CHAPTER TWO

FUNDAMENTALS OF CONTRACT LAW

How to Know When You've "Got a Deal"

WHAT IS A CONTRACT?

Having an appreciation for the fundamental principles of contract law will enable you to answer many of your own questions about everyday consumer transactions, and will enhance your ability to use other parts of this book.

A **contract** consists of voluntary promises, which the law will enforce, between competent parties to do, or not to do, something. These binding promises may be oral or written. Depending on the situation, a contract could obligate someone even if he or she wants to call the deal off before receiving anything from the other side. The details of the contract -- who, how, what, how much, how many, when, etc. -- are called its **provisions** or **terms**.

You don=t need a lawyer to form a contract. If you satisfy the maturity and mental capacity requirements, discussed below, you don't need anyone else (besides the other party). But it probably is a good idea to see a lawyer before you sign complex contracts, such as business deals or

contracts involving large amounts of money.

In order for a promise to qualify as a contract, it has to be supported by the exchange of something of value between the participants or parties. This something is called **consideration**. Consideration is most often money, in exchange for property or services, but can be some other bargained-for benefit or detriment (as explained more fully below). The final qualification for a contract is that the subject of the promise (including the consideration) may not be illegal.

An example: Suppose a friend agrees to buy your car, an Edsel in less-than-mint condition, for $1,000. That is the promise. The money is the consideration for the sale. You benefit by getting the cash. Your friend benefits by getting the Edsel. Since it is your car, the sale is legal, and you and your friend have a contract.

Sidebar

CONTRACT LANGUAGE

A valid contract does not have to be printed, legalistic-looking document. Nor does it have to be called a contract. A typed or even handwritten "agreement," " letter of agreement" or "letter of

understanding" signed by the parties or even e-mailed between them will be valid if it meets the legal requirements of a contract. Don't sign something assuming it's not a contract and therefore not important.

It is also common for the word "contract" to be used as a verb meaning "to enter into a contract." And we speak of **contractual relationships** to refer to the whole of sometimes complex relationships or transactions, which may comprise one or many contracts.

Capacity

Not just anyone can enter into a contract. In order to make an enforceable contact, people have to be able to understand what they're doing. That requires both **maturity** and **mental capacity**. Without both of these, one party could be at a disadvantage in the bargaining process, which could invalidate the contract.

In this sense, maturity is defined as a certain age a person reaches -- regardless of whether he or she is in fact "mature." State laws permit persons to make contracts if they have reached the **age of majority** (the end of being a minor), which is usually age eighteen.

That doesn=t mean minors can=t make contracts, by the way. But courts may choose not to

enforce some of them. The law presumes that minors need to be protected from their lack of maturity, and won't allow, for example, a Porsche salesman to exploit a minor=s naiveté by enforcing a signed sales contract whose real implications a young person is unlikely to have comprehended. Sometimes this results in minors receiving benefits (such as goods or services) and not having to pay for them, though they would have to return any goods still in their possession. This would apply even to minors who are **emancipated** -- living entirely on their own -- who get involved in contractual relationships, as well as to a minor who lives at home but is unsupervised long enough to get into a contractual fix.

A court may require a minor or the minor's parents to pay the fair market value (not necessarily the contract price) for what courts call **necessaries** (what you and I would likely call "necessities"). The definition of a "necessary" depends entirely on the person and the situation. It probably will always include food and probably will never include CD's, Nintendo cartridges or Porsches. Minors who reach full age and do not disavow their contracts may then have to comply with all their terms, and in some states, courts may require a minor to pay the fair value of goods or services purchased and received under a contract that minor has disavowed.

Parents who give their children access to home computers hooked up to the Internet should consider the situation that may arise if a child uses their credit card information online. This includes information that may be stored in the computer or at a website that recognizes your home computer

and, of course, doesn't know that a minor is the actual "shopper." From the point of view of the website owner, the parent is the customer, and you may have a hard time avoiding liability for a contract (such as for the purchase of merchandise) that your children have entered into using your Internet identity.

