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CONTRACT

Black's Law Dictionary (11th ed. 2019) (Approx. 25 pages)

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Black's Law Dictionary (11th ed. 2019), contract

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contract *n.* (14c) **1.** An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law <a binding contract>. **2.** The writing that sets forth such an agreement <a contract is valid if valid under the law of the residence of the party wishing to enforce the contract>.

“The term contract has been used indifferently to refer to three different things: (1) the series of operative acts by the parties resulting in new legal relations; (2) the physical document executed by the parties as the lasting evidence of their having performed the necessary operative acts and also as an operative fact in itself; (3) the legal relations resulting from the operative acts, consisting of a right or rights *in personam* and their corresponding duties, accompanied by certain powers, privileges, and immunities. The sum of these legal relations is often called ‘obligation.’ The present editor prefers to define contract in sense (3) ...” William R. Anson, *Principles of the Law of Contract* 13 n.2 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“A contract is a promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. This definition may not be entirely satisfactory since it requires a subsequent definition of the circumstances under which the law does in fact attach legal obligation to promises. But if a definition were attempted which should cover these operative facts, it would require compressing the entire law relating to the formation of contracts into a single sentence.” 1 Samuel Williston, *A Treatise on the Law of Contracts* § 1, at 1–2 (Walter H.E. Jaeger ed., 3d ed. 1957).

“The term ‘contract’ is also used by lay persons and lawyers alike to refer to a document in which the terms of a contract are written. Use of the word in this sense is by no means improper so long as it is clearly understood that rules of law utilizing the concept ‘contract’ rarely refer to the writing itself. Usually, the reference is to the agreement; the writing being

merely a memorial of the agreement.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 3 (4th ed. 1998).

3. A promise or set of promises by a party to a transaction, enforceable or otherwise recognizable at law; the writing expressing that promise or set of promises <when the lessor learned that the rooms were to be used for the delivery of blasphemous lectures, he declined to perform his contract>. See [Restatement \(Second\) of Contracts § 2 \(1979\)](#).

“The promissory element present in every contract is stressed in a widely quoted definition: ‘A contract is a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.’ [1 Samuel Williston, *Contracts* § 1.1 (4th ed. 1990).] This, like similar definitions, is somewhat misleading. While it is true that a promise, express or implied, is a necessary element in every contract, frequently the promise is coupled with other elements such as physical acts, recitals of fact, and the immediate transfer of property interests. In ordinary usage the contract is not the promise alone, but the entire complex of these elements.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 1.1, at 1–2 (4th ed. 1998).

4. Broadly, any legal duty or set of duties not imposed by the law of tort; esp., a duty created by a decree or declaration of a court <an obligation of record, as a judgment, recognizance, or the like, is included within the term “contract”>. 5. The body of law dealing with agreements and exchange <the general theory of contract>. 6. The terms of an agreement, or any particular term <there was no express contract about when the money was payable>. 7. Loosely, a sale or conveyance.

“Sometimes the word ‘contract’ is used to designate a transaction involving the exchange of goods or land for money. When money is exchanged for goods, this constitutes a sale. When money is exchanged for land, this constitutes a conveyance. Sales and conveyances may be the result of a previous contract but they are not the contracts in themselves. There is no undertaking or commitment to do or refrain from doing anything in the future. This indispensable element of contract is missing.” John Edward Murray Jr., *Murray on Contracts* § 2, at 5 (2d ed. 1974).

8. Loosely, an enforceable agreement between two or more parties to do or not to do a thing or set of things; a compact <when they finally agreed, they had a contract>. — **contract**, *vb.* — **contractual**, *adj.*

“A contract is an agreement in which a party undertakes to do, or not to do, a particular thing.” *Sturges v. Crowninshield*, 17 U.S. (4 Wheat) 122, 143 (1819).

- **absolute simulated contract**. (2012) *Civil law*. A simulated contract that the parties intend to be wholly ineffective. [La. Civ. Code art. 2026](#). See *simulated contract*.

- **accessory contract**. (1836) A contract entered into primarily for the purpose of carrying out a principal contract; esp., a contract entered into for the purpose of obtaining by surety, mortgage, etc. the fulfillment of the provisions of an earlier contract. • The principal types are suretyship, indemnity, pledge, warranty, and ratification. Cf. *principal contract*.

- **adhesion contract**. (1949) A standard-form contract prepared by one party, to be signed by another party in a weaker position, usu. a consumer, who **adheres** to the contract with little choice about the

terms. — Also termed *contract of* **adhesion**; *adhesive contract*; *adhesory contract*; *adhesionary contract*; *take-it-or-leave-it contract*; *leonine contract*.

“Some sets of trade and professional forms are extremely one-sided, grossly favoring one interest group against others, and are commonly referred to as contracts of **adhesion**. From weakness in bargaining position, ignorance, or indifference, unfavored parties are willing to enter transactions controlled by these lopsided legal documents.” Quintin Johnstone & Dan Hopson Jr., *Lawyers and Their Work* 329–30 (1967).

“Dangers are inherent in standardization ... for it affords a means by which one party may impose terms on another unwitting or even unwilling party. Several circumstances facilitate this imposition. First, the party that proffers the form has had the advantage of time and expert advice in preparing it, almost inevitably producing a form slanted in its favor. Second, the other party is usually completely or at least relatively unfamiliar with the form and has scant opportunity to read it — an opportunity often diminished by the use of fine print and convoluted clauses. Third, bargaining over terms of the form may not be between equals or, as is more often the case, there may be no possibility of bargaining at all. The form may be used by an enterprise with such disproportionately strong economic power that it simply dictates the terms. Or the form may be a take-it-or-leave-it proposition, often called a contract of **adhesion**, under which the only alternative to complete **adherence** is outright rejection.” E. Allan Farnsworth, *Contracts* § 4.26, at 296–97 (3d ed. 1999).

- **aleatory contract** (ay-lee-ə-tor-ee) [fr. Latin *aleator* “gambler,” fr. *alea* “the throwing of dice”] (1891) A contract in which at least one party's performance depends on some uncertain event that is beyond the control of the parties involved. • Most insurance contracts and life annuities are of this type. — Also termed *hazardous contract*; *wagering contract*. Cf. *certain contract*.

“A contract is aleatory when, because of the nature or according to the parties' intent, the performance of either party's obligation, or the extent of the performance, depends on an uncertain event.” [La. Civ. Code art. 1912](#).

- **alternative contract**. (1871) A contract in which the performing party may elect to perform one of two or more specified acts to satisfy the obligation; a contract that provides more than one way for a party to complete performance, usu. permitting that party to choose the manner of performance. — Also termed *alternative-methods-of-performance contract*.

- **assessment contract**. (1899) A contract in which the payment of a benefit is dependent on the collection of an assessment levied on persons holding similar contracts. See [assessment insurance under INSURANCE](#).

- **best-efforts contract**. (1956) A contract in which a party undertakes to use best efforts to fulfill the promises made rather than to achieve a specific result; a contract in which the adequacy of a party's performance is measured by the party's ability to fulfill the specified obligations. • Although the obligor must use best efforts, the risk of failure lies with the obligee. To be enforceable, a best-efforts term must generally set some kind of goal or guideline against which the efforts may be measured. See [BEST EFFORTS](#).

