, oral or written

Implied-in-fact contract—a contract formed in whole or in part from the conduct of the parties as opposed to an express contract

Quasi contract—a fictional contract imposed on parties by a court in the interests of justice and fairness; usually, quasi contracts are imposed to avoid the unjust enrichment of one party at the expense of another

Requirements of a Contract

Agreement—a meeting of two or more minds in regard to the terms of a contract; usually broken down into two events—an offer by one party to form a contract and an acceptance of the offer by the person to whom the offer is made

Three elements for a valid offer:

- 1. there must be a serious, objective intention by the offeree**
- 2. the terms of the offer must be reasonably certain so that the parties and the court can determine the terms of the contract**
- 3. the offer must be communicated to the offeree**

An offer can be terminated by the action of the parties in any of three ways:

- 1. revocation**
- 2. rejection**
- 3. counteroffer**

Revocation—the withdrawal of an offer by an offeror; unless the offer is irrevocable it can be revoked at any time prior to acceptance without liability

Counteroffer—an offeree’s response to an offer in which the offeree rejects the original offer and at the same time makes a new offer

The mirror image rule has been modified by the UCC. A contract is formed if the offeree makes a definite expression of acceptance even though acceptance terms modify the offer.

The offeree's power to transform an offer into a binding contract can be terminated by operation of law if any of 4 conditions occur:

- 1. lapse of time—an offer terminates automatically by law when the period of time specified in the offer has passed. If no time is for acceptance is specified the offer terminates at the end of a reasonable period.**
- 2. destruction of the subject matter—an offer is automatically terminated if the subject matter of the offer is destroyed before the offer is accepted. Bekins offers to sell his cow to Yatsen but the cow dies.**

- 3. death or incompetence of the offeror or offeree (unless the offer is irrevocable)—an offer is personal to both parties and normally cannot pass to heirs**

- 4. supervening illegality of the contract—a statute or court decision that makes an offer illegal will automatically terminate the offer**

Acceptance

Thus, except in special circumstances, only the person to whom the offer is made or that person's agent can accept the offer and create a binding contract.

Mailbox rule—a rule providing that an acceptance of an offer becomes effective on dispatch (on being placed in a mailbox), if mail is, expressly or impliedly, an authorized means of communication of acceptance to the offeror.

2. Consideration

Broken down into two parts:

- 1. something of legally sufficient value must be given in exchange for the promise**
- 2. there must be a bargained-for exchange**

For example, a sheriff cannot collect a reward for information leading to the capture of a criminal if the sheriff already has a legal duty to capture the criminal. Likewise, if a party is already bound by contract to perform a certain duty that duty cannot serve as consideration for a second contract.

Four elements of promissory estoppel:

- 1. There must be a clear and definite promise**
- 2. The promisee must justifiably rely on the promise**
- 3. The reliance normally must be of a substantial and definite character**
- 4. Justice will be better served by the enforcement of the promise**

3. Capacity

Contractual capacity—the threshold mental capacity required by the law for a party who enters into a contract to be bound by that contract

Disaffirmance—the legal avoidance or setting aside of a contractual obligation

Ratification—the act of accepting and giving legal force to an obligation that previously was not enforceable

Virtually every state has a statute that sets the maximum rate of interest that can be charged for different types of transactions, including ordinary loans. A lender who makes a loan at an interest rate above the lawful maximum commits usury.

In general, gambling contracts are illegal and void.

Blue laws—state or local laws that prohibit the performance of certain types of commercial activities on Sunday

Contracts that are contrary to public policy such as a contract that prohibits marriage.

A covenant not to compete is created when a seller agrees not to open a new store in a certain geographical area surrounding the old store.

Unconscionable contract—a contract or clause that is void on the basis of public policy because one party, as a result of his or her disproportionate bargaining power, is forced to accept terms that are unfairly burdensome and that unfairly benefit the dominating party.

Adhesion contract—a standard form contract such as that between a large retailer and a consumer in which the stronger party dictates the terms

Exculpatory clause—a clause that releases a contractual party from liability in the event of monetary or physical injury no matter who is at fault

Justifiable ignorance of the facts—when one of the parties to a contract is relatively innocent, that party can often obtain restitution or recovery of benefits conferred in a partially executed contract.

Members of protected classes—when a statute protects a certain class of people, a member of that class can enforce an illegal contract even though the other party cannot. For example, there are statutes that prevent employees (such as flight attendants) from working more than a specified number of hours per month.

Suppose that Jud Wheeler contracts to buy ten acres of land because he believes that he can resell the land at a profit to Bart. Can Jud escape his contractual obligations if it later turns out that he was mistaken?

Now suppose that Jud purchases a painting of a landscape from Roth's Gallery. Both Jud and Roth believe that the painting is by the artist Vincent Van Gogh. Jud later discovers that the painting is a very clever fake. Jud can rescind the contract because of mutual mistake.

Three elements of fraud:

- 1. A misrepresentation of a material fact must occur**
- 2. There must be an intent to deceive**
- 3. The innocent party must justifiably rely on the misrepresentation**

Statute of frauds—a state statute under which certain types of contracts must be in writing to be enforceable. The purpose of the statute is to ensure that there is reliable evidence of the existence and terms of certain classes of contracts deemed historically to be important or complex.

The test for determining whether an oral contract is enforceable under the one-year rule of the statute is not whether the agreement is likely to be performed within one year from the date of contract formation but whether performance within a year is possible.

There is an exception. An oral promise to answer for the debt of another is covered by the statute of frauds unless the guarantor's main purpose in accepting secondary liability is to secure a personal benefit.

Exceptions to the Statute of Frauds

Partial performance—in contracts relating to the transfer of interests in land, if the purchaser has paid part of the price, taken possession, and made permanent improvements to the property, and if the parties cannot be returned to their status quo prior to the contract, a court may grant specific performance.

Under the UCC, an oral contract is enforceable to the extent that a seller accepts payment or a buyer accepts delivery of the goods.

In some states, an oral contract that would otherwise be unenforceable under the S/F may be enforced under the doctrine of promissory estoppel.