

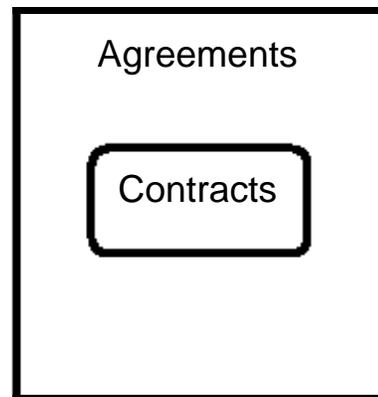
# ***How to Write a Contract & How to Read a Contract***

© Shawn David Olfman 2018, 2019  
Olfman.com

**A contract is an agreement** that has been enhanced and formalized and turned into what the law calls a contract. An agreement turns into a contract by having the elements added to it that are required for it to become what the law calls a contract. Therefore, if there was no agreement there can be no contract, because before there can be a contract there must be an agreement.

There can be an agreement without that agreement having all of the elements in it which are required for it to be a contract. Therefore there can be an agreement that is not a contract.

There cannot be a contract that is not also an agreement, because the first element needed for a thing to become a contract is that it be an agreement.



Simply writing down an agreement does not turn it into a contract. Placing the elements necessary for a contract into the agreement is what turns it into a contract.

A written document is not needed for there to be a contract, what is needed for there to be a contract is an agreement that has all of the elements in it that are necessary for an agreement to also be a contract. If the agreement, with all of the elements in it necessary for it to also be a contract is written down, then you have a written contract. If the agreement, with all of the elements in it necessary for it to also be a contract is not written down, then you have an oral contract. Written contracts and oral contracts are equally binding; the advantage to the written contract is that you can prove what was agreed to by producing the written contract. When there is an oral contract, if you have no proof of what was agreed to, then if the other party to that oral contract breaches it, you may have no way to succeed at suing them in court, as it will be your word against their word; and if they are breaching the contract they will likely lie in court and deny that the oral contract existed. Therefore, unless you have other evidence of what was orally agreed to which is sufficient to convince the court that said oral contract existed you will lose in court.

As explained above, a contract requires there to be an agreement with additional elements in it to have turned that agreement into a contract.

### **Is a contract better than an agreement ?**

**Yes.**

### **Why is a contract better than an agreement ?**

Because you can sue someone for breach of contract and win compensation for them having breached the contract; you cannot sue someone for breach of an agreement, because the law will not enforce an agreement; the law will say you had an agreement, not a contract, therefore we have no remedy for you if the other party breached your agreement, because the law does not enforce agreements. There are some exceptions, in law there are always exceptions, but most of the time if you only have an agreement the law will not help you enforce it.

An example of an agreement is: Randy Beakman and Sharon Moxly, who are friends that live across the street from each other, agree that on the first Sunday of the month Randy will do all of the grocery shopping for both households, and on the third Sunday of the month Sharon will do all of the grocery shopping for both households. If one of them decides to not do the shopping when it is their turn the other has no court remedy because they had an agreement which did not have enough elements in it to become a contract.

An example of a contract is: Randy Beakman and Sharon Moxly, who are friends that live across the street from each other, agree that on the first Sunday of the month Randy will do all of the grocery shopping for both households, and on the third Sunday of the month Sharon will do all of the grocery shopping for both households. They also agree that the person who will not be doing the shopping will email their shopping list to the person doing the shopping before noon on the Saturday before the shopping Sunday, and that if the person doing the shopping has any questions concerning the list that person will ask those questions by email before 4:00 PM of the Saturday on which they received the emailed list, and the other person will answer those questions by email before 6:00 PM of that Saturday. They also agree that the shopping will be done at Store "X", that it will be done between noon and 6:00 PM, that the person who has not done the shopping will immediately pay the person who did the shopping for the groceries which that person bought for them, when the groceries are delivered to their house. They also agree that the person doing the shopping will deliver the groceries to the other person's house before 9:00 PM on the Sunday on which the groceries were bought. If one of them decides to not do the shopping when it is their

turn the other can sue them in court for breach of contract because they had an agreement which did have enough elements in it to become a contract.