- **bilateral contract**. (1866) A contract in which each party promises a performance, so that each party is an obligor on that party's own promise and an obligee on the other's promise; a contract in which

the parties obligate themselves reciprocally, so that the obligation of one party is correlative to the obligation of the other. — Also termed *mutual contract*; *reciprocal contract*; (in civil law) *synallagmatic contract*. See [COUNTERPROMISE](#).

“In a bilateral contract a promise, or set of promises on one side, is exchanged for a promise or a set of promises on the other side. In a unilateral contract, on the other hand, a promise on one side is exchanged for an act (or a forbearance) on the other side. Typical examples of bilateral contracts are contracts of sale, the buyer promising to pay the price and the seller promising to deliver the goods. A typical example of a unilateral contract is a promise of a reward for the finding of lost property followed by the actual finding of the property.” P.S. Atiyah, *An Introduction to the Law of Contract* 32 (3d ed. 1981).

- **blanket contract.** (1894) A contract covering a group of products, goods, or services for a fixed period.
- **bona fide contract (boh-nə fld or fl-dee)** (18c) A contract in which equity may intervene to correct inequalities and to adjust matters according to the parties' intentions.
- **build-to-print contract.** (1986) A contract requiring the contractor to build a product according to exact technical specifications provided by the customer. • The design specifications are explicit and are often coupled with performance specifications, so the contractor has little discretion in how to perform. Much governmental contracting is build-to-print. — Also termed *design-specification contract*. Cf. *performance contract* (2).
- **certain contract.** (17c) A contract that will be performed in a stipulated manner. Cf. *aleatory contract*.
- **closed contract.** (1868) **1.** A contract whose terms constitute the entire agreement between the parties and may not be changed without the parties' consent. — Also termed *closed-book contract*. Cf. *open contract* (1). **2.** A contract for a fixed time. — Also termed (in sense 2) *fixed contract*. Cf. *open contract* (2).
- **closed-shop contract.** (1930) A labor agreement requiring an employer to hire and retain only union members and to discharge nonunion members. See [closed shop under SHOP](#).
- **collateral contract.** (1809) A side agreement that relates to a contract that, if unintegrated, can be supplemented by evidence of the side agreement; an agreement made before or at the same time as, but separately from, another contract. See [COLLATERAL-CONTRACT DOCTRINE](#).

“The term ‘collateral contract’ has no very precise meaning in the law. It is generally used as a label for a contract which is collateral, or by the side of, another contract. A great many examples of implied or constructive contracts created by the Courts are collateral in a broad sense ... [A]lthough the normal presumption is that the parties intend a written contract to be exclusive evidence of their intentions, it is always open to a party to show that in fact the writing did not exclusively represent their intentions, because of a ‘collateral’ contract made during the negotiations but not incorporated in the written instrument.” P.S. Atiyah, *An Introduction to the Law of Contract* 80–81, 161 (3d ed. 1981).

- **commutative contract (kə-myoo-tə-tiv or kom-yə-tay-tiv)** (1827) **1.** *Civil law.* A contract in which, at the time it is formed, the parties' obligations and advantages are certain and determinate. • This definition applied in Louisiana law before the civil code was revised in 1984. **2.** *Louisiana law.* A contract in which one party's performance is correlative to the performance of the other, so that nonperformance by either affords a defense to the other. [La. Civ. Code art. 1911](#). Cf. *independent contract*; *synallagmatic contract*.

- **conditional contract.** (17c) An agreement that is enforceable only if another agreement is performed or if another particular prerequisite or condition is satisfied. — Also termed *hypothetical contract*.
- **conditional sales contract.** See *retail installment contract*.
- **consensual contract.** (18c) *Hist.* A contract arising from the mere consensus of the parties, without any formal or symbolic acts performed to fix the obligation. • Although the consensual contract was known to the common law, it originated in Roman law, where it embraced four types of contracts in which informal consent alone was sufficient: (1) an agency agreement (*mandatum*), (2) a partnership agreement (*societas*), (3) a sale (*emptio venditio*), or (4) a letting or hiring (*locatio conductio*). Cf. *real contract*.

“[T]he peculiarity of these Consensual Contracts is that *no* formalities are required to create them out of the Pact. Much that is indefensible, and much more that is obscure, has been written about the Consensual Contracts, and it has even been asserted that in them the *consent* of the Parties is more emphatically given than in any other species of agreement. But the Consensual merely indicates that the Obligation is here annexed at once to the *Consensus*. The Consensus, or mutual assent of the parties, is the final and crowning ingredient in the Convention, and it is the special characteristic of agreements falling under one of the four heads of Sale, Partnership, Agency, and Hiring, that, as soon as the assent of the parties has supplied this ingredient, there is *at once* a Contract. The Consensus draws with it the Obligation, performing, in transactions of the sort specified, the exact functions which are discharged, in the other contracts, by the *Res* or Thing ...” Henry S. Maine, *Ancient Law* 322–23 (10th ed. 1884).

- **construction contract.** (1864) A contract setting forth the specifications for a building project's construction. • This type of contract is usu. secured by performance and payment bonds to protect both the owner and the subcontractors.
- **constructive contract.** See *quasi-contract*.
- **consumer contract.** (1909) A contract between a merchant seller and an individual who buys or contracts to buy goods that, at the time of contracting, are intended by the buyer to be used primarily for personal, family, or household purposes.
- **continuing contract.** (1828) A contract calling for periodic performances.
- **contract for deed.** (1825) See *installment land contract*.
- **contract for sale.** (1808) **1.** A contract for the present transfer of property for a price. — Also termed *contract of sale*; *sale contract*. **2.** A contract to sell goods at a future time. — Also termed (in sense 2) *contract to sell*.
- **contract for services.** (1840) A contract for a job undertaken by an independent contractor, as opposed to an employee.
- **contract implied in fact.** See *implied-in-fact contract*.
- **contract implied in law.** See *quasi-contract*.
- **contract in restraint of trade.** (1811) A contract that limits the free exercise of business or trade; esp., a contract stipulating that one who sells a business cannot open a similar business within a specified distance of the business being sold within a specified period.
- **contract of adhesion.** See *adhesion contract*.
- **contract of affreightment.** See [CONTRACT OF AFFREIGHTMENT](#).
- **contract of beneficence.** See *gratuitous contract*.

- **contract of benevolence.** See *gratuitous contract*.
- **contract of carriage.** See [CONTRACT OF AFFREIGHTMENT](#).
- **contract of employment.** See *employment contract*.
- **contract of indemnity.** See *indemnity contract*.
- **contract of insurance.** See [INSURANCE POLICY](#).
- **contract of marriage.** See *marriage contract*.
- **contract of pledge.** (18c) **1. PAWN. 2. Civil law.** A real contract by which a debtor gives a creditor property to hold as security for a debt or the performance of a promise. • The contract is also called a *pawn*, when the property is movable, and an *antichresis*, when the property is immovable. See (in sense 2) PAWN; ANTICHRESIS. Cf. *pignorative contract*.

“[A] pledge is a personal security in the Common law, while it is a real security in the Civil law. Hence, the contract of pledge is a personal contract in the Common law, and a real contract in the Civil law.” Henry Denis, *A Treatise on the Law of the Contract of Pledge as Governed by Both the Common Law and the Civil Law* 1 (1898).

