

18 GCA BUSINESS STRUCTURE & FUNCTION
CH. 85 NATURE OF A CONTRACT

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CHAPTER 85
NATURE OF A CONTRACT

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ARTICLE 1
DEFINITION

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- § 85102. Essential Elements of a Contract.

§ 85101. What is a Contract.

A contract is an agreement to do or not to do a certain thing.

SOURCE: CC § 1549.

§ 85102. Essential Elements of a Contract.

It is essential to the existence of a contract that there should be:

1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and
4. A sufficient cause or consideration.

SOURCE: CC § 1550.

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NOTE: No 1970 Civil Code §§ 1551-1555 existed.

ARTICLE 2
PARTIES

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§ 85202. Minors, etc.

§ 85203. Identification of Parties.

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§ 85201. Who may Contract.

All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.

SOURCE: CC § 1556.

CROSS-REFERENCES: For the law respecting minors and their contracts, see 19 GCA Chapter 1.

For a more recent and specific law regarding disabilities suffered by persons convicted of crimes, see 9 GCA Chapter 82.

§ 85202. Minors, etc.

Minors and persons of unsound mind have only such capacity as is defined by Title 19 of the Guam Code Annotated.

SOURCE: CC § 1557.

NOTE: Original reference was to Division 1, Part 1 "of this Code" -- the Civil Code. Such part is now found in 19 GCA, Personal Relations, primarily in Chapter 1.

§ 85203. Identification of Parties.

It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

SOURCE: CC § 1558.

§ 85204. When Contract for Benefit of Third Parties Enforced.

A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

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SOURCE: CC § 1559.

COURT CASES: See *T.S.S. Sportswear Ltd. v. Swank Shop*, 380 F.2d 512 (1967).

NOTE: No 1970 Civil Code §§ 1560-1564 existed.

ARTICLE 3
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- § 85310. Actual Fraud: Question of Fact.
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§ 85301. Essentials of Consent.

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The consent of the parties to a contract must be:

1. Free;
2. Mutual; and
3. Communicated by each to the other.

SOURCE: CC § 1565.

§ 85302. When Consent Voidable.

A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed in Chapter 89, Article 2 of this Title, *Rescission of Contracts*.

SOURCE: CC § 1566.

§ 85303. When Consent not Free.

An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or
5. Mistake.

SOURCE: CC § 1567.

§ 85304. Application of Previous Section.

Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed.

SOURCE: CC § 1568.

§ 85305. Duress.

Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband or wife;
2. Unlawful detention of the property of any such person; or

3. Confinement of such person, lawful in form, but fraudulently obtained or fraudulently made, unjustly harassing or oppressive.

SOURCE: CC § 1569.

§ 85306. Menace.

Menace consists in a threat:

1. Of such duress as is specified in subdivisions 1 and 3 of the last section;

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or

3. Of injury to the character of any such person.

SOURCE: CC § 1570.

§ 85307. Fraud; Actual & Constructive.

Fraud is either actual or constructive.

SOURCE: CC § 1571.

§ 85308. Actual Fraud.

Actual fraud, within the meaning of this Article, consists of any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.

2. A positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

3. The suppression of that which is true, by one having knowledge or belief of the fact;

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive.

SOURCE: CC § 1572.

§ 85309. Constructive Fraud.

Constructive fraud consists:

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1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or anyone claiming under him, by misleading another to his prejudice, or to the prejudice of anyone claiming under him.

SOURCE: CC § 1573.

§ 85310. Actual Fraud: Question of Fact.

Actual fraud is always a question of fact.

SOURCE: CC § 1574.

CROSS-REFERENCES: See the Guam Rules of Civil Procedure for the pleadings required in order to establish fraud in a case.

§ 85311. Undue Influence.

Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;

2. In taking an unfair advantage of another's weakness of mind;
or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

CROSS-REFERENCES: CC § 1575.

§ 85312. Mistake.

Mistake may be either of fact or law.

SOURCE: CC § 1576.

§ 85313. Mistake of Fact.

Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in ---

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,

2. Belief in the present existence of a thing material to the contract, which does not exist, or in the past existence of such a thing, which has not existed.

SOURCE: CC § 1577.

§ 85314. Mistake of Law.

A mistake of law constitutes a mistake within the meaning of this Article only when it arises from ---

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or

2. A misapprehension of the law by one party, of which the others are aware at the time of the contracting, but which they do not rectify.

SOURCE: CC § 1578.

§ 85315. Mistake of Foreign Law.

Mistake of foreign laws is a mistake of fact.

SOURCE: CC § 1579.

