

An Overview of Contract Law

The Extraordinary Importance of Contract Law

Contract law lies at the heart of our system of laws and serves as the foundation of our entire society. This is not an exaggeration. It is a simple observation - one that too often goes unobserved.

Our society depends upon free exchange in the marketplace at every level. Contract law makes this possible. Exchanges in the marketplace always depend upon voluntary agreements between individuals or other "legal persons". Such voluntary agreements could never work without contract law.

Contract law serves to make these agreements "enforceable", which usually means that it allows one party to a contract to obtain money damages from the other party upon showing that the latter stands in breach.

Without contract law, these voluntary agreements would instantly become impractical and unworkable. Since such agreements lie at the very heart of our society and economy, and since they depend upon contract law, it is no exaggeration to say, as I have just done, that "contract law lies at the heart of our system of laws and serves as the foundation of our entire society." Those were the very words that I used to begin this essay.

Stated more precisely, it is our system of contract law that underpins and makes possible the many private, voluntary agreements by which exchanges of goods and services are accomplished in our society at every level. No exchange is exempt from the contract law, which indeed can be rightly called the cornerstone of marketplace civilization.

In this article, I will briefly explain the different types of contracts that can be made, paying special attention to the common problems that arise in their formulation. I will also discuss how contracts are enforced or avoided, and how a wronged party to a contract can obtain recompense and other relief from the wrongdoing party. I will explain the principle of good faith, which in California is known as the "covenant of good faith and fair dealing", and which has been too often overlooked by commentators and practitioners alike.

I do not aim to provide a comprehensive explanation of all the theoretical and practical difficulties. This is an overview, not an exhaustive treatise. Sometimes the overview will better help the reader understand the essential points, or the "forest" if you will, while the treatise is better for explaining the many intricacies and complexities that can be rightly called the "trees" of contract law.

Definition of a Contract

A contract is nothing other than a voluntary, private agreement to exchange valuable things. It most often is an exchange of valuable promises. For example, a home-buyer might promise to pay \$250,000 to the seller, who in exchange promises to deliver unencumbered title to the buyer.

Good Faith and Fair Dealing

Most exchanges are straightforward matters that are self-executing and done without any problem at all. When I buy a cup of coffee at my local cafe (which I have just done so that I may enjoy it while I compose the present essay on my laptop), the cafe and I have made a self-executing exchange, which we have done without a hitch.

Ditto, if I buy a book at the local bookstore or have my car washed at the local car-wash. Ditto again, if I purchase airplane tickets from a travel agent, or have my house painted, or have my teeth cleaned at the dentist's office.

Fortunately, most exchanges are performed on the spot to everyone's satisfaction. Were this otherwise, our society and general commerce would soon become choked by controversy and disputes. Thus it may be said that our system depends above all on the good faith and honesty of our people. Indeed, the principle of "good faith" is central to contract law.

Every contract made or performed in California is said to include an implied-in-law covenant of good faith and fair dealing, by which each party to the contract agrees to act in good faith and deal fairly with the other. This has been construed to mean that one party to a contract should not try in bad faith to cheat the other party of the benefit of the bargain made by the contract.

Inevitable Complications and Controversies

While most exchanges are performed without incident, not all of them are, as we all know. This is true even in the simplest of matters (e.g., the sale of a cup of coffee) and is even more likely in a complicated transaction (e.g., the financing, delivery, and insurance of commercial aircraft for an overseas company over a thirty-year term).

Let us take a simple example first. I will list only a few of the problems that might arise from a simple contract for a one-time sale of a single box of tomatoes. If you offer to give me \$10 for a carton of tomatoes that I have sitting on a table behind me, and if I agree to accept it as payment in full for the tomatoes, we have made an oral contract that we can perform on the spot: You hand me the \$10 bill, and I give you the carton. Nothing more simple or straightforward, right? But what if you discover that my tomatoes were too ripe when you bought them, and that they all go rotten within two hours of the purchase? What if I take your \$10 bill, but then refuse to give the box of tomatoes, telling you to "beat it, scram, or else you'll get hurt!" What happens if your \$10 bill turns out to be counterfeit, or if you take the tomatoes but refuse to pay, or pay with a check that you later cancel or that is returned unpaid by the bank? What if the carton

breaks while you are carrying it, and all the tomatoes fall to the ground and are ruined? What if you needed these tomatoes for the dinner you meant to make for your boss, who, in disappointment, decides not to give you the promotion he had earlier discussed with you? My point is only that problems can and often do arise in even the simplest, easiest exchanges.

