

# CONTRACT BASICS FOR PARALEGALS



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Published on [www.lorman.com](http://www.lorman.com) - September 2017

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Contracts, whether implied, verbal or written, are legally binding and enforceable agreements made between two or more parties. Businesses and private individuals alike deal with contracts on a daily basis; therefore, contract law is an incredibly important legal field.

## Contract Basics

Any legal contract contains three basic elements: offer, acceptance and consideration. Any contract that is missing one or more of these elements is not legally binding.

An **offer** is simply any proposal to make a deal. In order to create a legally enforceable contract, the offer must be clearly communicated to another party. Offers remain open until they are accepted, rejected, withdrawn or expire. If one party makes a counter-offer, the original offer is immediately closed.

Legal contract offers must contain **terms**, which are specific details that help define the exact nature and scope of the offer. For instance, if a homeowner offers to rent out a room in his house, the offer must at minimum include a price, a length and a description of the property to be rented. Additional stipulations, such as restrictions on pets or an agreement to pay certain utility bills, could also be included. A homeowner who simply says

he wishes to rent out a room without specifying these terms has not made a legal contract offer.

Once an offer has been made, the second party in a contract must communicate his or her **acceptance** to the offerer.

Depending on the type of offer, this acceptance may be oral, written or implied. Regardless, the acceptance must comply with the terms of the original offer. It is important to note that a party need not have actually read the entire contract before accepting. Anyone who signs a contract is assumed to have understood and agreed to all of the terms and conditions.

Merely accepting an offer does not create a legally binding contract. In order to complete the contract, **consideration** must be exchanged. Consideration is the legal benefit assumed by one party and the legal detriment assumed by another; it usually takes the form of some exchange of money, property or services. This consideration need not be the full value of the contract; in fact, it can be a token amount such as a single dollar. Nevertheless, a contract is not legally enforceable without the exchange of something of value.

Before consideration has been exchanged, an agreement is not a contract and can still be cancelled by either party. It is also important to note that *past*



consideration cannot be used to establish a legal contract. Something of value must be exchanged *after* a legal offer has been made and accepted.

## Contract Forms

An **implied** contract is an unspoken agreement that arises between two parties. Implied contracts can be established based on conduct, assumed intentions, a relationship between two parties or the legal principle of equity.

For instance, if one party knowingly accepts an item of value from another party under circumstances that clearly indicate the item is not a gift, the party who accepts the item is legally obligated to provide a reciprocal benefit of equal value. Likewise, if a man provides financial support to his cohabiting girlfriend for an extended period of time, a court may rule that he implicitly agreed to continue to support her for life.

Naturally, implied contracts can be difficult to enforce. The same is true for **oral** contracts, which are based on verbal rather than written agreements. Although these contracts may be sealed by a handshake or even evidenced in writing, the actual terms of the contract are established orally rather than being written down. For example, a homeowner who hires a landscaper to mow his lawn may set the terms of the work verbally

and exchange payment after the lawn is mowed.

**Written** contracts include all of the contract terms in writing and are typically sealed by signatures from both parties. Handwritten, typed and electronic contracts are all considered written contracts. Because the contract itself serves as evidence of the terms, written contracts are typically the easiest form to enforce. Some types of contracts, such as agreements involving real estate, must be established in writing.

## Contract Types

Most contracts are **bilateral** agreements, which consist of mutual promises between two parties. Each party agrees to give some benefit to the other, and both parties are legally obligated to comply with the terms of the contract. For example, if an engaged couple signs a contract with a wedding photographer, the photographer must provide his services on the agreed-upon date and the couple must provide the agreed-upon payment. If the photographer does not provide his services, the couple can pursue legal recourse against him; likewise, if the couple refuses to pay, the photographer can take legal action to recover his lost payment.

**Unilateral** contracts, also known as performance contracts, place a legal obligation on one party only. The person offering the contract promises to extend some benefit if another party carries out a certain requested act. For instance, if someone offers a \$50 reward for the return of his lost dog, no one is legally obligated to actually find the dog. The offerer cannot sue someone for refusing to search for the lost dog or for abandoning his search after looking for a time. However, if someone *does* bring the dog back to the owner, the owner is contractually obligated to provide the \$50 reward.

An **aleatory** contract is an agreement that promises to offer some benefit only in the event of some unexpected circumstance. These contracts are most commonly used in the insurance industry. For example, the holder of a fire insurance policy is only entitled to insurance benefits if a fire actually damages his property. Likewise, the holder of a car insurance policy can collect benefits only if his car is damaged in an accident.

### Contract Enforceability

In order to be legally enforceable, a contract must include the basic components discussed above. However, under some circumstances a contract that has been offered, accepted and sealed by an exchange of consideration is still not legally enforceable. Challenges to the enforcea-

bility of a contract are known as **defenses**.

A contract that includes **illegal** stipulations is not legally enforceable. For instance, if one party agrees to offer payment in the form of illegal drugs, that contract cannot be enforced by a court. Likewise, an oral contract arranging the sale of a house is not enforceable because the law stipulates that real estate contracts must be written.

Both parties to a contract must have the **capacity** to enter a contract if the contract is to be legally enforced. Under most circumstances, minors do not have the legal capacity to enter a contract; thus, any contract entered by someone under the age of majority can be declared void. People who are mentally incapable and require a legal guardian also lack capacity to contract.

Under most circumstances, temporary conditions that affect a party's capacity do not make a contract unenforceable. For instance, one party generally cannot argue that a contract is void because he was under the influence of alcohol when he signed the contract. However, if that individual can prove that the other party knowingly took advantage of his mentally impaired state, his defense might be enough for a court to refuse to enforce the contract.

Contracts signed under coercion or improper statements may be ruled unenforceable due to **duress**, **undue influence** or **misrepresentation**. To claim that a contract was signed under duress, a party must show that his agreement was forced by a serious threat of wrongful action. Undue influence is defined as improper persuasion from someone who the victim justifiably assumed, based on an existing relationship, had the victim's welfare in mind. Finally, misrepresentation defenses focus on one party's deliberate false statements, withholding of information or deliberate concealment of relevant factual information. A homeowner who paints over water damage prior to selling his home may find the sale voided on grounds of misrepresentation.

An **unconscionable** contract is one that a court rules is grossly inequitable. If one party held a monopoly on bargaining

power at the time the contract was signed, and if the terms substantially favor the stronger party, a court may find the contract unconscionable. Likewise, if one party is illiterate or had no opportunity to ask questions, a court may rule that the contract unconscionably took advantage of the less informed party.

Finally, contracts may be ruled unenforceable due to a **mistake** in the terms. For this defense to be upheld, both parties must have had a mistaken concept of one of the contract's underlying assumptions and that mistake must have had a material effect on the contract. For instance, if one party offers to sell his smaller stereo for \$50, and the other party is under the impression that he is buying a larger stereo, their contract may be voided on grounds of a mistake.

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