

Name: _____

Street Law: Contracts – Class Notes and Practice

I. Overview- 4 elements of contracts

- a. _____
- b. _____
- c. _____
- d. _____

II. Offer and Acceptance:

- a. Showing a willingness to enter into a _____ in such a way that another person would interpret that they could _____ and it would conclude the negotiations.
- b. Can be through words or _____. _____ can be offers.
- c. _____ are not offers. Buyers have to be able to walk away from estimates or price quotes.
- d. Acceptance- once an offer has been made, the other party can accept the offer in _____, including starting performance.
- e. The party who accepts can back out up until performance begins.
- f. Factors include: Were _____ finalized? Did performance begin?

Practice- Discuss whether there was a valid offer and acceptance with your group. Explain your answers here. 8 minutes.

- 1. Jim negotiated a deal to re-roof his house with a carpenter. They did not sign a written agreement. The roofers showed up at the house on the agreed day, and another carpenter had already started work. Was there a contract?

2. Cheryl was fired from her job at the newspaper, and she sued because she thought there had been gender discrimination in her firing. Cheryl and the newspaper company agreed on the basic outline for a settlement, but before it was signed, she backed out and wanted to go to court. Should the settlement be binding?
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3. An advertisement in a magazine promises, "Our product will clear up your acne or we will give you double your money back!" Jenny bought the product, ProAktiv, at a drug store and did not notify the company that she planned on taking them up on their offer. Does the ProAktiv have to pay Jenny double her money back if the product does not work?
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III. Consideration

- a. Definition: A contract must include a promise and a _____.
- b. It cannot only go in one direction. Both parties have to get _____ (a good or service).
- c. A promise of a gift is not enforceable because one party gets nothing.
- d. The exchange doesn't have to be _____ - one person may value something more than someone else.

IV. Enforcement

- a. Substantial Performance- Doing exactly what is in the contract is not always possible, but the parties have to _____.
- b. If one party does not materially perform, the other party no longer has to perform.
- c. Failure to perform is called "_____."
- d. Damages- The party who is harmed can request money from the other party _____ from the breach.
- e. _____ - If it is still possible to perform the contract, the court can require the party to perform.

Practice- Read the following fact pattern to yourself, then spend about 3 minutes explaining whether you think one party breached the contract, and what the court should do, if anything. Then, you will share with your group for about 5 minutes.

Facts: Sam burned his hand on the stove. The burn was so bad that it permanently scarred his hand and made it hard to grip things. A doctor told him that he could fix the hand through a simple “skin-grafting” procedure. Sam and the doctor entered into a contract to have the surgery for \$1,200. After the surgery, Sam’s hand worked perfectly, but he grew hair out of the palm of his hand. Even though he tried waxing his hand and using Nair, he was not able to stop the hair from growing. Did the doctor breach the contract by giving Sam a hairy hand? If so, why, and what should the court do about it?

V. Defenses

- a. Certain things can make contracts void even though both parties agreed on the terms and there was valuable consideration.
- b. Unconscionability- If one party tricked another party into agreeing to an unfair contract, the court may not _____ it.
 - i. Often comes up when businesses try to trick poor or uneducated clients.
- c. Fraud or Duress- _____ something in negotiations can make a contract void.
 - i. Also, taking advantage of someone in a bad situation can make a contract void.
 - ii. If a company knows about a flaw in a product and _____, the contract to buy it is void.
- d. Criminality/Public Policy- If the terms of a contract require _____ behavior, or if they go against Congress’ _____, it will be declared void.

Practice- Have one member of your table read the following facts out loud, then discuss whether the contract should be declared void for any of the reasons discussed above. 5 minutes.

Teri and her husband wanted to have a child, but she had suffered from multiple sclerosis in the past, which means that pregnancy could have significant health complications for her and her child. Teri put an ad in the newspaper for someone willing to be a surrogate mother. Kelly responded to the ad, and after negotiating a price and specific terms, Kelly and Teri entered into a contract for Kelly to carry Teri's child to birth. After giving birth to the child, Kelly decided she did not want to give it up. Once she left the hospital, she went to Teri's house and told her that she would kill herself if Teri didn't give up the baby. The custody challenge was brought to court. What would you advise the court to do in this situation?

Discuss the issues, but you are not required to write them down. We will hear each group's opinion at the end of 5 minutes.