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### Contract Basics for Librarians and Others in Higher Ed

Stephen Wolfson

*University of Georgia School of Law Library*, [stephen.wolfson@uga.edu](mailto:stephen.wolfson@uga.edu)

Mariann Burreight

*University of Georgia Libraries*, [mariann@uga.edu](mailto:mariann@uga.edu)

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# Basics of Contracts

Mariann Burrigh  
mariann@uga.edu

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Stephen Wolfson  
stephen.wolfson@uga.edu



# 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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# Why should you care about contracts basics?

- Contracts are everywhere!
  - Increasingly, we live in a world that is mediated through contracts
- Libraries are managing a growing number of licenses that is, contracts

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# Why should you care about contracts basics?

- Contracts are everywhere!
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- Libraries are managing a growing number of licenses that is, contracts
- Librarians regularly interact with vendors and review/negotiate licenses



# Why should you care about contracts basics?

- Contracts are everywhere!
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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



Databases

Subscription Options

For Publishers

Request a Quote or Trial

Testimonials



**All contracts are promises, but not all promises  
are contracts.**

**So, the  
question  
is...**



**Q: When does a promise become a contract?**



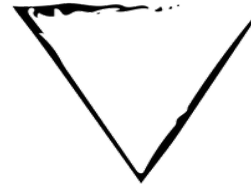
**A: When it has all the *elements* of a contract.**



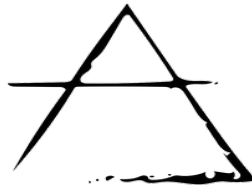
## The *elements* of a contract?



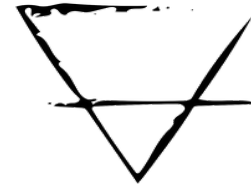
Fire




Water



Air



Earth



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  $\neq$  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<sup>st</sup>, 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<sup>st</sup>, 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) 2201(1)
  - A lease of goods for more than \$1000- Uniform Commercial Code 2A201
  - 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

How to contact us:

Mariann Burrigh

[mariann@uga.edu](mailto:mariann@uga.edu)

| Stephen Wolfson [stephen.wolfson@uga.edu](mailto:stephen.wolfson@uga.edu)



# Credits

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