Nature and Classification of Contracts

Contracts are the basis of many of people's daily activities. They provide the means for individuals and businesses to sell and otherwise transfer property, services, and other rights. The purchase of goods, such as books and automobiles, is based on sales contracts; the hiring of employees is based on service contracts; the lease of an apartment is based on a rental contract; and the sale of goods and services over the Internet is based on electronic contracts. The list is almost endless. Without enforceable contracts, commerce would collapse.

A contract is an agreement that is enforceable by a court of law or equity. The definition of a legally enforceable contract is: "If one party fails to perform as promised, the other party can use the court system to enforce the contract and recover damages or other remedy" (Cheeseman, 2003).

A few of the types of contracts that exist include the following:

- Bilateral, wherein the offeror's promise is answered with the offeree's promise of acceptance
- Unilateral, in which if the offeror's offer can be accepted, only by the performance of an act by the offeree
- Express contracts, which are stated orally or in written words
- Implied-in-fact contracts, in which agreement between parties has been inferred from their conduct

One final contractual element is equity. Equity is a doctrine that permits judges to make decisions based on fairness, equality, moral rights, and natural law. Equity was resorted to when an award of money damages at law would not be the proper remedy or when fairness required the application of equitable principles.

Contracts are voluntary agreements between the parties. One party makes the offer, and the other accepts it. Without mutual assent, there is no contract. Assent may be expressly evidenced by the words of the parties or implied from their conduct.

To be enforceable, a contract must be supported by consideration, which is broadly defined as something of legal value. It can consist of money, property, the provision of services, the forbearance of a right, or anything
else of value. Most contracts that are not supported by consideration are not enforceable. The parties, however, may voluntarily perform a contract that is lacking in consideration.

Generally, the law presumes that the parties to a contract have the requisite contractual capacity to enter into the contract. Certain persons do not have this capacity, however, including minors, insane persons, and intoxicated persons. The common law of contracts and many state statutes protect persons who lack contractual capacity from having contracts enforced against them. The party asserting incapacity or his or her guardian, conservator, or other legal representative bears the burden of proof.

An essential element for the formation of a contract is that the object of the contract be lawful. A contract to perform an illegal act is an illegal contract. Illegal contracts are void. That is, they cannot be enforced by either party to the contract. The term *illegal contract* is a misnomer, however, because no contract exists if the object of the contract is illegal. In addition, courts hold that unconscionable contracts are unenforceable. An *unconscionable contract* is one that is so oppressive or manifestly unfair that it would be unjust to enforce it.

**Reference**