“The contract of pledge is in general a contract wholly implied in law. No written contract is necessary, and generally none is made. If there be a written contract, it is generally made either to show that the transaction is a pledge and not a sale, or to provide a special mode for enforcing the lien. A mortgage under the registry laws must necessarily be made by a written transfer, while a pledge, though it may be constituted in writing, is ordinarily made by delivery of the property without any writing, the contract of the parties being wholly implied in law. A delivery of property as security for a debt without a written conveyance cannot be a mortgage, but must be a pledge.” Leonard A. Jones, *A Treatise on the Law of Collateral Securities and Pledges* 8 (Edward M. White ed., 3d ed. 1912).

- **contract of record.** (1855) A contract that is declared by a court and entered into the court's record. • Contracts of record include judgments, recognizances, and (in England) statutes staple.

“Contracts of record are not really contracts at all, but are transactions which, being entered on the records of certain courts called ‘courts of record,’ are conclusive proof of the facts thereby appearing, and could formerly be enforced by action of law as if they had been put in the shape of a contract.” 1 Stewart Rapalje & Robert L. Lawrence, *A Dictionary of American and English Law* 282 (1883).

“A contract of record is in point of fact no contract at all, and has nothing whatever to do with the law of contracts. These so-called contracts are the obligations incurred by a judgment or recognizance of a Court of Record. They came to be called contracts only because they were enforceable by the same type of action as was used for genuinely contractual cases in the old common-law system of procedure.” P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

- **contract of sale.** See *contract for sale* (1).
- **contract of service.** **1.** See [CONTRACT OF SERVICE](#). **2.** See *employment contract*.
- **contract of subscription.** See [SUBSCRIPTION](#) (3).
- **contract to pledge.** (1866) **1.** An agreement purporting to create a present pledge without a bailment. **2.** An agreement to make a future bailment for the purpose of security. See [PLEDGE](#) (3).

- **contract to satisfaction.** See *satisfaction contract*.
- **contract to sell.** See *contract for sale* (2).
- **contract *uberrimae fidei*** (yoo-ber-ə-mee fl-dee-l) (1916) A contract in which the parties owe each other duties with the utmost good faith.

“In a certain restricted group of contracts good faith is peculiarly necessary owing to the relationship between the parties, and in these cases — known as contracts *uberrimae fidei* — there is a full duty to disclose all material facts. The typical instance of such contracts is the contract of insurance. Here the duty to disclose all material facts to the insurer arises from the fact that many of the relevant circumstances are within the exclusive knowledge of one party, and it would be impossible for the insurer to obtain the facts necessary for him to make a proper calculation of the risk he is asked to assume without this knowledge.” P.S. Atiyah, *An Introduction to the Law of Contract* 221–22 (3d ed. 1981).

- **contract under hand.** (18c) *Archaic*. A contract entered into by individual signature by a duly authorized person, as opposed to a contract executed under seal or by deed.
- **contract under seal.** (1827) A formal contract that requires no consideration and has the seal of the signer attached. • A contract under seal must be in writing or printed on paper or parchment and is conclusive between the parties when signed, sealed, and delivered. Delivery is made either by actually handing it to the other party (or party's representative) or by stating an intention that the deed be operative even though it is retained in the possession of the party executing it. Modern statutes have mostly eliminated the special effects of a sealed contract. — Also termed *sealed contract*; *agreement under seal*; *special contract*; *deed*; *covenant*; *specialty*; *specialty contract*; *common-law specialty*. See **SEAL**. Cf. *sealed instrument* under **INSTRUMENT**.

“The only formal contract of English law is the *contract under seal*, sometimes also called a deed and sometimes a specialty. It is the only *formal contract*, because it derives its validity neither from the fact of agreement, nor from the consideration which may exist for the promise of either party, but from the *form* in which it is expressed.” William R. Anson, *Principles of the Law of Contract* 82 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“Contracts under seal also bear little resemblance to ordinary contracts, although here at least the liability is based on a promise. A contract under seal, that is to say a deed, ... is a written promise or set of promises which derives its validity from the form, and the form alone, of the executing instrument. In point of fact the ‘form’ of the deed is nowadays surprisingly elastic. The only necessities are that the deed should be intended as such, and should be signed, sealed, and delivered. The sealing, however, has now become largely a fiction, an **adhesive wafer** simply being attached to the document in place of a genuine seal. Similarly, ‘delivery’ is not literally necessary, provided that there is a clear intention that the deed should be operative.” P.S. Atiyah, *An Introduction to the Law of Contract* 31 (3d ed. 1981).

- **cost-plus contract.** (1920) A contract in which payment is based on a fixed fee or a percentage added to the actual cost incurred; esp., a construction contract in which the owner pays to the builder the actual costs of material and labor plus a fixed percentage over that amount.

- **cost-plus-percentage-of-cost contract.** (1961) A contract in which the contractor is reimbursed for all actual costs and paid an additional fixed percentage of those costs as compensation for work done. — Often shortened to *cost-plus contract*.
- **cost-plus-percentage-of-cost-plus-fee contract.** A contract in which the contractor is reimbursed for all actual costs, paid an additional fixed percentage of those costs, and paid an additional fee as compensation for work done. • The fee may be fixed or calculated as a percentage of costs.
- **de facto contract of sale.** (1918) A contract that passes property but is defective in some element.
- **dependent contract.** (1831) A contract conditioned or dependent on another contract.
- **deposit contract.** (1906) An agreement between a financial institution and its customer governing the treatment of deposited funds and the payment of checks and other demands against the customer's account.
- **design-specification contract.** See *build-to-print contract*.
- **destination contract.** (1958) A contract in which the seller bears the risk of loss until the goods arrive at the destination. [UCC § 2-509](#). Cf. *shipment contract*.
- **discharged contract.** See *void contract* (2).
- **divisible contract.** See *severable contract*.
- **dual contract.** (1849) One of two contracts entered by the same parties for the same transaction, sometimes so that one contract may be used to defraud a person or entity (such as a lender) as to the terms of the parties' actual agreement.
- **e-contract.** See [E-CONTRACT](#).
- **employment contract.** (1927) A contract between an employer and employee in which the terms and conditions of employment are stated. — Also termed *contract of employment*; *contract of service*; *service contract*.
- **engineering, procurement, and construction contract.** (1991) A fixed-price, schedule-intensive construction contract — typical in the construction of single-purpose projects, such as energy plants — in which the contractor agrees to a wide variety of responsibilities, including the duties to provide for the design, engineering, procurement, and construction of the facility; to prepare start-up procedures; to conduct performance tests; to create operating manuals; and to train people to operate the facility. — Abbr. EPC contract. — Also termed *turnkey contract*. See [SINGLE-PURPOSE PROJECT](#).
- **entire contract.** **1.** A nonseverable contract that cannot be supplemented by anything external to the contract. **2.** A contract that has been completely performed. **3.** See *indivisible contract*.
- **entire-output contract.** See *output contract*.
- **escrow contract.** (1908) The contract among buyer, seller, and escrow holder, setting forth the rights and responsibilities of each. See [ESCROW](#).
- **evergreen contract.** (1962) A contract that renews itself from one term to the next in the absence of contrary notice by one of the parties.
- **exclusive contract.** See [EXCLUSIVE-DEALING ARRANGEMENT](#).
- **executed contract.** (18c) **1.** A contract that has been fully performed by both parties. **2.** A signed contract.
- **executory contract** (eg-zek-yə-tor-ee) (18c) **1.** A contract that remains wholly unperformed or for which there remains something still to be done on both sides, often as a component of a larger transaction and sometimes memorialized by an informal letter agreement, by a memorandum, or by oral agreement.

