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High School Legal Education: Basic Contract Student Unit

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BASIC CONTRACT STUDENT UNIT

INTRODUCTION

This unit presents briefly the law of contracts and provides additional information about buying used automobiles. The rules of law are set aside for quick reference. Examples are provided to help you understand how each rule of law works. You will also find questions for discussion which cannot be answered with a definite yes or no. These are designed primarily to let you think about the law and how it works.

Overall this unit should help you understand your role in making various contracts throughout your life. It will by no means make you an expert since this takes years of study. You will, however, realize that there are many more "contract" situations in everyday life than you had thought. In reading the material, questions and problems try to recognize that contracts impose both rights and duties. Think of the examples in terms of your personal experiences involving contracts and they will become more meaningful.

I. GENERAL CONTRACT LAW

A. WHAT IS A CONTRACT?

Is it a writing or can it be a series of verbal statements? Can it be just an act or sign? To answer these questions you must first know what the law defines as a contract:

A CONTRACT IS A PROMISE OR SET OF PROMISES FOR WHICH THE LAW GIVES A REMEDY IF ONE OF THE PARTIES TO THE AGREEMENT BREAKS HIS PROMISE. IF THERE IS A CONTRACT THE LAW RECOGNIZES A DUTY ON EACH PERSON MAKING A PROMISE.

It looks as if they are "legal promises." You will see later that there are promises which are not legally recognized or which are not enforced by a court of law. Try to keep this definition in mind while reading the following problem.

PROBLEM

On January 24th Ernie Excitable is up like a flash when the newspaper lands on his doorstep. Today he is eighteen years old and will receive \$500 from his uncle, Timothy O'Leary. Two years ago Uncle Tim promised him this amount if Ernie did not smoke before his eighteenth birthday. He now plans to use this money to buy his first car.

Ernie races through the want ad section and sees an ad which says, "1957 Chevrolet, pink and green, convertible. Unbelievable at \$450." The ad also gives the phone number of Honest Harry's Car Lot and says to call Harry. Ernie immediately calls and Ellis Schnook answers the call. He is a salesman for Harry. Ernie excitedly tells him that he is answering the ad for the Chevrolet and will be right down to pay for it and pick it up. Ellis replies that he will be happy to do business with him.

BASIC CONTRACT UNIT

Next Ernie calls David Dimwit, a friend, and says that if David will drive him to Harry's right away, Ernie will forget the \$4.00 that Dimwit owes him. David agrees and tells Ernie, "I will be there in fifteen minutes." But he does not arrive and Ernie finally gets his father to drive him to Harry's after two hours delay.

Upon arriving at Harry's lot Ernie insists that he bought the 1957 Chevrolet - which has been sold. Ernie and his father demand that Ellis produce the car, but Ellis tells him that he does not transact business by phone and that he never talked to Ernie on that day. What will Ernie be able to do, if anything?

See if you notice more than one possible contract is the problem under our initial definition. Add to that definition the fact that in order to have a contract, three basic parts are necessary. These are called:

- 1) AN OFFER
- 2) AN ACCEPTANCE
- 3) A MUTUAL OBLIGATION

We must also define these terms as follows:

AN OFFER IS A STATEMENT, ORAL OR WRITTEN, THAT SOMEONE WILL DO A CERTAIN ACT IF SOMEONE ELSE WILL DO WHAT IS ASKED IN RETURN. IT LOOKS FORWARD TO A COMPLETED AGREEMENT.

AN ACCEPTANCE OCCURS WHEN SOMEONE TO WHOM THE OFFER IS MADE, AGREES TO ITS EXACT TERMS, AND INDICATES HIS ACCEPTANCE TO THE PERSON WHO MADE THE OFFER.

MUTUAL OBLIGATION EXISTS WHEN THE OFFER BY ONE PERSON HAS BEEN ACCEPTED BY THE PERSON TO WHOM IT WAS MADE, AND THEY ARE NOW BOTH BOUND TO THE AGREEMENT AND ITS TERMS. IT IS A BARGAIN WHICH THEY BOTH MUST LEGALLY LIVE UP TO.