There are other people, besides minors, who may not be able to form enforceable contracts. While the age test for legal maturity is easy to determine, the standards for determining mental capacity are remarkably complex and differ widely from one state to another. One common test is whether someone has the capacity to understand what he or she was doing and to appreciate its effects when the deal was made. Another approach is evaluating whether someone has self-control, regardless of his or her understanding.

That brings up the question of whether an intoxicated person can be held to a contract. Very often someone who is "under the influence" can get out of a contract. The courts don't like to let a voluntarily intoxicated person revoke a contract with innocent parties this way -- but if the evidence shows that someone acted like a drunk when making a contract, a court may well assume that the other party probably was trying to take advantage. On the other hand, if someone doesn't appear to be intoxicated, he or she probably will have to follow the terms of the contract. (The key in this area may be a person's medical history. Someone who can show a history of alcohol abuse, blackouts, and the like, may be able to void the contract, regardless of his or her appearance when the contract

is made. This is true especially if the other party involved knew about the prior medical history.)

Sidebar

CAPACITY

We've discussed the fundamental requirements for competence to make a contract -- maturity and mental capacity. Of course, it should go without saying that there's an even more fundamental requirement: that both parties be people. In the case of a corporation or other legal entity, which the law considers a "person," this could be an issue. A problem in the formation or status of the entity could cause it to cease existing legally, thus making it impossible to enter into a contract. In that case, however, the individuals who signed the contract on behalf of the legally nonexistent entity could be personally liable for fulfilling the contract.

Historically, the law has had other criteria for capacity. Slaves, married women and convicts were at one time not considered capable of entering into contracts in most states. Even today, certain American Indians are regarded as **wards** of the U.S. government for many purposes, and their contract-law status is similar to that of minors.

WRITTEN AND ORAL CONTRACTS

Some people mistakenly believe that an oral contract Aisn=t worth the paper it=s printed on.@ But many types of contracts don't have to be written to be enforceable. An example is purchasing an item in a retail store. You pay money in exchange for an item that the store warrants (by implication, as discussed later) will perform a certain function. Your receipt is proof of the contract.

As with a written contract, the existence of an oral contract must be proved before the courts will enforce it. But as you can imagine, an oral contract can be very hard to prove -- you seldom have it on video. An oral contract is usually proved by showing that outside circumstances would lead a reasonable observer to conclude that a contract most likely existed. Even then, there is always the problem of what the terms of the oral contract were.

Although most states recognize and enforce oral contracts, the safest practice is to put any substantial agreement in writing. Get any promise from a salesperson or an agent in writing, especially if there already is a written document that might arguably be a contract covering any part of the same deal. If the court concludes that the parties intended the written document--a handwritten "letter of agreement" or "understanding," an e-mail, or even an order form--to contain all its terms and be a

complete statement of all understandings between the parties, then the court will be very hesitant to add words or terms to the document. This is the important **parol evidence rule**, under which courts typically look only to **unrefuted** (uncontested) testimony to help them "fill in the blanks" of a contract. Anything not in that written contract would be deemed not to be part of the deal.

Writing down the terms of a good-faith agreement is the best way to ensure that all parties are aware of their rights and duties -- even if no party intends to lie about the provisions of the agreement.

Having said that, know that there are some contracts which are completely unenforceable if they're not in writing. This requirement, which exists in varying forms in nearly all the states, had its origins in the famous **statute of frauds,** an English law dating from 1677. It refers to "frauds" because it attempts to prevent fraudulent testimony in support of nonexistent agreements. In most states, the courts will enforce certain contracts only if they are in writing and are signed by the parties who are going to be obligated to fulfill them. These contracts often include:

- any promise to be responsible for someone else's debts -- often called a **surety contract** or a **guaranty**; one example would be an agreement by parents to guarantee payment of a loan made by a bank to their child;
- any promise, made with consideration, to marry (though this rule has been eliminated in many states);

- any promise that the parties cannot possibly fulfill within one year from when they made the promise;
- any promise involving the change of ownership of land or interests in land such as leases;
- any promise to pay a broker a commission for the sale of real estate;
- any promise for the sale of goods worth more than $500 or lease of goods worth more than $1,000 (the amounts may vary from state to state);
- any promise to **bequeath** property (give it after death);
- any promise to sell stocks and bonds (this provision is eliminated in some states).