In more complicated transactions, the possible difficulties are varied and sometimes difficult for the parties even to envision at the outset, much less address in an intelligent, orderly manner. Let's consider one such example. Suppose a large American company makes a contract with a large foreign company by which it becomes obliged to design, deliver, and insure an entire generation of commercial aircraft over a thirty-year period. The possible complications might take me literally years to ponder, list, analyze, and explain. It could take a decade or longer for feuding teams of lawyers in several countries to sort out the possible complications that might arise.

To avoid such controversy, which results in burdensome attorney's fees and an equally burdensome devotion of attention and effort that could be better employed in more constructive endeavors, it is necessary to have a proper contract in place at the outset: If the exchange is to be done on the spot and simultaneously, a written contract need not be used, but the parties should either reasonably trust one another's good faith or have an exact understanding of the exchange before they undertake it. If the exchange cannot be performed in full on the spot, there should be a written contract to state the parties' obligations and the essential terms of the exchange. A good written contract will also address at least the most likely complications that might arise, assigning responsibility for any such complication to a specific party in a specified manner.

A good written contract is one that clearly describes the exchange to be done and also addresses the possible complications that might arise during the performance of the exchange.

Different Kinds of Contracts

I earlier provided a simple definition of a contract. Here is a more technical definition: A contract is a private compact, voluntarily made, by which the parties agree to exchange valuable things with one another. A contract comes into existence when (1) one party makes an offer that the other party accepts, and (2) the parties thereby agree to exchange valuable benefits on specified terms and conditions, with reasonably specific agreement on the price, place, time, the goods or services to be delivered, and the other essential terms of the exchange.

Let us consider three different examples, so that this point can be illustrated clearly.

First Example: An Oral Contract. Suppose that I offer to pay you \$1000 to proof-read this article and offer constructive criticism on how it might be made more useful or enjoyable to my probable audience. I further specify that I want you to state your criticisms in writing to me no later than "next week Thursday", whereupon I will pay you in full. If you agree to these terms, perhaps by saying "I accept your offer", we have made an oral contract by which I have promised

to pay you \$1000 next week Thursday, on condition that you give me your editorial comments in writing on that date.

But no contract would have been made if you had instead stated the following: "I agree to everything, except the price, which is too low for such important work on your extraordinary article! I propose to do the work for \$10,000." In this event, you would have made a counter-offer, which is really a rejection of the offer and the proposing of a new offer in its place. I could then accept your counteroffer, thereby making a oral contract, or I could make some new counteroffer, which would be a rejection of your last offer, but with a new offer to you, or I could decide that there is no point in continuing to negotiate with you, in which case I would reject your offer and discontinue or terminate the effort to negotiate a contract. But to return to my example of a binding contract: Suppose that we finally agree upon the exact terms of my paying you to proofread this article. We have in this instance made a binding oral contract.

Second Example: An Implied Contract/Unilateral Performance. Now let's consider a second example. If I pay \$1.50 in exchange for a cup of coffee given to me by the serving-person at my local cafe, a contract has been made and performed on the spot: The parties to the contract are the cafe and me. We have impliedly agreed that I will pay the \$1.50, and that in exchange the serving person will make and give me a fresh cup of coffee that I may consume at leisure on the premises. I have given a valuable benefit (ready money) in direct exchange for another valuable benefit (a fresh cup of coffee that I can enjoy at leisure in a cafe).

