

HANDOUT

WHAT IS A CONTRACT?

When did you last make a contract? Surprisingly, you do not have to look back too far – perhaps only yesterday, or even this morning. Did you buy a sandwich? Place a quarter in a video game machine? Get a haircut? These involve contracts. Of course there are more complicated contracts, like those signed when purchasing a house or borrowing money from a bank, but people sometimes do not realize that a contract is involved in many of their daily transactions.

A contract is a legally binding agreement between two or more persons, also called parties. One party promises to do something and the other party promises to do something in return.

Pat promises to cut Robin's lawn once a week and Robin promises to pay Pat \$10 per week. Pat and Robin have a contract.

To be an enforceable contract, there must be something of value (also called consideration) exchanged. Each party must receive a benefit. Generally, the courts do not care if the consideration is reasonable or not. Robin can agree to pay Pat five cents or fifty dollars; the important thing is that they have exchanged something of value: Pat's labour of mowing lawns in exchange for a fixed sum of money from Robin.

Not all promises are legally binding. If Pat promises to take Robin to lunch tomorrow and then does not show up, neither Pat nor Robin expects any legal action as a result of the broken engagement. Neither of them intended to create a legally enforceable agreement when they agreed to the lunch date. A social engagement is not a legally enforceable agreement.

Also, a promise of a gift is not legally binding. Your uncle could promise you a trip to Europe for successful completion of high school, but would be under no legal obligation to do so when you graduate.

A contract should be clear about who the parties are, what the contract is about, and what is given in exchange.

ARE PRICE STICKERS AN OFFER?

Price stickers are in writing and placed on or beside merchandise. But does this make a price sticker an offer?

Say you went to an electronics store and found a big-screen television with a \$75 price tag. While most likely an error, does this mean that you should be able to purchase the set for \$75? Unfortunately for the consumer, price stickers are not considered an offer for sale. Instead, they are considered an "Invitation to Treat". This means that it is your option, as a consumer, to make an offer that the retailer can either accept or reject. The retailer has no obligation to sell merchandise for the price on the tag.

In fact, the retailer does not necessarily have to accept any offer you make for merchandise, as long as the reasons they refuse it are not in violation of human rights legislation, such as refusing to sell to you based on gender, religion, race, or sexual orientation.

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There must be:

- offer – a serious proposal which will lead to a contract being formed
- acceptance – an unconditional acceptance must be given that follows the terms of the offer. This acceptance can be either spoken or clearly indicated by actions.
- consideration – something of value exchanged to fulfill contract

Pat: I'll give you \$20 for those skates. (Offer)

Robin: It's a deal. (Acceptance)

Pat gives Robin \$20 (Consideration) in exchange for the skates.

If the offer, acceptance, or consideration is missing, there is no contract.

Pat: I'll give you \$20 for those skates. (Offer)

Robin: Well... I'm not sure. (No Acceptance)

Pat: On second thought, I think I'll buy a new pair instead. (Offer withdrawn)

Robin: No, don't. I'll take the \$20. (Acceptance too late – there is no contract)

Once you have entered into a contract, you cannot cancel or change it simply because you have changed your mind, unless the other party agrees to cancel or change it too. If you refuse to perform your part of the contract, the other party can sue you in a court of law. The court can enforce the contract - either by ordering you to perform your part of the contract or by ordering you to pay damages to the other person, for breach of contract. A breach of contract is the legal term used when one person fails to perform their part of a contract.



THE LETTERBOX RULE

While it is now commonplace to conduct business through e-mail and telephone, not long ago most business was done through the mail. From this, the "letterbox rule" came to be. While antiquated, it still is in force today. When an offer is sent through the mail, the letterbox rule will apply. It considers the post office "the long arm of the recipient". Therefore, the moment that the acceptance is placed in the mail, it is considered to be in the hands of the recipient. The date it is received does not matter, and this rule even applies if the letter is lost in the mail or delayed due to a postal strike.

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QUESTIONS



1. Examine the following scenarios and decide if a contract could exist in each scenario.
 - a. You buy a bike for \$25 at a yard sale.
 - b. You invite your friend to come over to see your bike.
 - c. Your aunt promises to pay you \$50 if you quit riding your bike in traffic.
 - d. You buy a bike helmet from the hardware store.
 - e. You bring your bike in for a tune-up at the sporting goods store.
2. List and describe the three elements that must be in place for a contract to exist.
3. In 1996, Pepsi introduced their “Pepsi Points” promotion, which allowed people to collect points from pop bottles to earn merchandise. One television advertisement featuring items that could be purchased with Pepsi Points humorously ended with a student landing at school in a Harrier jet, with the line “7,000,000 Pepsi Points” appearing on the screen. Because additional Pepsi points could be purchased to make up for point shortfalls, one Pepsi customer presented Pepsi with 15 Pepsi Points and a cheque for \$700,008.50 (to cover the excess points and shipping and handling) for the jet. Pepsi refused to present him with a Harrier jet, and he sued. Did the advertisement constitute an offer?
4. Brad sends a letter to Carol on September 1st offering to sell his car for \$2500. Carol receives the letter on September 5th, and mails back an unconditional acceptance the same day. Brad receives the letter on September 10th. In the meantime, Rachel approaches Brad on September 7th, and offers him \$3000 for the car. He accepts. Do all the elements of a contract exist in this scenario? If so, has Brad breached his contract with Carol? Explain.
5. Jim sends a letter to Dean on June 1st offering to sell an MP3 player for \$50. Dean receives the letter on June 3rd, and writes a letter back accepting this offer, places a 50 dollar bill in the envelope, and plans on mailing it the next day. However, on June 3rd, Terry tells Jim that he will give him \$50 for the MP3 player. Jim accepts this offer, immediately calls Dean and revokes the offer. Dean says he can't revoke this offer because he has already written a letter of acceptance. Does Jim have a contract with Dean that must be honoured? Explain.

