



Joseph Hobson

Shareholder

503-540-4269 Direct

jhobson@schwabe.com

CONTRACTS

DEFINITION OF A CONTRACT

An agreement between two or more parties competent for that purpose, upon a sufficient consideration, to do or not to do a particular thing which lawfully may be done.

WHAT IS A CONTRACT?

- Offer
- Acceptance
- Mutual Assent
- Consideration

OFFER

- A true offer is a promise to do something, as distinguished from a mere expression of intention or general willingness to do something, on the happening of a particular event or in return for something to be received
- It must be intended of itself to create a legal relation on acceptance
- It must be capable of creating a definite obligation
- An offer creates a power of acceptance in the offeree
- The offer can only be accepted by the offeree

OFFER CONT.

- To be an offer it must be so certain that upon an unqualified acceptance the nature and extent of the obligation may be determined with reasonable certainty
- When the offer leaves an essential term for future negotiations the acceptance of the offer does not create a contract
- Unless the offer provides that it will be open for a certain time, the power of acceptance may be terminated by revoking the offer any time before acceptance

OFFER CONT.

- A price quote is an invitation to make an offer, not an offer itself
- An advertisement is not an offer. It is a request to consider, examine and negotiate
- Publication of a reward is an offer accepted by performing the requested act

MUTUAL ASSENT

- There must be a meeting of the minds
- The parties must manifest agreement on all essential terms
- Mutual assent is generally demonstrated by offer and acceptance

CONSIDERATION

- There must be consideration which consists of the accrual to one party of some right, interest, profit or benefit or some forbearance, detriment loss or responsibility given, suffered or undertaken by the other.
- Both parties must give consideration for the performance by the other party.
- The consideration must be certain
- The consideration must be legal
- The consideration must be adequate and sufficient
- A promise made without consideration may be binding when the promisee acts or refrains from acting in reliance on the promise if the promisor should have understood that the promise would induce such action and there has been a substantial change in position (Promissory Estoppel)

LAND SALE CONTRACTS

- Date
- The parties
- The property
 - Real Property
 - Personal Property
- The purchase price
- Seller agrees to sell the property to purchaser and purchaser agrees to buy the property from seller on the terms and conditions set forth herein

LAND SALE CONTRACTS CONT.

- How the purchase price will be paid
 - When
 - Where
- Type of deed on fulfilment
- Title exceptions
- Existing tenants
- Other outstanding rights
- Closing
- Prorates
- Possession
- Assignment

LAND SALE CONTRACTS CONT.

- Maintenance and Alteration
- Improvements
- Prohibited activities
 - Nuisance
 - Illegal
- Timber
- Minerals
- Hazardous substances
- Water Rights

LAND SALE CONTRACTS CONT.

- Taxes
- Liens
- Insurance
 - Property Damage
 - Liability
- Reserves
- Compliance with prior indebtedness
- Indemnification
- Representation, warranties and covenants
- Authority
- Brokers

LAND SALE CONTRACTS CONT.

- Title Insurance
- Partial Release
- Security Agreement in Personal Property
- Default
- Prior agreements
- Notice
- Applicable laws
- Applicable Venue
- Survival of covenants
- Memorandum of Contract

LEASES

- Date
- The Parties
- The Property
- The Term
- The Rent
- Landlord agrees to lease the property to Tenant and Tenant agrees to lease the property from Landlord on the terms and conditions set forth herein

LEASES CONT.

- Crop year
- Renewal
- Rent in advance or in arrears
- Landlord's Security Interest
- Termination for some special reason
- Alterations and improvements
- Manner of farming and conservation laws
- Eminent domain

LEASES CONT.

- Compliance with law and hazardous materials
- Chemicals and fertilizer
- Use of the property
- Agricultural programs

LEASES CONT.

- Irrigation and Water Rights
- Proprietary Crops
- Security Interest
- Option to Purchase
- Taxes
- Liens

LEASES CONT.

- Insurance
 - Property
 - Liability
- Indemnity
- Default
- Landlord's Right of Entry
- Quiet Enjoyment
- Assignment and Sublease
- Notices
- Holdover