

Effective Legal Office Administration

Lesson 6 – Contracts

WORKBOOK



Contracts – Overview

- Understanding Contract Law
- The Essential Elements of a Contract
- Remedies for Breach of Contract

The Basics

- A contract is an agreement between two or more persons
- It is enforceable by a court of law or equity
- The use of written contracts facilitates the performance of the agreement in business
- If a party breaks a contract agreement, that party may be sued in court for damages caused by the breach (breaking of agreement)

The Basics

- In some cases, the court may order specific performance – an order for the breaching party to perform the specific obligations under the contract
- A well written contract may induce the breaching party to an out-of-court settlement, thus saving legal expenses. This includes a 'liquidated damages' provision in the contract that explains what the breaching party must pay if they fail to perform under the contract.
- Oral contracts are enforceable; however, proving the elements of the contract may be very difficult

The Basics

- The terms of a contract can vary somewhat, but there are three basic requirements that must exist in any contract for it to be valid and enforceable.
 - These are: Offer, Acceptance, and Consideration
- A contract arises when one person offers to do one or more specific acts on certain terms and those terms are accepted. The first part is known as the “offer”, the latter is “acceptance”
- An offer contains a promise to do something (or not do something) in exchange for something valuable in return
- Acceptance is an action indicating that a person agrees to the terms offered

The Basics

- A person making the offer may cancel the offer before it is accepted
- The person receiving the offer may not accept the terms
- If the person receiving the offer responds with different terms, known as a counteroffer, the original offer is terminated and no longer exists
- The counteroffer may be accepted or rejected

The Essential Elements

- To be considered a legally binding contract, certain elements must be included in the contract
 - Definiteness of Material Terms (Mutual Assent)
 - Consideration
 - Legality
 - Competent Parties (Capacity)



The Essential Elements

Definiteness of Material Terms – a “meeting of the minds”

- This element requires a full agreement (meeting of the minds) by all parties to the contract on the “material” provisions of the contract
- Material provisions are the most important or key provisions at the core of the agreement, such as the amount of payment or due dates

The Essential Elements

Consideration – “inducement to enter into a contract”

- In lay terms, this is the cause, motive, price or compelling influence which causes one to enter into a contract
- This is normally the price or value that one will receive in exchange for the goods or services provided
- This must be a bargain which each party must give up something, whether it be goods or services
- The value received by each party does not have to be equal

The Essential Elements

Legality – you may not contract for illegal goods or services

- Illegality is determined by statute
- A breach of public policy is also not allowed. While difficult to define, it normally includes serious breaches of conventional morality or ethics.
- Provisions requiring the commission of criminal acts or torts are also not allowed
- Illegal provisions may not break an entire contract; however, those provisions will be ruled as unenforceable

The Essential Elements

Competent Parties – usually determined by age or position

- Mentally incompetent individuals may not enter in a valid contract
- A person may not obligate a company or a person under a contract unless they have the proper authority to do so. Thus, a legal secretary may not obligate the law firm to a magazine subscription unless they are specifically granted that authority by the principal of the law firm
- Minors may not normally enter into valid contracts; however, there are exceptions regarding necessities

Remedies for Breach of Contract

- Possible remedies for a Breach of Contract include:
 - General Damages
 - Consequential Damages
 - Reliance Damages
 - Specific Performance

General Damages

- General damages arise directly and inevitable from a breach of contract
- Thus, if you offer to buy a car for a set price and the seller agrees but later changes the price, you have a breach of contract
- The general damages would be the difference in price from the original agreed upon price and the new price
- General damages are the most common form of damages. In some cases, the contract may actually state what the general damages will be for a breach of the contract.

Consequential Damages

- Consequential damages occur because of the injured party's particular circumstances
 - Sometimes referred to as "special damages"
- They result from a breach of contract; however, not every party under the contract may have been injured in the same manner from the breach
 - In the prior example, if there had been two buyers (say spouses) and one was handicapped and missed a critical appointment due to the change in terms, they may suffer an injury not suffered by the other buyer
- These types of damages are not normally awarded in a contract case; instead, they are usually the result of an additional tort case

Reliance Damages

- Reliance Damages occur when there are losses suffered due to a reasonable reliance on the promises in a contract
- These are normally calculated by asking what it would take to restore the injured party to the economic position occupied before the party acted in reasonable reliance on the promise
- In the prior example, if the buyer had to rent a car during the price dispute, and this was reasonable, the cost of the rental car may be recovered

Specific Performance

- Specific Performance would only be ordered by the court when monetary damages will not fix the harm
- This commonly occurs in cases involving real estate and rare items
- If there is a contract to purchase a specific piece of real estate, it is impossible to find an identical piece of real estate at any cost. Thus, the court would order the delivery of the real estate as agreed to under the contract.
- This would also hold true in one-of-a-kind items

Contracts – Review

- Understanding Contract Law
- The Essential Elements of a Contract
- Remedies for Breach of Contract



Questions

and

Answers

Review Questions:

1. Identify the 3 basic components of a valid contract:
 - A. Offer, Counteroffer, Acceptance
 - B. Agreement, Breach, Damages
 - C. Offer, Complaint, Appeal
 - D. Offer Acceptance, Consideration
2. Presuming that a contract contains the elements of: offer, acceptance and consideration, a valid contract should also include which of the following:
 - A. Counteroffer
 - B. Minimum consideration
 - C. Writing
 - D. Meeting of the minds
3. Where money is insufficient to fix a contract breach, a court may require what type of remedy, which will require the other party to do exactly as they promised under the contract?
 - A. Injunction
 - B. Arraignment
 - C. Specific Performance
 - D. Deposition
4. True or False: All valid contracts must be written.
 - A. True
 - B. False
5. True or False: General damages are the compensation for an actual damage that results when someone has breached their obligation under a contract.
 - A. True
 - B. False

Answer Key:

1. D

There are other components to a valid contract, but the 3 components that must be present in any contract include an offer to do something, an acceptance of the terms of that offer, and some valuable consideration given in exchange.

2. D

A meeting of the minds – or an understanding between the parties about the nature of the agreement – is required for a contract to be acceptable.

3. C

In cases where money isn't going to solve the problem, the court may require a person to do exactly as they promised under the contract. This often comes up where people agree to sell real estate, property, antiques or other one-of-a-kind items.

4. B

False. As long as the required elements are present, an oral or verbal contract may be valid and acceptable, just like a written contract.

5. A

True. There are other types of damage, but general damages will be awarded to someone who can prove how much they have lost as a result of the other party breaching their contract.