**To have a contract** the following is what must be in the agreement to make it a legally binding and enforceable contract:

I. **Parties to the Contract.** A **party to the contract** means a person or other legal entity<sup>1</sup> that has entered into the contract. For example, if Brian Larmeter and Ruth Myerson and S.M. Corporation all enter into a contract, then each of them is one of the parties to the contract.

There must be at least two parties to a contract. You cannot have a contract with yourself, with the singular exception of a trust. This paper is not about trusts, therefore, ignoring trusts, a contract must have at least two parties.

Each of the parties to the contract must be legally able to enter into a contract. This will be explained further below.

II. There must be **contractual subject matter**; the contract must be about something which the law allows to be the subject of a contract. This will be explained further below.

III. Each party to the contract must be receiving some **consideration**. This will be explained further below.

IV. Each of items I, II and III must be stated with sufficient specificity such that it is complete and unambiguous. This will be explained further below.

---

Each party to the contract must be correctly and accurately identified. That is not difficult as long as you pay attention to the identity of whom you are dealing with.

If you are 100% certain that you know the correct legal identity and address of the party with which you want to contract then just make sure their name and address are fully listed in the part

of the contract which identifies the parties to the contract; **otherwise**:

---

<sup>1</sup> A legal entity that is not a person is some other form of entity which the law recognizes as existing in and of itself, for example, a corporation is a legal entity, it has papers from a government body (usually a companies office) which says that the law recognizes it as existing. A group of people per se, whether they be friends or people gathered for a purpose, is not a legal entity, they can become a legal entity by registering their group with a government body that registers the type of legal entity they want to become, but until they do so they are not a legal entity, and hence said group per se could not become a party to a contract.

If you are dealing with a person, then, in the section which identifies the parties to the contract make sure to list that person's full name, any pseudonyms they go by, and their residential address, so that they cannot later claim that you contracted with someone else who happened to have the same name as they do (I suggest asking them to show you their driver's license or passport).

If you are dealing with a partnership, ask to see its government partnership registration form so that you can correctly list the partnership's legal name and registered business address in the section of the contract which identifies the parties to the contract.

If you are dealing with a company, ask to see its government corporate registration form so that you can correctly list the company's legal name and registered business address in the section of the contract which identifies the parties to the contract.

If you are dealing with a group or an organization, ask to see its government registration form so that you can correctly list its legal name, entity type and registered address in the section of the contract which identifies the parties to the contract.

Also, you must list yourself and your address correctly and accurately in the section which identifies the parties to the contract.

Each party to the contract must have the **legal capacity** to enter into a contract, which means **all of the following must be true**:

- (i) If the party is a person, then that person must be of legal age to enter into a contract; usually that is the same as the age required to vote; to know what legal age is in the jurisdiction in which you are entering into the contract you have to check the local law; **and**
- (ii) If the party is a person, then they must have the mental capacity to enter into a contract (ie. not be legally considered to be under a mental disability or mental handicap or under the influence of alcohol or drugs or other thing of sufficient affect such as to render them incapable of thinking and acting fully of their unfettered free will and with nothing significantly diminishing their normal capacity to think and reason); **and**
- (iii) If the party is **not a person**, then the party must be an entity recognized by the law as a legal entity. A few examples of recognized legal entities are: partnerships, corporations, some government agencies. On the other hand, a group of people who have not formed a partnership either by their actions or by having registered themselves as a partnership is not a legal entity. For example, an informal social club that is not incorporated or registered as a partnership would not be a legal entity; therefore, if "X" number of people regularly got together and called themselves something like "The Afterwork Buddies", but were not incorporated or otherwise registered as a legal entity, you could not enter into a contract with

“The Afterwork Buddies” being listed in and of itself as one of the parties, because they do not exist as a legal entity. Each of the people that is in “The Afterwork Buddies” could be listed separately as parties to the contract and then it would be a contract between you and all of them; but for the purposes of entering into a contract with that group of people, simply listing their group name would be worthless and would not make any or all of them a party to the contract, with the possible exception of the one of them that signed the contract for and on behalf of “The Afterwork Buddies”, that person alone might be considered to be a party to the contract, but that’s a might be, not a for sure.

There also must be a lack of coercion, intimidation or other thing that caused a party to enter into a contract against their free will. In other words, if the law is being properly applied you can’t directly or indirectly force someone to enter into a contract and expect it to be a valid contract.

