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We have a contract, don't we?

Every person deals with agreements. Whether it is my son, Michael, agreeing to mow the lawn for \$10 or Boeing selling an airplane for \$100 million, in each situation we have parties each giving something to the other pursuant to an agreement. In one scenario we have services (mow the lawn) and in the other we have a product (airplane), but in both there are mutual promises between two parties. If there is a dispute between parties as to the nature or existence of the agreement, the agreement needs to be a valid "contract" before it can be enforced.

For there to be a valid contract, the two parties need to mutually agree on the terms of the agreement. This seems to be fairly straightforward. However, there are many instances where it is not clear whether the parties actually entered into a contract.

For example, one company asks for a quote for a piece of equipment. The seller sends a quote to the buyer. The buyer agrees to buy the equipment, but with different delivery and payment terms than in the seller's original quote. Is there a contract? The answer will depend on the facts. Was the seller a seller who normally engaged in the sale of such equipment? Is the change in delivery time or the change in terms a material change? Were there past dealings between the companies?

In cases such as these, the facts of each situation often determine whether a valid contract exists. If the contract is for the sale of goods, the Uniform Commercial Code applies. The code is a set of laws that govern transactions between buyers and sellers of goods, which helps facilitate commercial transactions. The UCC helps parties determine if a contract is in place when there are numerous offers and counteroffers or even in situations where certain terms are left out of the agreement.

To reach a mutual agreement, there will generally be an offer and acceptance or counteroffer and acceptance. To be valid, the offer must contain enough definite terms so the promises and performances to be rendered are reasonably certain. If there is too much ambiguity, the offer is not valid.

The acceptance of a contract can be either by words or in writing or even by an action showing the offer was accepted. For example, if I ask Michael to mow the lawn for \$10, and Michael mows the lawn, there is a valid offer and acceptance even if Michael never said a word. Similarly, assume a buyer offers to buy equipment from another and the seller ships the equipment even though there is nothing in writing. If the buyer accepts the

equipment, there is a valid contract for the purchase and sale of the equipment.

To have a valid contract, there also needs to be "consideration" provided by each party. Consideration has numerous legal definitions; however, the basic premise is that each party gives something to the other party or promises to do something for the other party. Promises to do something (mow the lawn) or to give something (an airplane) or to make payment are all forms of consideration. However, making a promise to do something that you are already legally obligated to do does not qualify as consideration.

For example, if an employer holds an employee's wages, the employer can't ask the employee to perform another action (e.g. work more hours) in exchange for the payment of the wages already owed. Similarly, past consideration cannot be consideration for a new contract. For example, an employer can't require an employee to work more hours after the employee has already been paid. The additional work requires additional consideration.

The law also requires that the parties have the capacity to contract. This requires both mental capacity as well as being of the proper age. If a person is mentally incompetent, a contract will not be enforceable against that person. In Illinois, the legal age to contract is 18. If a person younger than 18 enters into a contract, the contract is voidable by the minor. The minor can decide to not perform under the terms of the contract. However, if the minor does proceed under the contract, the other party has to perform.

There are a number of laws and cases dealing with whether there is a mutual agreement, proper offer, proper acceptance, adequate consideration or if the party is legally capable of entering into a contract. To avoid confusion and potential litigation, the best course is to set forth the full agreement in writing. By doing so, you will be able to avoid future argument and potential lawsuits. If you have concerns about whether there is a valid contract or what should go into a contract, you should consult with a business attorney.

Now it's time for me to go out and check on that lawn. Hopefully Michael didn't decide to void that contract because he's underage ...

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