The following examples illustrate these three definitions and distinguish contracts from non-legally binding situations:

EXAMPLES

- (1) Bill Biker says to Rick Rider, "I will sell you my chopped Harley for three bills." Rick Rider replies that he will buy it for \$150.

There is no contract here. Bill made an offer but Rick did not accept that offer. Why? What if Bill said, "Okay, give me the \$150 and it is yours." That would be a contract because the answer of Rick was like a new offer to buy it, and Bill accepted it by the answer. They would have a mutual obligation to exchange the Harley for the money. This is an oral and legally binding contract.

- (2) Grace Slip begs Tom Twist, "Come to my pad and I'll fix you a fabulous meal." Tom says that he will, but instead he goes to dinner with Sarah Smooth.

Should this be a contract? It may seem to be one, but there is no mutual obligation which the law will enforce. It is a social agreement which is different from a legal agreement. The law simply cannot enforce every social agreement. Tom may have a moral duty to eat with Grace, but he does not owe her a legal duty. Do you think the law should enforce social agreements? Do you think Ernie's agreement with David Dimwit was a legal or social one?

- (3) Bonnie snaps to Clyde, "You get \$500 for helping me knock off this next bank!" Clyde merely nods his head. Later they rob the bank.

BASIC CONTRACT UNIT

Could you imagine Clyde going to court to collect his money? Even though there was an offer and an acceptance, there was no legal bargain. The law simply does not enforce illegal contracts or ones with an illegal purpose in mind. If Ernie's uncle had promised him \$500 for not smoking marijuana before he was eighteen do you think Ernie could have collected? What reasons would you give for your answer?

- (4) Marta Mitchell phones her jeweler and orders a case of Spiro Wenga watches. The watches are delivered the next day and are unique because they run backwards. Marta later refuses to pay. Should a court make her pay for them? If she offers to pay for the watches and they are delivered, then the delivery is the act of acceptance. Marta has an obligation to pay. Notice that the offer was by phone. What about the phone offer of Ernie to Ellis? Did Ellis accept the offer or did he merely agree to do business with Ernie? What is the difference?
- (5) Willie Joe Namath, a sometime ball player, sees a newspaper ad for full length bleached rat coats at a boutique. He mails a check to the boutique for \$90 and writes a letter asking them to send a size 44 long. Instead he receives the check back two days later with no explanation.

Would you think there was an offer? Up to now you might feel that there was an offer which Willie accepted by mailing the check. This is not the case though because of the following rule of law:

GENERALLY NEWSPAPER ADS AND OTHER FORMS OF ADVERTISEMENT TO THE GENERAL PUBLIC ARE NOT OFFERS BUT INVITATIONS TO THE PUBLIC TO COME AND MAKE OFFERS. THESE ARE CALLED PRELIMINARY NEGOTIATIONS.

Does the rule seem unfair to you?

Why? Why not?

What do you think are some of the reasons for such a rule?

Does this rule affect Ernie's problem with the car dealer?

- (6) Fat Albert is a candy fiend. One day he sees Upton Uppity with a bag. Fat Albert says to Upton, "Man, I would pay fifty dollars for a Hershey bar." In the next instant Upton reaches into the bag, pulls out a Hershey

bar, slaps it into Fat's hand and says, "Pay me."

If Fat refused and the case went to a court where you were the judge, how would you rule? Explain your reason. Since Fat had no idea what was in the bag could he be considered as having made an offer to Upton or was he merely talking? Can you see any reason why Upton should consider it a serious offer? This leads to another rule of law:

OFFERS MUST BE MADE SERIOUSLY AND NOT IN FUN OR JEST. IF THE PERSON HEARING IT KNOWS IT IS A JOKE HE CANNOT ACCEPT IT AND FORCE A CONTRACT OUT OF IT.

Isn't this what Upton did?
Would you answer differently if Fat Albert knew what was in the bag and had the \$50 in his hand?

CONSIDER THE FOLLOWING QUESTIONS:

Is a contract more of a process of bargaining than anything else?

