

Learn Legal English with PUSTULKA

Lesson Fourteen Contracts

Reading (part 1)

Read about the elements of contract and pay attention to the bolded words.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/948

Contracts are an important part of everyday life. Working for an employer; insuring your car or your house and even buying a carton of milk are all governed by the law of contract.

A contract is an **agreement** between two or more persons (individuals, businesses, organizations or government agencies) to do, or to **refrain** from doing, a particular thing in **exchange** for something of value. Contracts generally can be written, using formal or informal terms, or entirely **verbal**. If one side fails to live up to his/her/its part of the bargain, there's a "**breach**" and certain **remedies** for solving the differences are available. The **terms of the contract** - the who, what, where, when, and how of the agreement - define the **binding** promises of each party to the contract.

The existence of a contract requires finding the following factual elements:

1. Offer

When you ask someone to do something, or offer to do something for a price, you are making an offer. An offer is the first step in forming a contract. The middle step is the other party's **acceptance** of the deal. The last step is -- where you each live up to your side of the bargain. Words, gestures, or actions can signal an offer and its acceptance will mean entering into a contract. However, if you are forced to make an offer ("your money or life") and enter into the contract under **duress**, it is not a **valid** offer. Similarly, if you are tricked into accepting, misled about the terms of the contract, it will not be **deemed** acceptance of the terms offered but rather will constitute a fraud in the **inducement**.

2. Acceptance

There are three types of acceptance:

Express: a direct agreement, when you say: "I accept your offer."

Implied: usually by **conduct**, i.e. when the party behaves in such a way which indicates that they agreed to a proposed bargain/offer.

Conditional: (or qualified) acceptance when the offeree proposes some changes to the original offer, i.e. makes a **counter-offer** which now must be accepted by the original offeror for a contract to be made.

3. Consideration (which can be a promise or payment in some form)

Consideration is a necessary element of a valid contract. For a promise to be **enforceable** as a contract something (some consideration) must be given in exchange for that promise. In other words, the **promisor** should receive some advantage or benefit or, alternatively, the **promisee** must suffer some **detriment**. The general rule in English contract law is that without consideration a contract shall be **deemed invalid** or, to be more precise, there will be no contract concluded at all.

4. Intention to be legally bound

There is a presumption for commercial agreements that parties intend to be legally bound (unless the parties expressly state that they do not want to be bound). On the other hand, many kinds of domestic and social agreements are **unenforceable** on the basis of public policy, for instance between children and parents.

5. Capacity to contract

A person entering into a contract must be of legal age, **sane** and not a convict or enemy alien, otherwise the contract is **voidable**.

Note

To remember the elements of contract, learn the acronym **CIAO!** made of the first letters of the five elements of contract, where C is for consideration/capacity to contract, I is for intention, A is for acceptance, and O is for offer.

Reading (part 2)

Read about unilateral and bilateral contracts and pay attention to the bolded words.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/962

We should distinguish between two types of promise, namely those which do and don't give rise to a legal duty. Thus, a promise to meet one's other half for dinner at 7pm gives rise to no legal obligation - it is a "mere" promise - whereas a promise to sell someone a car for £5000 gives rise to legal obligation.

English contract doctrine distinguishes between **bilateral** and **unilateral** contracts. A **bilateral** contract **gives rise to obligations** on both sides. Thus, in a contract of sale, the seller has an obligation **to transfer title in the thing** sold to the buyer, whilst the buyer has an obligation to pay the price. A **unilateral** contract, by contrast, **gives rise to obligations** on one side only. Thus "I will give you £100 if you run a marathon" **gives rise to a legal duty** on the maker of the statement (the **promisor**) to pay the money if the race is run, whilst the person to whom the statement is made (the **promisee**) is under no obligation to run in the first place.

Reading (part 3)

Read about how a contract can come to an end and pay attention to the bolded words.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/971

Performance is completing the deal according to the terms given in the contract. However, if the parties do not perform what they have promised, they commit a breach of the terms and conditions of the contract

Terms and conditions constitute the very root of a contract. Breach of these terms **repudiates** the contract, allowing the other party to **terminate** the contract. Breach of these terms will **give rise to damages**.

There can be four different ways in which contracts can be **set aside**. A contract may be deemed '**void**', '**voidable**', or '**unenforceable**'.

Voidness means that a contract never came into existence.

If a contract is **voidable** then at least one of the parties to the contract can decide to end it and get back anything that they have lost as a result of that contract; they declare the contract to be **void**.

If a contract term, rule or law etc is **unenforceable**, it is impossible to force people to obey it.

Reading (part 4)

Read about defences to contract can come to an end and pay attention to the bolded words.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/963

The following elements can invalidate a contract:

1. Misrepresentation

Misrepresentation means a false statement of fact made by one party to another party and has the effect of persuading that party into the contract. For example, under certain circumstances, false statements or promises made by a seller of goods regarding the quality or nature of the product that the seller has may constitute misrepresentation. A finding of misrepresentation allows for a remedy of **rescission** and sometimes **damages** depending on the type of misrepresentation.

2. Mistake

A mistake is an incorrect understanding by one or more parties to a contract and may be used as grounds to invalidate the agreement.

3. Duress and undue influence

Duress is the use of threats, force or false imprisonment to force a person to do something against their wishes or interests. An innocent party wishing to set aside a contract for duress to the person need only to prove that the threat was made and that it was a reason for entry into the contract. Blackmail or **extortion** are classic examples of duress.

Undue influence involves one person taking advantage of a position of power over another person. It is where free will to bargain is not possible. It may include insinuation, flattery, trickery, deception.