§ 85316. Mutuality of Consent.

Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by Chapter 87 of this Part, *Interpretation of Contracts*, they are to be deemed so to agree without regard to the fact.

SOURCE: CC § 1580.

§ 85317. Communication of Consent.

Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

SOURCE: CC § 1581.

§ 85318. Mode of Communicating Acceptance.

If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

SOURCE: CC § 1582.

§ 85319. When Communication Complete.

Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to the last section.

SOURCE: CC § 1583.

§ 85320. Acceptance, Performed Conditions.

Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

SOURCE: CC § 1584.

§ 85321. Acceptance must be Absolute.

An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will include the person accepting. A qualified acceptance is a new proposal.

SOURCE: CC § 1585.

§ 85322. Revocation of Proposal.

A proposal can be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

SOURCE: CC § 1586.

§ 85323. How Revocation Made.

A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party, in the manner prescribed by §§ 85317 and 85319 of this Chapter, before his acceptance has been communicated to the former;
2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;
3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or
4. By the death or insanity of the proposer.

SOURCE: CC § 1587.

§ 85324. Ratification of Void Contract.

A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

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SOURCE: CC § 1588.

§ 85325. Assumption of Obligation by Acceptance of Benefits.

A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

SOURCE: CC § 1587.

NOTE: No 1970 Civil Code §§ 1588-1594 existed.

ARTICLE 4
OBJECT OF A CONTRACT

- § 85401. Object, What is.
- § 85402. Requisites.
- § 85403. Impossibility.
- § 85404. When Contract Wholly Void.
- § 85405. When Partially Void.

§ 85401. Object, What is.

The object of a contract is the thing which is agreed, on the part of the party receiving the consideration, to do or not to do.

SOURCE: CC § 1595.

§ 85402. Requisites.

The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

SOURCE: CC § 1596.

§ 85403. Impossibility.

Everything is deemed possible except that which is impossible in the nature of things.

SOURCE: CC § 1597.

§ 85404. When Contract Wholly Void.

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Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

SOURCE: CC § 1598.

§ 85405. When Partially Void.

Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

SOURCE: CC § 1599.

NOTE: No 1970 Civil Code §§ 1600-1604 existed.

ARTICLE 5
CONSIDERATION

- § 85501. What is Good Consideration.
- § 85502. Extent Legal or Moral Obligation Good Consideration.
- § 85503. Consideration Lawful.
- § 85504. Effect of Illegality.
- § 85505. Consideration Executed or Executory.
- § 85506. Executory Consideration.
- § 85507. How Ascertained.
- § 85508. Effect: Impossibility of Ascertaining.
- § 85509. Effect: When in Fact Impossible.
- § 85510. Written Instrument; Effect.
- § 85511. Burden of Proof to Invalidate Consideration.

§ 85501. What is Good Consideration.

Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is good consideration for a promise.

SOURCE: CC § 1605.

§ 85502. Extent Legal or Moral Obligation Good Consideration.

An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

SOURCE: CC § 1606.

§ 85503. Consideration Lawful.

The consideration of a contract must be lawful within the meaning of §87101 of this Title.

NOTE: In the 1970 Civil Code, the section referred to by this section was §1667.

SOURCE: CC § 1607.

§ 85504. Effect of Illegality.

If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

SOURCE: CC § 1608.

§ 85505. Consideration Executed or Executory.

A consideration may be executed or executory, in whole or in part. Insofar as it is executory it is subject to the provisions of Article 4 of this Chapter.

SOURCE: CC § 1609.

§ 85506. Executory Consideration.

When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

SOURCE: CC § 1610.

COURT CASES: In suit by seller to recover price of stock contracted to be sold to buyer who agreed actual value under a complex formula, action could not be dismissed as premature on the ground that unfilled conditions precedent existed when the parties followed the procedures set up in the contract. *Hines v. Perez*, 242 F.2d 459 (CA9, 1957).

§ 85507. How Ascertained.

When a contract does not determine the amount of the consideration, not the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

SOURCE: CC § 1611.

§ 85508. Effect: Impossibility of Ascertaining.

Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

SOURCE: CC § 1612.

§ 85509. Effect: When in Fact Impossible.

Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

SOURCE: CC § 1613.

§ 85510. Written Instrument; Effect.

A written instrument is presumptive evidence of a consideration.

SOURCE: CC § 1614.

§ 85511. Burden of Proof to Invalidate Consideration.

The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

SOURCE: CC § 1615.

CROSS-REFERENCES: For the rules of evidence, see Title 6, Guam Code Annotated.

NOTE: No 1970 Civil Code §§ 1616-1618 existed.

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