Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we have another episode in our series "Law Every 1L Should Know", and this one is on contracts. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the Law School Toolbox, the Bar Exam Toolbox, and the career-related website CareerDicta. Alison also runs The Girl's Guide to Law School. If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the contact form on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

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Lee Burgess: Welcome back! If you're new to this series, "Law Every 1L Should Know" is designed for incoming 1Ls – students who are getting ready for law school and want a head start on the law they're about to spend the next year learning. Each episode gives you a simplified overview of one of the core 1L subjects. We're not trying to cover every doctrine or every exception. We want to give you the framework, so that when you walk into class on day one, you already have mental shelves to put the new material on. And if you want to go deeper on any of the specific topics we mention today, our podcast also has a series called "Listen and Learn". Those episodes take one specific legal concept, review the rules in more detail, and apply the law to a fact pattern. We'll link to relevant "Listen and Learn" episodes in the show notes.

Lee Burgess: Now, today, we're talking about contracts. Contracts is another huge subject, and we are not going to cover all of it. We're going to focus on the part of the course that comes first and matters most: contract formation. Specifically, we're going to walk through three things that have to be true for a contract to exist in the first place: offer, acceptance, and consideration. Then we'll apply those three elements to a short fact pattern at the end.

Lee Burgess: A quick reminder, especially if you're listening to this just before law school starts: Don't try and memorize everything. Just let it wash over you. The goal is

recognition. When your professor says the word “consideration” in class, you've heard it before. When someone says "the mirror image rule", that doesn't feel like a foreign language. With that, let's dive in.

Lee Burgess: So, what is a contract? In plain English, a contract is a legally enforceable agreement. Two or more people agree to do something, or to not do something, and the law will back up that agreement with a remedy if one side fails to perform. The remedy is usually money damages; although in some cases, a court will order specific performance – meaning, it will actually order the breaching party to do what they promised. That last point is one of the most important things to understand about contract law as a first-year law student. Contract law does not generally throw people in jail for breaking a contract. It does not even, in most cases, force people to actually do what they promised. The default remedy in contract law is money. If you breach, you pay. That's it. We'll come back to remedies in a future episode, but for today, just hold on to the idea that contracts are about money on the back end, not punishment.

Lee Burgess: Now, before we get into the elements of formation, I need to flag one big-picture distinction. Contract law in the United States is actually two bodies of law sitting next to each other. The common law of contracts governs most agreements – service contracts, employment, real estate – anything that isn't the sale of goods. A separate body of law called the Uniform Commercial Code, or UCC, governs contracts for the sale of goods. So if you're hiring someone to paint your house – that's a common law contract. If you're buying a couch – that's a UCC contract. The two systems agree on the basics, but they diverge on some important details, like how strictly the acceptance has to match the offer. For today, we're focused on common law rules. UCC differences are something you'll learn in your Contracts class and in our "Listen and Learn" series. Just be aware the distinction exists.

Lee Burgess: Okay, let's get to formation. For a valid contract to exist, three things have to be true: There has to be an offer, there has to be acceptance of that offer, and there has to be consideration. If any one of those three is missing, there is no contract, full stop. That means the defendant in a contract case can win by knocking out just one element. Just like the four elements of negligence we talked about in our Torts episode, the three elements of contract formation are a checklist. You walk through them in order every time.

Lee Burgess: So let's start with element one – the offer. An offer is a manifestation of willingness to enter into a contract made in a way that the other person reasonably understands that their acceptance will create a binding agreement. So, let's unpack that. Three things have to be present. First, the offer has to be communicated to the person being asked to agree. That person is called the

"offeree". The person making the offer is called the "offeror". Get used to those words too – they appear constantly. If I tell my friend I'm thinking about selling my car – that's not an offer to her; it's just a statement of fact. An offer has to actually be directed at someone.

Lee Burgess: Second, the offer has to have definite terms. The offeree needs to know what they're agreeing to. Usually, that means identifying the parties, the subject matter, the price, and the scope or quantity. Not every term has to be in the offer, but enough terms have to be there that a court could enforce the contract if someone breached.

