

Class Reference on
Contract & Consideration

Index

I. Definition

II. Components

1. Offer
2. Acceptance
3. Consideration

III. Consideration

1. Definition & Overview
2. The purpose of consideration
3. Forms of consideration
 - (1) Benefit/Detriment
 - (2) Unilateral contracts
 - (3) Mutual Promises
 - (4) Forbearance to sue
4. Identifying consideration

IV. Defenses to Contract

1. Legality of the Contract
2. Capacity of the Parties
3. Agency
4. Mistake, Duress, and Fraud
5. Statute of Frauds

V. Contract Termination

Issues of Constitutional Law(LAW217-00)

Jun-Woo Kim

April 10, 2001

CONTRACT¹

I. Definition

A contract is a legally binding agreement between parties. There are several factors to look at to determine whether a contract has been made. Once a contract has been created, it must be determined if there are any issues that call into question its validity. Finally, if there has been a breach of the contract, there is a question of whether damages have occurred.

II. Components

There are three elements that must be present for a contract to exist: an offer, acceptance, and consideration.

1. Offer

The first step to a contract is an offer. An offer is a statement, written or spoken, by a party of his or her intention to be held to a commitment upon acceptance of the offer. There are a number of factors to look at to determine whether a statement constitutes an offer.

Is the person making the offer serious? A business executive who jokingly states that he or she will sell a successful business in exchange for a good bottle of single malt scotch is not making an offer. On the other hand, a business executive who writes up an offer on a bar napkin may be perfectly serious. A court will look at the context in which the statement was made to determine whether it was a valid offer.

Does the statement show a willingness of the party to be held to its contents? A person requesting a price quote or opening negotiations is not making an offer. An advertisement is usually viewed as an invitation to an offer rather than an offer itself.

Does the statement contain definite terms with regard to the subject matter? Is the subject matter identified, are parties identified, is the price set, are quantities determined, and is time for performance stated? There should be enough information contained in the statement that, if needed, a court would be able to enforce the contract or determine the damages.

¹ Disclaimer

Notes to Readers: This document was intended to be used as a reference during a classroom session, and thus does not contain the citations in the proper format. All the materials and pictures used in this paper are derived from original works by other scholars. My contribution in this paper is limited to restructuring the contents in an appropriate way to present in the classroom for the purpose of diffusing the information to the class. Formal presentations given in the class hereafter would have all references and sources cited in a proper form. Use caution in referring and distributing the information on this paper. Also, because the original document was created in HWP format, alterations and loss of information has occurred while transformatting to PDF format hence revealing some inconsistencies.

2. Acceptance

The second requirement for a valid contract is acceptance of the offer. In order for an acceptance of an offer to be effective, it must be made while the offer is still open. In some situations, the company making the offer gives a definite time frame (My company will sell you this computer software for \$2000 but you must decide whether to buy it within two days).

If a person changes the conditions of an offer in responding to the offer, the offer is rejected and the changed conditions constitute a counteroffer(I want to buy the software, but I will pay only \$1500 for it). In this scenario, the person who made the original offer can respond to the counteroffer by accepting or rejecting it, or proposing yet another offer.

There are two ways a person can accept an offer, either by promising to do something, or by performing the desired act. In the first type, a customer promises to pay \$2000 for computer software. This is a bilateral contract. In the second type, a business owner offers a contractor \$1000 to replace ceiling tiles and the contractor replaces the tiles; the contractor accepted the offer by performing the act requested. This is a unilateral contract.

3. Consideration

III. Consideration

1. Definition & Overview

Consideration is a legal concept which describes something of value that is given in exchange for a performance or a promise to perform. The presence of consideration distinguishes contracts from gifts.

Consideration can be a promise to do something there is no legal obligation to do, or a promise to not do something there is a legal right to do. Promises to exchange money, goods, or services are forms of consideration. All parties in an agreement must give consideration in order to create a contract, but courts

typically do not look at the adequacy of consideration unless there is evidence of some type of wrongdoing by the party benefiting most from the contract.

2. The purpose of consideration

A promise made by deed is binding.

A promise in a 'simple' contract (not by deed) is binding, if supported by consideration.

A promise to give something, not supported by consideration, is not binding..

3. Forms of consideration

(1) Benefit/Detriment

"Consideration means something which is of value in the eyes of the law, moving from the plaintiff: it may be some detriment to the plaintiff or some benefit to the defendant." *Thomas v Thomas* (1842) 2 QB 850 per Patteson J (U.K.)

