



Understanding Contracts

Or: 9 credit hours of law school in 30 minutes

**Dr. Shannon L. Ferrell
Associate Professor
Department of Agricultural Economics**



Lawyer cliché time



**READ EVERYTHING
GET EVERYTHING IN WRITING**

What is a “contract?”

- *An agreement between two or more parties consisting of a promise or set of promises which the law will enforce.*
- Just remember, not all “agreements” are “contracts,”

but a “contract” must first be an “agreement.”

...and why are they so important?


- They enable private parties to create legal obligations among themselves.
- Having a legal obligation then gives you a right to engage the legal system to enforce the obligation.

Is a handshake a contract?



The five elements of a contract

1. Legally competent parties
(Is it fair to hold the parties to it?)
2. Proper subject matter
(Is this something the law should enforce?)
3. Offer
4. Acceptance
5. Consideration



Was an agreement
between two willing
parties reached?

Now, food for thought...

- Two drunk farmers are in a bar talkin' smack to each other.
- Drunk Farmer A, thinking to himself that Drunk Farmer B is too broke to do anything about it, writes "We hereby agree to sell to Farmer B the Ferguson Place complete for \$50,000, title satisfactory to buyer."
- Farmer B then tells Farmer A to get his wife to sign it, and she does.
- Farmer B then picks up the napkin, offers Farmer A \$5 to seal the deal, and leaves the bar.
- ***Did Farmer B leave the bar with a binding contract to buy the Ferguson Place?***

YE OLDE VIRGINNIE RESTAURANT
GARAGE SERVICE STATION
25 MILES SOUTH OF PETERSBURG
McKENNEY, VA.

SERVER	CHEFF	TABLE	DATE
			25216

PLEASE PAY AT SERVICE

[Print]

We hereby agree to
sell to W. O. Lay
the Ferguson farm
containing 50000
title is being to begin
with the
H. A. Jones

[March]

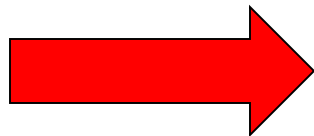
Back to that handshake thing

- The following types of contracts must be in writing and signed by the party against which enforcement is sought in order to be enforceable:
 1. Agreements that *cannot* be performed within one year of the making of the contract.
 2. A promise to answer for the debt, default, or miscarriage of another.
 3. “An agreement made upon consideration of marriage.”
 4. A contract for the sale of goods \$500.
 5. Agreements involving an interest in land.

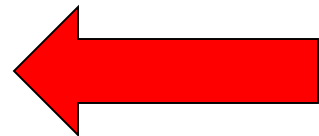
The Statute of Frauds:

Agreements involving an interest in land.

- Covers a broad range of interests, including:
 - The sale of real estate
 - Leases (more than 1 year)
 - Easements
 - Restrictions on the property
 - “Profits” from the land
- WHAT MATTERS IS THE *TYPE* OF INTEREST IN THE LAND, **NOT** THE AMOUNT OF PROPERTY INVOLVED!!!



EXAM QUESTION



What goes into a contract?

- A lot of:
 - thought
 - what ifting
 - discussion
 - clarity and specificity

What goes into a contract?

- Full legal identifiers for the parties
- Definitions of all critical terms
- Description of what is at issue
 - The property being exchanged
 - The services being provided
 - What's NOT being done

What goes into a contract?

- What each party is
 - Required to do
 - Allowed to do
 - Prohibited from doing
- Defining when the parties' obligations start and end
- Defining payment
 - If?
 - When, where, how
 - Calculation

What goes into a contract?

- Notices
 - Emergency contacts
 - Legal, written notices
- What constitutes a “material breach?”
- Right to cure
- Dispute resolution
 - Negotiation
 - Mediation
 - Arbitration
 - ...required prior to litigation?

Sources of the Law Governing Contracts

- ***Uniform Commercial Code (UCC)*** - a set of “uniform laws” adopted by virtually all the states to harmonize the law applying to the most common types of transactions.
This is why the UCC is important.

