

Sources of Contract Law

- **Uniform Commercial Code (U.C.C.):** a joint product of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI)
 - **Purpose:** To provide a set of uniform laws governing commercial transactions in all states
 - **UCC 1-103 (Purpose):** “(a) [The Uniform Commercial Code] must be liberally construed and applied to promote its underlying purposes and policies, which are: (1) to simplify, clarify, and modernize the law governing commercial transactions; (2) to permit the continued expansion of commercial practices through custom, usage, and agreement of the parties, and; (3) to make uniform the law among the various jurisdictions. (b) Unless displaced by the particular provisions of [the Uniform Commercial Code], the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, and other validating or invalidating cause supplement its provisions.”
 - ****no binding authority unless adopted by a state legislature****
 - **UCC 2-102 (Scope; Certain Security and Other Transactions Excluded From This Article):** “Unless the context requires, this Article applies to transactions in goods; it does not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this Article impair or repeal any statute regulating sales to consumers, farmers, or other specified classes of buyers.”
 - **Stare Decisis:** all cases involves the same or substantially similar facts and issues should be resolved in the same manner
 - **Restatement of Contracts (Restatements):** collection of propositions drafted by experts in the field of contracts by the ALI. Originally made in 1932, but in 1981 the ALI made an updated version called the Restatement (Second) of Contracts
 - ****NOT LAW!** Should be treated as a persuasive statement of what the law should be; a provision **can only have binding authority** if a court with binding authority adopts and incorporates a section into law**
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Formation

- **What is a Contract?**
 - **Contract (def.):** “an agreement between competent parties, upon a consideration sufficient in law, to do/not to do a particular thing”
 - **Restatement 1 (Contract):** “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.”
 - *Steinberg v. Chicago Medical School* (Restatements 1, 17, 50)
 - **a bargain for exchange of consideration** that’s legally sufficient and a result of a bargain
 - Brochure = invitation to offer & consideration
 - Submitting application and fee= offer
 - Taking application and fee = acceptance and D’s final act necessary for the creation of a binding contract
 - Advertisements do not generally constitute as offers
 - Facts proved an implied manifestation of assent through conduct
 - **Basic ingredients of a contract**

- **Restatement 17(1) (Requirement of a Bargain):** “(1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.”
- Offer
 - **Restatement 24 (Offer):** “A 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.”
- Consideration
 - any act or promise which is beneficial to one party or disadvantages another = sufficient consideration to support a contract
- Acceptance of Offer
 - **Restatement 50:** “Acceptance of an offer is a manifestation of assent to the terms thereof made by the offeree in a manner that is invited or required by the offer.”
 - Through conduct, writing, or orally stated

- **Restatement 1 (Contract)**

- **Manifestation of Assent and the Objective Theory of Contracts**

- *Lucy v. Zehmer*
 - Court ruled that because Lucy clearly had reason to believe that Zehmer was being serious, and not making the offer in jest, there is an agreement and therefore a contract
 - Objective Theory of Assent/Undisclosed Intention:
 - “The mental assent of the parties is not a requisite for the formation of a contract. If the words or other acts of one of the parties have but one reasonable meaning, his undisclosed intention is immaterial except when an unreasonable meaning which he attaches to his manifestations is known to the other party.” (pg. 11)
 - “We must look to the outward expression of a person as manifesting his intention rather than to his secret and unexpressed intention.” (pg. 11)
 - **Restatement 18 (Manifestation of Mutual Assent):** “Manifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a performance.”
 - **Restatement 19(2 & 3) (Conduct as Manifestation of Assent):** “(2) The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents. (3) The conduct of a party may manifest assent even though he does not in fact assent. In such cases a resulting contract may be voidable because of fraud, duress, mistake, or other invalidating cause.”
 - **Restatement 1 (Contract)**
- *Leonard v. Pepsico, Inc.*
 - An advertisement generally not an offer
 - Usually because of limited quantity
 - The view of an “objective, reasonable person”
 - “A basic rule of contracts holds that whether an offer has been made depends on the objective reasonableness of the alleged offeree’s belief that the advertisement or solicitation was intended as an offer.” (pg. 16)
 - If it was clear that the offer was not serious (*Lucy v. Zehmer*)
 - Subjective intent can’t be considered
 - **Restatements 1, 17, 22, & 24**