Some states have additional requirements for written contracts. These statutes are designed to prevent fraudulent claims in areas where it is uniquely difficult to prove that oral contracts have been made, or where important policies are at stake, such as the dependability of real estate ownership rights. Promises to extend credit are often in this category. One typical area of state regulation is automobile repairs; many states require that estimates for repair work be given in writing. If they aren't, and the repair is done anyway, the contract may not be enforceable, and the repair shop may not be able to get its money if the customer disputes authorizing the repairs.

Where a written contract is required, a signature by the **party to be charged** -- that is, the person whom the other party wants to hold to the contract -- is also necessary. A signature can be handwritten, but a stamped, photocopied, or engraved signature is often valid as well, as are

signatures written by electronic pens. Even a simple mark or other indication of a name may be enough. What matters is whether the signature is authorized and intended to authenticate a writing, that is, indicate the signer's **execution** (completion and acceptance) of it. That means that you can authorize someone else to sign for you as well. But the least risky and most persuasive evidence of assent is your own handwritten signature.

Incidentally, hardly any contracts require notarization today. Notary publics or notaries, once important officials who were specially authorized to draw up contracts and transcribe official proceedings, act now mostly to administer oaths and to authenticate documents by attesting or certifying that a signature is genuine. Many commercial contracts, such as promissory notes or loan contracts, are routinely notarized with the notary's signature and seal to ensure that they are authentic, even where this is not strictly required. Many technical documents required by law, such as certificates of incorporation and real property deeds, must be notarized if they are going to be recorded in a local or state filing office.

OFFER AND ACCEPTANCE

Offer and acceptance are the fundamental parts of a contract, once capacity is established. An **offer** is a communication by an offeror of a present intention to enter a contract. (The **offeror** is the person

making the offer.) It is not simply an invitation to bargain or negotiate. For the communication to be effective, the **offeree** (the one who is receiving the offer) must receive it. In a contract to buy and sell, for an offer to be valid, all of the following must be clear:

- Who is making the offer?
- What is the subject matter of the offer?
- How many of the subject matter does the offer involve (quantity)?
- How much is offered (price)?

Let's say you told your friend, "I'll sell you my mauve-colored Edsel for one thousand dollars." You're making the offer, your friend is receiving it, and the car is the subject matter. Describing the car as a mauve Edsel makes your friend reasonably sure that both of you are talking about the same car (and only one of them). Finally, the price is $1,000. It's a perfectly good offer.

Advertisements are not offers, as much as they seem like it. Instead, courts usually consider advertisements an "expression of intent to sell" or an invitation to bargain. We will discuss this further in chapter 5.

Sidebar

GIVE AND TAKE

A contract can only come about through the bargaining process, which may take many forms. This chapter discusses the definitions of consideration, offer, and acceptance. All the principles discussed here will have to be present, in some form, in any contract.

An offer doesn't stay open indefinitely, unless the offeree has an **option**, which is an irrevocable offer (discussed below). Otherwise, an offer ends when:

- the time to accept is up -- either a "reasonable" amount of time or the deadline stated in the offer;
- the offeror cancels (revokes) the offer;
- the offeree rejects the offer;
- the offeree dies or is incapacitated.

