Instructor Manual

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# Purpose and Perspective of the Chapter

The purpose of this chapter is for students to learn the general function of contract law and the objective theory of contracts. Contract law reflects our social values, interests, and expectations at a given point in promises our society thinks should be legally binding. Students will learn how contract law distinguishes between promises that create only moral obligations (such as a promise to take a friend to lunch), and promises that are legally binding (such as a promise to pay for items ordered online).

# Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Explain the difference between bilateral and unilateral contracts.
2. Differentiate between void contracts and voidable contracts.
3. Describe the concept of sufficiency of consideration.
4. Identify when an agreement is enforceable under the quasi-contract theory.
5. Describe the measure of recovery on a quasi-contract theory.

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# Key Terms

**Bilateral contract**: a type of contract that arises when a promise is given in exchange for a return promise.

**Contract**: a set of promises constituting an agreement between parties, giving each a legal duty to the other and the right to seek a remedy for the breach of the promises or duties.

**Executed contract**: a contract that has been fully performed by both parties.

**Executory contract**: a contract that has not yet been fully performed.

**Express contract**: a contract in which the terms of the agreement are stated in words, oral or written.

**Extrinsic evidence**: any evidence not contained in the contract itself, which may include the testimony of the parties, additional agreements or communications, or other information relevant to determining the parties’ intent.

**Formal contract**: an agreement that by law requires a specific form for its validity.

**Implied contract**: a contract formed in whole or in part from the conduct of the parties.

**Informal contract**: a contract that does not require a specific form or method of creation to be valid.

**Objective theory of contracts**: the view that contracting parties shall be bound only by terms that can be objectively inferred from promises made.

**Offeree**: a person to whom an offer is made.

**Offeror**: a person who makes an offer.

**Promise**: a declaration that binds the person who makes it (the promisor) to do or not to do a certain act.

**Promisee**: a person to whom a promise is made.

**Promisor**: a person who makes a promise.

***Quantum meruit***: a Latin phrase meaning “as much as one deserves;” the expression describes the extent of compensation owed under a quasi-contract.

**Quasi contract**: an obligation or contract imposed by law (a court), in the absence of an agreement, to prevent the unjust enrichment of one party.

**Unenforceable contract:** a valid contract rendered unenforceable by some statute or law.

**Unilateral contract**: a type of contract that results when an offer can be accepted only by the offeree’s performance.

**Valid contract**: a contract that results when the elements necessary for contract formation (agreement, consideration, capacity, and legality) are present.

**Voidable contract**: a contract that may be legally avoided at the option of one or both of the parties.

**Void contract**: a contract having no legal force or binding effect.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* New Business Law Analysis: *Deciding if a Court Would Impose a Quasi Contract*
* 3 New Numbered Case Examples:
  + on the theory of contracts (2019)
  + on quasi contracts (2020)
  + on rules of interpretation (2019)
* 1 New Case:
  + *Credible Behavioral Health v. Johnson* (2019) – The objective theory of contracts to determine the intent of the parties in agreeing to a promissory note for the repayment of a student loan.

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 10. (PPT Slide 3).*

**I. 10-1 An Overview of Contract Law (PPT Slide 5)**

* 1. **Sources of Contract Law**
     1. Common law governs all contracts except when it has been modified or replaced by statutory law, such as the Uniform Commercial Code (UCC), or by administrative agency regulations.
  2. **The Functions of Contracts**
     1. Contract law is designed to provide stability and predictability, as well as certainty, for both buyers and sellers in the marketplace.
  3. **The Definition of a Contract**
     1. A set of promises constituting an agreement between parties, giving each a legal duty to the other and the right to seek a remedy for the breach of the promises or duties.
  4. **The Objective Theory of Contracts** 
     1. (1) What the party said when entering into the contract. (2) How the party acted or appeared. (3) The circumstances surrounding the transaction.
     2. **Case Example 10.1** The Leaf Clean Energy Company

