

**REVIEW
OF
CONTRACTS**

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CONTRACTS free to recreate social contract

ELEMENTS OF A CONTRACT

Agreement
Consideration
Capacity
Reality of Assent
Form
Legal Subject Matter

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ELEMENTS OF A CONTRACT

AGREEMENT
offer identical to acceptance mirror image rule

CONSIDERATION
legally sufficient (not necessarily "fair price");
objective intent

CAPACITY
ability to grasp consequences of one's actions

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REALITY OF ASSENT
voluntary

- no **COMMON LAW FRAUD**

- 1.) knowing,
- 2.) intentional,
- 3.) misrepresentation of a material fact,
- 4.) justifiable reliance, **AND**
- 5.) causing injury

SECURITY LAW FRAUD = drop 1,2,& 4; use
3 (add omission) & 5

- no **duress**

- no **mistake**

* **unilateral**: objectively known and material fact

* **mutual**: material fact

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FORM

Statute of Frauds:

IF

1. sale of "goods" of at least \$500
2. sale of land
3. *must* last more than one year
4. guarantee debts of another **OR**
5. in consideration of marriage

THEN

written memorandum of material terms

- * parties (signature [s?])
- * consideration
- * time
- * subject matter

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LEGAL SUBJECT MATTER

public policy: e.g., protect competition

The government always is a third party to all contracts since the parties to a contract are seeking a **legally enforceable promise**.

The enforcement is by government.

Government will not enforce contracts that are contrary to public policy.

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Capacity is about the *ability to know*.
Capacity does not go to whether the person does or does not know.
Capacity merely establishes that the person can know.
The amount of capacity required varies by the type of transaction.
Some transactions require more ability to see the natural consequences of one's actions (either due to complex causation or more of consequences in the future), in which case more capacity is required.

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Very little capacity is required for a will
more for a tort
more for a contract
The most capacity is required for a crime

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For capacity the law is asking different questions.
Wills - How do you harm your life after your death?
Torts - When do you learn it is bad to hit other people?
Contracts - When do you understand the cause and effect of promises?
Crimes - When do you learn you hurt everyone when you hurt anyone?

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Material is a term often used in the law, but with very different meanings.

At its root meaning, material is something that the law will recognize as significant.

As capacity varied by type of transaction, so does material.

Material varies by the parties' type of relationship and the objective intent to harm.

Very small items are material for security law fraud
more for common law fraud
more for unilateral mistake
The largest items are barley material for mutual mistake

For material the law is asking different questions.

security law fraud - Has the legislature ordered the courts to protect one party?

common law fraud - Did the defendant create and take advantage of an opportunity to harm the plaintiff?

unilateral mistake - Did the defendant take advantage of an opportunity, but did not create the opportunity?

mutual mistake - Were both parties acting in good faith but got entangled in a legal dispute?
