

SLIDE 1 – Essentials of a Contract (Cover Page)

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Contract validity requirements



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Contract validity requirements

Competent parties. The parties to a contract must have the capacity to contract, and there must be at least two such parties. Thus, the owner of a tenancy for life cannot deed his interest to himself in the form of a fee simple, as this would involve only one party. Capacity to contract is determined by three factors:

- legal age
- mental competency
- legitimate authority

Depending on state law, a contract involving a minor as a party may be either void or voidable. If the law allows a minor to contract, the contract will generally be voidable and the minor can disaffirm the contract

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Contract validity requirements

To be mentally competent, a party must have sufficient understanding of the import and consequences of a contract. Competency in this context is separate and distinct from sanity. Incompetent parties, or parties of "unsound mind," may not enter into enforceable contracts.

The incompetency of a party may be ruled by a court of law or by other means. In some areas, convicted felons may be deemed incompetent, depending on the nature of the crime.

During the period of one's incompetency, a court may appoint a guardian who may act on the incompetent party's behalf with court approval.

If the contracting party is representing another person or business entity, the representative must have the legal authority to contract. If representing another person, the party must have a bona fide power of attorney. If the contracting party is representing a corporation, the person must have the appropriate power and approval to act, such as would be conferred in a duly executed resolution of the Board of Directors. If the contracting entity is a general partnership, any partner may validly contract for the partnership. In a limited partnership, only general partners may be parties to a contract.

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Mutual consent – Mutual consent, also known as *offer and acceptance* and *meeting of the minds*, requires that a contract involve a clear and definite offer and an intentional, unqualified acceptance of the offer. In effect, the parties must agree to the terms without equivocation.

A court may nullify a contract where the acceptance of terms by either party was partial, accidental, or vague.

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Contract creation

Offer and acceptance – The mutual consent required for a valid contract is reached through the process of offer and acceptance: The offeror proposes contract terms in an offer to the offeree. If the offeree accepts all terms without amendment, the offer becomes a contract. The exact point at which the offer becomes a contract is when the offeree gives the offeror notice of the acceptance.

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Legality of Object – The object of consideration of an agreement must be lawful, in order to make the agreement a valid contract. The content, promise, or intent of a contract must be lawful. A contract that proposes an illegal act is void.

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Contract validity requirements

Valuable consideration – A contract must contain a two-way exchange of valuable consideration as compensation for performance by the other party. The exchange of considerations must be two-way. The contract is not valid or enforceable if just one party provides consideration.

Valuable consideration can be something of tangible value, such as money or something a party promises to do or not do.

For example, a home builder may promise to build a house for a party as consideration for receiving money from the home buyer. Or, a landowner may agree not to sell a property as consideration for a developer's option money. Also, valuable consideration can be something intangible that a party must give up, such as a homeowner's occupancy of the house in exchange for rent. In effect, consideration is the price one party must pay to obtain performance from the other party.

Valuable consideration may be contrasted with good consideration, or "love and affection," which does not qualify as consideration in a valid contract. Good consideration is something of questionable value, such as a child's love for her mother. Good consideration disqualifies a contract because, while one's love or affection is certainly valuable to the other party, it is not something that is specifically offered in exchange for something else. Good consideration can, however, serve as a nominal consideration in transferring a real property interest as a gift.

In some cases, what is promised as valuable consideration must also be deemed to be sufficient consideration. Grossly insufficient consideration, such as \$50,000 for a \$2 million property, may invalidate a contract on the grounds that the agreement is a gift rather than a contract. In other cases where there is an extreme imbalance in the considerations exchanged, a contract may be invalidated as a violation of good faith bargaining.

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