In this case, the cafe and I have not merely made a contract, but have performed it on the spot. Since we did not actually haggle over the terms of the exchange, we have performed a unilateral contract: The cafe has in effect said to all comers, "If you approach our counter and order food or beverage at the prices stated on our menu, we will furnish you the food or beverage that you order, on condition that you pay for it on the spot. You may then consume your food or beverage at leisure on our premises."

In response to this open offer to all comers, I have taken the unilateral action of approaching the serving-person to order the coffee. My unilateral action of ordering a cup of coffee sets into motion the immediate performance of the exchange. The actual terms of the contract are implied by the cafe's posting of its prices, my own conduct, and the ensuing, simultaneous exchange.

Third Example: A Written Contract. For our third example, let's consider consider a more complicated contract that by its very nature requires a comprehensive written agreement. Suppose that a huge multinational corporation seeks to sell fighter aircraft to the United States Air Force, which is predisposed to meet its military needs by purchasing this aircraft. The two parties contemplate that the seller will help to design the aircraft, manufacture it, deliver it on a specified schedule, and provide insurance for it. Suppose that the Air Force agrees in principle to pay at least \$417 billion dollars for this aircraft over a ten-year period. The negotiations themselves will last for months, if not years. Offers, counter-offers, and term sheets will abound. Both parties will employ elite attorneys to compose a master contract and ancillary documents that will supposedly explain the transactions and address each possible problem that might arise

during their performance. The ensuing documents, which will likely fill a large room, will collectively constitute the series of written contracts and related documents by which the entire arrangement is to be performed.

In each example given above, the parties have agreed to exchange valuable benefits on specified terms and conditions (in the first example, I have also tried to show how contracts are sometimes proposed, but rejected by parties who exchange counteroffers but never reach a definitive binding offer-and-acceptance).

A lay-reader might think at first glance that my third example (the Air Force contract) is somehow a more formal, more binding contract than the first two examples (the proof-reading contract and the cafe contract). But this would be a mistaken conclusion: In all three examples the parties have made a binding, enforceable contract, by which each has agreed to give something of value in exchange for getting something of value. The only difference lies in the complexity of the exchange, not in its character.

The essential principle of every contract, no matter how large or small, is the giving of something in exchange for the getting of something. Typically, one "gives" a promise to do something, and in exchange "gets" a promise from someone else to do something.

Contracts can be stated in writing, in which event they are called written contracts. Or they can be made by oral agreement, whereupon they are called oral contracts. Or they can arise by implication, in which case they are said to be implied contracts. These then are the three different kinds of contract - written, oral, and implied.

Usually the parties to a written contract understand that they have entered into a binding agreement, but they do not always grasp this point when making an oral or implied contract. But the law never ignores this circumstance, nor is a party's ignorance of this "legal fact" an excuse that can be plead as a defense in court. If I offer to pay you \$25 tomorrow for a carton of tomatoes, and if you accept my promise and bring me the carton at the appointed place and time, I commit a breach of oral contract if I refuse to pay the \$25 for them. It matters nothing that we made no written agreement. We made an oral one, and you can seek damages for its breach in court if you so desire.

But it is always harder to prove the terms of an oral or implied contract than those of a written one. A written contract can "speak for itself". The terms of an oral contract can only be recounted by the parties themselves or other witnesses to the transaction. Their testimony can often be contradicted or is sometimes self-contradictory or implausible on its face. Even when the testimony is the absolute gospel truth, it might not be believed by a skeptical judge or jury, or it might be cynically discredited by a shrewd trial lawyer.

It is for this reason that written contracts should be used in exchanges that are not to be performed on the spot.

A written contract can be a simple recitation of a straightforward exchange, or it can be longer and more complicated. The parties themselves decide what will be stated in it, subject only to certain laws that will be addressed below.

For more complicated transactions, such as our Air Force example given above, the parties will invariably use a complicated, lengthy contract or more typically a series of such contracts: Such monumental works can take months or even years to compose, and far longer to decipher when the whole transaction unravels years later, as all too often occurs in the real world. Contracts of this kind usually include all manner of legal devices or drafter's tools to describe the manifold transactions and especially to allocate responsibility and risk.

