

A contract is an agreement that is enforceable by law. Modern business could not exist without such contracts. Most business transactions involve commitments to furnish goods, services, or real property; these commitments are usually in the form of contracts.

Use of the contract in business affairs ensures, to some extent, the performance of an agreement, for a party that breaks a contract may be sued in court for the damages caused by the breach. Sometimes, however, a party that breaks a contract may be persuaded to make an out-of-court settlement, thus saving the expense of legal proceedings.

A contract arises when an offer to make a contract is accepted. An offer contains a promise (for example, "I will pay \$1,000") and a request for something in return (a person's car). The acceptance consists of an assent by the party to whom the offer is made, showing that the person agrees to the terms offered. The offer may be terminated in a number of ways. For example, the party making the offer may cancel it (a revocation), or the party to whom the offer is made may reject it. When the party to whom the offer is made responds with a different offer, called a counteroffer, the original offer is terminated. Then the counteroffer may be accepted by the party making the original offer.

REQUIREMENTS OF A VALID CONTRACT

For a contract to be valid, both parties must give their assent. They must act in such a way that the other people involved believe their intention is to make a contract. Thus a person who is clearly not sincere in saying that he or she accepts an offer usually is not held to a contract by the courts. On the other hand, a person who secretly has no intention of making a contract but who acts in a manner that leads people to believe he or she had, may be held to a contract. Legally, it is the external appearance that determines whether one is held to a contract.

Consideration

A contract results from a bargain. This implies that each party to the contract gives up something, or promises to, in exchange for something given up or promised by the other party. This is called consideration. In the example given above, the consideration on one side is the promise to pay \$1,000, and on the other, the promise to deliver a car. With rare exceptions, a promise by one party, without some form of consideration being extended by the other party, does not result in a contract or other enforceable obligation, regardless of the sincerity of the promise. Although each party must extend consideration to the other in order to form a contract, the value of the consideration need not be equal. Determining how good a bargain is becomes the responsibility of the parties involved. Otherwise, the courts would be in the impossible position of having to appraise the relative value of millions of promises made every year.

Competence

For a contract to be enforceable it must be between competent parties. A contract with a person who has been adjudicated insane is likely to be declared void. A contract involving a minor--in most states of the United States a minor is now a person under 18--may be enforced or voided by the minor, unless the contract is for necessities such as food, lodging, or medical services, in which case he or she may be held responsible for the reasonable value of what was purchased. Persons suffering from a disability such as intoxication from drugs or liquor, or insane persons not adjudicated insane, usually may void a contract if the other party knows or should have known of the disability and if the consideration received is

returnable.

Legality

The last requirement of a valid contract is that its provisions be legal. If a purported contract requires an illegal act, the result is a void contract. Parties to an illegal contract have no standing in court. If one party receives money or property under an illegal contract, the other may not sue to recover what was paid under the contract. Not only are contracts requiring criminal acts illegal, so are contracts requiring commission of a TORT (a breach of civil law such as misrepresentation or trespass) or those in breach of public policy. Although public policy is difficult to define, it includes some serious breaches of conventional morality or ethics.

It is commonly assumed that an enforceable contract must be in writing. This is usually untrue. Most oral contracts are enforceable, but written contracts are easier to prove.

Some types of contracts must be in writing, for example, contracts for the purchase or sale of any interest in real property, contracts to pay debts of others, and contracts that require more than a year to perform. Contracts for the sale of personal property--that is, movable property--as distinguished from land, at a price above a specified sum set by law must be in writing unless payment or delivery has been made or unless the goods were specially manufactured.

Although only a few types of contract must be in writing, the terms of a written contract ordinarily may not be contradicted in court by oral testimony.

REMEDIES FOR BREACH OF CONTRACT

In the event of a breach of contract, the injured party usually sues for money damages (the award of a sum of money designed to compensate for losses stemming from the breach). Damages are measured by what may reasonably be foreseen as financial losses; unforeseeable losses may not be collected. If an award of money is not compensatory because something about the promised performance was unique, the party who breaks a contract may be ordered by the court to perform as agreed. This is called specific performance. For example, real estate is always considered unique. Therefore, when a party has contracted to sell real estate but changes his or her mind, the court may grant specific performance and order that the deed for the real estate be delivered to the agreed buyer.

Most contracts are formed with an implicit understanding that neither party need perform unless the other has completed his or her promised performance. An exception to this understanding occurs when a party has performed most of his or her obligation and the part not performed is relatively immaterial. The doctrine of substantial performance provides that in such a case, the opposite party must perform, although he or she may secure money damages to the extent that he or she was damaged by lack of complete performance.