“If a contract is wholly executory, and the legal duties of the parties are as yet unfulfilled, it can be discharged by mutual consent, the acquittance of each from the other's claims being the consideration for the promise of each to waive his own.” William R. Anson, *Principles of the Law of Contract* 138 (Arthur L. Corbin ed., 3d Am. ed. 1919).

2. Bankruptcy. A contract under which debtor and nondebtor each have unperformed material obligations and the debtor, if it ceased further performance, would have no right to the other party's continued performance.

- **express contract.** (17c) A contract whose terms the parties have explicitly set out. — Also termed *special contract*. Cf. *implied contract*.

- **financial contract.** *Securities.* An arrangement that (1) takes the form of an individually negotiated contract, agreement, or option to buy, sell, lend, swap, or repurchase, or other similar individually negotiated transaction commonly entered into by participants in the financial markets; (2) involves securities, commodities, currencies, interest or other rates, other measures of value, or any other financial or economic interest similar in purpose or function; and (3) is entered into in response to a request from a counterparty for a quotation, or is otherwise entered into and structured to accommodate the objectives of the counterparty to such an arrangement.

- **fixed contract.** See *closed contract* (2).

- **fixed-price contract.** (1922) A contract in which the buyer agrees to pay the seller a definite and predetermined price regardless of increases in the seller's cost or the buyer's ability to acquire the same goods in the market at a lower price.

- **formal contract.** (17c) A contract made through the observance of certain prescribed formalities. • Among the formal contracts are the contract under seal, the recognizance, the negotiable instrument, and the letter of credit. See *formal agreement under AGREEMENT*. Cf. *informal contract*.

- **form contract.** See *standard form contract*.

- **forward contract.** (1874) An agreement to buy or sell a particular nonstandardized asset (usu. currencies) at a fixed price on a future date. • Unlike a futures contract, a forward contract is not traded on a formal exchange. — Also termed *forward agreement*. Cf. **FUTURES CONTRACT**; *spot contract*.

- **futures contract.** See **FUTURES CONTRACT**.

- **gambling contract.** (1809) An agreement to engage in a gamble; a contract in which two parties wager something, esp. money, for a chance to win a prize. • Where gambling is legal, contracts related to legal gambling activities are enforceable. — Also termed *gaming contract*. See *wagering contract* (1).

“Generally, under or apart from statutes so providing, or prohibiting such contracts or transactions, gambling contracts and transactions are illegal and void and cannot be enforced; and such contracts are void ab initio ... A gambling contract is invalid, no matter what outward form it may assume, and no ingenuity can make it legal.” **38 C.J.S. Gaming § 26, at 138–39 (1996)**.

- **government contract.** (18c) A contract, esp. for the purchase of goods and services, to which a government or government agency is a party. See *procurement contract*.

- **gratuitous contract** (grə-t[y]oo-i-təs) (18c) **1.** A contract made for the benefit of a promisee who does not give consideration to the promisor. — Also termed *contract of beneficence*; *contract of benevolence*. Cf. *onerous contract*. **2. Civil law.** A contract in which one party promises to give a benefit to the other party without expecting or gaining any benefit in return. — Also termed *voluntary contract*.

- **grubstake contract.** (1888) A contract between two parties in which one party provides the grubstake — money and supplies — and the other party prospects for and locates minerals on public land. • Each party acquires an interest in the minerals as agreed to in the contract. Grubstake contracts are used chiefly in the western United States. In some states, such as Alaska, a request for grubstake money is considered the offer of a security and must be registered. — Also termed *grubstaking contract*.
- **guaranteed-sale contract.** (1980) A contract between a real-estate agency and a property owner in which the agency agrees to buy the property at a guaranteed price after a specified length of time if it has not been sold under the listing agreement. • The guaranteed price is usu. a substantial discount from the listed price. — Also termed *guaranteed-purchase contract*.
- **guaranty contract.** See [GUARANTY \(1\)](#).
- **hazardous contract.** See *aleatory contract*.
- **hedging contract.** (1848) A contract of purchase or sale that amounts to insurance against changing prices by which a dealer contracts to buy or sell for future delivery the same amount of a commodity as he or she is buying or selling in the present market.
- **hypothetical contract.** See *conditional contract*.
- **illegal contract.** (18c) A promise that is prohibited because the performance, formation, or object of the agreement is against the law. • Technically speaking, an illegal contract is not a contract at all because it cannot be enforced, so the phrase is a misnomer. Cf. *unenforceable contract*; *void contract*.

“An illegal contract is exceptionally difficult to define. It does not merely mean a contract contrary to the criminal law, although such a contract would indubitably be illegal. But a contract can well be illegal without contravening the criminal law, because there are certain activities which the law does not actually prohibit, but at the same time regards as contrary to the public interest and definitely to be discouraged, for instance, prostitution. While a void contract is not necessarily illegal, an illegal contract is often void. However, the consequences of an illegal contract differ somewhat from those usually produced by a simply void contract, so illegal contracts are usually accorded separate treatment.” P.S. Atiyah, *An Introduction to the Law of Contract* 38 (3d ed. 1981).

- **illusory contract.** (18c) An agreement in which one party gives as consideration a promise that is so insubstantial as to impose no obligation. • The insubstantial promise renders the agreement unenforceable.
- **immoral contract.** (18c) An agreement that so flagrantly violates societal norms as to be unenforceable.
- **implied contract.** (17c) **1.** An implied-in-law contract. See *quasi-contract*. **2.** An implied-in-fact contract. Cf. *express contract*.
- **implied-in-fact contract.** (1913) A contract that the parties presumably intended as their tacit understanding, as inferred from their conduct and other circumstances. — Also termed *contract implied in fact*; *inferred contract*.
- **implied-in-law contract.** (1932) See *quasi-contract*.
- **impossible contract.** (17c) An agreement that the law will not enforce because there is no feasible way for one of the parties to perform. See [IMPOSSIBILITY \(3\)](#).
- **indemnity contract.** (1835) A contract by which the promisor agrees to reimburse a promisee for some loss irrespective of a third person's liability. — Also termed *contract of indemnity*.

- **independent contract.** (1801) A contract in which the mutual acts or promises of the parties have no relation to each other, either as equivalents or as consideration. Cf. *commutative contract*.
- **indivisible contract.** (1808) A contract under which the parties' obligations are interdependent, so no party can demand performance from another unless it also performs or is ready and willing to do so. — Also termed *entire contract*.
- **inferred contract.** See *implied-in-fact contract*.
- **informal contract.** (1850) **1.** A contract other than one under seal, a recognizance, or a negotiable instrument; specif., that derives its force not from the observance of formalities but because of the presence in the transaction of certain elements that are usu. present when people make promises with binding intent — namely mutual assent and consideration (or a device other than consideration). • An informal contract may be made with or without a writing. Most modern contracts are informal. — Also termed *bargain*; *simple contract*. **2.** See *parol contract*. Cf. *formal contract*.