An offer is also closed, even if the offeree has an option, if:

- a change in the law makes the contract illegal;
- something destroys the subject matter of the contract (see below);

Note that there are special kinds of contracts called options. An option is an agreement, made for consideration, to keep an offer open for a certain period. For example, in return for a fifty-dollar payment today, you might agree to give your friend until next Friday to accept your offer to sell her your Edsel for $1,000. Now you have an option contract. The fifty dollars is not a down payment or

a deposit, but the price of the option. Selling an option puts a limit on your ability to revoke an offer, a limit that the **optionee** (the option-holder) bargains for with you in return for the fifty dollars.

Acceptance

A contract is not complete unless an offer is accepted. But what, exactly constitutes the acceptance of an offer? **Acceptance** is the offeree's voluntary, communicated agreement or assent to the terms and conditions of the offer. **Assent** is some act or promise of agreement. An easy example of an assent might be your friend saying, "I agree to buy your mauve Edsel for one thousand dollars."

Generally, a valid acceptance requires that every material term agreed to be the same as in the offer. In addition, if the offer requires acceptance by mail, you must accept by mail for the offer to be effective. Be aware that under the **mailbox rule**, an offer accepted by mail is usually effective when you put the letter in the mailbox, not when it is received -- unless the terms for acceptance state otherwise. If there's no such requirement, you just have to communicate your acceptance by some reasonable means (not by carrier pigeon, smoke signals or Achanneling@ but by telephone, mail, e-mail or facsimile). On the other hand, an assent that is not quite so specific but is crystal-clear in its meaning would also suffice -- such as, in the Edsel example, saying, "It's a deal. I'll pick it up tomorrow." The standard is whether a reasonable observer would think there was an assent.

In most cases, silence does not constitute acceptance of an offer. It isn't fair to allow someone

to impose a contract on you unless you go out of your way to stop it. Hence your cable TV company cannot force a contract for additional services on you simply because you failed to reject its offer. Yet there are circumstances where failure to respond may have a contractual effect. Past dealings between the parties, for example, can create a situation in which silence constitutes acceptance. Suppose a fire insurance company, according to past practice to which you have assented, sends you a renewal policy (which is in effect a new contract for insurance) and bills you for the premium. If you kept the policy but later refused to pay the premium, you would be liable for the premium. This works to everyone's benefit: If your house burned down after the original insurance policy had expired but before you had paid the renewal premium, you obviously would want the policy still to be effective. And the insurer is protected from your deciding to pay the premium only when you know you have sustained a casualty loss.

On the other hand, speechless acts *can* constitute an acceptance. Any conduct that would lead a reasonable observer to believe that the offeree had accepted the offer qualifies as an acceptance. Suppose you say, "Ed, I will pay you fifty dollars to clean my garage on Sunday at nine o'clock a.m." If Ed shows up at nine o'clock a.m. on Sunday and begins cleaning, he adequately shows acceptance (assuming you're home or you otherwise would know he showed up).

To take another example, you don't normally have to pay for goods shipped to you that you didn't order (a later section will discuss this in more detail). You otherwise would only have to allow

them to be taken back at no cost to you. But if you owned a shop and you put them on display in your store and sold them, you would have accepted the offer to buy them from the wholesaler and you would be obligated to pay the invoice price. Sometimes this is called an **implied** (as opposed to an **express**) contract. Either one is a genuine contract.

Sidebar

The Reasonable Person

Throughout this and any other law book, the word "reasonable" will appear many times. Very often you'll see references to the **reasonable man** or the **reasonable person**. Why is the law so preoccupied with this mythical being?

The answer is that no contract can possibly predict the infinite number of disputes that might arise under it. Similarly, no set of laws regulating liability for personal or property injury can possibly foresee the countless ways human beings and their property can harm other people or property. Since the law can't provide for every possibility, it has developed the standard of the "reasonable person" to furnish some uniform standards and to guide the courts.

Through the fiction of the "reasonable person," the law creates a standard that the judge or jury may apply to each set of circumstances. It is a standard that reflects community values, rather than the judgment of the people involved in the actual case. Thus a court might decide whether an oral contract was formed by asking whether a "reasonable person" would conclude from people's actions that one did exist. Or the court might decide an automobile accident case by asking what a "reasonable person" might have done in a particular traffic or hazard situation.

