

Opening Assignment

Should the shopkeeper have been allowed to continue increasing the price of the vase? Explain.

The Bargain

Contracts

- What is a contract?
 - Legally binding agreement
- Who may enter into contracts?
 - Capacity - the ability to understand one's actions and the effects of those actions
 - Persons with the *capacity* to contract are said to be legally competent

Elements of Contract

- Bargain
 - Offer
 - Acceptance
 - “meeting of the minds”
- Consideration

What is an Offer

- The offeror must intend to create a legal obligation.
- The terms of the offer must be definite and complete.
- The offer must be communicated to the offeree.

Ending an Offer

- An offer ends at the time stated in the offer.
- An offer not stating how long it will remain open terminates after a reasonable length of time.
- An offer ends if it is rejected by the offeree.

Ending an Offer (cont.)

- An offer ends if the offeree makes a counteroffer.
- An offer usually ends if it is revoked or modified by the offeror before the offeree has accepted.
- An offer is terminated by death or insanity of either the offeror or offeree.

How can an offer be kept open?

- Option
 - mini-contract for the purpose of keeping an offer open
- Firm Offer
 - binding offer stating in writing how long it will be kept open (statutory)

What is Acceptance?

- Acceptance must be by the person(s) to whom the offer was made.
- Acceptance must be unconditional and must match the offer.
- Acceptance must be communicated to the offeror.

Monday

Abner offers to sell his trained golden retriever, Track, to Bob for \$300 cash. "My offer is open until we go hunting next Saturday."

Tuesday

Carl offers Abner \$400 for Track, in eight equal monthly payments of \$50. Abner says, "Sorry, my price is \$300 cash."

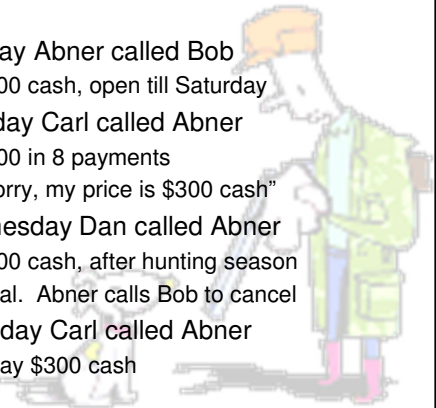
Wednesday

Dan learns that Abner has offered to sell Track. Dan tells Abner, "I'll pay \$300 cash, and you can keep the dog until hunting season is over. Abner says, "Sounds like a good deal, Track is yours." He phones Bob and tells him of the sale.

Thursday

Carl phones Abner and says, "I accept your offer. I'll pay \$300 cash. When can I pick him up?"

- Monday Abner called Bob
 - \$300 cash, open till Saturday
- Tuesday Carl called Abner
 - \$400 in 8 payments
 - "Sorry, my price is \$300 cash"
- Wednesday Dan called Abner
 - \$300 cash, after hunting season
 - Deal. Abner calls Bob to cancel
- Thursday Carl called Abner
 - I'll pay \$300 cash



Opening Assignment

Glenn contracted to remodel Reid's home for \$8,000. When he started working, Glenn realized the job would be more time-consuming than he first thought, so he refused to continue unless Reid agreed to pay an additional \$5,000. Is Glenn legally entitled to the extra money? Explain.

Consideration

What is consideration?

- The promise or action that one person gives in exchange for the promise or action of another person
- It must be mutual - each party must give consideration

Forms of Consideration

- Money – I'll give you \$5 if you...
- Property – I'll give you my cheeseburger if you...
- Act – I'll walk your dog if you...
- Promise – I'll buy your lunch tomorrow if you...



Forbearance

- Refraining from doing what one has a right to do
- Example: If you leave your dog inside while you're at work, I will let him out for you.



Forms of Consideration

- Promise
- Money
- Property
- Act
- Forbearance

Promissory Estoppel

- Promise is made
 - Foreseeable that another person will rely on the promise
 - Person acts in reliance on the promise
 - Person suffers detriment if promise not enforced
- Detriment = damage/injustice

Forms of Consideration

- Promise
- Money
- Property
- Act
- Forbearance
- *Promissory Estoppel*

Sufficiency of Consideration

- The actual value of consideration is unimportant as long as the parties agreed voluntarily
- So, value doesn't matter...much



When is consideration not sufficient?

- Fraud – misrepresentation (lie) about value
- Duress – threat or coercion
- Unconscionable – grossly inadequate, shocking the conscience of the court

Other notes on consideration...

- Additional obligations require new consideration to be enforceable
- Past performance cannot serve as consideration for a current agreement



Case Problems

Quick Response



Jules Winnfield wanted the gutters of his new house to be rust-proof. The specs in the contract he signed called for “rust-resistant aluminum gutters galvanized with zinc.” After the gutters were installed, he learned that “rust-resistant” did not mean the same thing as “rust-proof”. He sued claiming breach of contract. Will he win? Why or why not?

