

Contract Law Basic Terms

1. **Section 1** of the Second Restatement of Contracts defines a Contract as “ a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” In short, a **contract is a legally enforceable promise.**

2. **Section 2** of the Second Restatement of Contracts defines a **promise** as “ a manifestation of intention to act or refrain from acting in a specified way so made as to justify a **promisee** in understanding that a commitment has been made.” The person manifesting the intention is the **promisor**, and the person to whom a manifestation is addressed is the **promisee.**

3. A **bargain contract** is the primary type of contract recognized in American law. It in essence is **an agreement** pursuant to which the promisor promises to do something **in exchange for** some promise or performance given by the promisee. The **promise or performance** given by the promisee in exchange for the promisor’s promise is called “**consideration.**” (See **Sections 3, 17 and 71** of the Second Restatement of Contracts.)

Therefore, **the basic elements of a bargain contract are (1) the promise, (2) mutual assent (the process by which the parties reach an agreement), and (3) consideration.**

4. Courts sometimes instead say that the basic elements of a bargain contract are **(1) offer, (2) acceptance and (3) consideration.** These elements are the same as those set out above, because an offer is a conditional promise (that is, a promise conditioned on the promisee’s (a) agreeing to the exchange proposed by the promisor by (b) providing the consideration sought by the promisor). When the promisee agrees to the proposed exchange and provides the consideration sought by the promisor, the promisee is said to have **accepted the offer. Therefore, offer and acceptance together give rise to an agreement which completes the process of mutual assent.** The consideration element, of course, is the same in these two formulations.