The Uniform Commercial Code

Article 2

- Deals with sale of “goods.”
- "Goods" means all things (including specially manufactured goods) which are ***movable*** at the time of identification to the contract for sale
- "Goods" also includes the unborn young of animals and growing crops



The implied warranty of merchantability

UCC Article 2



The implied warranty of fitness for a particular purpose UCC Article 2



The Uniform Commercial Code

Article 2A

- Deals with leases.
- Lease: “a transfer of the right to possession and use of goods for a term.”



The Uniform Commercial Code

Article 7

- Deals with “warehouse receipts,” “bills of lading,” and “other documents of title.”
- In other words – the rules governing transactions where you place your goods in the care of someone else.
 - Grain elevators
 - Feedlots
 - Truckers



The Uniform Commercial Code

Article 9

- Deals with SECURED TRANSACTIONS
- What the heck is a secured transaction?
 - A transaction where a debtor agrees to turn over possession of something in the event that the debtor defaults on their obligation.
 - NOTE: While Article 9 applies to more than just goods (for example, it includes “intangible property”), it DOES NOT apply to real property – if the collateral is real property, then you have a MORTGAGE.



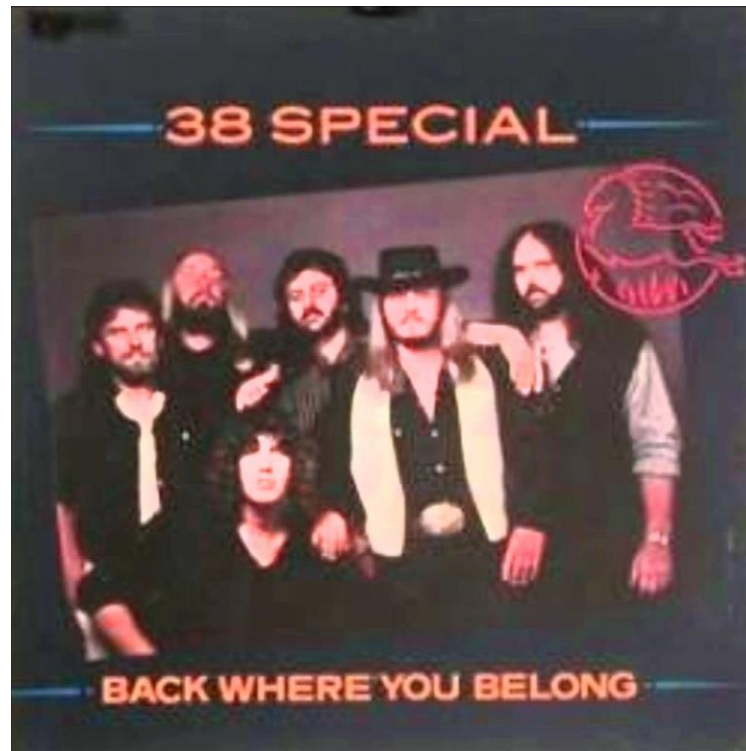
What happens if the contract is breached?

- We won't allow *punitive* damages for breach of contract – damages in contracts cases are meant to *compensate*, not *punish*.



What happens if the contract is breached?

- Most common measure of damages in contracts is “expectation damages.” Definition: ***a sum that leaves an injured party in as good a position as full performance.***



What happens if the contract is breached?

- Incidental damages: ***costs reasonably incurred in arranging a replacement deal (making phone calls, delivery fees, etc.)***



What happens if the contract is breached?

- Consequential damages: ***special damages reasonably foreseeable by the breaching party at the time of the contract.*** LOTS of contracts will specifically exclude these damages.



What if we need to change something?

- If you want to make a modification:
 - Minor: Strike out, write new provision, and have both parties initial.
 - Major:
 - Start over
 - Have a separate document “rider,” “amendment,” or “exhibit” attached with reference.
 - BOTH parties need to acknowledge



If I had to go into court and prove

- Prove there was a contract
- Prove what was required by it
- Prove that I did what was required
- Prove they did not do what was required

... how would you do it?

Don't forget

READ EVERYTHING

GET EVERYTHING IN WRITING

Many thanks!

Shannon L. Ferrell
Oklahoma State University
Dept. of Agricultural Economics
shannon.l.ferrell@okstate.edu

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