

HANDOUT

CAPACITY TO CONTRACT

To enter into a contract, an individual must have the capacity to do so. Generally speaking, everyone is capable of entering into a contract, although exceptions are made for minors, those with mental disabilities and intoxicated persons. This is because contracts must be performed “consensus ad diem”, meaning there must be mutual understanding of the terms of a contract. With the above exceptions, the individuals may be entering into a contract while not having the capacity to do so. Therefore, consensus ad diem may not exist.

UNENFORCEABLE CONTRACTS

While there is no automatic right to cancel a contract, not every contract can be enforced by law. Contracts may be voided in the following situations:

Misrepresentation

Knowingly making misrepresentations or false statements to persuade a consumer to enter into a contract can make that contract voidable. This means that either party can cancel the contract if they want to. But the misrepresentation must be about a major part of the contract, not some minor detail, and the contract must be cancelled within a reasonable amount of time. For example:



LIFE INSURANCE – EVERYBODY IS ACCEPTED BUT IS EVERYBODY PAID?

A frequent claim in life insurance advertisements is that no applicants will be turned down. However, this claim does not necessarily mean that benefits will be paid if that person should die.

For example, if a man knows that he is on his deathbed, says nothing, and enters into a life insurance contract, chances are the benefits will not be paid out if he dies shortly thereafter. This is because remaining silent about a terminal health condition is considered a misrepresentation on behalf of the individual. Had he revealed this information, the man on his deathbed may have only been eligible for a small insurance payout. Misrepresentation can work both ways, and as an individual entering into a contract, you have responsibilities to the person you are contracting with.

Pat is thinking of buying a duplex from Dale and renting it out. Dale tells Pat that the rent is enough to cover the mortgage payments. In fact, Dale says, the rents last year totaled \$24,000. (Dale's representation to Pat)

Pat buys the duplex and then finds out that the suites were vacant most of last year because of the poor location of the building, and last year's rents were only \$10,000. (Dale's representation to Pat was a misrepresentation)

Because the misrepresentation was a major part of the contract and because it convinced Pat to enter into the contract, Pat has the option to either continue the contract or cancel it.

HANDOUT

Mistake

There are three types of mistakes that can void a contract:

Common Mistake – If both parties make the same mistake regarding the subject matter. For example, if you agree to buy a car from a dealer, but unbeknownst to you, the car burns down in the car lot while you are striking the deal. The court would see this contract as void because each person was mistaken about the condition of the car.

Mutual Mistake – If both parties have a different subject matter in mind, the contract will be void. For example, if you're negotiating a car purchase, and you think it's the red Ford on the lot but the seller thinks you are dealing on the blue Chevy. This contract will be void because both parties made a mistake as to the subject matter.

Unilateral Mistake – An error made by one party to a contract that is known to the other, and the knowing party makes no attempt to fix this error. For example, Tyler sells Jon a vase which Jon believes to be an ancient Roman artifact. In actuality, the vase is a reproduction. If Tyler is unaware of Jon's erroneous belief, the case is one of mutual mistake. But if he knew that Jon thought it was an actual ancient artifact, it is a unilateral mistake.

Duress

Genuine consent does not exist if a person agrees to a contract under the threat or use of physical violence.

Undue Influence

Genuine consent does not exist if an improper use of power has been used to by a person to form a contract.

CONTRACT KILLINGS - A KILLER DEAL!!!



A contract killing is when one person is hired to murder a third party. Since 1917, it is estimated that the Chicago Mob has ordered over 1100 contract killings. Among these murders, mob boss Sam Giancana was murdered while frying sausage in his home, FBI informant Richard Cain was shot in a sandwich shop, and Al Capone's chief hit man Jack McGurn was gunned down in a bowling alley.

One commonality of all these crimes is that the elements of a contract exist (the offer of murdering somebody, the acceptance, and the consideration of payment for the killing). However, the contract is not actually enforceable at law if one side or another reneges on the deal. This is because any contract for an illegal activity is not a legally binding contract.