Void and Voidable Agreements

Offer + Acceptance + Consideration =

- Valid Contract
 - legally enforceable
- Void Contract
 - illegal subject

Voidable Contract

- When one or both parties can void (cancel) the contract
- Lack of capacity
 - Person lacks the ability to understand the terms of the contract
- Mistake

Mutual Mistake

- Both parties mistaken
- Material fact
- Either party may void the contract

Unilateral Mistake

- Uni (one) lateral (side)
- parties bound by what they outwardly do or say, regardless of what they were thinking
- Usually courts will say: “too bad, so sad”

Major Mistake

- if the mistake is major
- recognized by the other party, but not admitted (close to fraud, but not fraud)
- court may void the contract

Quasi-Contract

- Plaintiff provided valuable goods / services to Defendant with a reasonable expectation of being compensated;
- Defendant knowingly accepted the goods / services; and
- Defendant would unfairly benefit if no compensation were paid

Performance

- Performance - completion of terms of the contract
- Substantial Performance – all material aspects of contract have been performed

Breach

- Breach – failure to perform according to terms of contract
- Anticipatory breach – if you say you will breach, it's as good as a breach

Impossibility of Performance

- Acts of God
- War
- Civil Unrest

Case Problems

Lee Calan Imports, Inc., advertised a 1964 Volvo station wagon for sale in the newspaper. The ad was supposed to give a price of \$1,795.00, but the paper erred and listed it at \$1,095.00. O'Brien offered to buy the car at the advertised price, and the salesman, unaware of the error, agreed to the price. However, the finance department prepared the paperwork at \$1,795.00. After the papers were signed, O'Brien refused to pay the \$1,795.00 as it was not the price he had agreed to. Calan Imports sued. Should they win? Why or why not?

Opening Assignment



Acme Construction breached their contract by calling Jules and telling him that they couldn't install his gutters on time. Can Jules now buy the most expensive gutters he can find and charge Acme for the difference? Why or why not?

Contract Remedies

Termination

- Agreed termination
 - Tear it up
- Termination by operation of law
 - discharge in bankruptcy
 - statute of limitations

Substitution

- Assignment
 - Rights transferred to another party
- Delegation
 - Duties transferred to another party
- Novation
 - Name of the party in a written contract changed

Damages

- Compensatory - non-breaching party made whole, as if breach did not occur
- Special - compensation for foreseeable financial harm (i.e. lost profits)
- Liquidated - amount agreed to in advance by terms of the contract

Mitigation of Damages

- Non-breaching party has a duty to take reasonable steps to minimize the amount of damages caused by the breach


Specific Performance

- Party compelled to perform as promised
- Unique product or performance
- How will the timing work?




Case Problem

In March, Shell Oil contracted for an oil tanker to carry a load of oil from Texas to India for a fee of \$450,000. No reference was made as to the route the ship would take, however, the price included the toll for passage through the Suez Canal.



In April, the ship steamed off toward India. As it approached the Mediterranean Sea, the captain was warned of “possible violence in the Middle East.” Upon reaching the Suez Canal, the captain discovered that the canal had been closed due to an Arab-Israeli conflict.



The ship turned back and sailed around Africa, at an added cost of \$150,000. The ship's owner billed Shell for that amount, and Shell refused to pay. The Washington Trader's owner sued. Who should win? Why?



Opening Assignment

Write a contract where you agree to pay \$800 for a used Gibson SG Standard electric guitar.



Contracts in Writing

Statute of Frauds

- Some contracts that **must** be in writing:
 - Sale of real property
 - Sale of goods from a merchant over \$500
 - Contract that can't be performed within one year
 - Promise to pay the debt of another person

Parol Evidence Rule

- The Rule
 - If a contract is in writing, and appears to be complete, then no oral agreement made before the contract will be enforced.
- Integration Clause
 - “the written terms constitute the entire agreement of the parties”

Rules of Construction

- Try to honor intent of parties
- Plain language given ordinary meaning, trade language given trade meaning
- Form contracts - ambiguity decided against drafter
- Implied reasonableness
 - Reasonable time, reasonable performance, reasonable tender of payment, etc.

Rules of Construction (cont.)

- Conflicts between typeset, typewritten and handwritten terms
 - Which was likely done last?
- Conflicts between words and numbers
 - Go with the words, unless they don't make sense: ex.
 - Twenty-two fifty
 - Two twenty-five dollars
 - \$2.25

In a detailed, written purchase contract, Trans-Continental Supply Corporation, a food distributor, agreed to buy a large quantity of sugar from Col-Rocky Distribution.

Col-Rocky refused to ship any sugar, claiming that Trans-Continental had breached an oral promise to make cash payments in advance.

Trans-Continental sued. Trans-Continental argued that no mention of the cash payments was made in the written contract.

Who should win? Why?


When Tanner leased an apartment from Leon, they used a printed form provided by Leon, the Landlord.

One sentence in the printed form said: ‘No advance deposit required.’

On a blank line in the contract, Leon had typed: ‘\$400 refundable security deposit to be paid before move-in.’

Tanner crossed out the \$400 and wrote “\$200” and they both signed the contract.

What's the security deposit?



Silvio bought an insurance policy on his helicopter. The policy required every pilot flying the helicopter to be licensed by the FAA and have a minimum of 500 logged flying hours.

A handwritten addition to the policy specified that each pilot should also have 200 logged flying hours in a helicopter.

A pilot with 2000 logged flying hours, but only 75 logged helicopter flying hours was piloting the helicopter when it crashed.

Does the insurance company have to pay?
Why or why not?