Fundamentals of Contracts

Resources

• Contracts: https://lawshelf.com/courseware/topic/contracts
What We Will Cover

• Case Scenario 1
• What is a Contract?
  • Express and Implied Contracts
• Do All Contracts Have to be in Writing?
• How is a Contract Created?
  • Offer and Acceptance
  • Mutual Assent
  • Consideration
  • Legal Capacity
  • Legality

What We Will Cover

• Elements of a Contract Case
• Defenses to Breach of Contract
• Case Scenario 2
• Case Scenario 3
• Damages
• Case Scenarios 4 - 5
Case Scenario 1: Lucy Snearly v. John Wallace, Justice Court, Pct. 3, Tarrant County

- Lucy Snearly v. John Wallace, Justice Court, Pct. 3, Tarrant County:
  - What is the plaintiff claiming?
  - What is the defendant claiming?
  - Is there a valid and enforceable contract?
  - What would you want to know to decide this case?
  - Will you need to hear from an expert witness?
  - Can you award punitive damages?
What is a Contract?

- An agreement between two or more parties (either people or organizations) which the law recognizes and will enforce.
- It may require a party to do something or not do something (aka “refrain from” doing something).

Express or Implied Contracts

- For a contract to be formed, there must be mutual assent (discussed more below).
- Mutual assent just means that both parties agree to enter into a contract.
  - If mutual assent is explicitly stated or expressed, either orally or in writing, then the resulting contract is an express contract.
  - If mutual assent is present but not explicitly stated or expressed, then the resulting contract is an implied contract.
- See Handout 1
Amber tells Travon that for $500 plus the cost of paint, she will paint Bronson’s office walls burnt orange. Travon accepts. He types up the agreement and both Amber and Travon sign it. This contract is:

A. Express
B. Implied

Seeing what a great painter she is, Travon sends an email to Amber asking her to paint his house yellow for $1,000. Amber doesn’t respond to the email but the next weekend when Travon is out of town, Amber comes over and paints Travon’s house yellow. This contract is:

A. Express
B. Implied

Does Travon owe Amber $1,000?
Do All Contracts Have to Be in Writing?

NO!
This is a common misconception!

Most contracts can be either oral or written.

Statute of Frauds

• But some contracts must be in writing to be enforceable.
• These include:
  • A contract for the sale of real estate.
  • A lease of real estate for more than one year.
  • A contract which cannot be performed within one year from the date the contract was made.
  • A contract for the sale of goods for more than $500
• Business & Commerce Code §§ 2.201 and 26.01
• See Handout 2
Statute of Frauds

• For a contract that cannot be performed within one year:
  • If there is any theoretical possibility that the contract can be performed within one year, then the contract does not need to be in writing.

The City of Houston and Yahoo Builders make an oral agreement on January 1, 2020, that the city will pay Yahoo $1 million to build a 100 story building in Houston.

This agreement:

A. Has to be in writing because it cannot be performed within one year.
B. Does not have to be in writing because it is theoretically possible that Yahoo could complete the building within one year.
The Broken Spoke makes an oral contract with Judge David Beebe on January 1, 2020, to sing there on January 1, 2024.

This agreement:

A. Has to be in writing because it cannot be performed within one year.
B. Does not have to be in writing because Judge Beebe might decide to show up early.

How is a Contract Created?

• Offer and Acceptance
  • Someone makes an offer.
  • The person to whom the offer was made accepts the offer.
• If there is no offer and acceptance, then a contract was not formed.
• But even if we do have a valid offer and acceptance, the contract may not always be enforceable for reasons we’ll discuss.
What is Required for an Offer to be Binding?

1. **Intent**
   The offeror must intend for the offer to be legally binding.

2. **Communication of the Offer**
   The offer must be delivered to the other party. If it is never received, there is no acceptance or mutual assent.

3. **Definite Terms**
   Clearly defined terms are required to establish the parties' intention.

How Long Does the Offer Last?

- An offer remains open until:
  - Rejection by the offeree
  - **Revocation**, or withdrawal, of the offer before it is accepted
  - Expiration of a specified or "reasonable" time
  - Counteroffer with different terms
  - Death, incapacity, or insanity of either party
  - Destruction of the subject matter
Acceptance of the Offer

A party may accept an offer by communicating their acceptance, or by beginning performance in some cases.

- An offer may communicate how it must be accepted. If so, that is the only valid way to accept the offer.

A risk of beginning performance without communication is that the offer may have been withdrawn before you begin performance.

- The mailbox rule makes an acceptance valid when it is deposited in the mail (revocation valid when received.)

