
Volunteer Lawyers Project
Nebraska State Bar Association

Contract Basics



What is a contract?

A contract is a legally enforceable agreement. A contract may be made in writing, may be stated orally, or may in whole or in part be implied by the parties' actions.

How is a contract formed?

• Offer and Acceptance

In order to create a contract, there must be a proposal of terms to form an agreement, and the parties must consent to these terms. This is commonly known as an "offer" and an "acceptance," both of which are required in order to create a binding contract between parties. Another basic concept regarding contract formation is a "counter-offer." Instead of choosing to accept an offer, a party may decide to propose different terms in the form of a counter-offer. A counter-offer is a new offer which does not create a contract unless it is accepted.

• Requirement of Mutual Understanding and Obligations

Parties to a contract must have a mutual understanding of all essential terms of the agreement. A contract is not formed if the parties leave part of the agreement to be completed in the future. In addition, there must be mutual obligations. One party must promise to do something or allow something to be done in exchange for the other party's fulfillment of its promise. The types of promises vary depending on context, but they could be a promise to pay a sum of money, or perform a particular act, or refrain from acting. The mutuality of obligation requirement is not met when the agreement binds only one party to perform.

• Unilateral Contracts

The above paragraphs describe what is known as a "bilateral contract," consisting of mutual promises between parties. Another type of contract is a "unilateral contract." This occurs when Party A makes an offer to Party B, and Party B creates an enforceable contract by fulfilling the terms of the offer, even though Party B has not made any promises to Party A. For example, Party A may state to Party B, "I will pay you \$200 if you paint my house." Party B is under no obligation to paint the house, but if Party B paints the house Party A must pay \$200. In this example, Party B has accepted the contract through "performance." Acceptance by performance creates a binding agreement so long as the offering party is aware of the performance.

• Termination of an Offer

An offer to create a contract may be terminated in the following ways, for example:

- Lapse of an offer – the time period specified in an offer in which the offer may be accepted has expired;
- Revocation of an offer – the offering party takes back the offer before it is accepted. Some offers are irrevocable (for more information, research "option contracts");
- Death of offeror terminates the offer if the offer has not been accepted. However, death does not terminate an irrevocable offer, and does not terminate an already existing contract.

What are the legal elements of a contract?

A contract is a private bargain which has the force of law and may be enforced by a court. A party which brings a breach of contract claim in court bears the burden to prove all the elements of its claim. The standard of proof in a contract case is preponderance of the evidence, which means that every element must be proven by the greater weight of the evidence. Stated another way, a party must prove that it is more likely than not that its claim is valid. The elements which a party must prove in order to recover for breach of contract are:

- The existence of a contract between the plaintiff and defendant.
 - There must be a showing that the requirements of contract formation, discussed above, have been met;
- The terms of the contract;
- The plaintiff substantially performed its responsibility under the contract;
 - "Substantial performance" means a party has made an honest effort to fulfill its obligations under the contract and provide the agreed-upon benefits to the other party. Substantial performance may be established so long as there are no major deviations from the contract;
 - Some contracts contain a type of term known as a "condition precedent," which must first be satisfied before the contract becomes legally binding, or before the other party is required to fulfill its part of the bargain. If the contract contains a condition precedent, then the plaintiff must show that the condition has been satisfied;
- The defendant breached the contract in one or more ways;
 - The plaintiff must prove that the defendant committed a "material breach," which is a fundamental failure to

live up to the terms of the agreement. A material breach is a breach which defeats the purpose of the contract, deprives the parties from the benefits of the contract, or interferes with the plaintiff's efforts to satisfy its contract obligations. If a party materially breaches a contract, then the other party will be excused from fulfilling its obligations under the contract;

- The defendant's breach of the contract caused proximate harm to the plaintiff; and

- The concept of "proximate harm" generally means that there is a natural and logical connection between the defendant's breach and the damages suffered by the plaintiff.

- The nature and extent of that damage;

- A party's damages for breach of contract is typically measured according to the benefits that party expected to receive under the agreement at the time it made the agreement. There is a requirement that damages be proven with "reasonable certainty." A damages figure must be supported by relatively objective evidence. There can be no guessing or speculating;

- Limitations on damages: a party is under a duty to mitigate its damages. A party will not be permitted to recover damages if those losses could have been avoided. In addition, a breaching party will only be held responsible for damages which could have been foreseen at the time the contract was made.

How does a court evaluate a breach of contract claim?

For written contracts, a court first considers whether the contractual language is ambiguous. Ambiguity exists if a key aspect of the contract may genuinely be read to contain multiple conflicting meanings. Ambiguity is not established just because the parties disagree about what a contract means; ambiguity is established if the contractual language is fairly and objectively open to interpretation.

If a contract is ambiguous, the court will consider evidence outside of the contract, such as the parties' other words or conduct, in order to determine the terms upon which the parties reached an agreement. If a contract is unambiguous, the court considers the entire written agreement and nothing else in order to determine the parties' intentions. A court will interpret the language of an unambiguous contract in its ordinary and most natural sense.

By interpreting the contractual language, a court will determine the responsibilities each party agreed to take on. In this way, a court enforces the parties' agreement. A court does this by applying the factual background presented by the parties to the terms of the agreement, and then considers whether the elements of a breach of contract claim have been proven. If a plaintiff fails to prove any one of the elements, according to the preponderance of the evidence standard, the claim will fail.

How soon must a breach of contract claim be filed?

A lawsuit based on a written contract must be filed within five years after the contract was breached. A lawsuit based on an oral contract must be brought within four years of the breach.

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