This said, there is one point that is more important than all the others. Every written contract, no matter how complicated or convoluted, is at bottom a statement of a private, voluntary agreement to exchange valuable benefits.

Various Devices Used in Written Contracts

Written contracts often employ various "devices" or "drafter's tools" to explain the exchange more fully and to allocate responsibility and risk for the possible complications might arise, as I have mentioned just above. (You may skip this section if you do not wish to read about such "devices").

Here is a very imperfect listing and brief explanation of the most commonly used devices:

- A preamble or recitation of recitals is never obligatory, but is often useful, so that the nature and purpose of the transaction can be stated expressly. These serve to explain and clarify the contract whose proper meaning is later disputed. This matter is discussed below.
- A covenant is merely a statement of an obligation or duty that the covenantor promises to observe or perform for the benefit of the covenantee. Covenants are often used in real estate contracts and are meant often to become "covenants that run with the land" (i.e., obligations that burden the land even after it is passed from the original covenantor to a new purchaser who never personally made any covenant to do anything, but who is bound by the covenant merely because he has succeeded to title to the land).
- A provision is merely an express statement of rights or responsibilities that has special importance to one or more of the parties (e.g., an "opt-out provision").
- A condition precedent is the statement of a prerequisite event or circumstance that must occur or arise before a stated obligation becomes binding (e.g., "the company must deliver 47 widgets each Wednesday of any week in which the quoted price of widgets in Chicago on Monday is above \$4 per widget" - which means that a condition precedent to the company's obligation to ship the widgets on Wednesday is that the market-price for widgets in Chicago on Monday is at least \$4 per widget).
- A condition subsequent is the statement of an event or circumstance whose occurrence extinguishes or modifies an obligation (e.g., "the company must deliver 47 widgets each Wednesday to Smithers until the market price of widgets in Chicago falls below \$4 per

widget, whereupon this contract shall become voidable at the company's expense" - which means that the company acquires the right but not the duty to cancel the contract upon the condition subsequent of the fall of the market price to below \$4 per widget).

- A condition concurrent is the statement of a condition that must be satisfied at the very time the obligation is owed, else the obligation is not owed at all. Most escrow transactions employ such conditions (e.g., "the purchaser will place \$400,000 in escrow; the seller will place into escrow a grant deed of title to a specified parcel of real property; and the condition concurrent will be that the escrow holder will record the grant deed in the purchaser's favor while transferring the purchase price to the seller's ledgers as a credit in the seller's favor).
- Express representations are statements of material fact, made by one party to induce the other to agree to the contract. Often these are oral statements made during negotiations. Sometimes a prudent party will insist that representation be recited in the contract itself and declared to be a "material inducement" to the agreement. If the representation later proves to have been misleading or inaccurate, the party who relied on it might have a claim for misrepresentation (intentional or negligent). Often the parties will specify that no party to the contract has relied on any representation, other than those expressly recited in the contract itself. This matter is discussed below.
- Disclaimers are express disavowals of responsibility, as in "the company disclaims (disavows) any responsibility for any harm that any of its widgets might cause to Smithers, his business or his property".
- Exclusions, which are often employed in insurance contracts, are used to remove certain kinds of obligations from the contract that otherwise might be deemed to be required by it (e.g., "the insurance company will pay for all harm caused to the structure by fire, unless the fire was caused by natural disaster or set on purpose by an arsonist" - in this instance, it is the phrase that begins with the word "unless" that states the exclusion to the general obligation).
- A warranty is a guarantee of a condition or circumstance that is material to the contract (e.g., the company warrants that its widgets shall be fit for use in widget-grinders", or "the automobile is warranted to remain in good repair for seven years or the first 100,000 miles of driving, whichever comes first"). Typically, the warrantor must pay for harm caused if the warranty is not met.
- An indemnity is the grant of reimbursement upon the occurrence of a condition subsequent. Stated differently, a party might become entitled to reimbursement upon the occurrence of a condition precedent! The condition, whether it be deemed subsequent or precedent, is some sort of loss suffered by the party entitled to indemnification (e.g., "if the company fails to deliver the widgets by next week Wednesday, and Smithers thereupon purchases widgets from another vendor, the company must indemnify Smithers for his general and incidental damages" - this example being particularly instructive, as it is an express indemnity for contract damages that shows an indemnity clause at work and leads us to our next subject, which is the matter of damages upon the breach of a contract). Indemnities tend to include specific procedures that must be followed in order to obtain the indemnification on offer. The law of indemnification is fundamental to insurance contracts and more generally to the

