

CHAPTER SEVEN

The Requirements of an Employment Contract

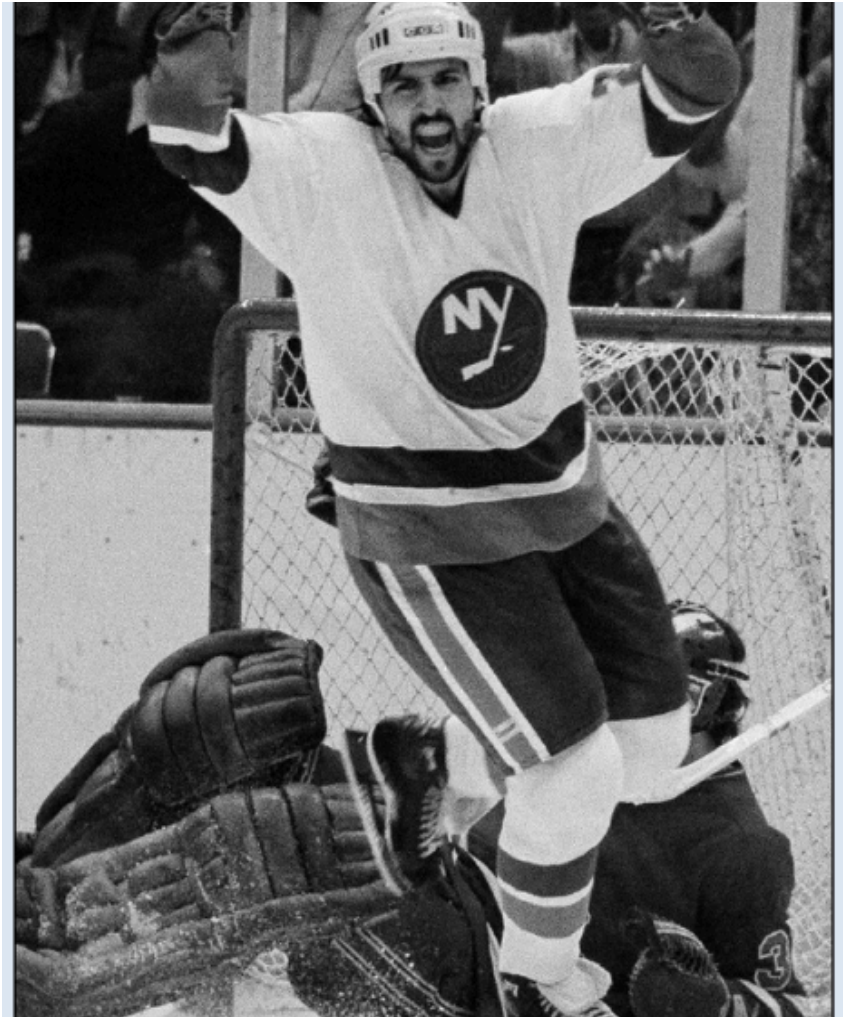
When is an agreement an enforceable legal contract?

For a contract to be legally enforceable it must meet the following requirements:

- I. Both parties have the capacity to enter into a legal contract
- II. Both parties have the intention to create a legally enforceable contract
- III. There is: (1) An Offer; (2) Acceptance of that Offer; and (3) Mutual Consideration

I. Capacity to Enter into a Contract

- A contract involves a meeting of the minds of two or more informed and consenting parties
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- If a party lacks the the capacity to understand what they are agreeing to, then a meeting of the minds cannot be said to exist
- If a person who lacks capacity enters into a contract, a court may decline to enforce the contract



II. Intention to Create a Legally Enforceable Contract

- There must be an intention to create a legal contract. Not every promise is intended to create a legally binding contract.
- In assessing whether such intention exists, Judges ask whether “**a reasonable person**” would assume that the intention existed.
 - This is called an **Objective Test**. A **Subjective Test** asks “What did this person *actually believe* at the time?”
- Consider the *Sarmiento v. Wilding & Rampage* decision on p. 90, dealing with intention of an unpaid intern to create an employment contract.

III. Elements of a Contract: Offer, Acceptance, and Mutual Consideration

A. Offer and Acceptance

- An employer will *offer* to employ a worker.
- The worker may *accept* that offer.

Dear Ms. Cheng:

We are pleased to offer you employment at Legal Grounds Coffee Shop commencing on Monday, January 19, 2015.

As an employee of Legal Grounds Coffee Shop, you are entitled to coverage under our employee health plan after completion of three months' continuous employment. Please find attached our standard Contract of Employment, which together with this offer letter, constitutes your employment contract. You should review the terms in that contract and consult a lawyer if you wish. Provided the terms are acceptable to you, please verify your acceptance of our offer of employment by signing on the space provided below. This offer of employment is open until 5 p.m. on Friday, January 16, 2015. If you have not returned a signed acceptance of this offer by that time, this offer expires.

We are excited to have you aboard! Legal Grounds Coffee Shop is a friendly, great place to work with a lot of opportunities to advance for hard-working, positive employees.

Sincerely,

Dylan L. Wilson

Dylan L. Wilson
Director of Human Resources

I _____ have read this offer letter and the attached Contract of Employment. I have sought legal advice or have elected voluntarily not to seek legal advice to review the contents of the contract. My signature below indicates my acceptance of this offer of employment and the terms set out in this offer letter and the attached Contract of Employment.

Employee's Signature

Date

III. Elements of a Contract: Offer, Acceptance, and Mutual Consideration

A. Mutual Consideration

- A contract must provide *something of value to both the employer and the employee.*
- What is the consideration flowing to employer and employees in a typical employment contract?
- Issues can arise when amendments made to contracts without mutual consideration (e.g. *Redjak v. Fight Network*; *Francic v. CIBC*)



Stilk v. Myrick (1809)

Questions and Issues for Discussion

1. Should an employment contract between an employer and an “infant” or a worker who is mentally incompetent always be unenforceable? Explain.
2. What is the difference between an “objective test” and a “subjective test”? How does this distinction matter when the courts assess whether there was an intention to create a legally enforceable employment contract?
3. Explain the significance of offer, acceptance, and mutual consideration in employment law.
4. Must an employment contract be in writing to be enforceable?
5. Jon’s employer asked him to sign a revised employment contract that was identical to the original contract, except that it gave the employer the right to terminate the contract by providing less notice than was required in the original contract. Jon signs the revised contract. Is the revised employment contract legally enforceable?