If it is a process what do you think is its purpose?

What would society be like if the law did not recognize and enforce this process?

How many of the contracts that you make are in writing?

What would happen if every contract, even for the sale of a pack of gum, had to be in writing?

BASIC CONTRACT UNIT

B. WARRANTIES AND DISCLAIMERS

What does a twenty thousand mile guarantee on a set of tires mean? What does first quality mean when someone describes a set of skis to you? What do you do when your pre-shrunk Levis shrink down two sizes when they are washed? What if your water bed bursts while you are sleeping on it? These are all questions relating to the subject of contract warranties. A warranty is like something extra included in the bargain. There are two types of warranties defined as follows:

EXPRESS WARRANTY - AN ORAL OR WRITTEN STATEMENT MADE TO INDUCE THE BUYER TO MAKE THE PURCHASE.

IMPLIED WARRANTY - ANY OTHER WARRANTY IMPOSED BY LAW ON EACH SALE OF GOODS REGARDING THEIR QUALITY OR FITNESS, THOUGH NOTHING IS SAID OR WRITTEN ABOUT IT.

EXAMPLES

- (1) David Dimwit did not pick up Ernie in our earlier problem because he had to buy a raincoat. The salesman at the store, Rook Atkins, spent nearly two hours telling Dimwit what a terrific buy the raincoat was. He told him that it was colorfast (the coat was red) and guaranteed for life. Fifteen minutes after he stepped into the rain with it, the red dye from the coat ran onto his shirt. Later on a sleeve fell off.

If you were Dimwit's lawyer what would you tell him about the salesman's statements? Would it make any difference if they were attached to the label in the coat? David is entitled to rely on what the salesman said or what is with the labels attached to the coat, or literature

which comes with it. Do you think you should be able to rely on what a seller states about the thing he sells to you? What would you suggest be done about David's coat?

- (2) Suppose that David Dimwit stepped into the street and began walking in the rain with his new raincoat and after walking a few minutes he noticed it was not keeping him dry.

Is this an example of an express warranty? Does it seem more like an implied warranty? Actually, it is an implied warranty that the raincoat fits the purpose intended, that of a raincoat.

The law implies warranties of FITNESS FOR USE INTENDED and MERCHANTABILITY. You saw both types in the examples we just finished. David, like anyone else, is entitled to believe that what he buys will at least fit the purpose for which it is sold and for which he intends to use it. It has to be a use that it is designed for, otherwise there can be no reliance.

Consider the following examples for further study:

- (3) Tommy Trampoline continually bounces and jumps on his parents' new box springs and after only two months they break down and make it impossible to use as a bed.

Do you see any warranty problem here? Explain why or why not. If you think that there is no warranty that the box springs will stand up under constant jumping, you are right.

- (4) Walter Waterlog buys a Tinex watch from a door-to-door salesman named Cameron John Sleezy. The back of the watch is engraved "waterproof." The first time Walter showers with the watch on it becomes waterlogged.

You shouldn't have any trouble finding an express warranty concerning its waterproofness. Would you question the application of the warranty if Walter used it for continual deep sea dives and it broke under the sea pressure? Is there a difference between being waterproof and being suitable for deep sea diving?

- (5) Pete Puffer sells a boat to Gary Gullible. Pete tells Gary that the boat is, among other things, a real beauty,

BASIC CONTRACT UNIT

a steal, and a fabulous buy. Actually it is a bad buy and needs some repairs.

Do you think Pete's statements about the boat are warranties? Do you think it is difficult to fix exactly what he has warranted about the boat by them? See if the following rule of law answers any doubts you have about this sale.

A SELLER IS ENTITLED TO "PUFF"
A SALE OR DEAL WITHOUT ACTUALLY
CREATING AN EXPRESS WARRANTY.

CONSIDER THE FOLLOWING:

Why do you think the law allows "puffing" without making it a warranty?

Does this seem fair or unfair to you?

Would you think it was puffing if someone said that an item was of the highest quality when it was of the lowest?