allocation of commercial risk. It is a highly evolved body of law that requires special study in order to be practiced with competence.

- A release is a formal renunciation and binding forfeiture of a right or claim (e.g., "Smithers releases the company from any claim that it might otherwise have for misperformance of any obligation owed or arguably owed before the date of signing of this contract").
- Litigation procedures are special provisions by which the parties agree in advance on the resolution of any subsequent dispute arising from the performance of the contract. Parties typically specify which law governs interpretation and enforcement of the contract (e.g., "the contract is to be governed by California law"). The parties sometimes require that any dispute arising between them first be submitted to mediation and afterwards to private arbitration in lieu of a courtroom litigation. Other times they specify that any lawsuit must be instituted in a particular place (e.g., "venue shall be in San Diego County").

The important point is that the parties themselves can insert in their contract whatever they choose, so long as their purpose or the mechanism chosen is not illegal or otherwise contrary to local public policy. The above-listed devices are merely means of stating and refining the agreement that the parties mean to make with one another.

These devices are used all the time in written contracts, but only rarely in oral or implied ones, which instead tend to be straightforward or simple exchanges that usually are performed on the spot or are made by parties who readily trust one another or otherwise have no reason to suspect that the mutual obligations are unclear or could be misconstrued.

Written contracts, in contrast, tend to make liberal use of these different devices, which I have tried to touch upon briefly above. The inartful or excessive use of such devices in written contracts can lead to unwelcome confusion. It is no stretch to say that some written contracts are so complicated that either (1) no one alive really understands their entire meaning or ramifications, or (2) they are at best understood only by teams of attorneys who have labored for months on end to prepare and implement them. I personally have had the honor, or misfortune if you prefer, to litigate controversies arising from such contracts, which at first glance are less comprehensible than ancient tomes written in Old Sanskrit! But patience, past experience, and joyless effort allow most seasoned lawyers to make sense of these unwieldy monsters, or at least as much sense as is humanly possible to make of them!

A truly well-done contract is one that takes any transaction, no matter how complicated, and states it in simple, unambiguous terms that are instantly understood by everyone and cannot be misinterpreted by anyone. Good contracts will employ some or all of the above devices, but will do so sensibly and intelligibly.

Controversies and Remedies

If one party to a contract wishes to complain that the other has failed to perform or has misperformed, he can assert that the non-performing or misperforming party has committed a

breach of the contract. A breach is said to occur when one party to a contract fails or refuses without proper excuse to perform a "material" term or condition of the contract in a satisfactory or timely manner.

If such a breach occurs and causes proximate harm to the wronged party, the offending party becomes liable at law for a breach of contract. Stated more exactly, the wronged party can bring suit against the offending party if he pleads that (1) a contract (oral, written or implied) was formed between the two of them; (2) the wronged party performed his own obligations under the contract or has been excused by the other party's malfeasance from performing them; (3) the offending party failed or refused to perform at least one material term or condition of the contract in a reasonable or timely manner; and (4) by so failing to perform, the offending party caused proximate injury or harm to the wronged party.

If an aggrieved party prevails on a claim for breach of contract, his remedies are limited ordinarily to monetary damages, which is to say, money recompense. The ordinary measure of monetary damages is such amount of money as is necessary to place the aggrieved party in the position in which he would have been, had the offending party timely performed the contract in proper manner.

Another way of stating this formula is to say that the aggrieved party, upon proving the breach, is entitled to the benefit of his bargain, but not usually to specific performance of the bargain itself.