1. **10-2 Elements of a Contract (PPT Slide 6-7)**
2. **Requirements of a Valid Contract**
   * 1. Agreement
     2. Consideration
     3. Contractual capacity
     4. Legality
3. **Defenses to the Enforceability of a Contract**
   * 1. Voluntary consent
     2. Form
4. **10-3 Types of Contracts (PPT Slide 8-15)**
5. **Contract Formation**
   * 1. Bilateral versus Unilateral Contracts
        1. Bilateral Contracts – Offeree can accept simply by promising to perform
           1. **Example 10.2** Javier
        2. Unilateral Contracts – Offer is phrased so that the offeree can accept only by completing the contract performance
           1. **Example 10.3** Reese
        3. Revocation of Offers for Unilateral Contracts
     2. Formal versus Informal Contracts
     3. Express versus Implied Contracts
        1. Requirements for Implied Contracts
           1. **Example 10.5** Ryan
        2. Mixed Contracts with Express and Implied Terms
           1. **Spotlight Case Example 10.6** Lamar Hopkins
6. **Contract Performance**
   * 1. Executed contract
        1. Contract that has been fully performed on both sides.
     2. Executory contract
        1. Contract that has not been fully performed by the parties.
     3. **Example 10.7** Jackson, Inc.
7. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of the necessary requirements for a valid contract. After answer is provided, review with students each of the requirements needed for a contract in order for it to be valid.*
8. **Contract Enforceability** 
   * 1. Voidable Contracts
        1. One that can be avoided at the option of one or both of the parties.
     2. Unenforceable Contracts
        1. One that cannot be enforced because of certain legal defenses against it.
     3. Void Contracts
        1. No contract at all.
9. **10-4 Quasi Contracts (PPT Slide 16-17)**
10. **Limitations on Quasi-Contractual Recovery** 
    * 1. Party who has conferred a benefit on someone else unnecessarily, or as a result of misconduct or negligence cannot invoke the doctrine of quasi contract.
      2. **Case Example 10.9** Michael Plambeck
    1. **When an Actual Contract Exists**
       1. Party who claims that a nonperforming party was unjustly been enriched already, thus has a remedy. The nonbreaching party can sue the breaching party for breach of contract.
       2. **Case Example 10.10** R & M Trucking-Intermodal, Inc.
    2. ***Knowledge Check Activity (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of the enforceability of a contract. After answer is provided, review whether a contract must be valid to be enforceable.*