Thea offers Bronson $100 to paint her office green and gold. Bronson says “No, but I’ll paint it crimson and cream for $400.” Bronson has:

A. Modified and accepted the offer
B. Made a counteroffer
C. Terrible taste in paint colors
Bob offers ABC Tree Trimming $600 to remove two trees from his yard. He says he’s “not in a hurry,” but would like it done as soon as possible. ABC doesn’t respond to Bob’s email. Six months later, Bob comes home and finds the trees removed and a bill for $600 taped to his front door. Was the offer still valid?

A. Yes
B. No

Requirements for an Enforceable Contract

• All contracts, whether express or implied, are enforceable only if the following factors are present:
  • Mutual assent
  • Consideration
  • Legal capacity
  • Legality
Requirement 1: Mutual Assent

- Any contract must be entered into freely and with an intent to be bound by its terms. Mutual assent can be viewed as the “agreement” and is often called the “meeting of the minds.”
- Therefore, both the offer and acceptance must be free, knowing, and voluntary.

Mutual Assent

- We don’t expect people to be bound by unintended promises, promises made in response to “force,” or promises that arise out of mistakes about the facts.
- We DO expect parties to follow through on intended promises so that the reasonable expectations of all parties are met.
Things That Affect Mutual Assent

• **Duress**
  • The use of force, threat of force, or mental stress can create duress.

• **Undue Influence**
  • An abuse of a relationship of trust by the trusted person, causing the other party to act against his or her own free will.

• **Fraud or misrepresentation**
  • A misrepresentation of information or terms or the inducement of another party by deceit.

• **Mutual mistake**
  • Where both parties are mistaken about the subject matter of the contract.

Amber helps her elderly and wealthy Grandmother around the house and with her finances. Grandma has dementia. Grandma’s other grandchildren discover that Grandma has contracted to pay Amber’s Yard Service $4,500 per month for mowing the lawn. Is this a valid contract?

A. Yes
B. No
Rebecca has a collection of Michael Kors purses. Jessica sees her carry them at work and is very jealous. Jessica offers Rebecca $1000 for “that sparkly one with the bedazzled cross.” Jessica means one that she saw Rebecca carrying, but Rebecca can’t remember which ones Jessica has seen, and thinks she means a different one with silver bedazzles instead of pink. Rebecca responds “Sure, it’s a deal.”

Is there mutual assent?

A. Yes, there was an offer and acceptance
B. No, there was mutual mistake.

Requirement 2: Consideration

- **Consideration** is the value that parties give or receive from each other under the contract.
- This can be mutual promises, and usually takes the form of money, property or services given or received.
- If there is no consideration, an enforceable contract does not exist.
Past consideration is *not valid*. Any goods or services to be exchanged must be exchanged at or after the time of contract formation.

A pre-existing duty *does not* count as consideration.

**Thea offers to stain and seal Travon’s deck if Travon will paint Thea’s back porch. Travon agrees. Was the agreement made for consideration?**

A. Yes

B. No
Amy is stressed out with wedding planning and is complaining to her mom about it. Her mom says: “Let me send you $1,000 to help ease your stress.” Amy’s mom didn’t send the money. Is there an enforceable contract?

A. Yes
B. No

Requirement 3:
Legal Capacity

- You must have the power and authority to enter into a contract. “Legal capacity” means capacity that is approved by law.
- A person or entity who does not have legal capacity to enter into a contract will not be bound by the terms of the contract.
What Affects Legal Capacity?

**Mental Capacity** - If you are mentally incompetent, or under the influence of drugs or alcohol, you lack the requisite capacity to contract. Guardians may contract for wards.

**Legal Age** – Usually 18 years of age. Contract entered into by minors are voidable, but may be enforceable if for necessities.

**Authority to act** – All parties must have authority to act. This comes into play when persons sign for others or for companies.

James, a 16 year old high school junior, is a budding entrepreneur. He decides to sell snacks to other students at his high school. To do this he enlists the help of other students; he gives them a bag of snacks to sell and they are supposed to return any that are not sold and give him half the proceeds of the sales. Joe, who is 18, takes a bag of snacks but never gives James any money or unused snacks. Is there a binding contract?

A. Yes
B. No
C. Binding on Joe but not on James
Requirement 4: Legality

- The subject matter must not be illegal in light of statute or public policy (e.g., crimes, obstruction of justice, usury).
  - “I will pay you $5000 not to testify in this case.”
  - “I will deliver 8 ounces of marijuana for $1700.”
- Such contracts are unenforceable, and the offeror and offeree may be subject to criminal penalties.

