

# CONTRACT VS. PROMISE

- **Promise:** A person's declaration that he will perform or refrain from performing some present or future act.
  - **Promisor:** The person making the promise.
  - **Promisee:** The person to whom the promisor made the promise.
  
- **Contract:** An agreement between two or more competent parties, for valuable consideration, to perform or refrain from performing some present or future act.
  - **Offeror:** The person proposing an agreement.
  - **Offeree:** The person to whom the offeror proposes the agreement.

# CONTRACT REQUISITES

- **Agreement:** The offeror must **offer** to enter into an agreement, and the offeree must **accept** the terms of the offeror's offer.
- **Consideration:** Something of value given or promised to convince a party to agree to the deal.
- **Contractual Capacity:** Both parties must be legally competent to enter into the agreement.
- **Legality:** The contract's purpose must be to accomplish some goal that is legal and not against public policy.
- **Genuineness of Assent:** The apparent consent of both parties must be genuine.
  - **Objective Theory of Contract:** The parties' assent is judged not by the subjective intent of each party, but by the objective intent that a similarly situated reasonable person would understand the parties to have.
- **Voluntary Consent:** Each party must give its consent voluntarily.
- **Form:** The agreement must be in whatever form (*e.g.*, written, under seal) the law requires.

# CONTRACT TYPES

- **Bilateral Contract:** A bilateral contract arises when the offeror gives her promise in exchange for the offeree's return promise (*e.g.*, X promises to deliver a car to Y, and Y promises to pay X an agreed price).
- **Unilateral Contract:** A unilateral contract arises when the offeree can only accept the offer by performance (*e.g.*, X delivers a car to Y, who promises to pay X an agreed price).
  - Once the offeree of a unilateral contract begins to perform, the offeror loses the ability to *revoke* her offer (*e.g.*, if Y offered to pay X an agreed price in exchange for X delivering a car to Y, once X delivered the car, Y could not revoke her offer to pay X).
- **Formal Contract:** A contract that requires a special form or method of formation (creation) in order to be enforceable.
- **Informal Contract:** A contract that **does not** require a specified form or method of formation in order to be valid.

# EXPRESS AND IMPLIED CONTRACTS

- **Express Contract:** A contract in which the terms of the agreement are explicitly stated orally or in writing.
- **Implied-in-Fact Contract:** A contract formed in whole or in part by the conduct (as opposed to the words) of the parties. To establish an implied-in-fact contract,
  - (1) the plaintiff must have **furnished some service or property** to the defendant,
  - (2) the plaintiff reasonably **expected to be paid** and the defendant knew or should have known that a reasonable person in the plaintiff's position would have expected to be paid for the service or property rendered, and
  - (3) the defendant must have had the **opportunity to reject** the service or property and failed to do so.

# CONTRACT PERFORMANCE AND ENFORCEABILITY

- **Executed Contract:** A contract that has been completely performed by both (or all) parties.
  - By contrast, an **executory contract** is a contract that has not yet been fully performed by one or more parties.
- **Valid Contract:** A contract satisfying the requisites discussed earlier – agreement, consideration, legal purpose, capacity, and form. By contrast,
  - a **voidable contract** is an otherwise valid contract that one of the parties may legally avoid, cancel, or annul (*e.g.*, a contract entered into under duress or under false pretenses);
  - an **unenforceable contract** is an otherwise valid contract rendered unenforceable by some statute or law (*e.g.*, an oral contract that, due to the passage of time, must be evidenced by a writing to be enforceable); and
  - a **void contract** is a contract having no legal force or binding effect (*e.g.*, a contract entered into for an illegal purpose).

# QUASI CONTRACT

- **Quasi Contract:** A legal fiction a court imposes, in the interests of fairness and justice, *on parties who have not formed an enforceable contract*, typically to
  - (1) prevent the *unjust enrichment* of one party at the expense of the other, and
  - (2) allow the party whose actions would otherwise unjustly enrich the other party to recover the value of the unjust enrichment.
  
- Courts typically will not allow a party to recover in quasi contract if the party conferring the benefit did so
  - (1) **officially** (*e.g.*, if a car dealership applies, without your asking or agreeing to have it do so, an expensive finish to a car you agreed to buy, but before you take delivery, you should not have to pay for the unsought benefit) or
  - (2) as a **result of misconduct** (*e.g.*, a relative's murderer cannot use quasi contract to recover a portion of your inheritance) **or negligence** (*e.g.*, a driver who falls asleep at the wheel and loses control of his car, which ends up sideways on the sidewalk in front of you, cannot recover in quasi contract for preventing you from falling into an open manhole in the sidewalk).

# CONTRACT INTERPRETATION

- The key to contract interpretation is to give effect to the **intent of the parties** as expressed in their agreement.
- In keeping with the *objective theory of contract*, intent is generally ascertained by considering
  - (1) the **words** used by the parties in the agreement,
  - (2) the **actions** of the parties pursuant to the agreement, and
  - (3) the **circumstances surrounding** the agreement

as they would be interpreted by a **reasonable person** – rather than by considering the parties’ *subjective* intentions (usually expressed after the fact).

- **The Plain Meaning Rule:** When a contract is clear and unequivocal, a court will enforce it according to its plain terms, set forth on the face of the instrument, and there is no need for the court either to consider extrinsic evidence or to interpret the language of the contract.
- **Rules of Interpretation:** When a contract contains ambiguous or unclear terms, a court will resort to one or more of the following rules in order to determine and give effect to the parties’ intent.

# RULES OF INTERPRETATION

- Insofar as possible, the contract's terms will be given a **reasonable, lawful, and effective** meaning.
- The contract will be **interpreted as a whole** and its various provisions will be "harmonized" to yield a **consistent** expression of intent.
- **Negotiated terms** will be given greater consideration than standard-form, or "boiler-plate," terms.
- A non-technical term will be given its **ordinary, commonly-accepted meaning**, and a technical term will be given its **technical meaning**, unless the parties clearly intended something else.
- **Specific terms** will prevail over general terms.
- **Handwritten** terms prevail over **typewritten** terms, which, in turn, prevail over **printed** terms.
- Any ambiguity is construed **against the drafting party**.
- A contract should be interpreted in light of pertinent **usages of trade** in the locale or industry, the **course of prior dealing** between the parties, and the parties' **course of performance** of the contract.