V. 10-5 **Interpretation of Contracts** (PPT Slide 18-27)

1. **Plain Language Laws**
2. **The Plain Meaning Rule**
   * 1. The meaning of the terms must be determined from *the face of the instrument*—from the written document alone.
     2. Ambiguity
        1. When the intent of the parties cannot be determined from its language;
        2. When it lacks a provision on a disputed issue;
        3. When a term is susceptible to more than one interpretation;
        4. When there is uncertainty about a provision.
     3. Extrinsic Evidence
        1. Evidence no contained in the document itself
3. **Other Rules of Interpretation**
   * 1. Rules the Courts Use
     2. Express Terms Usually Given Most Weight
        1. Express terms (terms expressly stated in the contract) are given the greatest weight, followed by course of performance, course of dealing, and custom and usage of trade—in that order.
        2. **Case Example 10.11** E.I. du Pont de Nemours and Company
4. ***Knowledge Check Video Activity (3) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of quasi contracts. After answer is provided, review with students the necessary requirements for a quasi- contract and when they apply.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – An Overview of Contract Law (PPT Slide 5). Duration 5 Minutes.**
2. **What is the objective theory of contracts?** 
   * + - 1. Intent to enter into a contract is important in the con­tract’s formation. Intent is determined by the objective theory of contracts. That is, it is judged by outward, ob­jective facts as they would be interpreted by a reasonable person, rather than by the party’s own secret, subjec­tive intentions. These facts include what the party said, how he or she acted or appeared, and the cir­cum­stances surrounding the transaction. Generally, courts examine objective facts, conduct, and circum­stances sur­rounding a particular transaction to determine whether the parties made a contract and, if so, what its terms are.
3. **Discussion – Types of Contracts (PPT Slide 8-15). Duration 20 Minutes.**
4. **What is the difference between a formal contract and an informal contract?**
   * + - 1. Formal con­tracts are enforceable because of their special form or method of formation. Formal contracts include con­tracts under seal. All other contracts are informal contracts—they require no special form (ex­cept for certain types that must be in writ­ing).
5. **What is the difference between express and implied contracts?**
   * + - 1. An express contract is one in which the terms are expressed in words, oral or written. An implied contract is one that is implied from the conduct of the par­ties—the parties’ conduct reveals their intent to form a contract, which creates and defines its terms. To cre­ate an implied contract: (1) one party must furnish a service or property; (2) the party must do so expecting to be paid and the other party must (or should) know that payment is expected; and (3) the other party must have a chance to reject the service (or property) or accept it.
6. **How does a party distinguish between an executed and an executory contract?** 
   1. This is a con­tract classification based on per­formance. An executed contract is one that has been performed. An execu­tory contract is one that has not been performed. If a contract is executed on one side and executory on the other (that is, if one party has fully performed and the other has not), it is classified as executory.
7. **What are the differences among valid, void, voidable, and unenforceable contracts?**
8. A valid contract results when all elements of contract formation exist—through an offer and an acceptance, two or more par­ties agree to form a contract; the parties have capacity to contract; the contract is supported by considera­tion; and the contract is for a legal purpose. A void contract (such as an illegal contract) is no con­tract—it gives rise to no obligation on the part of any party. A voidable contract is a valid contract under which one or both of the parties has the option of avoiding his or her obligations—if the contract is avoided, both parties are re­leased; if it is ratified, both parties must perform. An unenforceable contract is a valid contract that cannot be enforced due to certain defenses (such as a statute of limitations).
9. **Discussion – Quasi Contracts (PPT Slide 16-17). Duration 5 Minutes.**
10. **How does a quasi contract differ from an express or an implied contract?**
11. A quasi contract is not based on an express promise, or on conduct implying a promise; in other words, a quasi con­tract is not based on a contract. Quasi contracts are imposed by courts to avoid unjust enrichment. The doctrine under which the court imposes a quasi con­tract is called quantum meruit, or “as much as he de­serves,” and that also describes the extent of compensa­tion that a court will award. The recipient of a bene­fit does not have to pay for it if it was thrust on him or her. A quasi contract will not normally be imposed when there is a contract that covers the matter.
12. **Discussion – Interpretation of Contracts (PPT Slide 18-27). Duration 10 Minutes.**
13. **What is the plain meaning rule?** 
    1. When the law attempts to enforce a contract, it attempts to en­force the contract that the parties made. When a contract is in writing that is clear and unequivocal, a court will en­force the writing according to its plain meaning—this is the plain meaning rule. The meaning of the words will be determined from the face of the instrument; a court will not consider extrinsic evidence (includ­ing prior agreements or contemporaneous oral agreements).
14. **What are some of the other rules regarding the interpretation of contracts?** 
    1. When a writing is ambigu­ous, a court will interpret its language to give effect to the parties’ intent as expressed in their con­tract. (This is an important point: a court will not make or remake a contract nor interpret the language according to what the parties claim their intent was when they made it.)
    2. A reasonable, lawful, and effec­tive meaning will be given to all of a contract’s terms.
    3. A contract will be interpreted as a whole; individ­ual clauses will be con­sid­ered subordinate to the contract’s general intent.
    4. All writings that are part of the same transaction will be interpreted together, although terms that were negotiated separately will be given greater consideration than standardized terms and terms that were not negotiated separately.
    5. A word will be given its ordinary, com­monly accepted meaning, and a technical word or term will be given its technical meaning, unless the parties clearly intended something else.
    6. Specific and exact wording will be given greater consideration than general language.
    7. Written or typewritten terms prevail over printed ones.
    8. When the language used has more than one meaning, it will be interpreted against the party who drafted the contract.
    9. When evidence of trade usage, prior dealings between the parties, and previous course of performance under the contract is admitted, what each of the parties does under the contract will be interpreted as consistent with what the other does and with any relevant usage of trade and course of dealing and performance.

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# Additional Activities and Assignments

1. **MindTap** – Why Does Contract Ambiguity Matter to Me?
   1. Online auto-graded activities connect the upcoming chapter to an authentic, real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **MindTap** – Learn It: Quasi-Contract Theory; Bilateral and Unilateral Contracts; Executed and Executory Contracts
   1. Online auto-graded activities that review foundational concepts presented in this chapter and assesses students’ comprehension of the topics. Consists of 2 multiple choice questions in each.
3. **MindTap** – Check Your Understanding: Nature and Terminology
   1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Interpretation of Contracts
   1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Nature and Terminology
   1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resource

* MindTap Quick Lesson Video:
  + Quasi Contracts. Duration 2:57 minutes.

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