(2) Unilateral contracts

(3) Mutual Promises

Mutual promises create executory consideration, so that both parties are bound. If A promises to sell goods for certain won, and B promises to buy those goods for certain won, A gains a benefit only if B is bound, and B suffers a detriment only if A is bound. Conversely A suffers a detriment only if B is bound, and B gains a benefit only if A is bound.

(4) Forbearance to sue

4. Identifying consideration

Consideration must be something of value in the eyes of the law, but need not be adequate. Value is interpreted as economic value, not moral obligation.

IV. Defenses to Contract

Once it is determined that there is a contract, it must be determined whether there are any defenses that

call into question the validity of the contract. There are some defenses that make the contract unenforceable (void) and other defenses that may give the parties the option to enforce the contract or not (voidable).

1. Legality of the Contract

Although two persons may exchange an offer, acceptance, and consideration, if the subject matter of the contract is illegal, an enforceable contract does not exist. For example, if a person offers to pay another person money for illegal drugs, this is a void contract.

2. Capacity of the Parties

In order to be bound to a contract, the parties must be competent to enter into the legal arrangement. Underage persons, persons who are mentally ill, and intoxicated persons are usually not bound by the contracts they enter. However, a minor may have the option of enforcing a contract.

3. Agency

A business may challenge the validity of a contract by alleging that the person who signed for the company was not an agent of the company and therefore had no authority to act on the company's behalf. Agency is the legal status in which one person, the agent, has authority to conduct business for another party, the principal. Unless their businesses are very small, most business owners must rely on other people to conduct business and enter into contracts on behalf of their businesses. Because principals are bound by contracts entered into by their agents, business operators should be familiar with the laws of agency.

An agent's authority to enter into contracts on behalf of the business can be actual, implied, or apparent. Actual authority is authority that the principal has intentionally given to an agent who has accepted it. Implied authority results because of the agent's relationship with the principal or the principal's business,

from custom, or by acquiescence. Apparent authority can result when the principal acts in a way that would cause third parties reasonably to assume that the agent had authority.

4. Mistake, Duress, and Fraud

A mutual mistake by both parties to a contract on an important issue makes the contract unenforceable. However, a mistake by only one party does not necessarily make the contract void.

Duress is the use of force or pressure by one party to make the other party agree to the contract. The force does not have to be physical -- one could be put under mental duress. The use of duress makes the contract voidable by the party under duress.

Fraud is the intentional misrepresentation of an important issue of the contract. The presence of fraud in a contractual proceeding makes the contract voidable by the party upon whom the fraud was perpetrated.

5. Statute of Frauds

Contracts, in many instances, do not have to be in writing to be legally binding. However, a rule known as the Statute of Frauds requires that some contracts must be written to be valid. Contracts involving the sale of real estate, contracts concerning the sale of goods worth more than \$500, contracts that cannot be performed within one year, contracts to pay off someone else's debts, leases for more than one year, and contracts concerning a marriage must be in writing.

V. Contract Termination

Once there is a valid contract between parties, it can end in several ways. A contract may have a limited time span and finish at the end of the stated time. If a person is hired to work for two weeks, the contract concludes at the end of two weeks. In many instances in which there is a specific time frame stated in the contract, parties to the contract may have the option to extend the contract for a longer period of time.

Contracts may also be project, not time, specific. Goods or services may be contracted for a project and upon the completion of the project, the contract for these goods or services ends. Parties to a contract may mutually agree to rescind the contract. In that case, the parties may agree on the duties and responsibilities of each party after the rescission.

A contract also may end because of a breach. A breach occurs when a person does not fulfill his or her responsibilities as promised in the contract. A breach may be minor or major. A minor breach is one that affects small, minor details of the agreement and may not affect the outcome of the contract. However, a major breach is one that does affect the subject matter of the contract and may affect the outcome of the contract. This is also known as a breach of a material issue. When there has been a breach in a contract, the question of damages is raised.

CONTRACT

I. Definition

II. Components

1. Offer
2. Acceptance
3. Consideration

III. Consideration

1. Definition & Overview
2. The purpose of consideration
3. Forms of consideration
 - (1) Benefit/Detriment
 - (2) Unilateral contracts
 - (3) Mutual Promises
 - (4) Forbearance to sue
4. Identifying consideration

IV. Defenses to Contract

1. Legality of the Contract
2. Capacity of the Parties
3. Agency
4. Mistake, Duress, and Fraud
5. Statute of Frauds

V. Contract Termination