“In general, there are five essential elements to the formation of an informal contract. These are: (1) mutual assent; (2) consideration or some other validation device; (3) two or more contracting parties (no person may contract with himself); (4) parties having legal capacity to contract; (5) the absence of any statute or common-law rule declaring the particular transaction to be void. The fourth and fifth elements are essential to the creation of any contract, formal or informal. The first, second and third elements are essential to the formation of informal contracts.” John Edward Murray Jr., *Murray on Contracts* § 17, at 28 (2d ed. 1974).

- **innominate contract** (i-nom-ə-nit) (18c) *Roman & civil law*. A contract not classifiable under any particular name; a contract for which the law supplies nothing in addition to the express agreement of the parties. [La. Civ. Code art. 1914](#). • This type of contract was developed late in classical Roman law. Although the agreements were reciprocal, they did not become operational without at least part performance. — Also termed *innominate real contract*. Cf. *nominate contract*.
- **installment contract.** (1896) A contract requiring or authorizing the delivery of goods in separate lots, or payments in separate increments, to be separately accepted. • Under the UCC, this type of agreement will be considered one contract even if it has a clause stating that each delivery is a separate contract. [UCC § 2-612\(1\)](#).
- **installment land contract.** (1909) A contract for the sale of land providing that the buyer will receive immediate possession of the land and pay the purchase price in installments over time, but that the seller will retain legal title until all payments are made. — Also termed *contract for deed*; *land contract*; *land sales contract*.
- **integrated contract.** See [INTEGRATED CONTRACT](#).
- **interstate contract.** (1882) **1.** A contract whose parties are residents of different American states. **2.** A contract made between denizens of different nations. • Private international law may be used to resolve conflicts in such an agreement.
- **invalid contract.** (18c) An agreement that is either void or voidable. — Also termed *invalid agreement*.
- **investment contract.** See [INVESTMENT CONTRACT](#).
- **joint contract.** (17c) A contract in which two or more promisors are together bound to fulfill its obligations, or one in which two or more promisees are together entitled to performance. Cf. *severable contract*.
- **land contract.** See *installment land contract*.

- **land sales contract.** See *installment land contract*.
- **leonine contract.** See *adhesion contract*.
- **letter contract.** (1949) In federal contract law, a written contract with sufficient provisions to permit the contractor to begin performance.
- **leverage contract.** See [LEVERAGE CONTRACT](#).
- **literal contract.** (18c) **1.** *Roman law.* A type of written contract originally created by — and later evidenced by — an entry of the sum due on the debit side of a ledger, binding a signatory even though the signatory receives no consideration. • Literal contracts were often used for novations. See [LITTERIS OBLIGATIO](#).

“Though an obligation could be created by a literal contract in the time of Gaius, the so-called literal contract of Justinian was not, in itself, a means of *creating* an obligation, but was the *evidence* of an obligation created in some other way ... The true literal contract, as described by Gaius, may be defined as a means of creating an obligation to pay money by a fictitious entry ... in the creditor's account book ... with the consent of the intended debtor. A, with B's consent, enters the fact that B is indebted to him ... and thereupon B is under an obligation to pay, though no money has passed between them.” R.W. Leage, *Roman Private Law* 316–17 (C.H. Ziegler ed., 2d ed. 1930).

2. Civil law. A contract fully evidenced by a writing and binding on the signatory.

- **lump-sum contract.** (1911) A contract setting a fixed total price for a construction project.
- **marine contract.** See *maritime contract*.
- **maritime contract.** (17c) *Maritime law.* A contract that is recognized in admiralty jurisdiction. • In general, a maritime contract relates to a vessel in its use as such, to navigation on navigable waters, to transportation by sea, or to maritime employment. — Also termed *marine contract*.
- **marketing contract.** (1920) **1.** A business's agreement with an agency or other association for the promotion of sales of the business's goods or services. **2.** An agreement between a cooperative and its members, by which the members agree to sell through the cooperative, and the cooperative agrees to obtain an agreed price.
- **marriage contract.** (16c) A form of mutual consent required for a matrimonial relationship to exist according to the law of the place where the consent takes place. — Also termed *contract of marriage*.
- **mixed contract.** (17c) **1.** *Civil law.* A contract in which the respective benefits conferred are unequal. **2.** A contract for the sale of both goods and services. • The UCC may apply to a mixed contract if the predominant purpose is for the sale of goods.
- **mutual contract.** See *bilateral contract*.
- **naked contract.** See [NUDUM PACTUM](#).
- **nominate contract (nom-ə-nit)** (17c) *Civil law.* A contract distinguished by a particular name, such as sale, insurance, or lease, the very use of which determines some of the rules governing the contract and the contractual rights of the parties, without the need for special stipulations. • The contracts are generally divided into four types, real (arising from something done), oral (arising from something said), literal (arising from something written), and consensual (arising from something agreed to). [La. Civ. Code art. 1914](#). Cf. *innominate contract*.
- **nude contract.** See [NUDUM PACTUM](#).
- **nugatory contract.** (1838) A contract that is either wholly worthless to one party or of only trivial value to that party.

- **onerous contract.** (17c) *Civil law.* A contract in which each party is obligated to perform in exchange for the other's promise of performance. [La. Civ. Code art. 1909](#). Cf. *gratuitous contract*.
- **open contract.** (1839) **1.** A contract whose terms do not constitute the entire agreement between the parties and are subject to change or modification without mutual consent. Cf. *closed contract* (1). **2.** A contract that has no fixed end date but can continue indefinitely as long as all parties are satisfied with each other's performance. — Also termed *open-ended contract*. Cf. *closed contract* (2). **3.** A contract that has not been completely performed before being transferred to a nonoriginal party.
- **option contract.** See [OPTION \(2\)](#).
- **oral contract.** (18c) A contract that has been agreed to but not fully reduced to writing; *parol contract* (1).

“A simple contract in writing differs from a specialty chiefly in not being under seal. A written contract is one which, in all its terms, is in writing.

“A contract partly in writing and partly oral is, in legal effect, an oral contract. It occurs where an incomplete writing, or one expressing only a part of what is meant, is by oral words rounded into the full contract; or where there is first a written contract, and afterward it is changed orally.” Joel Prentiss Bishop, *Commentaries on the Law of Contracts* §§ 163–64, at 60 (1887).

- **output contract.** (1904) A contract in which a seller promises to supply and a buyer to buy all the goods or services that a seller produces during a specified period and at a set price. • The quantity term is measured by the seller's output. An output contract assures the seller of a market or outlet for the period of the contract. — Also termed *entire-output contract*. Cf. *requirements contract*.
- **parol contract** (pə-rohl or par-əl) (18c) **1.** A contract or modification of a contract that is not in writing or is only partially in writing. — Also termed *oral contract*; *parol agreement*; (loosely) *verbal contract*. **2.** At common law, a contract not under seal, although it could be in writing. — Also termed *informal contract*; *simple contract*. See [PAROL-EVIDENCE RULE](#).
- **pay-or-play contract.** (1924) A contract in which one party agrees to perform and the other agrees to pay for the promised performance even if performance is never demanded. • Pay-or-play contracts are usu. made in the entertainment industry.
- **performance contract.** (1947) **1.** A contract that requires a party to act personally and does not allow substitution. • People who provide unique personal services often make performance contracts. — Also termed *personal-services contract*. **2.** A contract that allows the contractor to choose the means to achieve the end result. • The product's specifications may be loose and allow the contractor latitude in deciding how to perform. Cf. *build-to-print contract*.
- **permutative contract.** (1681) A contract in which the purpose of the parties is to keep an equality in the worth and value of the things exchanged, the value of them being regulated according to market value and liquidated by some fungible medium of exchange such as money or bartered items.
- **personal-care contract.** See [PERSONAL-CARE CONTRACT](#).
- **personal contract.** (17c) **1.** A contract that binds a person but not that person's heirs or assignees because the contract requires a personal performance for which there is no adequate substitute. **2.** A contract that binds a representative as an individual rather than binding the person or entity represented. • For instance, contracts made by a decedent's personal representative traditionally bind the representative, not the estate, unless expressly agreed otherwise. **3.** A real-property-related

contract that is treated as personal property, not as a substitute for the real property. • Examples include oil-and-gas royalty contracts and property-insurance policies.

