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Intro to Contracts

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Introduction to Contracts

Contract Law – An Overview

- Written and unwritten contracts for the basis of many of our own personal and business transactions.
- The law of contracts refers to the obligations that people have to one another in relation to transactions in which they engage.
- As we will see, contract law is generally based in **common law** (developed from customs and old traditions, carried down and interpreted through judge-written decisions) opposed to **statutes** (written law passed by legislature).
    - ***One exception is Article 2 of the **Uniform Commercial Code** – a code that governs only transactions of the sales of goods. The UCC is a model code, meaning each state decides whether they adopt it.
    - We do not need to worry about the UCC this class.

What is a Contract?

- Generally, a **contract** is any voluntary legally binding agreement between two or more parties.
    - The parties can be people or businesses.
- Contracts can be really simple (you offer your friend a price for his bike; he accepts; you pay and get the bike) or they can be complex (the sale of a house or business)
- A contract has several elements.
- A valid contract requires –
    - 1) An **agreement** (which is an **offer and acceptance** of the terms);
    - 2) Supported by valid **consideration**;
    - 3) Between two **competent parties;**
    - 4) That is **LEGAL.**
- Each class will focus on one or more of a contract's elements. But for now, here is a quick summary of each element

Four Elements of a Valid Contract (There are elements within these elements!)

1. **Agreement**
    a. The first step in forming a contract. The terms are set forth and offered by one party, the other party accepts
        i. I offer to sell you my car for $5,000. You accept and pay me the money.
        ii. The person making the offer is the **offeror** and the person accepting is the **offeree**
2. **Consideration**
    a. Something of value that is exchanged by each party to bind them to the agreement (money, property etc)

i. At a stoop sale, the owner offers a passerby a box of old books for $10. The books and the $10 are the consideration for the agreement.

3. **Capacity**
    a. Refers to the legal and mental capacity to enter into an agreement
    b. There are certain people under the law that cannot be legally bound by a contract (in most states, minors, people under the influence, or people deemed mentally incompetent)
4. **Legality**
    a. The contract must not be against the law
        i. A criminal defendant offers an eye witness to a crime $1,000 to not testify against him at trial. This would be an illegal contract because it is against the law (witness tampering)

*****Before we delve into the elements of a valid contract, there are some important terms to know –**

Unilateral vs. Bilateral Contracts

What is the distinction between a **unilateral** and **bilateral contract?**

- In a **unilateral contract,** the offeror seeks a completed performance (and not simply a return promise to perform by the other contracting party.) It is a promise to pay for an act but only if the act is completed (ex: offers of rewards, real estate broker's contracts, or attorney contingency fees).
    - It is an offer calling for **full performance** as the acceptance of the offer.
    - Ex: Walk across the Brooklyn Bridge and I will pay you $100. Here, the promisor undertakes to pay only for a completed performance and the walker promised nothing.
    - A unilateral contract usually creates no obligation at its inception but is merely a promise to pay in its future provided the promisee fully performs under the contract terms.
    - In a unilateral contract, the promise to pay is the offer **and the fully performed act is the acceptance**. At no time in a unilateral contract has the offeree contractually bound herself to do anything. Even if she starts to perform she has no contractual duty and is not bound to finish the performance.
- A **bilateral contract** has **two promises –** both parties make binding promises to perform and one promise is consideration for the other promise.
    - **Offer and Acceptance in a Bilateral Contract –** to constitute a binding bilateral contract, there must be an express or implied offer, coupled with an express or implied acceptance of that offer.
    - **Ex:** Any sales agreement is an example of a bilateral contract. A car buyer may agree to pay the seller a certain amount of money in exchange for the title to the car. The seller agrees to deliver the car title in exchange for the specified sale amount. If either party fails to complete one end of the bargain, a breach has occurred.

- Business contracts are almost always bilateral. Businesses provide a product or service in exchange for financial compensation, so most businesses are constantly entering into bilateral contracts with customers or suppliers.
- An employment agreement in which a company promises to pay an applicant a certain rate for completing specified tasks, is also a bilateral contract.

Valid, Void, Voidable, and Unenforceable Contracts

- Contracts are defined in terms of whether they are legal and enforceable
- A **valid contract** is one that contains all the essential elements of a contract (an agreement (offer and acceptance), consideration, between competent parties, and for a legal purpose).
  - Think of it as a perfect contract
  - Ex: Carl, a carpenter, agrees to build a fence for Henry, the homeowner, for $1,000.
- A **void contract** is a contract that is missing one of the essential elements of a contract so **it cannot be enforced** as a matter of law.
  - N**o legal purpose -** Ex: A husband offers a hitman $20,000 to kill his wife. Neither the husband nor the hitman can enforce the contract in court. Illegal conduct cannot be part of the contract
  - **Parties not competent –** A mentally incompetent person doodles his name on a business contract. It is void
- A **voidable contract** is one that is enforceable against the parties **until** the party who is entitled to void the contract raises his right to do so.
  - Ex: A car salesman sells a car to a 15-year old. The 15-year old can return the car, despite any return policy, because generally, minors cannot enter into contracts. If the minor does not try to get out of the contract, it remains in place.
- An **unenforceable contract** has all the elements of a contract but fails to meet a requirement of the law.
  - Ex: The law requires that some contracts, such as for the sale of land, be in writing. So a verbal contract to sell your home is not enforceable (you cannot be forced to sell)
  - **Some contracts simply cannot be performed**
    - Pat agrees to paint Dan's house for $500. The house burns down. Pat cannot paint the house.

Express vs. Implied

- **Express Contracts** which must be stated in definite, written or oral words
- **Implied Contracts** – contracts that are formed from the actions of the parties
  - a) **Implied In Fact**
    - contracts that arise from conduct implying an agreement (usually to pay money).

        - Ex: You go to a corner store and grab a bag of chips. You hold up a dollar to the cashier and leave it on the side of the counter because you don't want to wait in line.
    - **Implied In Law –** Contracts implied to law, also known as **quasi-contracts**, are imposed by law to prevent a party's unjust enrichment at the other party's expense.
        - A quasi-contract, implied in law, is not a contract at all but is an obligation imposed by law to do justice even though it is clear that no enforceable promise existed.
        - Ex: H contracted to paint O's house. Halfway through the job an earthquake, a flood or fire demolished O's house. The doctrine of impossibility of performance will excuse both parties from further performance. H can sue in quasi-contract on the now unenforceable contract but only to the extent his services enhance the value of O's house at the time of the performance. When a contract is excused based on impossibility of performance, then the performing party's recovery is limited to the amount his services increased the value of O's realty.
        - Ex: a doctor bound by an oath to give aid to an unconscious victim can sue in quasi-contract for the value of those services even though the victim died. T
        - Ex: P found D's damaged boat washed up on shore. P put it in storage and repaired it. When D found out, he demanded its return. Here, P has a claim in quasi-contract to recover his expenses in restoring and storing the property

Executory vs. Executed Contracts

- **Executory –** A contract that has not yet been performed (Ex: You offer a friend $100 to install your computer program. He installs it. You have not yet paid him. The contract is executor)
- **Executed –** A contract that has been completely performed.