Lee Burgess: Third – and this is the key one – the offer has to manifest a present intent to be bound. The offeror has to be communicating in words or in conduct that they are ready to enter a contract right now if the offeree agrees. This distinguishes an offer from what lawyers call an "invitation to negotiate". If I say, "I'm thinking about selling my bike for around $400. What do you think?" – that's an invitation to talk; it's not an offer. But if I say, "I'll sell you my bike for $400. Let me know by Friday" – well, that's an offer. The first one invites further conversation. The second one says, "I'm ready to be bound if you say 'yes'."

Lee Burgess: You might have heard of a famous case called *Lucy v. Zehmer*, where a husband and wife signed an agreement on the back of a restaurant check, selling a farm. The husband later claimed he was joking and drunk and didn't really mean it. The court enforced the contract anyway, because what matters is the outward manifestation of intent, not what's going on in someone's head. If you act like you're making an offer and a reasonable person would understand it as an offer, you've made an offer. You'll read this case in your first few weeks of Contracts. It's a good one.

Lee Burgess: One more thing to know about offers: They can generally be revoked at any time before the offeree accepts. So if I make you an offer to sell my bike, I can call you up and take it back before you say "yes". There are some exceptions – option contracts and what's called a "firm offer" under the UCC. But for now, just know the default rule: Offers can be revoked until they're accepted.

Lee Burgess: Element two – acceptance. Acceptance is a manifestation of assent to the terms of the offer in the manner invited or required by the offer. In plain English, the offeree has to say "yes", and they have to say "yes" to what was actually offered. Now, under the common law, acceptance has to match the offer exactly. This is called "the mirror image rule". If I offer to sell you my bike for $400 and you say, "I'll take it for $350" – well, that's not an acceptance; that is a counteroffer. And here's the catch: A counteroffer rejects the original offer. So, once you counteroffer at $350, my original offer at $400 is dead. I'm no longer

bound by it. If I now refuse to sell at any price, I owe you nothing. We're back at zero. This is one of those rules that trips up 1Ls, because it doesn't match everyday intuition about negotiating. In ordinary life, if I offer $400 and you say $350, we just keep talking. In contract law, your counter killed my offer. If you then change your mind and say, "Fine, I'll pay the $400 you originally wanted" – that's not an acceptance. It's a new offer from you, and now I can accept or reject it. The UCC, by the way, relaxes the mirror image rule for sales of goods. That's the famous "battle of the forms" under UCC Section 2-207, which gets its own "Listen and Learn" episode. But for today – common law – acceptance has to match exactly.

Lee Burgess: Acceptance also has to be communicated. Silence is generally not acceptance. If I send you an email saying, "I'll sell you my bike for $400, and if I don't hear from you by Friday, I'll assume you accepted" – that doesn't actually work. You haven't agreed just by ignoring me. There are some narrow exceptions, like prior dealings between the parties, but the basic rule is that you have to actually say "yes". There is one famous weird rule about timing of acceptance that you'll definitely run into. It's called "the mailbox rule". Under the common law, an acceptance sent by mail is effective the moment it is dropped in the mailbox, not when it arrives. So if I mail you my acceptance on Monday, and you – the offeror – try to revoke your offer on Tuesday before my letter arrives, my acceptance still wins because it was effective Monday, when I mailed it. The mailbox rule applies to acceptances. It does not apply to rejections, counteroffers, or revocations. Those are only effective when received. The mailbox rule is one of those things that shows up in some form on almost every Contracts exam, so file it away.

Lee Burgess: Element three – consideration. Consideration is the most important and most heavily tested concept in formation, so pay close attention here. Consideration is what makes a promise legally enforceable, rather than just a moral one. Without consideration, you do not have a contract. You might have a gift, you might have a promise, but you don't have a contract that a court will enforce. Consideration has a specific legal definition to it. It is a bargained-for exchange of legal value. So, let me break that into parts. "Bargained-for" means the promise on one side has to induce the consideration on the other side, and the consideration has to induce the promise. Each side's contribution is the reason the other side is making theirs. The two are tied together. If I promise to give you $100 as a gift – that's not a contract. There was no bargain. You didn't give me anything in exchange; I just promised you a gift. " Legal value" means each side has to give up something the law recognizes as having value. That could be money. It could be a tangible thing – a bike, a house, a painting. It could be a service – mowing a lawn, designing a logo, performing surgery. It could even be

a promise to do something in the future, or a promise to not do something you have the legal right to do.