- **personal-services contract.** See *performance contract* (1).

- **pignorative contract** (**pig-nə-ray-tiv**) (18c) *Civil law.* A contract of sale in which the owner of real property, instead of relinquishing possession of the property that is theoretically sold, gives the counterparty a lien; a contract of pledge, hypothecation, or mortgage of realty. Cf. *contract of pledge* (2).

- **precontract.** (15c) A contract that precludes a party from entering into a comparable agreement with someone else. • Historically, a precontract was usu. a promise to marry. It formed an impediment to marriage with any person other than the promisee. The legal impediment was extinguished and revived several times until it was finally abolished in 1752 by 26 Geo. 2, ch. 33, § 13. Cf. [LETTER OF INTENT; BETROTHAL](#) (1).

- **principal contract.** (1876) A contract giving rise to an accessory contract, as an agreement from which a secured obligation originates. Cf. *accessory contract*.

- **private contract.** (16c) An agreement between private parties affecting only private rights.

- **procurement contract.** (1942) A contract in which a government receives goods or services. • A procurement contract, including the bidding process, is usu. subject to government regulation. — Also termed *government contract*. See [FEDERAL ACQUISITION REGULATION](#).

- **public contract.** (17c) A contract that, although it involves public funds, may be performed by private persons and may benefit them.

- **quasi-contract.** (1743) An obligation created by law for the sake of justice; specif., an obligation imposed by law because of some special relationship between the parties or because one of them would otherwise be unjustly enriched. • A quasi-contract is not actually a contract but instead is a remedy that allows the plaintiff to recover a benefit conferred on the defendant. — Also termed *implied-in-law contract*; *contract implied in law*; *constructive contract*. See [UNJUST ENRICHMENT](#). Cf. [QUANTUM MERUIT](#).

“The term ‘quasi contracts’ may with propriety be applied to all noncontractual obligations which are treated, for the purpose of affording a remedy, as if they were contracts. So interpreted, the subject includes: (1) judgments and other so-called contracts of record; (2) a number of official and statutory obligations, such as the official obligation of a sheriff to levy execution and pay over the proceeds, and the statutory obligation of the owner of a vessel to pay pilotage; and (3) obligations arising from ‘unjust enrichment,’ i.e. the receipt by one person from another of a benefit the retention of which is unjust.” Frederic Campbell Woodward, *The Law of Quasi Contracts* § 1, at 1–2 (1913).

“[A]dventurous courts have turned to the idea of a ‘contract implied in law,’ a ‘quasi-contract’ — not really a contract, a legal fiction necessary to promote the ends of justice and, in particular, to prevent ‘unjust enrichment.’” Grant Gilmore, *The Death of Contract* 73–74 (1974).

“Since ... claims for the redress of unjust enrichment did not fit comfortably into either the category of contract or that of tort, they came to be described as claims in *quasi-contract*. Some of them were originally characterized as being in *quantum meruit* (as much as he deserved), a form of action used for claims to payment for services. This procedural term

has persisted and is sometimes used inexactly as a synonym for the more general term *quasi-contract*, which refers to any money claim for the redress of unjust enrichment.” E. Allan Farnsworth, *Contracts* § 2.20, at 103 (2d ed. 1990).

- **real contract.** (17c) *Hist.* A contract in which money or other property passes from one party to another; a contract requiring something more than mere consent, such as the lending of money or handing over of a thing. • This term, derived from Roman law, referred to contracts concerning both personal and real property. Real contracts included transactions in the form of *commodatum*, *depositum*, *mutuum*, and *pignus*. Cf. *consensual contract*.

“The essence of ... *the real contracts*, was that, at the time the agreement was made, one party, by delivering something belonging to him to the other party to the contract, imposed on that other an obligation to return the thing itself or, in the case of things intended to be consumed, an equivalent in kind. As the Roman lawyers expressed it, the contractual obligation was created by something being handed over ...” R.W. Leage, *Roman Private Law* 292 (C.H. Ziegler ed., 2d ed. 1930).

“The term ‘real contract’ is in common use in the Civil law, and though not commonly used by judges or writers in the common law, nevertheless describes certain obligations enforced in England from very early times. A real contract is an obligation arising from the possession or transfer of a res.” 1 Samuel Williston, *A Treatise on the Law of Contracts* § 8, at 19 (Walter H.E. Jaeger ed., 3d ed. 1957).

- **reciprocal contract.** See *bilateral contract*.

- **recorded contract.** (1844) An original or authentic official copy of a contract that has been deposited with an authority.

- **referral sales contract.** See [REFERRAL SALES CONTRACT](#).

- **relative simulated contract.** (2013) *Civil law.* A simulated contract that the parties intend to have some effects, but not necessarily those recited in the contract. [La. Civ. Code art. 2027](#). See *simulated contract*.

- **requirements contract.** (1932) A contract in which a buyer promises to buy, and a seller to supply, all the goods or services that a buyer needs during a specified period. • The quantity term is measured by the buyer's requirements. A requirements contract assures the buyer of a source for the term of the contract. Cf. *output contract*.

- **retail installment contract.** (1935) A contract for the sale of goods under which the buyer makes periodic payments and the seller retains title to or a security interest in the goods. — Also termed *retail installment contract and security agreement*; *conditional sales contract*. Cf. [chattel mortgage under MORTGAGE](#).

- **sale contract.** See *contract for sale* (1).

- **satisfaction contract.** (1912) A contract by which one party agrees to perform to the satisfaction of the other. — Also termed *contract to satisfaction*.

- **schedule-of-rates contract.** (1995) A contract containing a schedule of the work to be done and the separate prices to be charged for units of materials, labor, equipment, overhead, etc.

- **sealed contract.** See *contract under seal*.

- **self-determination contract.** (1978) Under the Indian Self-Determination and Education Assistance Act, an agreement under which the federal government provides funds to an Indian tribe and allows

the tribe to plan and administer a program that would otherwise be administered by the federal government. [25 USCA § 450b\(j\)](#).

- **service contract.** (1902) **1.** A contract to perform a service; esp., a written agreement to provide maintenance or repairs on a consumer product for a specified term. **2.** See *employment contract*.

- **severable contract.** (1854) A contract that includes two or more promises each of which can be enforced separately, so that failure to perform one of the promises does not necessarily put the promisor in breach of the entire contract. — Also termed *divisible contract*; *several contract*. See [SEVERABILITY CLAUSE](#). Cf. *joint contract*.