Elements of a Contract Case

In order to recover for breach of contract, the plaintiff must show:

1. The existence of a valid and enforceable contract.
2. The plaintiff performed their obligation under the contract or were excused from doing so (for example, because the defendant breached).
3. That the defendant breached the contract, that is they did not live up to their end of the agreement.
4. The breach caused the plaintiff economic injury.
Did the Defendant Breach the Contract?

• If the contract is valid and enforceable, then the next question is whether the parties performed their obligations.

• Sometimes the defendant will file a counterclaim, saying that in fact it is the plaintiff who has breached the contract.
  • In a case like this, both parties may stipulate, or agree, that there was a contract. If so, we can ignore the previous steps on mutual assent, consideration, etc., and jump right to this question.
  • Remember the benefits of pretrial hearings!

Deciding if There Was a Breach of Contract

• Information that you use to decide if there was a breach of contract could include:
  • The contract language itself
  • Testimony regarding any discussion between the parties
  • Testimony regarding the conduct of the parties
Defenses to Breach of Contract Include:

<table>
<thead>
<tr>
<th>Standing</th>
<th>Fraud or Duress</th>
<th>Mutual Mistake</th>
</tr>
</thead>
<tbody>
<tr>
<td>(wrong plaintiff)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Impossibility</th>
<th>Unconscionability</th>
<th>Modification</th>
</tr>
</thead>
<tbody>
<tr>
<td>(contract couldn’t be performed)</td>
<td>(contract was legally unfair)</td>
<td></td>
</tr>
</tbody>
</table>

Defenses to Breach of Contract Include

<table>
<thead>
<tr>
<th>Statute of Limitations</th>
<th>Statute of Frauds</th>
<th>Excuse</th>
</tr>
</thead>
<tbody>
<tr>
<td>(four years)</td>
<td></td>
<td>(e.g. plaintiff prevented performance)</td>
</tr>
</tbody>
</table>
Case Scenario 2:
Alysa Leyba v. Juan Sierra,
Justice Court,
Pct. 1, Bexar County

Case Scenario 2

• Alysa Leyba v. Juan Sierra, Justice Court, Pct. 1, Bexar County:
  • What is the plaintiff claiming?
  • Was there a valid and enforceable contract?
  • What would you want to know to decide this case?
  • Are there grounds for rescission?
  • Does the Texas Lemon Law apply?
Case Scenario 3: Larry Parker/Ramon Parker dba Ramon’s Parrots v. Gilmore, Justice Court, Pct. 2, Limestone County
Case Scenario 3:
Larry Parker/Ramon Parker dba Ramon’s Parrots v. Gilmore, Justice Court, Pct. 2, Limestone County

Final Points:
I am actually scared to go back to the property where my parrots are located or even make a phone call to Ramona’s Parrots because of the bad behavior of Larry Parker, Dawn, and the granddaughter Ramona. This is bullying if not criminal for them to continue holding my 2 parrots at their store. I was notified that the store is located on private property for the first time ever on October 1st, 2020. I witnessed the final location of Lola, my blue and gold macaw, on October 1st, 2019 at Ramona’s Parrots in a barn next to the store. Below is a picture of Lola in their pens. I was informed by Ramona herself that she “did not know where Babe was.”

I am sad to be treated so disrespectfully by Ramona’s Parrots. I would often visit Ramona’s and enjoy time with the birds and talk. I am not sure what has happened to Ramona’s Parrots. It was a kind store and I recommended the store to colleagues of mine who have parrots. Now I am worried for the welfare of my parrots and it is emotionally upsetting. On October 1st, 2019, I was also threatened to be shot off the property if I did not leave Larry Parker. Please help me 1) to get my parrots back to me and 2) to reduce the costs associated with my parrot’s having and remind them of who the customers are because I was treated unrightfully. I also lost a good friend named Ramona Parker. 3) I would gladly help Ramona out if she wanted me too. Please return my parrots!

Signed
Natalie Gilmore
512-813-0425 leave message if necessary

Case Scenario 3

• Larry Parker/Ramon Parker dba Ramon’s Parrots v. Gilmore, Justice Court, Pct. 2, Limestone County:
  • What is the plaintiff claiming?
  • What is the defendant claiming?
  • Is there a valid and enforceable contract?
  • Did the plaintiff prevent the defendant from taking the parrots?
  • Can the plaintiff just sell the parrots?
  • What if the plaintiff gets a judgment?
    • Can they execute the judgment on the parrots?
What are Damages?

Damages are one of the main elements of ANY civil case

Same burden as all of the other elements – plaintiff must prove by a preponderance of the evidence

• You should develop the facts of the case and ask questions designed to determine the amount of damages.