**Contractual Subject Matter** means the thing, things, service and/or services that the contract is about.

Not everything can be the subject matter of a contract that the law will enforce. If parties enter into a contract which is about something that the law says you are not allowed to enter into contracts about, then you will have a contract that the law will not enforce; hence if one of the parties breaches that contract the law will not provide a remedy for the aggrieved party(ies).

Repeating myself, the law says that there are some things about which parties cannot enter into a contract. The law says that if you enter into a contract on something which the law says cannot be the subject of a contract, then the law will not enforce that contract. What that means is that if Michael and Susan enter into a contract concerning subject matter C (a subject matter the law says cannot be the subject matter of a contract); if Michael does not do what the contract required him to do, and Susan sues Michael for breach of contract, the court will rule against Susan and say that because C is not a legally enforceable subject matter Susan gets no remedy for Michael breaching the contract.

It should be obvious that the law forbids contracts to be made concerning the doing of illegal activities. For example, if Michael and Susan enter into a contract to rob a specific store, it being agreed that Michael will bring a specified type of loaded gun and Susan will steal a specified type of vehicle to be used as the vehicle for the job, and it being agreed that they will meet at a specified time and place from which to proceed to do the job, and each of the actions needed for the robbery and get away are specified, and it being agreed who will do each of said actions; that

would be a forbidden contract as the law will not enforce a contract for the doing of an illegal activity.

That an illegal activity cannot be the contractual subject matter of a contract that the law will enforce is only the tip of the iceberg. Many laws have sections in them which either directly or indirectly make certain things subject matters about which contracts cannot be entered into. There are many forbidden contractual subject matters. A small example of the laws which make some things either directly or indirectly contractually illegal are: union laws, copyright laws, marriage laws, family laws, trust law, wills law, banking law, labour law, real estate law, the laws governing professions, and a host of other laws.

The moral of the story is that unless you are writing a simple contract governing the selling of mundane item A, check into whether or not what you want to contract about is governed by a law which either forbids you from contracting about that thing or places restrictions on what can be in the contract. Free enterprise is not as free as popular mythology would lead a person to believe.

Therefore, for a contract to be legally enforceable it must have some **contractual subject matter** which the law allows contracts to be written about, you can't have a legally enforceable contract about something about which the law forbids contracts to be made **and you can't have a contract about nothing**. In this context "nothing" means something that is valueless or of such little value as to be almost valueless, or of such uncertainty that it cannot be ascertained. The subject matter of the contract being unascertainable is usually inextricably linked to the specificity of the consideration (contractual consideration will be explained below). However, there is sometimes sufficient separation between the contractual subject matter and the consideration such as to make it useful to keep both concepts in mind when writing a contract. For example, you cannot have a contract for the doing of a favor, even if the contract was otherwise correctly formally written, it would still not be a valid contract, because the term "a favor" is too uncertain (ie. no-one can say what it is before it is asked). Another example of "nothing", is that you cannot have a contract for something that is not known to exist (eg. a unicorn, a seat on the first public transport to Mars, etc.) as those things are valueless because those things are not known to exist.<sup>2</sup> Also, as written above, there are many things about which the law forbids the making of a contract, those things would also not be acceptable contractual subject matter for a legally enforceable contract.

---

<sup>2</sup> Regarding the first public transport to Mars, there are many science fiction fans who would swear on a stack of bibles that it will happen some day, and they will flail their arms as they manically shout about the advancements of science and therefore its inevitability; but if you ask them to bet a substantial sum of money that it will happen in ten years, they will demure, because their brains know what their emotions refuse to recognize, that it may never exist and hence is valueless.

Being not known to exist is different from being possibly non-existent. Under most sections of land there are no valuable minerals, however, the mineral rights to the land is a thing of value as valuable minerals are known to exist, and hence may be under any plot of land that has not yet been thoroughly examined for minerals.

A contract to search for a unicorn is a contract that has contractual subject matter because in that contract the subject matter of the contract is the service of searching for the unicorn, not the unicorn itself. A contract to research the possibility of a public transport to Mars has contractual subject matter because in that contract the subject matter is the research.

The **upshot of contractual subject matter** which is not directly or indirectly forbidden by the law, is that sometimes its all in the wording.