Lee Burgess: There is a famous case called *Hamer v. Sidway*, where an uncle promised his nephew $5,000 if the nephew refrained from drinking liquor, using tobacco, swearing, and playing cards or billiards for money until he turned 21. The nephew did it. The uncle's estate then refused to pay. The court enforced the promise. Why? Because the nephew giving up his legal right to do those things was legal value. That was consideration. The bargain was, "You forbear from these activities and I'll pay you $5,000." Both sides gave up something, and each promise induced the other. *Hamer v. Sidway* is one of the foundational cases in Contracts. You will read it.

Lee Burgess: A couple of subtle points about consideration that come up a lot. First, courts do not police whether the exchange is fair. If you sell me your $20,000 car for a dollar, and I genuinely paid the dollar, and you genuinely accepted it – well, that still could be consideration. Courts will not say, "This is unfair. No contract." Lawyers say a peppercorn can be consideration – meaning, even something almost worthless counts if it's the result of an actual bargain.

Lee Burgess: Second, past consideration is not consideration. If I shovel your driveway as a favor, and then a week later you say, "Thanks, I'll pay you $50 for that" – your promise to pay is not enforceable, because there was no bargain at the time I shoveled. The shoveling was already done. It cannot be the consideration for a promise that came later.

Lee Burgess: Third, doing something you're already legally obliged to do is not consideration. This is called "the pre-existing duty rule". If I'm a contractor and I've already agreed to build you a deck for $5,000, and halfway through I demand more money to finish, my promise to finish the deck – which I was already obligated to do – is not new consideration for your new promise to pay more.

Lee Burgess: Now, one quick note before we move on. Sometimes consideration is missing, but the law still wants to enforce a promise, because the other party reasonably relied on it and would be hurt if the promise weren't enforced. That doctrine is called "promissory estoppel". It's a kind of backup theory. The elements are: a promise the promisor should reasonably expect to induce reliance; actual reliance by the promise; and injustice that can only be avoided by enforcing the promise. The classic example is a family promise that gets relied on. A grandfather promises his granddaughter a sum of money, and on the strength of that promise, she quits her job. He dies before paying. There's no consideration. She didn't promise him anything in return, but promissory

estoppel may still let her enforce the promise. We have a full "Listen and Learn" episode on promissory estoppel, linked to in the show notes.

Lee Burgess: Okay. Offer, acceptance, consideration – that's contract formation under the common law. Hopefully, you're still with me. So let's bring it together by walking through a short fact pattern. As I read it, listen for where each of the three elements shows up: offer, acceptance, and consideration. We'll work through the analysis after. Here's the fact pattern:

Lee Burgess: David runs a small wedding photography business. On Monday, he emails Priya, who is a freelance graphics designer he met at a networking event. The email says, "Hi, Priya. I need a new logo and a website redesign for my business. I can pay $3,000 total, with everything delivered within 45 days of you starting. If you want the project, let me know by Friday." On Wednesday, Priya emails back: "Hi, David. I'd love to take this on. Three thousand dollars for the logo and website redesign, delivered within 45 days. Count me in." On Friday morning, David emails Priya: "Hey, sorry, my cousin just offered to do this for free, so I'm going to go with him. The project is off." Priya is upset because she had already turned down a different project earlier in the week to make room in her schedule for David's job. She wants to know if she has a contract with David that she can enforce.

Lee Burgess: So, let's go through the three elements one at a time. First – the offer. Did David's Monday email constitute a valid offer? Well, let's check. Was it communicated to a specific offeree? Yes. David emailed Priya directly. Did it have definite terms? Yes. It identified the parties, the subject matter (a logo and website design), the price ($3,000), and a timeframe for performance (45 days). Did it manifest a present intent to be bound? Yes. David said, "If you want the project, let me know by Friday." That is not a vague invitation to chat. That is a specific offer with a specific deadline. Element one is satisfied. David made a valid offer.

