

From the desk of

John A. Crane

*Helping Texans maintain control of
their personal and financial affairs.*

The Chase Building, 700 Lavaca, Suite 1010, Austin, Texas 78701
(512) 469-9444 • Fax (512) 469-9060 • jcrane@zunkercrane.com

March 2005

A Primer on Texas Contract Law

My contract law professor was a nice old guy. He had a friendly demeanor you could not help but like. He was fond of saying "A contract is just a contract," and it was obvious that he was proud of the statement's simplicity. The problem was that I had no idea at first what he meant. I didn't want to admit my ignorance in class, but I remember thinking "Yeah, well a rock is just a rock, a pencil is just a pencil ... *what the heck do you mean?*"

Later, I understood the point he was making: a contract can be a very simple thing. All that is required is an agreement between two parties or, as legal scholars have put it, a "meeting of the minds" on the essential elements of a bargain.

With a few exceptions, an agreement does not have to be in writing to be enforceable. Oral agreements can be just as binding. In some instances, no words are spoken or written, but the parties' conduct clearly indicates a meeting of the minds, resulting in an *implied* contract.

In fact, discussion about the form of the contract (written, oral, implied) simply refers to the type of proof available to prove the existence of an agreement. Presumably, it is easier to prove that existence if you have a written document. Otherwise, each side may get into a swearing match in court over who said what to whom, or how each party acted in particular circumstances.

An agreement must be supported by "consideration" in order to be an enforceable contract. Basically, that just means that each party to the agreement has to have some skin in the game. If I gratuitously promise to mow your lawn next week, you can't sue me if I later change my mind because you gave me nothing of value in exchange for my promise. If you pay me in advance, however, or promise to mow mine in exchange, then either the payment or promise constitutes "consideration" for our bargain and the deal is enforceable.

A Texas law known as the Statute of Frauds requires a written agreement, signed by the party to be obligated, for certain kinds of contracts, including:

- A promise to answer for the debt of another (such as a loan guarantee)
- Prenuptial agreements
- Real estate sales agreements
- Real estate leases longer than 1 year
- Any agreement that can't be performed within 1 year from the date it is made
- An agreement with a physician or medical provider relating to medical care
- An agreement to loan more than \$50,000.00

Usually, if someone breaks a contractual obligation, the only remedy is to sue for the money you lost as a result. In limited instances, however, you can sue to make them do what they promised to do. For instance, if someone signs a contract to sell a house and later changes their mind without valid reason, the buyer has the option to sue for a court order forcing the owner to sell.

If there is a dispute or confusion over what a written contract actually requires, the court is required to look only to the actual words used in the document. Only if the words used are too ambiguous for the judge to determine the parties' intent can testimony be offered about what was actually meant by the words used in the document.

Often a client will come to me concerned that their written contract is unenforceable because the signatures are not notarized. My response is usually that it doesn't matter. Documents are generally notarized for one of two reasons: 1) the signer is swearing that the facts stated in the document are true or 2) the signer is acknowledging that he or she signed it for the purposes expressed in the document. Affidavits must be sworn before a notary. Deeds and lien releases must be "acknowledged" before a notary or they cannot be recorded with the county clerk.

So, be careful next time you're talking business deals at that restaurant. The terms you scribble on a napkin might just constitute a binding contract.

Until next month...