A contract usually is Ain effect@ as soon as the offeree transmits or communicates the acceptance -- unless the offer has expired or the offeror has specified that the acceptance must be *received* before it is effective, or before an option expires (as discussed previously). In these situations, there's no contract until the offeror receives the answer, and in the way specified, if any.

---Sidebar

NON-ACCEPTANCE

An **agreement to agree** is seldom a contract**,** because it suggests that important terms are still missing. Rarely will a court supply those terms itself. An agreement to agree is another way of saying

that there has not yet been a meeting of the minds, although the parties would like there to be.

Another common question people have, as funny as it sounds, is whether a joke can be an offer. That depends on whether a reasonable observer would know it's a joke, and on whether the acceptance was adequate. In our Edsel example, you probably couldn't get out of the contract by saying, "How could you think I'd sell this for $1,000? I meant it as a joke!" On the other hand, if someone sued you because you "backed out" on your "promise" to sell her France for fifteen dollars, the joke would be on her -- no one could have reasonably thought you were serious.

Conditions

Most contracts have conditions. People often use the word "condition" to mean one of the terms of a contract. But a more precise definition is that a **condition** is an event that has to occur before one or both parties must perform.

A condition can be a promise. For example, if your friend, from out earlier case, had said, "I'll buy your mauve Edsel only if you deliver it to me by midnight," and you accept that condition, you have both promised him delivery by midnight and made that a condition of the contract.

On the other hand, many conditions involve uncertain events not under the direct control of the

parties to the contract. Thus neither of them can promise anything about the condition, but the conditions still must be fulfilled for the contract to go forward. Examples are conditioning a home purchase on obtaining financing, on the sale of the buyer's present home, or on an acceptable home inspection report.

Consideration

In order for a contract to exist, both sides must give some consideration. There is a crucial principle in contract law called **mutuality of obligations**. It means that both sides have to be committed to giving up something or doing something. If either party reserves an unqualified right to bail out, that person's promise is illusory: no promise at all**.**

Sidebar

IN CONSIDERATION

The doctrine that consideration is critical to formation of a contract came about in the last few centuries. Until then elaborate formality rather than consideration was the chief requirement. The

necessary formalities were a sufficient signed writing, a seal or other testation of authenticity, and delivery to whomever would have the rights under the contract. A seal could be an impression on wax or some other surface, bearing the mark (often found on a Asignet ring@) of the person making the promise. The vestiges of the seal remain in some contracts, where the initials "L.S." (for the Latin *locus sigilli*, "place of the seal"), or simply the word "seal," is printed to represent symbolically the authentication of the contract's execution. Even today, traditional Jewish wedding contracts are made on these formal bases: a writing by the groom, an attestation by witnesses, and delivery (also witnessed) to the bride.

There is no minimum amount of consideration required to effect a contract. A price is only how people agree to value something, so there's no absolute standard of whether a price is fair or reasonable. The courts presume that people will only make deals that they consider worthwhile. So if you make a contract to sell your car for one dollar, a court will probably enforce it. (But don't sell it for $1,000 and just report a one-dollar sale to the state to avoid paying the full sales tax. It's unethical, illegal, and dangerous: many states have systems in place to check for just such abuses.) The exception is something that would "shock the conscience of the court." The idea of unconscionability will be discussed later in this book in chapter 3.

Consideration is any promise, act, or transfer of value that induces a party to enter a contract. Consideration is a bargained-for benefit or advantage, or a bargained-for detriment or disadvantage. A benefit might be receiving $10. First dibs on Super Bowl tickets might be an advantage. A disadvantage may involve promising not to do something, such as a promise not to sue someone. For these purposes, even quitting smoking, done with the reasonable expectation of some reward or benefit from someone else, is regarded as a detriment: Even though it's good for your health, it cost you effort that you otherwise would not have made. And even if it were effortless, your commitment to forbear from engaging in lawful conduct would still constitute consideration.