“A severable contract ... is one the consideration of which is, by its terms, susceptible of apportionment on either side, so as to correspond to the unascertained consideration on the other side, as a contract to pay a person the worth of his services so long as he will do certain work; or to give a certain price for every bushel of so much corn as corresponds to a sample.” *Wharton's Law Lexicon* 215 (Ivan Horniman ed., 13th ed. 1925).

- **shipment contract.** (1893) A contract in which a seller bears the risk of damage to the items sold only until they are brought to the place of shipment. • If a contract for the sale of goods does not address the terms of delivery, it is presumed to be a shipment contract. [UCC §§ 2-319, 2-504, 2-509](#). Cf. *destination contract*.

“In the jargon of commercial lawyers, a contract that requires or authorizes the seller to send the goods to the buyer but does not require that he deliver them at any particular destination is called a ‘shipment contract.’ Generally, in shipment contracts, risk of loss passes to the buyer at the point of shipment, which is also the point of ‘delivery,’ while in ‘destination contracts’ (seller must deliver at a particular destination) risk passes upon seller's tender at destination.” 1 James J. White & Robert S. Summers, *Uniform Commercial Code* § 3–5, at 128–29 (4th ed. 1995).

- **simple contract.** **1.** See *informal contract* (1). **2.** See *parol contract* (2).

- **simulated contract.** (1817) *Civil law*. A contract that, by mutual agreement, does not express the true intent of the parties. [La. Civ. Code art. 2025](#). • A simulated contract is absolute when the parties intend that the contract will impose no obligations; no obligations are enforceable on the parties by such a contract. A simulated contract is relative if the parties intend it to impose obligations different from those recited in the contract; the intended obligations are enforceable if all relevant conditions are met. A simulated contract may affect the rights of third parties. — Also termed *simulation*. See [action en declaration de simulation under ACTION \(4\)](#).

- **special contract.** (17c) **1.** See *contract under seal*. **2.** A contract with peculiar provisions that are not ordinarily found in contracts relating to the same subject matter. **3.** See *express contract*.

- **specialty contract.** See *contract under seal*.

- **spot contract.** (1967) A contract to buy or sell a security, commodity, or currency for immediate payment and delivery on a specified date, usu. within a specified number of hours or days before the transaction. — Also termed *spot transaction*; *spot*. Cf. *forward contract*; [FUTURES CONTRACT](#).

- **standard-form contract.** (1923) A usu. preprinted contract containing set clauses, used repeatedly by a business or within a particular industry with only slight additions or modifications to meet the specific situation. • Because standard-form contracts usu. favor the drafting party, they can amount to **adhesion contracts**. As with contract interpretation generally, courts offset the drafting party's

advantage by construing ambiguities in the light least favorable to the drafting party. — Often shortened to *form contract*. — Also termed *standardized contract*. See *adhesion contract*; [CONTRA PROFERENTEM](#).

“[U]niformity of terms in contracts typically recurring in a business enterprise is an important factor in the exact calculation of risks. Risks that are difficult to calculate can be excluded altogether. Unforeseeable contingencies affecting performance, such as strikes, fire, and transportation difficulties can be taken care of ... Standardized contracts have thus become an important means of excluding or controlling the [‘irrational factors’ that could persuade a court or jury to decide against a powerful defendant].” Friedrich Kessler, *Contracts of Adhesion — Some Thoughts About Freedom of Contract*, 43 Colum. L. Rev. 629, 631–32 (1943).

- **statutory contract.** (1832) A contract for which a statute prescribes certain terms. • Statutes often govern the contracts made by public entities, but also some by private persons. For example, a statute may define and set minimum standards for terms in home-improvement contracts.
- **stock-option contract.** (1945) A negotiable instrument that gives the holder the right to buy or sell — for a specified price within a fixed time limit — a certain number of shares of the corporation's stock. See [STOCK OPTION](#).
- **subcontract.** (18c) A secondary contract made by a party to the primary contract for carrying out the primary contract, or a part of it.
- **subscription contract.** See [SUBSCRIPTION \(3\)](#).
- **substituted contract.** (1833) A contract made between parties to an earlier contract so that the new one takes the place of and discharges the earlier one. • A substituted contract differs from a novation (as “novation” is traditionally defined) in that the latter requires the substitution for the original obligor of a third person not a party to the original agreement; when the obligee accepts the third party, the agreement is immediately discharged. In contrast to both substituted contract and novation, an executory accord does not immediately discharge an obligation; rather, the obligation is discharged on performance, often by a third person, rather than the original obligor. Cf. [NOVATION](#); [ACCORD \(2\)](#).

“[A] substituted contract immediately discharges the prior claim which is merged into the new agreement. Consequently, in the absence of an express agreement to the contrary, the original claim can no longer be enforced. In the event of a breach, any action would have to be brought on the substituted agreement ... The concept of ‘substituted contract’ was created largely to circumvent the unsatisfactory rules that until recently governed executory accords. Now that these rules have been modernized, the next step should be the reabsorption of the substituted contract into the executory accord ... [T]he untidy distinction between executory accords and substituted contracts should not be allowed to complicate litigation about routine claim settlements.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 21.6, at 803 (4th ed. 1998).

- **supply contract.** A buy-sell agreement under which the seller agrees to furnish good or services either for a specified period of time or indefinitely. • A supply contract may specify quantities to be delivered at certain times, it may be a requirements or output contract, or it may specify indefinite quantities.

- **synallagmatic contract** (sin-ə-lag-mat-ik) [fr. Greek *synallagma* “mutual agreement”] (1826) *Civil law*. A contract in which the parties obligate themselves reciprocally, so that the obligation of each party is correlative to the obligation of the other. [La. Civ. Code arts. 1908, 1911](#). • A synallagmatic contract is characterized by correlative obligations, whereas a commutative contract is characterized by correlative performances. The term *synallagmatic contract* is essentially the civil-law equivalent of the common law's *bilateral contract*. Cf. *commutative contract*.
- **tacit contract**. (17c) A contract in which conduct takes the place of written or spoken words in the offer or acceptance (or both).
- **take-it-or-leave-it contract**. See *adhesion contract*.
- **take-or-pay contract**. (1960) A contract requiring the buyer to either purchase and receive a minimum amount of a product (“take”) or pay for this minimum without taking immediate delivery (“pay”). • These contracts are often used in the energy and oil-and-gas industries.
- **task-order contract**. (1995) A contract under which a vendor agrees to render services or deliver products as ordered from time to time. • Governments use this type of contract when the quantities that will be needed or the times for performance are uncertain. The contract may describe the services or products generally, but it must specify the period of performance, the number of option periods, and the total minimum and maximum quantity of products or services that the government will acquire under the contract. When exercising its contractual rights, the government issues task orders to specify the product or service requirements, which may vary with each order. — Sometimes shortened to *task order*.
- **third-party-beneficiary contract**. (1921) A contract that directly benefits a third party and that gives the third party a right to sue any of the contracting parties for breach.
- **tonnage contract**. See [CONTRACT OF AFFREIGHTMENT](#).
- **turnkey contract**. See *engineering, procurement, and construction contract*.
- **unconscionable contract**. See *unconscionable agreement under AGREEMENT*.
- **unenforceable contract**. (1842) An otherwise valid contract that, because of some technical defect, cannot be fully enforced; a contract that has some legal consequences but that may not be enforced in an action for damages or specific performance in the face of certain defenses, such as the statute of frauds. — Also termed *agreement of imperfect obligation*. Cf. *illegal contract*; *void contract*.

