

What Makes A Valid Contract?

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Although lots of contracts are filled with mind-bending legal gibberish, there's no reason why this has to be true. For most contracts, legalese is not essential or even helpful. On the contrary, the agreements you'll want to put into a written contract are best expressed in simple, everyday English.

All that is necessary for most contracts to be legally valid are the following two elements:

- **All parties are in agreement** (after an offer has been made by one party and accepted by the other).
- **Something of value has been exchanged**, such as cash, services or goods (or a promise to exchange such an item) for something else of value.

Does a Contract Have To Be in Writing?

In a few situations, a contract must also be in writing to be valid. State laws often require written contracts for real estate transactions or agreements that will last more than one year. You'll need to check your state's laws to determine exactly which contracts must be in writing. Of course, it is wise to write out most business agreements, even if not legally required, because oral contracts can be difficult or impossible to prove.

Let's look a bit more closely at the two elements necessary for a valid contract: agreement between the parties and exchange of things of value.

Agreement Between the Parties

Although it may seem like stating the obvious, an essential element of a valid contract is that all parties must agree on all major issues. In real life, there are plenty of situations that blur the line between a full agreement and a preliminary discussion about the possibility of making an agreement. To help clarify these borderline cases, the law has developed some rules defining when an agreement legally exists.

Offer and Acceptance

The most basic rule of contract law is that a legal contract exists when one party makes an offer and the other party accepts it. For most types of contracts, this can be done either orally or in writing.

Let's say, for instance, you're shopping around for a print shop to produce brochures for your business. One printer says (or faxes or e-mails) that he'll print 5,000 two-color fliers for \$200. This constitutes his offer.

If you tell the printer to go ahead with the job, you've accepted his offer. In the eyes of the law, when you tell the printer to go ahead, you create a contract, which means you're liable for your side of the bargain (in this case, the payment of \$200). But if you tell the printer you're not sure and want to continue shopping around (or don't even respond, for that matter), you clearly haven't accepted the offer, and no agreement has been reached.

Or if you tell the printer the offer sounds great, except that you want the printer to use three colors instead of two, no contract has been made, since you have not accepted all of the important terms of the offer. You have actually changed one term of the offer. (Depending on your wording, you have probably made a counteroffer, which is discussed below.)

When Acceptance Occurs

In day-to-day business, the seemingly simple steps of offer and acceptance can become quite convoluted. For instance, sometimes when you make an offer it isn't quickly and unequivocally accepted; the other party may want to think about it for a while or try to get a better deal. And before the other party accepts your

offer, you might change your mind and want to withdraw or amend your offer. Delaying acceptance of an offer and revoking an offer, as well as making a counteroffer, are common situations that may lead to confusion and conflict. To minimize the potential for a dispute, here are some general rules you should understand and follow.

How Long an Offer Stays Open

Unless an offer includes a stated expiration date, it remains open for a "reasonable" time. What's reasonable, of course, is open to interpretation and will vary depending on the type of business and the particular fact situation.

To leave no room for doubt as to when the other party must make a decision, the best way to make an offer is to include an expiration date.

If you want to accept someone else's offer, the best approach is to do it as soon as possible, while there's no doubt that the offer is still open. Keep in mind that until you accept, the person or company who made the offer--called the offeror--may revoke the offer.

Revoking an Offer

Whoever makes an offer can revoke it as long as it hasn't been accepted yet. This means if you make an offer and the other party wants some time to think it through, or makes a counteroffer with changed terms, you can revoke your original offer. Once the other party accepts, however, you'll have a binding agreement. Revocation must happen *before* acceptance.

An exception to this rule occurs if the parties agree that the offer will remain open for a stated period of time.

Offers With Expiration Dates

An offer with an expiration date is called an option, and it usually doesn't come for free. Say, for instance, someone offers to sell you a forklift for \$10,000, and you want to think the offer over without worrying that the seller will withdraw the offer or sell to someone else. You and the seller could agree that the offer will stay open for a certain period of time, say, 30 days. Often, however, the seller will ask you to pay for this 30-day option--which is understandable, since during the 30-day option period the seller can't sell to anyone else.

Payment or no payment, when an option agreement exists, the offeror cannot revoke the offer until the time period ends.

Counteroffers

Often, when an offer is made, the response will be to start bargaining. Of course, haggling over price is the most common type of negotiating that occurs in business situations. When one party responds to an offer by proposing something different, this proposal is called a "counteroffer." When a counteroffer is made, the legal responsibility to accept, decline or make another counteroffer shifts to the original offeror.

For instance, suppose your printer (here, the original offeror) offers to print 5,000 brochures for \$300, and you respond by saying you'll pay \$250 for the job. You have not accepted his offer (no contract has been formed) but instead have made a counteroffer. If your printer then agrees to do the job exactly as you have specified, for \$250, he's accepted your counteroffer, and a legal agreement has been reached.

Even though a contract is formed only if the accepting party agrees to all substantial terms of an offer, this doesn't mean you can rely on inconsequential differences to void a contract later. For example, if you offer to buy 100 chicken sandwiches on 1-inch-thick sourdough bread, there is no contract if the other party

replies that she will provide 100 emu filets on rye bread. But if she agrees to provide the chicken sandwiches on 1-inch-thick sourdough bread, a valid contract exists, and you can't later refuse to pay if the bread turns out to be a hair thicker or thinner than 1 inch.

Exchange of Things of Value

In addition to both parties' agreement to the terms, a contract isn't valid unless both parties exchange something of value, in anticipation of the completion of the contract.

Consideration Defined

The "thing of value" being exchanged--which every law student who ever lived has been taught to call "consideration"--is most often a promise to do something in the future, such as a promise to perform a certain job or a promise to pay a fee for a job. For instance, let's return to the example of the print job. Once you and the printer agree on terms, there is an exchange of things of value (consideration): the printer has promised to print the 5,000 brochures, and you have promised to pay \$250 for them.

Gifts vs. Contracts

The main importance of requiring things of value to be exchanged is to differentiate a contract from a generous statement or a one-sided promise, neither of which are enforceable by law. If a friend offers you a gift without asking anything in return--for instance, such as offering to stop by and help you move a pile of rocks--the arrangement wouldn't count as a contract because you didn't give or promise your friend anything of value. If your friend never followed through with her gift, you would not be able to enforce her promise. However, if you promise your friend you'll help her weed her vegetable garden on Sunday, in exchange for her helping you move rocks on Saturday, a contract exists.

Promises vs. Action

Although the exchange-of-value requirement is met in most business transactions by an exchange of promises ("I'll promise to pay money if you promise to paint my building next month"), actually doing the work can also satisfy the rule.

If, for instance, you leave your printer a voice-mail message saying you'll pay an extra \$100 if your brochures are cut and stapled when you pick them up, the printer can create a binding contract by actually doing the cutting and stapling. And once he does so, you can't weasel out of the deal by claiming you changed your mind.