

Contracts Formation Attack Outline

1. Overview of Contracts Formation

Definition:

Contract formation requires an offer, acceptance, and consideration. Together, these elements establish a legally enforceable agreement between parties.

2. Rule Statements

A. Offer

1. **Definition:**

- An offer is a manifestation of intent to enter into a contract, communicated to the offeree, with definite and certain terms, creating the power of acceptance in the offeree.

2. **Key Elements of an Offer:**

- **Manifestation of Intent:** Clear intent to be bound upon acceptance.
- **Communication:** The offer must be communicated to the offeree.
- **Definite and Certain Terms:**
 - Essential terms include parties, subject matter, price, quantity, and time for performance.
 - Example: "I will sell you my car for \$10,000, delivery next Friday."

3. **Revocation of Offers:**

- **General Rule:** Offers are revocable before acceptance.
- **Irrevocable Offers:**
 - **Option Contracts:** Supported by separate consideration to keep the offer open.
 - **Firm Offers (UCC):** A signed, written promise by a merchant to hold the offer open for up to 90 days.
 - **Unilateral Contracts:** Irrevocable once performance begins.

B. Acceptance

1. **Definition:**

- Acceptance is the unequivocal assent to the terms of the offer, communicated in the manner invited or required by the offer.

2. **Key Concepts:**

- **Mirror Image Rule (Common Law):** Acceptance must match the offer exactly; any variation constitutes a counteroffer.

- **UCC Rule:** Acceptance may include additional or different terms. Such terms become part of the contract unless:
 - The offer limits acceptance to its terms.
 - The additional terms materially alter the contract.
 - The offeror objects to the additional terms within a reasonable time.
- **Mailbox Rule:**
 - Acceptance is effective upon dispatch unless:
 - The offer specifies otherwise.
 - The offeree sends a rejection or counteroffer before acceptance.

C. Consideration

1. Definition:

- Consideration requires a bargained-for exchange of legal value, meaning a promise, performance, or forbearance that is sought by the promisor in exchange for their promise.

2. Key Issues:

- **Pre-existing Duty Rule:** Performing a pre-existing legal duty is not valid consideration unless:
 - Unforeseen difficulties arise.
 - The duty is modified under the UCC's good faith standard.
- **Adequacy of Consideration:** Courts do not typically assess the fairness of consideration if it exists.
 - **Nominal Consideration:** Consideration that is merely symbolic (e.g., \$1 for a house) may not be valid if it fails to reflect a real bargained-for exchange or suggests a lack of intent to create a binding agreement.
 1. Example: A promise to sell a \$100,000 property for \$1 may be treated as a disguised gift unless other contextual factors indicate a genuine transaction.

D. Defenses to Formation

1. Capacity

• Minors:

- A minor (under 18) may disaffirm contracts before reaching the age of majority or within a reasonable time afterward.
- **Exceptions:**
 - Contracts for necessities (e.g., food, clothing, shelter) are enforceable, but recovery is limited to the reasonable value of the benefit conferred.
 - Ratification: A minor may ratify a contract after reaching the age of majority by affirming it explicitly or through conduct (e.g., continuing to use the purchased item).

• Mental Incompetence:

- Contracts are voidable if the party could not understand the nature and consequences of the transaction.
- **Exceptions:**
 - If the contract is for necessities, the incompetent party may be held liable for the reasonable value of the benefit received.
- **Intoxication:**
 - Contracts entered into by an intoxicated person are voidable if the person lacked the ability to understand the agreement and the other party knew of the intoxication.

2. Duress and Undue Influence

- **Duress:**
 - A contract is voidable if one party was forced to agree due to an improper threat that left no reasonable alternative.
 - Examples:
 - Threat of physical harm.
 - Threat of unlawful economic harm (economic duress).
- **Undue Influence:**
 - Occurs when a party uses a position of trust or power to unduly persuade the other party to enter into a contract.
 - Factors:
 - Vulnerability of the victim (e.g., age, illness).
 - Unusual or rushed circumstances.

3. Misrepresentation and Fraud

- **Misrepresentation:**
 - A contract is voidable if one party makes a false statement of material fact that induces the other party's agreement.
 - **Key Elements:**
 - False statement of fact (not opinion or puffery).
 - Materiality: The fact must be significant enough to influence the other party's decision.
 - Justifiable reliance: The other party must reasonably rely on the misrepresentation.
- **Fraud:**
 - Fraudulent misrepresentation involves intentional deceit.
 - **Key Elements:**
 - Intent to deceive.
 - Knowledge of falsity or reckless disregard for the truth.

