

Farm Management

Limits to contracts



Country Counsel

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A CONTRACT is an agreement between two or more people in which each party receives something of value and gives something of value. Almost anything can be subject to a contract, but there are times when a contract may not be allowed under the law. The following is a discussion of a few of these exceptions to contracts.

■ **Capacity to enter into contract.** The law requires that any person entering into a contract must have the ability to understand they are engaging in a contractual relationship. The classic law school example is where a drunk guy in a bar agrees to sell his farm and signs a contract on the back of a napkin. The judge in the case said the seller was drunk and did not have the capacity to understand he was selling his farm. (Coincidentally, a contract can be drawn up on a napkin and be effective.)

Other conditions rendering a person incapacitated include senility, illness (physical or mental) and when under the influence of drugs (legal or illegal). If a person can prove he or she was incapacitated when signing a contract, the contract will be nullified.

■ **Minors.** A contract should not be signed with a minor. In Ohio, a minor is someone 17 years old and younger. A minor can enter into a contract and has the ability to withdraw from the contract. If the other party to the contract is an adult, the adult cannot cancel the contract. The classic example of this scenario is a 16-year-old who buys a car on an installment sale with the dealership. The kid wrecks the car and then voids the contract, leaving the dealership with a wrecked car and no more payments. The minor had the ability to walk away from the contract, but the dealership could not.

■ **Postnuptial agreements.** Most people are familiar with a prenuptial agreement. It is a contract that determines how assets are divided upon the termination of a marriage. Can a married couple enter into this same type of agreement after marriage? In Ohio, the answer is no. Ohio law does not recognize postnuptial agree-

ments, only prenuptial agreements. Many other states do, however, allow for post-nuptial agreements.

■ **Mutual assent.** A requirement of a contract is to have mutual assent, which is defined as a common understanding in the formation of the contract, commonly called a “meeting of the minds.” That is, both parties to a contract must have the same understanding of the nature of the contract. The classic law school example of this scenario involves a ship called the Peerless. A merchant agreed to ship goods to another merchant on the ship Peerless the next time she left port. However, unbeknownst to the two merchants, there were two ships named Peerless. Each merchant thought the contract related to a different Peerless, which caused the goods to ship at different times. A court ruled that the contract was void because the two merchants did not have a “meeting of the minds” as to which Peerless would ship the goods.

■ **Mutual mistake.** If both parties are mistaken as to a material fact of the contract, the contract may be voided. For example, seller and buyer agree to sell/buy a bred Black Angus cow. Later it is discovered that the cow is not bred and is a black Simmental. Since both the buyer and seller were mistaken about an important fact related to the cow, the contract could likely be voided. A mistake by only one party to the contract does not usually allow the contract to be voided unless both parties mutually agree.

Trying to void a contract based on defenses of lack of mutual assent or mistake is difficult and should only be attempted as a last resort. Obviously, the best course of action is to ensure that the parties to the contract are fully aware of the facts, terms and conditions of the contract.

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