Lee Burgess: Second – acceptance. Did Priya validly accept that offer? Well, let's check. Did her response match the terms of the offer? Yes. She repeated the price, the scope, and the timeframe, and she said, "Count me in." That's a mirror image acceptance. Was the acceptance communicated? Yes. She emailed it directly to David. And was it within the time the offer was open? Yes. David said, "Let me know by Friday", and Priya accepted on Wednesday – two days before the deadline. Element two is satisfied. Priya validly accepted.

Lee Burgess: And here's the crucial point – by Wednesday, David's offer had been accepted. Once acceptance happened, David could no longer revoke the offer. Remember, offers can be revoked at any time before acceptance, but not after. David's

Friday morning attempt to call the deal off came two days late. The contract was already in place.

Lee Burgess: Now, third – consideration. Was there a bargained-for exchange of legal value? Yes. David promised to pay $3,000. Priya promised to design a logo and a website. Each promise induced the other. David was paying because he wanted the design work, and Priya was agreeing to do the design work because she wanted to be paid. Both sides gave up something of legal value. Element three is satisfied.

Lee Burgess: So, all three elements of formation are met. Priya has a valid contract with David. His Friday morning email did not undo the agreement. It was a breach. Priya could sue him for damages.

Lee Burgess: Now, there are some additional issues a real Contracts professor might layer in – for example, whether the statute of frauds requires this contract to be in writing, or what Priya's damages would be. And on damages, Priya would generally be entitled to her expectation interest – what she would have earned had the contract been performed, possibly minus what she actually earned doing other work instead. Now, we'll cover damages and the statute of frauds in a future episode. For now, what I want you to take away is the three-element framework and the discipline of walking through each element before you reach a conclusion.

Lee Burgess: Before we wrap up, a quick recap. A contract is a legally enforceable agreement, and the default remedy for breach is money. Most contracts are governed by the common law. Contracts for the sale of goods are governed by the UCC. For a contract to exist, three things have to be true: offer, acceptance, and consideration. An offer manifests present intent to be bound, with definite terms, communicated to a specific offeree. Acceptance under the common law must match the offer – that's the mirror image rule. And a mailed acceptance is effective when sent, not when received. Consideration is a bargained-for exchange of legal value, and without it, a promise is not legally enforceable, with the narrow exception of promissory estoppel. If you want to go deeper on any of these topics, check out the show notes. We've linked to "Listen and Learn" episodes on contract formation, consideration, promissory estoppel, the battle of the forms under the UCC, contract defenses, and remedies. These go into more depth than we did here.

Lee Burgess: Next up in the "Law Every 1L Should Know" series, we'll tackle another core 1L subject. Until then, take a breath. Law school is going to throw a lot at you, but if you have the frameworks in place before you start, you'll be ahead of the curve.

Lee Burgess: Thanks again to Juno for sponsoring this podcast. If you're thinking about student loans for law school, head to JoinJuno.com to explore your options and see how Juno can help you find a better rate.

Lee Burgess: If you enjoyed this episode of the Law School Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@lawschooltoolbox.com or alison@lawschooltoolbox.com. Or you can always contact us via our website contact form at LawSchoolToolBox.com. Thanks for listening, and we'll talk soon!

RESOURCES:

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Lucy v. Zehmer
Hamer v. Sidway
Podcast Episode 344: Listen and Learn – Contract Formation
Podcast Episode 487: Listen and Learn – Consideration (Contract Law)
Podcast Episode 245: Listen and Learn – Promissory Estoppel
Podcast Episode 267: Listen and Learn – UCC 2-207 ("The Battle of the Forms")
Podcast Episode 341: Listen and Learn – Contract Defenses
Podcast Episode 354: Listen and Learn – Expectation and Consequential Damages (Contracts)
Podcast Episode 497: Listen and Learn – Incidental, Reliance, and Restitution Damages (Contracts)
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