Reading (part 5)

Read about remedies for a breach of contract and pay attention to the bolded words.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/972

A breach of contract is failure to perform as stated in the contract. There are many ways to remedy a breached contract assuming it has not been **waived**. Typically, the remedy for breach of contract is an award of money **damages** which is known as a remedy at **law** (legal remedy).

When money is not enough, the court may award one of remedies in equity (equitable remedies). When dealing with unique subject matter, **specific performance** may be ordered. For example, when an art collector purchases a rare painting and the vendor refuses to deliver, the collector's damages would be equal to the sum paid. The court may make an order of "**specific performance**", requiring that the contract be performed.

In some circumstances a court will order a party to perform his or her promise or issue an order, known as an "**injunction**," that a party refrain from doing something that would breach the contract.

Glossary

acceptance - zaakceptowanie

to bargain - negocjować

bilateral - dwustronny

breach - naruszenie

damages - odszkodowanie

to deem - uznać

detriment - szkoda

duress - przymus

enforceable - wykonalny

extortion - wymuszenie

injunction - nakaz

invalid – nieważny, nieprawomocny

promisee – strona otrzymująca przyrzeczenie

promisor - przyrzekający

to refrain – powstrzymać się

remedy - zadośćuczynienie

to repudiate - wypowiedzieć

rescission – uchylenie, unieważnienie

to set aside – uchylić, unieważnić

specific performance – nakaz spełnienia obowiązków umownych

terms of contract – warunki umowy

undue influence – bezprawny nacisk

unenforceable - niewykonalny

unilateral - jednostronny

valid - ważny

verbal - ustny

void - nieważny

voidable – dający się unieważnić

to waive – uchylić, odstąpić

EXERCISES

1. Decide if the contracts listed below are unilateral or bilateral? Write a letter U or B in the boxes provided.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/947

- A. A broker offers a trip to Hawaii to any salesperson who sells \$1 million of property during the month.
- B. A contract for the sale of a home, the buyer promises to pay the seller \$200,000 in exchange for the seller's promise to deliver title to the property.
- C. John promises Mary to pay her € 50 if she finds his dog.
- D. Someone offered to drive you to work on Mondays and Tuesdays in exchange for your promise to return the favour on Wednesdays and Thursdays.
- E. I will pay you \$1,000 if you bring my car from Cleveland to San Francisco.
- F. Chris promises to sell Joe a Car for \$1000 and Joe promises to pay \$1000 for the car.

2. Decide on what grounds the contracts in the following situations can be invalidated: mistake, misrepresentation or duress.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/968

- A. Armstrong threatened to kill Barton if he did not sign a contract, so the court set the contract aside.
- B. The plaintiff entered into a contract to purchase a medical practice. During negotiations it was said that the practice produced an income of £2000 per year. Before the contract was signed, the practice took a downward turn and lost a significant amount of value.
- C. A person sees an advertisement of car to be sold for €1 which is a fault of the newspaper company that printed the newspaper and not the fault of the car dealer.
- D. A seller who sell you a car promises the car was owned by an elderly lady who only drove it to church on Sunday but in reality, it was crashed twice, and its meter was turned back.

3. Form collocations which relate to the area of contract law. When you are ready, try to define their meaning in plain English.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/969

A	undue	1	of contract
B	specific	2	a contract
C	breach	3	invalid
D	to deem	4	influence
E	terms	5	performance
F	to set	6	and conditions
G	to discharge	7	aside

4. Complete the sentences with the following words: void, undue influence, voidable, duress, enforceable, mistake.

You can do this exercise online:

pustulka.edu.pl/PublicExercise/PublicExerciseGo/970

1. The lawyer for a US citizen on trial in the United Arab Emirates says his client's testimony was given under, since he was tortured.
2. The head of the health service in Scotland has admitted that significant were made in drawing up the new contract for NHS consultants.
3. The new leader of Britain's chief architectural body has accused the Prince of Wales of abusing his position to influence planning decisions and exerting on the planning process to oppose modern designs in favour of his preferred brand of classicism.
4. If a management contract is not approved by the National Commission, it is
5. Californian judges have ruled that a contract written in blood is not legally
6. A contract between a minor and another party is generally viewed as by the minor.

5. Cut the stripes and match the words on the left with their definitions.



You can practise the set on quizlet:

quizlet.com/356355119/contract-law-flash-cards/

acceptance	an unconditional agreement to what is proposed by the other party
bilateral	a contract where each of the parties have reciprocal obligations
consideration	something of value that parties exchange under a contract
breach of contract	an act of violating a contract
detriment	harm or damage
donation	legal term for gift, whether of goods, services or legal rights
donee	the party who receives under a donation
donor	the party who gives under a donation
unenforceable	cannot be accepted as legal in a court of law because of a condition that is not legal, information that is not correct
void	having no legal force or effect; not legally binding
voidable	valid contract but that can be declared invalid at the request of one of the parties because of a defect or illegality in making it
offer	a statement setting out terms by which an offeror is willing to be bound
offeree	one who receives an offer
offeror	one who makes an offer
promisee	party who benefits from a contractual obligation undertaken towards them by another, loosely person to whom a promise is made
promisor	party who undertakes a contractual obligation towards another, a person who makes a promise
performance	fulfilling the obligations under a contract
unilateral	a contract under which only one party has obligations

ANSWERS

1. AU, BB, CU, DB, EU, FB

3. A4, B5, C1, D3, E6, F7, G2,

2. A duress, B misrepresentation, C mistake, D misrepresentation

4. 1. duress, 2. mistake, 3. undue influence, 4. void, 5. enforceable, 6. voidable