“The difference between what is voidable and what is unenforceable is mainly a difference between substance and procedure. A contract may be good, but incapable of proof owing to lapse of time, want of written form, or failure to affix a revenue stamp. Writing in the first cases, a stamp in the last, may satisfy the requirements of law and render the contract enforceable, but it is never at any time in the power of either party to avoid the transaction. The contract is unimpeachable, only it cannot be proved in court.” William R. Anson, *Principles of the Law of Contract* 19–20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“Courts are ... fond of condemning the unenforceable agreement as ‘illegal.’ This is misleading insofar as it suggests that some penalty is necessarily imposed on one of the parties, apart from the court's refusal to enforce the agreement. In some cases, the conduct that renders the agreement unenforceable is also a crime, but this is not necessarily or even usually so. It is therefore preferable to attribute unenforceability to grounds of public policy rather than to ‘illegality.’” E. Allan Farnsworth, *Contracts* § 5.1, at 323 (3d ed. 1999).

- **unilateral contract.** (1855) A contract in which only one party makes a promise or undertakes a performance.

“[M]any unilateral contracts are in reality gratuitous promises enforced for good reason with no element of bargain.” P.S. Atiyah, *An Introduction to the Law of Contract* 126 (3d ed. 1981).

“If A says to B, ‘If you walk across the Brooklyn Bridge I will pay you \$100,’ A has made a promise but has not asked B for a return promise. A has asked B to perform, not a commitment to perform. A has thus made an offer looking to a unilateral contract. B cannot accept this offer by promising to walk the bridge. B must accept, if at all, by performing the act. Because no return promise is requested, at no point is B bound to perform. If B does perform, a contract involving two parties is created, but the contract is classified as unilateral because only one party is ever under an obligation.” John D. Calamari & Joseph M. Perillo, *The Law of Contracts* § 2-10(a), at 64–65 (4th ed. 1998).

- **unit-price contract.** (1916) A contract that sets a fixed price per unit produced but no total or final price.

- **valid contract.** (17c) A contract that is fully operative in accordance with the parties' intent. — Also termed *valid agreement*.

- **variable annuity contract.** (1959) *Securities*. An annuity whose payments vary according to how well the fund (usu. made up of common stocks) that backs it is performing. SEC Rule 0-1(e)(1) (17 CFR § 270.0-1(e)(1)). See *variable annuity under ANNUITY*.

- **verbal contract.** See *parol contract* (1).

- **voidable contract.** (18c) A contract that can be affirmed or rejected at the option of one of the parties; a contract that is void as to the wrongdoer but not void as to the party wronged, unless that party elects to treat it as void. — Also termed *voidable agreement*. Cf. *void contract*.

“A voidable contract is a contract which, in its inception, is valid and capable of producing the results of a valid contract, but which may be ‘avoided,’ i.e. rendered void at the option of one (or even, though rarely, of both) of the parties.” P.S. Atiyah, *An Introduction to the Law of Contract* 37–38 (3d ed. 1981).

- **void contract.** (17c) **1.** A contract that is of no legal effect, so that there is really no contract in existence at all. • A contract may be void because it is technically defective, contrary to public policy, or illegal. — Also termed *void agreement*. Cf. *illegal contract*; *unenforceable contract*; *voidable contract*.

“Strictly speaking, a ‘void contract’ is a contradiction in terms; for the words describe a state of things in which, despite the intention of the parties, no contract has been made. Yet the expression, however faulty, is a compendious way of putting a case in which there has been the outward semblance without the reality of contract.” William R. Anson, *Principles of the Law of Contract* 18 (Arthur L. Corbin ed., 3d Am. ed. 1919).

“A valid contract is, of course, simply a contract of full force and effect, not vitiated in any way. A so-called void contract, on the other hand, is really a contradiction in terms inasmuch as a contract has already been defined in terms applicable only to a valid contract. However, the term is convenient and is universally used. For purposes of exposition, it is convenient to treat void contracts as falling, broadly speaking, into main

categories. On the one hand, are cases where one of the normal requirements for the creation of a contract is absent, while, on the other hand, are cases where all the normal requirements are satisfied, but the contract is void because the law disapproves of its purpose or the terms by which it seeks to achieve that purpose. Typical examples of contracts which are void because one of the normal requirements is absent are contracts in which the acceptance of an offer has not been communicated or in which a promise is given gratuitously. Typical examples of contracts which are void because of their terms or objects are wagering contracts, and contracts prejudicial to family relations.” P.S. Atiyah, *An Introduction to the Law of Contract* 36–37 (3d ed. 1981).

2. A contract that has been fully performed. — Also termed *discharged contract*.

“Not only is the term ‘void contract’ in itself technically inaccurate, but a contract is sometimes said to be void, not because it was destitute of legal effect from its commencement, but because it has been fully performed, and so has ceased to have legal operation. It would be more proper to describe such a contract as ‘discharged.’” William R. Anson, *Principles of the Law of Contract* 20 (Arthur L. Corbin ed., 3d Am. ed. 1919).

3. Loosely, a voidable contract. See [VOIDABLE CONTRACT](#).

“Again the word ‘void’ has been used, even by judges and the framers of statutes, where ‘voidable’ is meant. One illustration will suffice. By 17 *Geo. III*, c. 50, failure to pay certain duties at an auction is stated to make a bidding ‘nul and void to all intents,’ but this does not entitle a purchaser who has repented of his bargain to avoid the contract by his own wrong, that is by refusal to pay the statutory duty. The contract is voidable at the option of the party who has not broken the condition imposed by law.” William R. Anson, *Principles of the Law of Contract* 20–21 (Arthur L. Corbin ed., 3d Am. ed. 1919).

- **voluntary contract.** See *gratuitous contract* (2).

- **wagering contract.** (18c) 1. A contract made entirely for sport, the performance depending on the happening of an uncertain event. See *gambling contract*.

“Although wagering and gaming agreements were generally enforceable under the English common law, they were condemned in most American states, in part because they were thought to encourage shiftlessness, poverty, and immorality, and in part because they were regarded as too frivolous to be worthy of judicial attention. *Irwin v. Williar*, 110 U.S. 499, 4 S.Ct. 160 (1884) (‘In England it is held that the contracts, although wagers, were not void at common law, ... while generally, in this country, all wagering contracts are held to be illegal and void as against public policy.’)” E. Allan Farnsworth, *Contracts* § 5.2 n.4, at 326–27 (3d ed. 1999).

2. A contract in which performance depends on a business transaction or outcome. • With this type of wagering contract, a business person is protected from a trade risk. 3. See *aleatory contract*.

- **written contract.** (17c) A contract whose terms have been reduced to writing.

“Written contracts are also commonly signed, but a written contract may consist of an exchange of correspondence, of a letter written by the promisee and assented to by the promisor without signature, or even of a memorandum or printed document not signed by

either party. Statutes relating to written contracts are often expressly limited to contracts signed by one or both parties. Whether such a limitation is to be implied when not explicit depends on the purpose and context.” [Restatement \(Second\) of Contracts § 95 cmt. c \(1979\)](#) (citations omitted).

- **yellow-dog contract.** See [YELLOW-DOG CONTRACT](#).

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