
Course Learning Outcomes for Unit III

Upon completion of this unit, students should be able to:

3. Explain the basic elements of forming an enforceable contract.
 - 3.1 Examine the four elements of an enforceable contract.
 - 3.2 Connect the offer and the acceptance of that offer necessary to form an enforceable contract.
 - 3.3 Analyze the consideration required to create an enforceable contract.

Required Unit Resources

Chapter 9: Introduction to Contracts and Agreement

Chapter 10: Consideration

In order to access the following resources, click the links below.

Benoliel, U., & Becher, S. I. (2019). [The duty to read the unreadable](#). *Boston College Law Review*, 60(8), 2255–2296.
<https://libraryresources.columbiasouthern.edu/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=asn&AN=140349133&site=ehost-live&scope=site>

Kim, N. S. (2019). [Digital contracts](#). *Business Lawyer*, 75(1), 1683–1693. <https://bi-gale-com.libraryresources.columbiasouthern.edu/global/article/GALE%7CA612929188/5c850bdd7b85bb9891c32953cc6282ba?u=oran95108>

Unit Lesson

Elements of a Contract

Contracts enable businesses to operate effectively and efficiently because contracts allow business to make binding agreements with employees, suppliers, financiers, and customers. Binding agreements allow businesses to know what to expect in their dealings with others and to plan for the future. Though contracts are vital to the success of businesses and should be well understood by businesses, the truth is that contract law is seldom exhilarating. That is not to say that contract law is not important or not interesting, but contract law can seem a little tedious. However, there are sometimes interesting twists when contract law is applied to unique situations.

Contracts are simply agreements between parties that require the parties to do something or to not do something. If such an agreement involves all of the elements of a contract, courts will enforce the obligations that the parties to the contract have undertaken in the contract. If Ben's Computer Company agrees to sell 100 laptops to Ann's Computer Store for \$100 each, a court will enforce that agreement. That may not seem like an important or exciting contract, but without the ability to enforce agreement in court, businesses such as Ann's Computer Store would not know how to plan for the future.

An agreement does have to encompass certain elements to qualify as a contract: an agreement, consideration, capacity, and legality. An *agreement* is simply an understanding reached between the parties. *Consideration* is what each party to the agreement expects to receive when the agreement is performed. *Capacity* refers to the ability of a party to understand the obligations that are being undertaken in the

agreement, and *legality* refers to the requirement that the object of the contract not violate any laws or public policies. Of course, there are nuances in each of these elements that we need to examine and understand.

In this unit, we will consider the first two elements of a contract: the agreement and consideration.

Agreement

An agreement consists of two parts: the offer and the acceptance of that offer. Contracts begin with one party proposing an act of value to the other party; that is the *offer*. Simple enough, but there are certain requirements that the offer must meet. Most of these requirements that apply to the offer have developed from situations that raised the questions about whether an offer was really made, to whom the offer was made, and how long the offer remains available to be accepted.

To begin, the offer must actually be an offer and not an expression of opinion or a question. "I am thinking about selling my laptop for \$250," or "I wonder if anyone would buy my laptop for \$250?" are not offers. The person making the offer, the offeror, must intend to make a proposal that can be accepted.

Over the centuries that contract law, which for the most part is common or case law, has developed, special cases where offers might have been made have received interesting interpretations. For example, advertisements are usually interpreted to be expressions of interest in negotiating rather than offers to sell. A newspaper advertisement of a new lawn mower for sale for \$200 would probably be interpreted by a court as an expression of interest by the seller to have potential buyers come into the store to make an offer to buy the lawn mower for \$200 rather than an offer by the seller to sell the lawn mower to anyone who came into the store.

Another aspect of an offer that must be considered is whether the offer includes all of the terms necessary for the parties to understand their agreement. That does not mean that all terms that might affect the agreement must be stated in detail, but the terms that are vital to a complete the agreement must be stated; a description of what is being offered, the time schedule for each party to perform their obligations under the contract, and what the offeror expects in return must be clear. If Al offers to sell Sally one of his cars for \$1,000, his proposal will not be definite enough to form a contract if Al owns more than one car because the offer does not specify which of his cars he is willing to sell.

Another requirement of an offer that has sometimes created interesting contract cases is that the offer must be communicated. Obviously, if Steve thinks of an offer, but he does not tell Peter about the offer, Peter cannot accept what Steve has not communicated to him. The more interesting cases about communicating an offer are the cases where the offer is communicated to a specific person, but someone else tries to accept the offer. If John and Kevin are talking, and John says directly to Kevin, "I will sell you my laptop for \$250," and before Kevin can respond, Elizabeth, who overheard John's offer says, "I accept your offer," there is no contract because the offer was not made to the person who attempted to accept the offer.