Suppose that I make a contract with you by which I am to deliver a box of tomatoes to you next week Thursday before noon at your restaurant, and you are to pay me \$15 for the product thus delivered. But on the Thursday in question I discover that the spot market for tomatoes has risen spectacularly, to \$50 per box. I decide to sell all my boxes on the spot market and therefore fail to deliver the promised box to you, who were prepared to pay me the promised \$15 for it. But you need a box of tomatoes for your restaurant, so you purchase one on the spot market that day for \$50. On these facts, you have an open-and-shut claim against me for breach of contract, since I breached (broken) the above contract, doing so obviously and willfully. Your damages against me will be such money as will put you in as good a position as you would have enjoyed had I faithfully performed the contract - which in this instance is (1) the difference between what you were supposed to pay me for a box of tomatoes and what you had to pay on the spot market after I failed to deliver the product; and (2) any incidental expense that you reasonably incurred so that you could make the replacement purchase - for example, the taxi fare you might have incurred to drive to the tomato stand at the other end of town, etc. In this example, the difference in price is called direct damages - the harm that you directly suffered as a direct consequence of my breach; the taxi fare is called incidental damages, as it was an expense that you incidentally incurred while making replacement arrangements.

Ordinarily, direct damages and incidental damages serve to give the aggrieved party the benefit of his bargain, placing him in the position that he would have enjoyed had the offending party performed rather than breached the contract. Interest on these sums is also given, since there is

often a long interval between the suffering of harm and the award of recompense (the aggrieved party must complain to the offending party, and usually must bring suit, etc.).

In some cases an aggrieved party cannot have the benefit of his bargain if he receives only direct and incidental damages. Sometimes the aggrieved party may properly seek consequential damages, which are losses suffered in foreseeable consequence of the breach. Such damages can greatly exceed the value of the contract (it is therefore advisable to disclaim responsibility for consequential damages so far as the law allows).

If I make a contract with my local dry-cleaner by which it agrees to dry-clean my dress shirts and suits, and if it thereafter breaches the contract by ruining rather than properly cleaning my clothing, I am almost certainly entitled to a recovery of the money I will need to buy brand new clothing of comparable quality, as well as reasonable incidental expenses incurred to make these new purchases (such money recompenses me for my direct and incidental damages). But can I argue that in consequence of the breach, I did not have a proper suit to wear to an all-important meeting with a prospective client, who in consequence has decided not to engage our firm to provide \$1.3 million of legal services, thereby causing my firm to lose specified profits? In this instance I would be arguing for consequential damages -- i.e., damages incurred as a consequence of the breach. The contract law rightly says that such damages may be recovered only when they are either (1) reasonably foreseeable at the time the contract was made, or (2) expressly contemplated in the contract itself as compensable damages in the event of a breach. In the example given above, the dry-cleaner would almost certainly prevail by arguing that it could not reasonably foresee that its failure to clean my clothing could result in such enormous losses for my law firm. It wouldn't be held responsible for my alleged consequential damages. (If the dry-cleaner had properly prepared its form contracts, it would have expressly disclaimed such responsibility at the outset, making a case against it for consequential damages untenable from the start).

Most but not all commercial contracts also award attorney's fees to the prevailing party, meaning that the aggrieved party, if he brings suit for breach or misperformance of the contract, can recover his attorney's fees, but only on condition that he prevail in the suit; but if he loses the suit, the other party, having been found not to have committed any breach or misperformance, is entitled to recovery of attorney's fees incurred to prove his innocence in the matter.

In some instances, money damages simply will not suffice to recompense the aggrieved party. This is true where the offending party promised to give something of unique or irreplaceable value to the aggrieved party, but then breached his obligation to do so. In such a case, the aggrieved party may assert that no sum of money can recompense him adequately, and he may insist on specific performance of the contract. The aggrieved party in such a case argues in effect that he can enjoy the benefit of his bargain only if he can compel performance of the bargain itself. It is not possible for a mere award of money to put him in the position he would have enjoyed had the bargain been performed. The bargain must therefore be performed.

