

The 4 Elements of a Contract

When Does a Contract Exist?

When a party files a suit claiming a breach of contract, the first question the judge must answer is whether a contract existed between the parties. The complaining party must prove four elements to show that a contract existed:

1. Offer - One of the parties made a promise to do or refrain from doing some specified action in the future.
2. Consideration - Something of value was promised in exchange for the specified action or nonaction. This can take the form of a significant expenditure of money or effort, a promise to perform some service, an agreement not to do something, or reliance on the promise. Consideration is the value that induces the parties to enter into the contract.

The existence of consideration distinguishes a contract from a gift. A gift is a voluntary and gratuitous transfer of property from one person to another, without something of value promised in return. Failure to follow through on a promise to make a gift is not enforceable as a breach of contract because there is no consideration for the promise.

3. Acceptance - The offer was accepted unambiguously. Acceptance may be expressed through words, deeds or performance as called for in the contract. Generally, the acceptance must mirror the terms of the offer. If not, the acceptance is viewed as a rejection and counteroffer.

If the contract involves a sale of goods (i.e. items that are movable) between merchants, then the acceptance does not have to mirror the terms of the offer for a valid contract to exist, unless:

- (a) the terms of the acceptance significantly alter the original contract; or
- (b) the offeror objects within a reasonable time.

4. Mutuality - The contracting parties had “a meeting of the minds” regarding the agreement. This means the parties understood and agreed to the basic substance and terms of the contract.

When the complaining party provides proof that all of these elements occurred, that party meets its burden of making a prima facie case that a contract existed. For a defending party to challenge the existence of the contract, that party must provide evidence undermining one or more elements.