In the law of contracts **consideration** means something of value.

Each party to the contract must be receiving some **consideration**. In the law governing contracts consideration means something that has value, it does not mean that the thing is actually valuable.

**Consideration = something that is worth at least non-minimally more than nothing.**

If you sold item “X” for a penny or a nickel or even a dime, a court would likely declare the contract to be invalid (unless what you sold was only worth a dime or less); the court would say that even a dime is too close to nothing to be sufficient to be consideration in a contract. With any amount under one dollar you risk a court considering it to be too minimal to be consideration. However, the hackneyed example of selling something for one dollar is usually held to be valid, because a dollar does have real value; hence, if you sell item “X” for \$1.<sup>00</sup> and the contract is correctly written it will usually stand up in court.<sup>3</sup> Nevertheless there have been times when courts have ruled that a contract to be invalid because the discrepancy between what was bought and what was paid was too great.

**Specificity** is essential in every sentence of a contract. Nothing in a contract can have more than one (in the circumstances of the contract) accepted meaning or that part of the contract is invalid and if that part is an essential part of the contract then the whole contract might be invalid. Specificity is essential, because if a sentence in the contract can have more than one accepted meaning, then what was agreed to cannot be determined, therefore the agreement is unknown, and

---

<sup>3</sup> The question of would 11¢ or 17¢ or 91¢ be enough is a silly question, because if you’re writing a contract to give something of value to someone for essentially nothing, just stick in the \$1. or some higher amount.

if the agreement is unascertainable there can be no contract, as before there can be a contract there has to be an agreement.

**The following is what to do when writing a contract  
and what to look for when reading a contract:**

Is there contractual subject matter ?

Is the contractual subject matter of the contract something about which it is legal to have a contract ?

Is the contractual subject matter completely and accurately listed in the contract ?

Are there at least two parties to the contract ?

Is each of the parties correctly, fully and accurately listed in the contract ?

Does each party to the contract have the legal capacity to enter into a contract ?

Is each party to the contract receiving consideration ?

Is the consideration that each of the parties is receiving completely and accurately listed ?

Is everything in the contract fully, completely and accurately specified ?

Examples:

If a service is to be performed, is there a start date and a completion date ? Is the standard to which the service is to be performed listed ? Is it listed who will determine if said standard was met ? If relevant, is how the service is to be performed listed ? If relevant, is by whom the service is to be performed listed ? If relevant, is where the service is to be performed listed ? If relevant, is at what times of day and what days of the week the service may and may not be performed listed ? Is the penalty for failing to meet any or all of the above listed ?

If an item is being purchased are sufficient details about that item listed so that there can be no dispute as to whether or not the item received by the buyer is the item he believed he would receive ?

If money is to be paid, is the amount clear and unambiguous, is who is paying it and by what date it must be paid clear and unambiguous ?

If a warranty is part of the contract is each and every thing that the warranty provides listed in clear and unambiguous terms ?

If part of the contractual subject matter or part of the consideration is conditional, are the conditions clear and unambiguous ? Has what will happen if the conditions do not occur been clearly and unambiguously listed ?

---

**My personal warning to all who write and read contracts is as follows:**

Based on my experience as a lawyer who has written many contracts and been to all levels of court many times, it is my opinion that courts will sometimes declare something which I would have said was a valid contract to not be a valid contract and to declare something which I would have said was not a valid contract to be a valid contract. I have also experienced courts declaring terms in a contract which I felt were complete and clear to mean something entirely different than what I would have said they meant, and in my opinion, to have simply changed the contract right there in the court room, leaving the parties with an entirely different contract to the one they entered into. When any of the foregoing happens there is nothing you can do about it. This does not mean that contracts are worthless or that I think a court will always muck-about with a contract, it means what it said and nothing more.

There is no defence to what might happen, therefore, my advice is to write contracts as formally, completely, correctly and accurately as you are able to. When you read a contract that you or someone else has written, look for how it could reasonably be interpreted differently than you would want it to be interpreted and look for what specifics are missing, and then correct it so that no reasonable interpretation could produce a result that you did not want; then, if you end up in court, at least you have your best chance of the contract being interpreted by the judge in the way that you intended it to be interpreted.