Plaintiff may have a valid cause of action, but no damages
Available Damages – CONTRACTS

<table>
<thead>
<tr>
<th>Compensatory Damages</th>
<th>Attorney’s Fees</th>
<th>Pre-Judgment Interest (if specified in the contract)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Court Costs &amp; Post-Judgment Interest (available in all cases)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Exemplary (Punitive) Damages are not available.</td>
</tr>
</tbody>
</table>

The main idea of **compensatory damages in a contract case** is to give a party “the benefit of their bargain” by placing them in the economic position they would have been in if the contract had been performed.

They include **loss of value** and **consequential losses**, which are losses that naturally flow from the breach of the contract and were foreseeable by the parties.
### Compensatory Damage Scenario – CONTRACTS

**Willie agrees to purchase 2000 widgets from Widgets R Us for $2 each. In the contract, he specifies that he uses those widgets to create WidgetSpinners©, and he is having a WidgetSpinner© convention where he will sell the spinners for $10 each.**

**Widgets R Us breaches and provides 0 widgets. If Willie has to pay $3 each for widgets, what are his compensatory damages?**

**What if no other widgets are available, so he has no WidgetSpinners© at the convention? Do his lost profits flow from the breach of contract? If so, would he recover $10 \times 2000? If not, how much?**

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### Damage Calculation Issues - CONTRACTS

Many contracts contain clauses that specify what the amount of damages will be in the event of the breach. These are called **liquidated damage clauses**, and they fall under compensatory damages.

Parties cannot recover compensatory damages for inconvenience or delay, unless there is a specific clause in the contract stating that there is a certain time by which the work must be complete.

- This is called a “**time is of the essence clause**.”
Court Costs/Fees

The winning party is entitled to recover the costs involved with the case, such as filing fees, service fees, jury fees, interpreter fees if appropriate, etc.

They do not have to request this explicitly; the Rules of Civil Procedure say the court must award costs.

- TRCP 505.1(d)

Attorney’s Fees

Attorney’s fees are awardable in breach of contract cases but they must be “reasonable and necessary.”

Unlike court costs, the plaintiff does have to specifically request attorney’s fees, and must prove they are reasonable and necessary, either with affidavits or live testimony from the attorney.

To determine if the fees are reasonable and necessary, look at hours worked, and rate charged. If those numbers are reasonable and necessary, the fees are as well.
Attorney’s Fees

- The court must not award attorney’s fees based on an “average case” basis.
- For example, “usually these cases take 5 hours at $250 an hour, so just award me $1250 per case.”
- This is not fair, because a defendant whose case took 3 hours is paying extra fees because of a completely unrelated case.

Pre-Judgment Interest

- This is interest that begins accruing on the plaintiff’s damages when the injury occurs.
- It is only awarded on actual damages, not exemplary damages, court costs, or attorney’s fees. It is calculated as simple interest (meaning it accrues only on the principal and not on accrued interest) and is the same rate as post-judgment interest.
Post-Judgment Interest

All money judgments **must** include an interest rate that applies to the judgment.

- Finance Code Sec. 304.001.

Unless a contract specifies otherwise (with a maximum of 18%), the court should use the rate located at: http://www.occc.state.tx.us/pages/int_rates/Index.html

- Currently 5.0% as of November 2019, changes monthly, so court needs to check it every month.

Case Scenario 4:
Kili Harkins v.
Rick Woods,
Justice Court, Pct.
3, Wise County
Case Scenario 4

- Kili Harkins v. Rick Woods, Justice Court, Pct. 3, Wise County:
  - What is the plaintiff claiming?
  - What is the defendant claiming?
  - Is there a valid and enforceable contract?
  - What was each party’s expectation?
  - Does the return of the $400 amount to “accord and satisfaction”?
  - Are the defendant’s damages what he would have had to spend to make the dwelling habitable?
  - What would you want to know to decide this case?

Case Scenario 5:
Fellowship of the Nations Church v. Rodrigo Becera d/b/a Rico Signs & Graphics, Justice Court, Precinct 3, Place 1, Harris County
Case Scenario 5: Fellowship of the Nations Church v. Rodrigo Becera d/b/a Rico Signs & Graphics, Justice Court, Precinct 3, Place 1, Harris County

Case Scenario 5

- Fellowship of the Nations Church v. Rodrigo Becera d/b/a Rico Signs & Graphics:
  - What is the plaintiff claiming?
  - Does the court have jurisdiction?
  - Is there a valid and enforceable contract?
  - What would you want to know to decide the case?
  - What if the new contractor could fix the sign to the specifications of the contract for only $3,000?
Questions?