For example, you could agree to give your car to your friend in exchange for her promise that she'll stop letting her schnauzer out late at night. Your friend is giving up what is presumably her right to let her dog out any time she wants. In return, you are giving up that Edsel. Other types of consideration include a promise to compromise an existing dispute.

Consideration has to be a *new* obligation, because someone who promises to do what he or she is already obligated to do hasn't suffered any detriment, or bestowed anything the other party wasn't already entitled to.

For example, suppose you agree to have a contractor paint your house this Thursday for $500. Before starting, though, his workers demand higher wages. He tells you on Wednesday night that he settled the strike but now the job will cost $650. You need the house painted before you leave town

on Friday, and there's no time to hire another contractor, so you agree to the new price. But the new "agreement" (the new price) is not enforceable by him. Under the original contract, he already had to paint your house for $500. He should have figured the possible increased costs into the original price. You didn't get anything of benefit from the modified "contract," since you already had his promise to paint the house. There is no new contract because there is no new consideration. Therefore, you only owe $500 -- the old agreement remains in effect. Along the same lines, police officers are never entitled to reward money posted for catching fugitives or turning in information leading to someone=s conviction. That=s their job.

Just because consideration has to be new doesn=t mean a contract can never be voluntarily renegotiated. It only means that no one can force another party to renegotiate by taking advantage of an existing agreement. In the housepainting example, you may agree to a renegotiation even though it would technically not be enforceable. Perhaps you think the painter "deserved" more than he had agreed to take, or want to maintain a good to relationship with him. (Considerations like these are what motivate many sports teams to "renegotiate" their stars' salaries. Though they have no legal obligation to do so, they nonetheless may decide to keep their stars "happy.")

While it=s true you can go to the other party and ask for more money, keep in mind that whenever you get involved in a deal, you are taking a risk that it might be less beneficial for you than you planned when you agreed to the contract terms. The other party doesn't have to ensure your

profit, unless the two of you included that in your bargain.

Based on the rule of consideration, a promise to make a gift is not usually enforceable, if it truly is only a promise to make a gift, because a gift lacks the two-sided obligation discussed above. But if the person promising the gift is asking for anything in return, even by implication, a contract may be formed. The key, again, is consideration.

Reliance

We said earlier that consideration is a two-way street, and that both parties must get some for a contract to be formed. There is an exception to that rule. Sometimes a contract will be formed by the reliance of one party on another person=s promise, even if the one making the promise hasn=t gained anything. The concept of **reliance** is that a contract may be formed if one party reasonably relies on the other's promise. That means that he or she does more than expect to receive what was promised. He or she has to do something that wouldn't have been done, or fail to do something that would have been done, but for the promise. If that reliance causes some loss, he or she may have an enforceable contract.

Suppose that rich Aunt Alice loves your kids. On previous occasions she has asked you to buy them expensive presents and has reimbursed you for them. This past summer, she told you she would like you to build a swimming pool for the kids, and send her the bill. You did so, but moody

Aunt Alice changed her mind. Now she refuses to pay for the pool, and claims you can't enforce a promise to make a gift. The pool, however, is no longer considered a gift. You acted to your detriment in reasonable reliance on her promise, by taking on the duty to pay for a swimming pool you would not normally have built. Aunt Alice has to pay if you prove that she induced you to build the pool, especially if this understanding was consistent with many previous gifts. Remember, however, that you still have to live with your Aunt Alice.

Agents

You can have someone enter into a contract on your behalf, but only with your permission. The law refers to such an arrangement as **agency**. We couldn't do business without it. For example, when you buy a car, you bargain and finally cut a deal with the salesperson. But she doesn't own the car she's selling you. She might not even have a car. She is an **agent**, someone with the authority to bind someone else -- in this case, the car dealership -- by contract. The law refers to that someone else as the **principal**. Most of the sales people you deal with are agents.

