Basics of Contracts

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Why should you care about contracts basics?

- Contracts are everywhere!
  - Increasingly, we live in a world that is mediated through contracts
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- Libraries are managing a growing number of licenses that is, contracts
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- Librarians regularly interact with vendors and review/negotiate licenses
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- Libraries are managing a growing number of licenses—that is, contracts
- Librarians regularly interact with vendors and review/negotiate licenses
- Librarians help faculty understand publication agreements—Contracts!
Background on US contract law

- The US Constitution itself protects the right to contract *(Art. 1, sec. 10, cl. 1).*
  - There are broad individual powers to contract.
  - You can even contract away things that the law gives to you; See Copyright v. Terms of Use agreements

- Contracts are subject to state law
  - See, *e.g.*, choice of law/choice of venue provisions in vendor contracts/publication agreements
What is a contract?
What is a contract?

§ 1. Contract Defined
A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.
What does that mean?
What is a contract?

- A promise to do something that legally obligates the promisor to perform the promised action.
All contracts are promises, but not all promises are contracts.
What *isn’t* a contract?

- Examples of things that *look* like contracts, but aren’t:
  - Gifts
  - Advertisements
  - Illegal Contracts
  - Conditions
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So, the question is…
Q: When does a promise become a contract?
A: When it has all the *elements* of a contract.
The *elements* of a contract?
Offer + Acceptance + Consideration = K
Elements of an contract: Offer

§ 24. Offer Defined
An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.
Elements of an enforceable contract

- Put more simply: an offer is something that creates in the offeree the ability to create a contract simply by acceptance.

- The offer must be “clear, definite, and explicit, and leave nothing for negotiation.” *Lefkowitz v. Great Minneapolis Surplus Store, Inc*
Lefkowitz v. Great Minneapolis Surplus Co., 86 NW 2d 689 (Minn. 1957)

- Is it “clear, definite, and explicit, and leave nothing for negotiation?”
Elements of a contract: Acceptance

§ 50. Acceptance of Offer Defined; Acceptance by Performance; Acceptance by Promise

(1) Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner invited or required by the offer.

(2) Acceptance by performance requires that at least part of what the offer requests be performed or tendered and includes acceptance by a performance which operates as a return promise.

(3) Acceptance by a promise requires that the offeree complete every act essential to the making of the promise.
Elements of a contract: Acceptance

- A manifestation of assent to the terms of the offer
- An acceptance cannot be conditional
- An acceptance with a condition is a counter-offer
- Acceptance can be through conduct.
- You don’t need to say “I ACCEPT!” ...
- …but silence alone may not imply acceptance
Elements of a contract: Consideration

TOPIC 1. THE REQUIREMENT OF CONSIDERATION

§ 71. Requirement of Exchange; Types of Exchange

(1) To constitute consideration, a performance or a return promise must be bargained for.

(2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.

(3) The performance may consist of
   (a) an act other than a promise, or
   (b) a forbearance, or
   (c) the creation, modification, or destruction of a legal relation.

(4) The performance or return promise may be given to the promisor or to some other person. It may be given by the promisee or by some other person.
Elements of a contract: Consideration

- The “bargained-for exchange”
- Courts do not usually consider the adequacy of consideration. The important question is whether there was a bargain between the parties/whether both sides suffered a detriment.
- Consideration ≠ money (necessarily)
What is a valid contract?

- You have a remedy at law (damages = money) or equity (specific performance, i.e. a court order to do something) for breach of contract cases.
- Courts prefer to deal with money damages rather than specific performance.
- What does enforcement look like?
  - Bob promises to paint Mary’s house for $125 on January 1st, 2019 for job completion on or before 9pm EST. Payment of $125 is payable upon completion of job.
  - Mary accepts
  - Bob does not show up on January 1st, 2019 to do the job. Does Mary have an enforceable remedy to assert?
  - Bob finishes the job before 9pm EST and Mary does not pay him the promised $125. Does Bob have an enforceable remedy to assert?
Elements of a contract: final notes

- A written document is *not necessarily* a requirement for a valid contract
- Contracts can be verbal or implied by conduct
Written contracts: “Statute of Frauds” & the “four corners”

- Statute of Frauds is a defense against fraudulent contracts by requiring written contracts for some things
  - Sale of goods of $500 or more - Uniform Commercial Code (UCC) 2-201(1)
  - A lease of goods for more than $1000 - Uniform Commercial Code 2A-201
  - An agreement that will not be performed for more than a year
  - A lease of real property for longer than one year
- When a contract is written, courts will often assume that it is complete, and only look within its “four corners” to understand its provisions
- “Extrinsic evidence” is only used where the provisions are ambiguous
Contracts basics: remedies

- What happens when one party breaches?
  - **Expectation Damages**: The aggrieved party receives enough money to be put in the place as if the contract had been performed.
  - **Reliance Damages**: The aggrieved party receives enough money to compensate for the loss for relying on the contract.
  - **Liquidated Damages**: The aggrieved party receives a sum of money fixed by the contract itself.
  - **Specific Performance**: The breaching party must do what it was supposed to do.
Hypo: remedies

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Wrap-up and takeaways

- A valid contract is a legally binding obligation to do something in exchange for something else, either another promise or performance (sometimes forbearance from doing something) to do something.
- An enforceable contract must have the essential elements of offer, acceptance, and consideration.
- If there is a written document, courts will look to it first – and maybe only – to determine what the agreement includes.
Contracts - Q & A

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Credits

- Lefkowitz v. Great Minneapolis Surplus Co. YouTube video by Donald Roth: https://www.youtube.com/watch?v=WPPsWubYAlk