

CONTRACT

A contract is a legally enforceable agreement.
Promise + Consideration = K
Promise + Detrimental Reliance = K

PROMISE

A promise is the *manifestation of intent* to act or refrain from acting in a specified way

A promise or performance must offer some *legal detriment*, i.e. something of value or some form of freedom

CONSIDERATION

To constitute consideration, a performance or promise must be *bargained for*, i.e. *sought in exchange* for another performance or a return promise

Each party has the duty to bargain in *good faith*

DETRIMENTAL RELIANCE

In some instances, detrimental reliance acts in place of consideration.

UNENFORCEABLE

Conditional & Illusory Promises

An agreement that depends on the *wish, will, or pleasure* of one of the parties will not be enforced.

No Commitment

One party cannot convert what both parties knew to be a joke into a serious transaction simply by claiming it to be so.

There must be a *meeting of the minds*.

DISCRETIONARY

Vague & Indefinite Terms

Six Ways of Interpreting a Term:

The Courts use these to determine INTENT

- (1) Language of the K
- (2) Dictionary
- (3) Prior Negotiations Between the Parties
- (4) Trade Usage
- (5) Standards incorporated by Reference
- (6) The Conduct of the Parties

Other relevant factors:
Evidence; Subject Matter

ENFORCEABLE

Satisfaction Clauses

Two Categories:

- (1) Objective test: *Reasonable person standard*, where "satisfaction" can be ascertained to something measurable
- (2) Subjective test: *Good faith standard*, where "satisfaction" is determined by the fancy, taste, or judgment of the parties

Exclusivity:

Good Faith & Reasonable Efforts
Implied Promises = A promise may be lacking, and yet the whole K may be "instinct with an obligation, imperfectly expressed." In these situations the court *reads in the promise* through *good faith* and *reasonable efforts* by both parties.

Business Law Contracts Study Guide

DJ Losen



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