As long as agents do not exceed the authority granted them by their principals, contracts they make bind their principals as if the principals had made the contracts themselves. If something went wrong with the contract, you would sue the principal -- not the agent -- if you couldn't resolve the dispute in a friendly manner. An agent normally does not have any personal obligation.

While acting on behalf of principals, agents are required to put their own interests after those of the principal. Therefore, they may not personally profit beyond what the principal and agent have agreed to in their agency contract. That means they cannot take advantage of any opportunity which, under the terms of the agency, should be exploited for the principal.

When an agent exceeds her authority, there are a number of factors that determine whether the contract can be enforced against the principal. Under the doctrine of apparent authority, if the person she's dealing with doesn't reasonably understand that she's exceeding her authority, the principal may be bound by the contract negotiated by the agent. If the other person was not being reasonable in believing that the agent was acting within her authority, the contract will only be enforceable against the principal if the principal has knowingly permitted the agent to do this sort of thing in the past.

What is reasonable belief in the scope of the agent=s authority? Suppose the teenage boy wearing a service-station uniform and a nose-ring who fills your gas tank and checks your oil -- and who appears to be an agent, to some limited degree, of the service station -- offers to sell you the whole service station in return for the sleek mauve Edsel you are driving. It's not reasonable for you to assume he has that power when common sense tells you he can only sell you his boss's gasoline and oil for a fixed price.

In contrast, if an insurance agent wrote you an insurance policy from her company that exceeded the policy amount she was authorized to write, but the insurer never told you this, you

would be acting reasonably to assume she was authorized, and you probably would be entitled to collect on a claim above his limit.

Sidebar

AGENTS WHO EXCEED THEIR AUTHORITY

On occasion, while making a contract, an agent might exceed the authority granted by the principal. An example might involve an automobile salesperson who signs a contract on behalf of a car dealer which, without the dealer's authority, gives the customer a warranty for 40,000 extra miles. In that case, the dealer might very well be bound by the contract.

Delegations and Assignments

You can transfer your duties under a contract to someone else, unless the contract specifically prohibits such a transfer. The law refers to a transfer of duties or responsibilities as a **delegation**. If, however, someone contracts with you because of a special skill or talent only you have, you may not be able to transfer your duty. Such cases are quite rare. There are arguably no car mechanics who

are so good at tuning an engine that they may not delegate someone else to do it for them -- unless they specifically promise to do it themselves. On the other hand, if you hire specific entertainers to perform at your wedding, they may not send other entertainers (no matter how talented) as substitutes without your permission.

A transfer of rights, called an **assignment**, is more flexible than a transfer of duties. For example, you may wish to transfer the right to receive money from a buyer for something you have sold. Generally, a contract right is yours to do as you wish with it, as long as you didn't agree in the contract not to assign the right. You can sell it or give it away, though most states require you to put an assignment in writing, especially if it is a gift.

There are exceptions to the rule that assignments may be made freely. If an assignment would substantially increase the risk, or materially change the duty of the other party to the contract, the contract may not be assignable, even if its terms contain no explicit agreement to the contrary. Such an assignment would be regarded as unfairly upsetting the expectations the other party had when he or she entered the contract, and so that party would no longer be obligated by the terms of the contract.

For example, suppose you made a contract for fire insurance on a garage for your Edsel. Then a notorious convicted arsonist and insurance cheat contacted you upon release from prison and asked you to sell him the garage and assign him your rights under the garage's fire insurance policy.

You would probably both be in for a disappointment, even if the insurance policy didn't prohibit assignment. Since the insurer made its decision to insure in part based on your solid citizenship, insuring the arsonist would greatly increase the insurer=s burden by exposing it to a risk it never anticipated.

We=ve discussed some very basic ideas in contracts. But this is only half the story. The next chapter deals with situations where a contract may be unenforceable even when the elements of capacity, offer, acceptance and consideration are present, but something fundamentally unfair or illegal is going on.

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