- *Stepp v. Freeman*
 - Case involved the purchase of lottery tickets as a group
 - Manifestation of assent can = conduct of a party
 - 3 categories of contract:
 - (1) Expressed (offer & acceptance)
 - (2) implied in fact (conduct)
 - (3) implied in law (legal fiction)
 - **Restatement 22(2) (Mode of Assent: Offer an Acceptance):** “(2) A manifestation of mutual assent may be made even though neither offer nor acceptance can be identified and even though the moment of formation can not be determined.”
- *Andersen Investments, L.L.C. v. Factory Card Outlet of America, Ltd.*
 - Court ruled there was a breach of an oral contract when P agreed to material terms pertaining to the lease and P subsequently didn’t enter into the final lease agreement
 - **Restatement 50(1) (Acceptance of Offer defined):** “(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.”
 - **Restatement 27 + Comments A (Existence of Contract Where Written Memorial is Contemplated):** “Manifestation of assent that are in themselves sufficient to conclude a contract will not be prevented from so operating by the fact that the parties also manifest an intention to prepare and adopt a written memorial thereof; but the circumstances may show that the agreements are preliminary negotiations.”
 - **Comment A:** “Parties who plan to make a final written instrument as the expression of their contract necessarily discuss the proposed terms of the contract before they enter into it and often, before the final writing is made, agree upon all the terms which they plan to incorporate therein. This they may do orally or by exchange of several writings. It is possible thus to make a contract the terms of which include an obligation to execute subsequently a final writing which shall contain certain provisions. If parties have definitely agreed that they will do so, and that the final writing shall contain these provisions and no others, they have then concluded the contract.”
 - **Restatement 3 (Agreement Defined; Bargain Defined):** “An agreement is a manifestation of mutual assent on the part of two or more persons. A bargain is an agreement to exchange promises or to exchange a promise for a performance or to exchange performances.”

- Offer

- Invitations to Assent

- *Lonergan v. Scolnick*
 - D placed an ad in a newspaper to sell his land. P and D made several exchanges, one of which included D telling P that “If you are really interested, you will have to decide fast, as I expect to have a buyer in the next week or so.” Court concluded that D’s ad was a mere request for an offer, and that D stating they expected to have a buyer was to indicate to P that there is a time restraint, and that some further assent from D is required to accept an offer in the first place.
 - The offeror is the master of his/her offer, and can make the offer based off any condition they want
 - **Restatement 29 (To Whom an Offer is Addressed):** “(1) The manifestation of intention of the offeror determines the person or persons in whom is created a power of acceptance. (2) An offer may

create a power of acceptance in a specified person or in one or more of a specified group or class of persons, acting separately or together, or in anyone or everyone who makes a specified promise or renders a specific performance.”

- **Restatement 35 (The Offeree’s Power of Acceptance):** “(1) The offer gives the offeree a continuing power to complete the manifestation of mutual assent by acceptance of offer. (2) A contract cannot be created by acceptance of an offer after the power of acceptance has been terminated in one of the ways listed in Restatement 36.”
- **Restatement 26 (Preliminary Negotiations):** “A manifestation of willingness to enter into a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain until he has made a further manifestation of assent.”
- **Restatement 25 (Option Contracts):** “An option contract is a promise which meets the requirements for the formation of a contract and limits the promisor’s power to revoke the offer.”
- *Craft v. Elder*
 - D placed an ad about the sale of a sewing machine, which stated it was a “Thursday Only Special.” P went to company with price advertised full in cash, but D refused to fulfill the offer. Court ruled that an ad in a newspaper for selling goods is simply an invitation to enter into a bargain and not an offer (goes back to specific quantity), and therefore there was no contract in this case
 - Although ads are generally not offers are merely invitations to all people reading them, they can arise to being the level of an offer
 - **Restatement 3 (Agreement Defined; Bargain Defined)**
 - **mutual assent on a specific thing—certainty = key
- *Lefkowitz v. Great Minneapolis Surplus Store, Inc.*
 - D placed ad in newspaper, and every Saturday following the ad P would go to D’s store demanding to be sold a coat that was advertised and read to pay. D would refuse to sell, stating that there’s a “house rule” that the ad was only intended for women. Court ruled that the offer of “the sale of Lapin fur was **clear, definite, and explicit, and left nothing for negotiation,**” so therefore P was entitled to performance on the part of D, and that there was a conduct between the parties that constituted mutuality of obligation in a contract. (pg. 42)
 - **Restatement 24 (Offer) + Craft**
 - **Restatement 33 (Certainty): (Lefkowitz repeated)**
 - (1) to be an offer it must need certainty; (2) is certain when we can identify the obligations and craft a remedy (**Restatement 1**); (3) if not sufficient certainty, then manifestation of intent isn’t to be understood as an offer
 - *****Restatements 24 & 33 are linked***.** (1) an offer needs to be certain because the assent doesn’t articulate the promise. We want to know how the offer was made. Even if intent is understood as an offer, it’s not unless the terms of the contract are reasonably certain.

○ Clear and Definite Terms

- *Yoder v. Rock Island Bank*