But the courts rarely compel the specific performance of a contract, save where it is one for the sale of real estate, since every parcel of real property is deemed to be unique, special, and uniquely valuable to its owner. There are other kinds of contracts that can be specifically enforced, but their number is limited and dwindling in an unsentimental, commercial world in which the payment of money is usually deemed the proper remedy for every loss or disappointment suffered.

Under certain circumstances, an aggrieved party can avoid a contract that he previously agreed to make. This is known as rescission or avoidance of the contract. By this relief, the parties are to be placed in the position in which they found themselves before the contract was made. Suppose that you and I make a contract for the purchase of goods, and the contract calls for me to make a deposit at your store and obliges me to complete my purchase of your goods at a stated time. But afterwards I establish that I am entitled to a rescission of the contract. In this event I am not only excused from the obligation to purchase your goods, but am also entitled to a refund of the deposit, along with any incidental damages.

Rescission is always available to those who have been defrauded by false representations into agreeing to unfair contracts (this point is discussed further below). Rescission is also available to relieve aggrieved parties from unconscionable contracts - typically, deceitful contracts on pre-printed forms with hidden, "surprising" terms that are utterly unfair and one-sided to the point of being oppressive.

Illegal contracts, in contrast, are not voidable at the election of the aggrieved party. Rather, they are deemed void ab initio, which is to say, invalid and without legal effect from the outset.

Fraud. I alluded above to the use of fraud to trick a party into accepting an unfair contract. Let me return to this point, which unfortunately arises all the time in commercial and private dealings. Trickery, deceit, and treachery are as old as humanity itself. The different kinds of deceit used are as wide-ranging and varied as human invention and imagination allow.

Sometimes a party to a contract will belatedly discover that he was duped into agreeing to it in the first place. Such a party might wish to be excused from performing the contract on the related grounds of intentional and negligent misrepresentation.

Misrepresentation is said to occur when the following events occur during pre-contract negotiations:

- One party (the offending party) states a matter of "material" fact to the other, doing so in effort to induce the other party (the deceived party) to agree to a proposed contract.
- The deceived party, having heard the statement, is induced by it to enter into the proposed contract, and under the circumstances it is reasonable for him to have relied on the statement and to have been induced by it to enter into the proposed contract.
- The statement proves to be false.

- The offending party either knew at the time that it was false (intentional misrepresentation) or recklessly made the statement without regard to whether it was true or false (negligent misrepresentation).
- Having been thus induced into the proposed contract on the basis of false statement of material fact, the deceived party suffers proximate losses in consequence.

If the deceived party can prove each of these points, he can make a claim against the offending party for intentional or negligent misrepresentation, which, once proven, entitles him to either (1) rescission of the contract, restitution of sums given, and incidental damages; or (2) all losses proximately caused by the fraud. The deceived party may elect his remedy after proving his case. Since both intentional and negligent misrepresentation arise by definition from the fraudulent behavior of the offending party, the deceived party can also seek and recover punitive/exemplary damages.

Conclusion

Different kinds of contracts are used to accomplish different purposes. For example, leases are used to sell the possession of real property for a specified term, while contracts for sale of property are used for the sale and transfer of title to real property. Insurance contracts are used to sell insurance against loss in exchange for certain payments at specified intervals. When you order a plate of pasta, you have made a contract with restaurant where you have ordered it. The list of actual and possible contracts is infinite: Contracts are the means by which legal persons in our society agree to exchange goods, services and other valuable things.

All such contracts are nothing other than private agreements between parties, who by their agreement become obligated to exchange valuable benefits with each another. The contract law makes such agreements enforceable, which means that an aggrieved party can seek money damages or sometimes even specific performance from the party who allegedly breached or misperformed the contract.

This monograph is by no means a comprehensive, exhaustive catalogue of the many and complicated principles of contract law. It is meant rather to give an overview and sampling of this body of law. If it succeeds at providing this to the reader in understandable English, then it has accomplished its modest purposes.