4. Mistake

- **Mutual Mistake:**

- Both parties are mistaken about a material fact that affects the essence of the agreement.
- Example: Both parties believe a painting is an original, but it is later discovered to be a forgery.
- **Effect:** The contract is voidable by the adversely affected party if:
 - The mistake concerns a basic assumption of the contract.
 - The mistake has a material effect on performance.
 - The party seeking rescission did not assume the risk.
- **Unilateral Mistake:**
 - One party is mistaken about a material fact.
 - **Effect:** The contract is voidable if:
 - The non-mistaken party knew or should have known of the mistake.
 - Enforcing the contract would result in unconscionable hardship.

5. Illegality

- **Void Contracts:**
 - Contracts with illegal subject matter or purpose are void and unenforceable.
 - Examples:
 - Contracts for illegal activities (e.g., drug sales).
 - Contracts that violate public policy (e.g., non-compete agreements that are overly broad).
 - **Severability:**
 - If a contract contains both legal and illegal provisions, courts may sever the illegal portions and enforce the remainder if it is independent and enforceable.
-

3. Defenses and Exceptions

A. Defenses to Offer and Acceptance

1. **Revocation by Offeror:**
 - Offers can generally be revoked before acceptance unless they are irrevocable (e.g., option contracts).
2. **Counteroffer:**
 - A counteroffer operates as a rejection of the original offer, extinguishing the offeree's power of acceptance.
3. **Lapse of Time:**
 - Offers terminate after a reasonable period unless a specific time is stated.
4. **Rejection by Offeree:**
 - Explicit rejection terminates the offer.
5. **Death or Incapacity:**

- An offer is terminated if the offeror or offeree dies or becomes incapacitated before acceptance.

B. Defenses to Consideration

1. Past Consideration:

- A promise based on a prior act is not valid consideration unless the act was requested by the promisor with an understanding of future compensation.

2. Illusory Promises:

- Promises that lack a binding commitment (e.g., "I will sell you my car if I feel like it") are unenforceable.

- **Key Indicators:**

1. The promise is conditional on the promisor's sole discretion.
2. There is no mutuality of obligation between the parties.

3. Pre-Existing Duty Rule:

- A promise to perform a duty already owed is not valid consideration unless:
 - There are unforeseen difficulties.
 - The modification is under UCC rules (requires only good faith).

C. Exceptions to Consideration

1. Promissory Estoppel:

- A promise without consideration may be enforced if:
 - The promisor should reasonably expect reliance.
 - The promisee reasonably relies to their detriment.
 - Enforcement is necessary to avoid injustice.

2. Moral Obligation:

- In limited circumstances, moral obligations may support enforcement (e.g., promise to pay for past services that conferred a significant benefit).

3. Charitable Subscriptions:

- Promises to charities may be enforceable even without consideration if reliance is established.

4. Nominal Consideration and Gifts:

- While courts generally enforce nominal consideration to support specific agreements (e.g., options), it may not validate a gift disguised as a contract.

4. Steps for Analysis

1. Identify Offer:

- Was there a clear manifestation of intent, communication, and definite terms?

2. Evaluate Acceptance:

- Did the offeree unequivocally assent to the offer's terms?
- Consider the mailbox rule and UCC modifications.

3. **Determine Consideration:**
 - Was there a bargained-for exchange of legal value?
 - Check for pre-existing duty issues or adequacy of consideration.
 4. **Consider Defenses to Formation:**
 - Analyze capacity, duress, misrepresentation, mistake, and illegality.
-

5. Policy Considerations

1. **Promoting Certainty in Agreements:**
 - Clear rules for offer, acceptance, and consideration ensure predictability in contract formation.
 2. **Encouraging Fairness:**
 - Defenses to formation prevent exploitation and protect vulnerable parties.
 3. **Balancing Freedom of Contract:**
 - While parties can generally agree on their terms, limitations like the Statute of Frauds and parol evidence rule safeguard fairness.
-

6. Example Application

Example 1:

- **Fact Pattern:** A offers to sell their car to B for \$10,000. B mails acceptance, but A revokes the offer before receiving the acceptance.
- **Rule:** Under the mailbox rule, acceptance is effective upon dispatch unless the offer specifies otherwise.
- **Application:** B's acceptance was valid upon mailing, making A's revocation ineffective.

Example 2:

- **Fact Pattern:** C promises to give D \$1,000 but later refuses.
 - **Rule:** A promise without consideration is unenforceable unless promissory estoppel applies.
 - **Application:** If D relied on the promise to their detriment, C may be estopped from denying it.
-