Once a valid offer has been made, one of the issues that arises is how long that offer remains valid. The general rule is that the offeror has the power to withdraw or revoke the offer at any time before the person to whom the offer was made responds to the offer. If Jean say to Pat, "I will sell you my laptop for \$250," but before Pat responds, Jean changes her mind and says, "Never mind; I think my laptop is worth more than that," the offer is no longer available to be accepted. Although Jean's offer was valid, she exercised her power to revoke that offer before Pat responded. Of course, as the offeror, Jean has to be sure that her revocation of the offer is communicated to Pat before Pat accepts the offer.

Once an offer is made, the person to whom the offer was made, the offeree, controls what happens next. The offeree might decide not to respond to the offer. That is appropriate since, only in very unusual cases, silence is not considered to be an acceptance of an offer. Of course, the offeree may accept the offer, and an agreement will be made. An offeree might also reject the offer, in which case the offer ceases to exist and cannot later be accepted by the offeree unless the original offeror consents. A final response that an offeree might make to an offer is to suggest that the offer will be accepted if some of the terms of the offer are changed to suit the offeree. If Taylor say to Mary, "I will sell you my laptop for \$250," and Mary responds, "I would like to buy your laptop, but I will only pay \$200," Mary has made a counteroffer to Taylor that he can either accept or reject. However, by making a counteroffer, the offeree is considered to have rejected the

original offer so that if the counteroffer is not accepted, the original offer no longer exists and cannot be accepted unless the original offeror consents.

If the offeree wants to accept that offer, the offeree must express an intent to accept the offer. Of course, the easiest way to express the intent to accept the offer is simply to say, "I accept your offer." However, there are certain kinds of contracts, called unilateral contracts, where the offer can only be accepted by performance. For example, if Bill say to William, "I will pay you \$500 if you will paint my house," that offer can only be accepted by William painting Bill's house. Once William paints Bill's house and/or once William begins to paint Bill's house and if William completes the painting within a reasonable time, Bill has accepted Bill's offer, and Bill owes William \$500.

The idea that the offer must be communicated also applies to an acceptance of an offer. The offeree must communicate the acceptance of the offer to the offeror. Unless the offer specifies the means by which the acceptance of the offer must be made, the acceptance can be communicated in any reasonable manner. However, there is a special rule that applies to acceptances. The mailbox rule says that if the acceptance of an offer is made by mail, that acceptance is effective when the acceptance is actually placed in a mailbox rather than when the acceptance is received by the offeror. This rule is very specific. It only applies to acceptances, so, if the offeree mails a rejection of the offer or a counteroffer, the rejection or counteroffer is not effective when mailed but when received by the offeror. An acceptance made in any other manner than by mail is effective only when the acceptance is received by the offeror.

Consideration

The second element of a valid contract is *consideration*, which is the benefit that each party expects to receive from the contract. It is often said the consideration must be bargained for, which essentially means that a gift does not create a contract. If there is no benefit to each of the parties to an agreement, the agreement lacks consideration, and there is no contract.

Interestingly, courts generally do not consider the adequacy of the consideration in a contract. In other words, courts do not ask whether the consideration is equal for each of the parties to a contract. If each party receives some benefit from the contract, that is enough to satisfy the requirement for consideration. That really does recognize the practical benefit of contracts since, typically, we enter into contracts because we think we are getting a good deal—not because we are getting the same value from the contract as the other party to the contract. There are, however, times when a court will consider that unequal consideration in a contract is an indication of a problem with the contract. In the next unit, we will consider some defense to contracts, such as when one party to a contract takes unfair advantage of the other party to the contract. Unequal consideration in a contract can be an indication that there are legal defects involved in the formation of the contract.

Specific cases have resulted in several rules about consideration. One of those rules is that consideration rendered at some time before the agreement was made cannot be consideration for a contract. For example, if Edward's boss tells him at the end of the year that because Edward has been a good employee he is going to give Edward a bonus next week and Edward says, "Great," there is no contract. Edward cannot force his boss to pay the bonus because, though Edward would get the bonus as the benefit under the contract, his boss would get nothing new. All of the good work Edward did to earn the bonus was done before his boss made the offer of the bonus, so there was no consideration to his boss.

Learning Activities (Nongraded)

Nongraded Learning Activities are provided to aid students in their course of study. You do not have to submit them. If you have questions, contact your instructor for further guidance and information.



Continue

(Photogl, n.d.)

View the [Unit III Glossary](#) to review key terms presented in this unit.

[Alternate format for Unit III Glossary](#)

Reference

Photogl. (n.d.). *Books on library shelves (ID 20785201)* [Photograph]. Dreamstime.
<https://www.dreamstime.com/stock-image-books-library-shelves-image20785201>