

CONTRACTS

The *Restatement of Contracts* is probably as good an introduction into the topic of Contracts as anything else in the law. While contracts generally affect all components of society and all facets of life, the concepts applicable to contracts are not much different for public agencies than they are for private persons or entities. With a few exceptions, such as the statutory Interlocal Cooperation Act (RCW 39.34) and state constitutional constraints (e.g., the prohibition of cities making gifts or loans of public money, except for the necessary support of the poor or infirm – Const. art. 8, Sec. 7), the rules of contract law apply to public agencies. The *Restatement (Second) of Contracts* (1981) provides the following:

Sec. 17. Requirement of a Bargain

(1) Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.

(2) Whether or not there is a bargain a contract may be formed under special rules applicable to formal contracts or under the rules stated in Sec. 82- 94.

Comment:

a. Formal contracts. The types of contracts listed in Sec. 6 are not necessarily subject to the requirements of manifestation of assent and consideration. Where contracts under seal still have their common-law effect, neither manifestation of assent by the promisee nor consideration is essential. See Sec. 95, 104(1). Under Uniform Commercial Code Sec. 3-408, a negotiable instrument may be binding without consideration in some cases. Under Uniform Commercial Code Sec. 5-105, 5-106, neither manifestation of assent by the customer or the beneficiary nor consideration is necessary to the establishment of a letter of credit.

b. Bargains. Contracts of types enumerated in Sec. 6 can be used in many of the transactions essential to civilized life: e.g., sale or lease of land, goods, or intangible property; the rendering of services for hire; the lending of money. But in modern times less formal contracts are far more important. The typical contract is a bargain, and is binding without regard to form. The governing principle in the typical case is that bargains are enforceable unless some other principle conflicts. This chapter and the next deal with the two essential elements of a bargain: agreement and exchange.

c. “Meeting of the minds.” The element of agreement is sometimes referred to as a “meeting of the minds.” The parties to most contracts give actual as well as apparent assent, but it is clear that a mental reservation of a party to a bargain does not impair the obligation he purports to undertake. The phrase used here, therefore, is “manifestation of mutual assent,” as in the definition of “agreement” in Sec. 3. See also Comment b to Sec. 2. Topics 2-5, Sec. 18-70, explain this requirement.

d. “Sufficient consideration.” The element of exchange is embodied in the concept of consideration. In some cases a promise is not binding for want of consideration, despite the presence of an element of exchange. “Consideration” has sometimes been used to refer to the element of exchange, without regard to whether it is sufficient to make an informal promise

legally binding; the consideration which satisfies the legal requirement has then been called “sufficient consideration.” As the term “consideration” is used here, however, it refers to an element of exchange which is legally sufficient, and the word “sufficient” would therefore be redundant. The requirement of consideration is the subject of Sec. 71-81.

Additionally, “[m]utual assent is required for the formation of a valid contract.” *Yakima County (West Valley) Fire Protection District v. Yakima*, 122 Wn.2d 371, 388, 858 P.2d 245, 255 (1993). It has also been said that it is “essential” that the parties “manifest to each other their mutual assent to the same bargain at the same time. Mutual assent generally takes the form of an offer and an acceptance.” *Id.*, quoting *Pacific Cascade Corp. v. Nimmer*, 25 Wn. App. 552, 555–56, 608 P.2d 266, 268 (1980), review denied 93 Wn.2d 1030 (1980). The requirement as set forth in the *Restatement (Second) of Contracts* Sec. 23 (1981) is merely that “[i]t is essential to a bargain that each party manifest assent with reference to the manifestation of the other.”

The *Restatement* defines the acceptance of an offer as a manifestation of assent to the terms of the offer, and that the manifestation of acceptance by the offeree occurs in a manner invited or required by the offeror. *RESTATEMENT (SECOND) OF CONTRACTS*, Sec. 50 (1981); see also *Alexander & Alexander, Inc. v. Wohlman*, 19 Wn. App. 670, 578 P.2d 530 (1978) (noncompetition covenants were enforceable against employees in favor of purchaser of business). Washington caselaw defines acceptance as an expression of the intention, by word, sign, or writing, communicated to the person extending the offer. *Plouse v. Bud Clary of Yakima, Inc.*, 128 Wn. App. 644, 116 P.3d 1039 (2005) (trial court properly held that car dealer was bound by contract once it accepted buyer’s offer to purchase). By accepting an offer, the offeree has completed the manifestation of mutual assent. *Restatement (Second) of Contracts* Sec. 35 (1981).

Again, contract law applies pretty generally to public entities, and short of turning this Introduction into a comprehensive treatise, suffice it to say that the various nuances of contract law can come into play regarding public sector contracts.