CONTRACTS: BASIC PRINCIPLES

- **Contract:** An agreement between two or more parties to perform or to refrain from some act now or in the future.

- **Requisites for Contract Formation**
  - **Agreement:** One party must *objectively* intend to make an *offer* to enter into an agreement, and the other party must *accept* the terms of the offer;
  - **Consideration:** Something of value received or promised, to convince a party to agree to the deal;
  - **Contractual Capacity:** Both parties must be competent to enter into the agreement;
  - **Legality:** The contract’s purpose must be to accomplish some goal that is legal and not against public policy;
  - **Genuineness of Assent:** The apparent consent of both parties must be genuine; and
  - **Form:** The agreement must be in whatever form (e.g., written, under seal, etc.) the law requires.
UNILATERAL AND BILATERAL CONTRACTS

Every contract involves at least two parties -- the **offeror/promisor**, who makes the offer/promise to perform, and the **offeree/promissee**, to whom the offer/promise is made.

**Bilateral Contract:** A bilateral contract arises when a promise is given in exchange for a promise in return (e.g., X promises to deliver a car to Y, and Y promises to pay X an agreed price). In a bilateral contract, the parties are both promisors and promisees.

**Unilateral Contract:** A unilateral contract arises when an offer can be accepted only by the offeree’s performance (e.g., X offers Y $15 to mow X’s yard). Under the modern-day rule, once the offeree has substantially performed the act (the acceptance), the offeror cannot **revoke** the offer for a reasonable period of time.
EXPRESS AND IMPLIED CONTRACTS

- **Express Contract:** A contract in which the terms of the agreement are fully and explicitly stated orally or in writing.

- **Implied-in-Fact Contract:** A contract formed in whole or in part by the conduct (as opposed to the words) of the parties. In order to establish an implied-in-fact contract,
  
  1. the plaintiff must have furnished some service or property to the defendant,
  
  2. the plaintiff must have reasonably expected to be paid and the defendant knew or should have known that a reasonable person in the plaintiff’s shoes would have expected to be paid for the service or property rendered by the plaintiff, and
  
  3. the defendant must have had the opportunity to reject the services or property and failed to do so.

- **Quasi or Implied-in-Law Contract:** A fictional contract imposed on parties by a court in the interests of fairness and justice, typically to prevent the **unjust enrichment** of one party at the expense of the other.
FORMAL AND INFORMAL CONTRACTS

- **Formal Contract:** A contract that requires a special form or method of formation (creation) in order to be enforceable.

- **Contract Under Seal:** A formalized writing with a special seal attached.

- **Recognizance:** An acknowledgment in court by a person that he or she will perform some specified obligation or pay a certain sum if he or she fails to perform (e.g., personal recognizance bond).

- **Negotiable Instrument:** A check, note, draft, or certificate of deposit -- each of which requires certain formalities.

- **Letter of Credit:** An agreement to pay that is contingent upon the receipt of documents (e.g., invoices and bills of lading) evidencing receipt of and title to goods shipped.

- **Informal Contract:** A contract that does not require a specified form or method of formation in order to be valid.

- The vast majority of contracts are informal.
EXECUTION AND VALIDITY OF CONTRACTS

- **Executed Contract:** A contract that has been completely performed by both (or all) parties. By contrast,

  - An *executory contract* is a contract that has not yet been fully performed by one or more parties.

- **Valid Contract:** A contract satisfying all of the requisites discussed earlier -- agreement, consideration, capacity, legal purpose, assent, and form. By contrast,

  - A *void contract* is a contract having no legal force or binding effect (e.g., a contract entered into for an illegal purpose);

  - A *voidable contract* is an otherwise valid contract that may be legally avoided, cancelled, or annulled at the option of one of the parties (e.g., a contract entered into under duress or under false pretenses); and,

  - An *unenforceable contract* is an otherwise valid contract rendered unenforceable by some statute or law (e.g., an oral contract for the transfer of an interest in real estate).
The key to contract interpretation is to give effect to the **intent of the parties** as expressed in their agreement.

Intent is generally to be ascertained **objectively** -- by looking at:

(1) the **words** used by the parties in the agreement,

(2) the **actions** of the parties pursuant to the agreement, and

(3) the **circumstances surrounding** the agreement

as they would be interpreted by a **reasonable person** -- rather than the parties’ **subjective** intentions (usually expressed after the fact).

**The Plain Meaning Rule:** When a contract is clear and unequivocal, a court will enforce it according to its plain terms, set forth on the face of the instrument, and there is no need for the court either to consider extrinsic evidence or to interpret the language of the contract.
RULES OF INTERPRETATION - PART I

- Rules of Interpretation: When a contract contains ambiguous or unclear terms, a court will resort to one or more of the following rules in order to determine and give effect to the parties’ intent.

  - Insofar as possible, the contract’s terms will be given a reasonable, lawful, and effective meaning.

  - The contract will be interpreted as a whole and its various provisions will be “harmonized” to yield a consistent expression of intent.

  - Negotiated terms will be given greater consideration than standard-form, or “boiler-plate,” terms.

  - A non-technical term will be given its ordinary, commonly accepted meaning, and a technical term will be given its technical meaning, unless the parties clearly intended something else.

  - Specific terms will prevail over general terms.

  - Handwritten terms prevail over typewritten terms, which, in turn, prevail over printed terms.
RULES OF INTERPRETATION - PART II

■ When the language used in a contract has more than one meaning, any ambiguity is construed against the drafting party.

■ An ambiguous contract should be interpreted in light of pertinent usage of trade in the locale and/or industry, the course of prior dealing between the parties, and the parties’ course of prior performance of the contract.

■ Express terms are given preference over course of prior performance, which is given preference over course of dealing, which is given preference over usage of trade.

■ Words are given preference over numbers or symbols.