DISCLAIMERS

Because warranties may impose serious obligations on a seller that he does not wish to assume, the law allows him to disclaim certain warranties by including statements in the contract known as disclaimer clauses. These are statements that something is sold "as is" or that the seller is "disclaiming all express or implied warranties." Disclaimers may even extend to the implied warranties of fitness for use and merchantability if they are expressly mentioned in the disclaimer. The rule of law concerning them is:

A **DISCLAIMER** CLAUSE IS AN EXPRESS STATEMENT WHICH LIMITS THE WARRANTIES TO THOSE OTHERWISE EXPRESSLY INCLUDED IN A CONTRACT. IT IS A LIABILITY LIMITING CLAUSE.

This type of clause is often used in the sale of used or old goods. Can you recognize its importance? By modifying our old problem about Ernie we can illustrate the relationship of warranties and disclaimers.

When Ernie and his father arrive at the used car lot, the Chevrolet is unsold and he buys it for \$450. The contract that is written at the time of the sale states the car is guaranteed for parts and labor for 5000 miles or ninety days. It further says that the car is sold "as is" with no other express or implied warranties other than those in the contract.

One week after Ernie buys the car it stops running. Neither Ernie nor his father knows what to do about it.

CONSIDER THE FOLLOWING QUESTIONS:

Would you advise Ernie not to worry about the car? Why?

If the car radio did not work, would you feel that it was covered by the warranty? Why or why not?

If you sold an old motorcycle, would you disclaim anything about its condition?

The warranty on Ernie's car would certainly cover the cost of the car engine repair, but it is doubtful if it would cover a radio.

BASIC CONTRACT UNIT

C. MINORS' CONTRACT RIGHTS

May a minor ((a person under twenty-one) make a contract?

What reasons would you give for or against such a rule that minors may not make contracts which are legally enforceable?

Are you surprised by the fact that minors have special contract rights because the law wishes to protect them as a special class of persons.. This is the rule of law which provides that protection:

A PERSON UNDER TWENTY-ONE MAY AVOID A CONTRACT HE MADE WHILE UNDER AGE TWENTY-ONE BY RETURNING WHAT HE RECEIVED IN THE BARGAIN AND STATING HE WISHES TO AVOID ANY FURTHER OBLIGATION.

Avoiding any further obligation merely means he no longer is obligated to do anything he was bound to do under the contract, including making payments for any purchases.. The rule is slightly different if the minor is under eighteen at the time he makes the contract.. Read the following two examples to see how the rule works..

EXAMPLES

- (1) Dinah Duds is nineteen years old and opens a charge account with a clothing store.. After buying \$200 worth of clothes she decides to avoid the charge account contract.. The store manager demands she return the clothes.. Later he finds out she lives alone and supports herself and he then refuses to cancel the contract..

Have you any idea why he changed his mind when he found out she was out on her own? If she could return the clothes do you think she should pay for the wear and tear on them? The answer is yes,, she must return them and pay

for their usage and wear. The answer to the first question is contained in this rule:

MINORS MAY NOT AVOID CONTRACTS FOR NECESSARIES OF LIFE SUCH AS FOOD, CLOTHING AND SHELTER, WHEN THESE ARE NOT PROVIDED BY A PARENT. A MINOR MAY NOT AVOID CONTRACTS FOR SPORTS AND ARTISTIC SERVICES WHEN THE CONTRACT IS APPROVED BY A COURT.

- (2) Sean Swinger is twenty, works, lives in a plush apartment and spends most of his money. He charges his food at a grocery store.

If Sean comes to you and asks if he can avoid paying his food bill, what advice will you give him? How about avoiding his rent contract? Would your answer be different if he were sixteen and lived at home and the contract was for sports equipment?

CONSIDER THE FOLLOWING QUESTION:

Why does the law hold minors to contracts for food, clothing and shelter?

If Sean lived out in the country and was forced to buy a car in order to get to and from work, would you consider the car a necessary of life?

Do you now see another possible remedy for Ernie because of the car that won't run?

If Ernie avoids his contract would there be a depreciation charge for one week? How would you argue that Ernie should pay some depreciation?

