

# CONTRACTS

## TABLE OF CONTENTS

- I. WHAT IS A CONTRACT? ..... 1
  - A. GENERAL DEFINITION ..... 1
  - B. LAW GOVERNING CONTRACTS ..... 1
  - C. TYPES OF CONTRACTS ..... 1
    - 1. Classified by Formation ..... 1
    - 2. Classified by Acceptance ..... 2
    - 3. Void, Voidable, and Unenforceable Contracts ..... 2
  - D. CREATION OF A CONTRACT ..... 2
  
- II. MUTUAL ASSENT—OFFER AND ACCEPTANCE ..... 2
  - A. IN GENERAL ..... 2
  - B. THE OFFER ..... 4
    - 1. Promise, Undertaking, or Commitment ..... 4
    - 2. Terms Must Be Definite and Certain ..... 4
    - 3. Communication Requirement ..... 5
  - C. TERMINATION OF OFFER ..... 5
    - 1. Termination by Acts of Parties ..... 5
    - 2. Termination by Operation of Law ..... 6
  - D. THE ACCEPTANCE ..... 7
    - 1. Who May Accept ..... 7
    - 2. Acceptance Must Be Unequivocal ..... 7
    - 3. Generally, Acceptance Must Be Communicated ..... 8
  - E. UNILATERAL OR BILATERAL CONTRACT ..... 10
    - 1. Interpreting Contract as Unilateral or Bilateral ..... 10
    - 2. Formation Problems ..... 10
  
- III. CONSIDERATION ..... 11
  - A. INTRODUCTION ..... 11
  - B. ELEMENTS OF CONSIDERATION ..... 11
    - 1. Bargained-For Exchange ..... 11
    - 2. Legal Value Element ..... 11
  - C. MUTUAL AND ILLUSORY PROMISES—REQUIREMENT OF MUTUALITY . 12
    - 1. Examples ..... 13
    - 2. Right to Choose Alternative Courses ..... 13
  - D. NO REQUIREMENT THAT ALL CONSIDERATION BE VALID ..... 13
  - E. SUBSTITUTES FOR CONSIDERATION ..... 13
    - 1. Promissory Estoppel or Detrimental Reliance ..... 13
    - 2. Modification Under the U.C.C. .... 13
    - 3. Promises to Pay Legal Obligations Barred by Law ..... 14
    - 4. Seal ..... 14
  
- IV. REQUIREMENT THAT NO DEFENSES EXIST ..... 14
  - A. DEFENSES TO FORMATION ..... 14
    - 1. Absence of Mutual Assent ..... 14

2.	Absence of Consideration .....	15
3.	Public Policy Defenses—Illegality of Contract .....	15
B.	DEFENSES BASED ON LACK OF CAPACITY .....	15
C.	DEFENSES TO ENFORCEMENT .....	15
1.	Statute of Frauds .....	15
2.	Unconscionability .....	17
V.	RIGHTS AND DUTIES OF NONPARTIES TO CONTRACT .....	17
A.	INTRODUCTION .....	17
B.	THIRD-PARTY BENEFICIARIES .....	17
1.	Who Is Third-Party Beneficiary? .....	17
2.	When Does Beneficiary Acquire Contractual Rights? .....	19
3.	Who Can Sue Whom? .....	19
C.	ASSIGNMENT OF RIGHTS AND DELEGATION OF DUTIES .....	19
1.	Assignment .....	19
2.	Delegation of Duties .....	21
D.	NOVATION DISTINGUISHED .....	21
VI.	RULES OF CONTRACT CONSTRUCTION AND THE PAROL EVIDENCE RULE .	21
A.	RULES OF CONTRACT CONSTRUCTION .....	21
B.	PAROL EVIDENCE RULE .....	22
1.	Exceptions .....	22
VII.	INTERPRETATION AND ENFORCEMENT OF THE CONTRACT .....	22
A.	INTRODUCTION .....	22
B.	WHEN HAS A CONTRACTING PARTY’S DUTY TO PERFORM BECOME ABSOLUTE? .....	22
1.	Distinction Between Promise and Condition .....	22
2.	Classification of Conditions .....	24
3.	Have the Conditions Been Excused? .....	25
C.	HAS THE DUTY TO PERFORM BEEN DISCHARGED? .....	27
1.	Discharge by Performance or Tender of Performance .....	27
2.	Discharge by Condition Subsequent .....	27
3.	Discharge by Illegality .....	27
4.	Discharge by Impossibility, Impracticability, or Frustration .....	27
5.	Discharge by Rescission .....	28
6.	Partial Discharge by Modification of Contract .....	29
7.	Discharge by Novation .....	29
8.	Discharge by Cancellation .....	29
9.	Discharge by Release .....	29
10.	Discharge by Substituted Contract .....	29
11.	Discharge by Accord and Satisfaction .....	29
12.	Discharge by Account Stated .....	30
13.	Discharge by Lapse .....	30
14.	Discharge by Operation of Law .....	30
15.	Effect of Running of Statute of Limitations .....	30
VIII.	BREACH OF CONTRACT AND AVAILABLE REMEDIES .....	30



