

4.10 BILATERAL CONTRACTS

C. EXISTENCE OF A LEGALLY ENFORCEABLE CONTRACT (Approved 5/98)

A contract is a legally enforceable agreement to do or not to do something.

Plaintiff claims that *[party]* and *[party]* entered into a contract to *[explain terms alleged]*. The defendant claims *[explain terms alleged]*. To establish that this contract existed, plaintiff must prove the following:

1. Meeting of the minds — the parties reached an agreement to (do what is alleged).
2. Offer and acceptance — one party communicated a willingness to enter into the agreement and the other party gave some outward indication that the agreement was accepted.
3. Consideration — each party gave or promised something of value to the other.
4. Certainty — the terms of the agreement were reasonably certain.

I will now explain these requirements in greater detail.

1. Meeting of the Minds:
For the parties to reach an agreement, they must have a meeting of the minds on the material terms. To have a meeting of the minds, both parties must understand what each is agreeing to do or not to do. The contract cannot be based upon the secret or hidden intention or understanding of one party.
2. Offer and Acceptance:
An offer occurs when one party communicates to another a willingness to enter into a contract and does so under circumstances justify the other party's understanding that if the offer is accepted, an agreement would result. An offer must be reasonably clear, definite and certain in all its essential terms.

An acceptance occurs when a party shows intent to agree to an offer. The acceptance may be made by words or conduct. It must be made before the offer is withdrawn or lapses, and it must match the terms of the offer exactly. A proposal to accept an offer on any different terms is not an acceptance of the original offer. If any new or different terms are proposed in response to the offer, the response is not an acceptance but rather a counter-offer. A counter-offer is a new offer by the party making that proposal. The new offer must in turn be agreed to by the party who made the original offer for there to be an acceptance.

3. Consideration:

Consideration is something of value. Thus for there to be a sufficient exchange of consideration, something of value must be bargained for. Consideration can be a benefit to one party or loss of a benefit to the other party. Its actual value in money terms is not important. But each party must have given or promised something of value to the other party. Where the contract provides for an exchange of promises, each promise is consideration for the other promise.

4. Certainty:

To satisfy the certainty requirement, the plaintiff must demonstrate that the terms were sufficiently clear so that what each party was to do or not to do could be determined with reasonable certainty.¹ In other words, the parties must be able to determine what it is that the contract requires them to do or not to do and to determine later whether those obligations have been satisfied.

¹*Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 435 (1992) (a contract arises from proper acceptance, and “must be sufficiently definite that the performance to be rendered by each party can be ascertained with reasonable certainty.”); *West Caldwell v. Caldwell*, 26 N.J. 9, 24-25 (1958); *Friedman v. Tappan Development Corp.*, 22 N.J. 523, 531 (1956); *Leitner v. Braen*, 51 N.J. Super. 31, 38-39 (App. Div. 1958).