BASIC CONTRACT UNIT

THINK ABOUT THIS STATEMENT:

The reason for allowing minor's to avoid contracts is to protect them from unscrupulous dealings and from bad bargains from which they could not otherwise protect themselves.

Should this mean that the minor should be allowed to avoid a contract for good merchandise when he just does not want to pay for it?

II. AUTOMOBILE PURCHASE REQUIREMENTS

Should a used car dealer be allowed to sell a car with bald tires? What if he sells one with no brakes? What would you mean if you said a car was a "menace to the highway?" Are you really at the mercy of the used car dealer once you drive the car off his lot after buying it?

Fortunately, since the early days of car sales, the law has recognized the need to protect buyers and certain laws now apply. The policy of the law has changed to reflect the need to protect the person who might be injured. Consider these three rules in connection with that policy:

A DEALER MAY NOT SELL A USED MOTOR VEHICLE UNLESS IT IS EQUIPPED WITH PROPER WORKING BRAKES AND LIGHTS.

A DEALER MAY NOT SELL A USED MOTOR VEHICLE WHICH IS A "MENACE TO THE HIGHWAY." HE MUST ALSO REASONABLY INSPECT IT BEFORE SELLING IT TO FIND AND EITHER REPAIR DEFECTS OR WARN THE BUYER ABOUT THEM.

NO ONE MAY OPERATE OR SELL A MOTOR VEHICLE UPON A HIGHWAY WHICH HAS TIRES WITH LESS THAN 1/8 INCH OF TREAD REMAINING.

If we now go back to the problem with Ernie and modify it again as follows:

BASIC CONTRACT UNIT

When Ernie buys the Chevrolet from Harry's, he signs a contract that disclaims all express or implied warranties and further guarantees nothing about the car. Three days after buying it the brakes fail and the car collides with another car. Both Ernie and the other driver are injured.

QUESTIONS:

Do you think the disclaimer clause affects the dealer's obligation?

What reasons would you give for making Harry pay for the car and the injuries to Ernie and the other driver?

Do you believe a private party should be held to the same obligation? Why or why not?

Do you think there should be more such rules to protect used car buyers?

Are you surprised by the fact that anyone who violates any of the three rules just stated would also face criminal charges?

CONCLUSION

Now that you have completed the material on contracts you should be able to work with the problems that follow this section. Remember when you are looking at the problems that more than one rule may apply, so look carefully at each one.

Lawyers, judges and law students try to look at both sides of a problem before they answer. Try this with the problems and questions and see if it helps you find the answer. Many times just looking at the problem from the opposite view will help you find the right answer or the best one.

BASIC CONTRACT UNIT

PROBLEMS TO ANSWER

(1) Morris Minor recently bought a used car from reliable Honest Harry, a used car dealer. The car was several years old and so Harry told Morris that he could not guarantee a thing about the car. He made out a contract with an express disclaimer clause, disclaiming all express or implied warranties. Morris paid \$400 for the car and drove it for eight days. Then the brakes failed.

Morris took the car to Three Wheel Brake where he was told that a complete new brake job would be required. He is also told that it is a miracle that he did not hit another car. The mechanic found that the brake system had serious leaks in it. The cost of the repair job is \$120. It comes with a 20,000 mile or one year guarantee. The contract contains this guarantee.

Three months after having the brakes repaired, the brakes begin to leak and Morris is forced to take it to another mechanic who explains that the brake lines were never replaced with the last job. Morris decides to take it back to Three Wheel Brake, but they refuse to do anything under the warranty. Morris is told, "We guarantee the brake linings but nothing else."

QUESTIONS:

1. Can you identify the contracts, warranties and disclaimers involved?
2. If you were a judge would you require the brake company to repair the brake lines? What law or laws would you rely on for your answer?
3. Suppose Morris also decides he wants Honest Harry to pay for the \$120 brake job, would you rule for Harry or Morris? Explain your answer.
4. If Morris turned twenty-one the day the brakes went out, what would you also recommend he do about the contract for the car?
5. What do you think about the argument that, "We only guarantee the brake linings."