- A. **WHEN DOES BREACH OCCUR?** ..... 30
- B. **MATERIAL OR MINOR BREACH?** ..... 31
  - 1. **Tests for Materiality** ..... 31
  - 2. **Timeliness of Performance** ..... 31
- C. **REMEDIES FOR BREACH** ..... 31
  - 1. **Damages** ..... 31
  - 2. **Suit in Equity for Specific Performance** ..... 33
  - 3. **Restitution** ..... 34

## CONTRACTS

### I. WHAT IS A CONTRACT?

**A. GENERAL DEFINITION**

A contract is a promise or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

**B. LAW GOVERNING CONTRACTS**

Generally, contracts are governed by the common law. Contracts for the sale of *goods* (movable, tangible property) are governed by Article 2 of the Uniform Commercial Code (“U.C.C.”) as well as the common law. In such contracts, when Article 2 conflicts with the common law, Article 2 prevails. (*See* Sales outline for more detail on Article 2.)

**C. TYPES OF CONTRACTS**

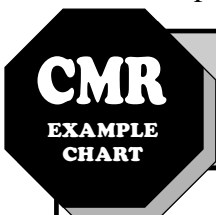
Contracts are classified by how they are formed and how they can be accepted.

**1. Classified by Formation**

Contracts may be *express* (formed by language, oral or written) or *implied* (formed by manifestations of assent other than oral or written language, *i.e.*, by conduct).

**a. Quasi-Contract or Implied in Law Contract**

A quasi-contract is *not a contract*, but rather is a way to avoid unjust enrichment. Thus, even if an agreement does not qualify as a contract, under a quasi-contract, a party can recover the benefit she has conferred on the other party.



### THEORIES OF CONTRACT LIABILITY

<u>Theory</u>	<u>Description</u>	<u>Example</u>
<b>Express Contract</b>	Promises are communicated by <b>language</b> .	X promises to paint Y’s car in return for Y’s promise to pay X \$100.
<b>Implied Contract</b>	Parties’ <b>conduct</b> indicates that they assented to be bound.	(i) X fills her car with gas at Y’s gas station. There is a contract for purchase and sale of the gas.  (ii) X watches Y paint X’s house, knowing that Y mistakenly thought they had an agreement for Y to be paid for it.
<b>Quasi-Contract</b> (Not a contract at all)	One party is <b>unjustly enriched</b> at the expense of the other party, so that the enriched party must pay restitution to the other party equal to the unjust enrichment.	X contracts with Y to build a house for Y. X becomes ill and is unable to continue after completing a third of the work. X cannot sue on the contract, but may recover the benefit conferred on Y.

## 2. Classified by Acceptance

Contracts are either *bilateral* or *unilateral*. Bilateral contracts require an exchange of promises. Unilateral contracts require the exchange of an act for a promise. Under the modern view, most contracts are bilateral. Unilateral contracts are limited to two circumstances: (i) where the offeror clearly indicates that performance is the *only manner of acceptance*; or (ii) where there is an *offer to the public* clearly contemplating acceptance by performance (e.g., a reward offer).

## 3. Void, Voidable, and Unenforceable Contracts

Certain contracts may not be enforceable:

- a. A *void contract* is one *without any legal effect* from the beginning (e.g., an agreement to commit a crime).
- b. A *voidable contract* is one that a party may *elect to avoid or ratify* (e.g., a contract by a minor).
- c. An *unenforceable contract* is one otherwise valid but for which some *defense* exists extraneous to formation (e.g., the Statute of Frauds).



### Exam Tip

The distinction between void and voidable contracts is sometimes important to an exam question. The key thing to remember is that *void* contracts cannot be enforced, but a party may *elect* to enforce a *voidable* contract.

## D. CREATION OF A CONTRACT

Three elements are required to create a contract:

1. *Mutual assent*, i.e., offer and acceptance;
2. *Consideration* or a substitute; and
3. *No defenses* to formation.



### Exam Tip

Contract formation is a major topic on the exam. For any contract question, be sure that there really is an enforceable contract; i.e., *all three* of the above elements must be present. Fact patterns sometimes greatly emphasize some elements (e.g., offer and acceptance) to try to fool you into thinking that a contract has been formed, but on closer examination, you find that another element (e.g., consideration) is missing. Remember to check carefully for all three elements. (Of course, if the *facts state* that one or more of the elements is present—or that a valid contract has been formed—don't waste your time analyzing elements already given to you.)

## II. MUTUAL ASSENT—OFFER AND ACCEPTANCE

### A. IN GENERAL

For an agreement to be enforced as a contract, there must be mutual assent. In other words, one party must accept the other's offer. Whether mutual assent is present will be determined by an objective standard; i.e., did words or conduct manifest a present intention to enter into a contract?



### IS THERE AN ENFORCEABLE CONTRACT?