(2) Frank Fast buys a car from Honest Harry which comes with a guarantee that states, "Seller agrees to repair or replace any of the moving parts which fail under normal use and care during a one year period from the date of this sale." Harry does not know that Frank is a very poor driver and has ruined two cars within the past eighteen months.

Within three weeks after he buys the car, Frank has received two citations for driving too fast, and one for an unsafe start. He is very fond of accelerating rapidly from stop signs even though it is very hard on the clutch and transmission. Within a month both clutch and transmission are badly worn and need repairs. He takes the car back to Harry's for repair under the warranty.

Harry refuses to repair it under the warranty because he knows how it got in that condition. Frank insists that Harry should repair the car free and when he refuses to do it, files a suit in court. Assume you are the judge hearing the case and must interpret the warranty in favor of either Harry or Frank. What would your decision be on the following items:

CONSIDERATIONS:

1. That Harry did not limit repairs from the warranty caused by bad driving.
2. That Frank's conduct voids the warranty.
3. That Harry should have known or expected that Frank would drive the car the way he did and should never have made the warranty with this knowledge?

BASIC CONTRACT UNIT

ADDITIONAL STATEMENTS FOR DISCUSSION *(Answers on next page)*

1. An eighteen year old lies about his age, buys a car, wrecks it and refuses to pay for it claiming he is avoiding the contract.
2. A used car dealer sells you an old car with good tires, but before you pick it up, has the tires switched with bald ones?
3. Your brother is injured in an accident when the steering goes out on the used car he just bought. The trouble was a missing cotter pin which could have been found if the car had been inspected.
4. Someone offers to buy your Honda for \$200 and you tell him you won't take less than \$350 for it. This is a contract.
5. You overhear an offer to sell a set of skis for \$50 and tell the person who made the offer that you will accept it (Be sure you look at the rule on offers and acceptance).
6. Minors can buy anything they want without having to worry about paying for it.
7. Courts will not enforce contracts unless they are in writing.
8. A seventeen year old can make a contract with a nineteen year old.
9. Mike, who is thirteen, calls a cab to take him to school because it is raining and he has no other way to get there. Then he refuses to pay the driver.
10. Joan has three teeth filled by her dentist. She is seventeen years old and wants to avoid the contract.

ANSWERS :

1. Few courts are going to let someone get away with something like that. He would have to pay for the car if he could not return it.
2. Not only is this a violation of the law, but it also is a fraud. The car dealer would definitely have to replace the tires.
3. If the dealer had inspected it the accident could have been prevented. This certainly comes under the obligation to prevent the selling of a menace to the highway.
4. As it stands there is an offer followed by a counter-offer, but no acceptance. There is no contract.
5. The rule is that the acceptance must be by someone to whom the offer was made, so the acceptance by someone who overhears the offer is not a valid acceptance.
6. That is not a true statement of the law. To avoid the contract the minor must return the goods or make restitution for it before he can avoid his obligation.
7. Most of the contracts we discussed were not in writing. There are only a few specific types of contracts that must be in writing, for example, sale of real estate.
8. Both have the legal capacity to make a contract, and both can avoid it. For that reason it may not have as much stability as contracts between adults.
9. This could be considered a "necessary" of life if he had no other way to get to school. His parents would probably be obligated to pay for it.
10. Perhaps she can avoid it, but she better give the fillings back first.

BASIC CONTRACT UNIT

Behavioral Objectives:

In a period of not more than twenty-five minutes, the students shall, with 75% efficiency:

1. Define the following terms:

- a. contract
- b. offer
- c. acceptance
- d. legal promise
- e. mutual obligation
- f. express warranty
- g. implied warranty
- h. disclaimer clause
- i. under-21 rule
- j. over-21 rule

2. Given four hypothetical instances (parallel to the examples above) in which the question of "Is there a contract?" is paramount, the student shall determine correctly whether there is a contract, and the student's rationale for his decision (the rationale to be included with his discussion for each hypothetical) is to be considered for possible full-weight value, whether correct or not.

