

# Marshall On The Constitution And Country

## High School US/VA Government

**Objectives:** Students will be able to:

- ▶ analyze and interpret primary and secondary sources;
- ▶ classify information;
- ▶ make connections between past and present;
- ▶ identify the rights and responsibilities of citizenship; and
- ▶ access a variety of media, including online resources.

## Standards

**Virginia: GOVT.10e** Investigating and Evaluating How the Judiciary Influences Public Policy by Delineating the Power of Government and Safeguarding the Rights of the Individual

**GOVT.7b** Checks & balances of judicial branch

**GOVT.15b** In a free market economy, markets need a backdrop of a rule of law, in which the government enforces contracts and protects property rights, to function well. Individuals enter into agreements (contracts) with one another to buy and sell goods and services. Whether written or oral, these agreements are legally binding and can be enforced within the judicial system established by government. (Dartmouth case)

**National: NSS-USH.5-12.4 Era 4** Expansion & Reform (1801-1861)

**Approx. Time:** One and one-half 90 minute blocks or three 45 minute blocks

**HOOK:** Show students the video clip from the movie “Liar Liar” that deals with a legal contract. (approx. 3 minutes). (Caution: Rated Pg-13 for sex-related humor and language.)

“Liar Liar” Video Clip: <https://goo.gl/NbVdaP> \*

After viewing the clip, ask them the following questions:

1. What is the purpose of a legal contract?
2. Why do you think minors are not allowed to enter into a contract without parental consent?
3. What is a prenuptial agreement, and why might it be useful?
4. If there is a disagreement about a contract, who has the authority to settle the dispute?

Today, you will learn (i) how important legal contracts are, and (ii) how Chief Justice John Marshall’s decision in the Supreme Court case *Dartmouth College v. Woodward* upheld a legal contract for Dartmouth College even when a state tried to interfere with it.

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Name \_\_\_\_\_ Date \_\_\_\_\_

## Contract Basics Web Quest

Have you ever signed or agreed to a legal contract? Do you have iTunes or Spotify? Do you have a Netflix account? Ever bought anything from a store or online? Then, you have entered into a legal contract.

You will learn the basics of legal contracts by using the website below and answering some questions. You will then apply your knowledge of contracts by identifying whether a contract exists or not. <http://goo.gl/UbbdV9> \*

1. **What is a contract?** \_\_\_\_\_

\_\_\_\_\_

2. **Describe the four types of contracts:**

**Express Contract:** \_\_\_\_\_

\_\_\_\_\_

**Implied Contract:** \_\_\_\_\_

\_\_\_\_\_

**Unilateral Contract:** \_\_\_\_\_

\_\_\_\_\_

**Bilateral Contract:** \_\_\_\_\_

\_\_\_\_\_

3. **Typically, who is NOT allowed to enter into a contract?** \_\_\_\_\_

\_\_\_\_\_

Click "Next: Elements of a Contract"

4. **What four elements are required for a contract?** \_\_\_\_\_

\_\_\_\_\_

5. **Using the following example, identify the offer, consideration, acceptance, and mutuality of the contract.**

Mr. Lee tells Mr. Ownby that he will exchange his tattoo work for work in kind, for Mr. Ownby work to fix Mr. Lee's motorcycle. Mr. Ownby agrees and picks up Mr. Lee's motorcycle and replaces the clutch and tires.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

6. **Typically, does a contract have to be written?** \_\_\_\_\_



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Name \_\_\_\_\_ Date \_\_\_\_\_

## Contract or No Contract? That Is The Question!

Now that you know the four essentials of a legal contract it is time to test your skills. Looking at the following examples, identify whether a contract exists or not. If a contract does not exist, explain why.

1. Alex goes to the local car dealership and signs a lease for a car. C or NC

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2. Jennifer clicks on the iTunes agreement box and downloads the latest version to her phone. C or NC

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3. Greg wins an item on eBay after bidding on it but when it arrives it is a different item. C or NC

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4. Julia's parents promise to buy her a car when she turns sixteen, but when she turns sixteen they decide she needs to help pay for it. C or NC

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5. Jim goes to the gas station and fills his car up with gas and uses his debit card to pay for it. C or NC

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Name \_\_\_\_\_ Date \_\_\_\_\_

## Contract or No Contract? That Is The Question!

6. Mr. Green Jeans Lawncare accidentally mows the grass at the wrong house and demands the homeowner to pay for the service. C or NC

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7. Mike downloads the new Taylor Swift album from an illegal website from Russia for free. C or NC

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8. Mr. Nelson agrees to give students extra credit in government class if the students come to school on "senior skip day," but at the end of the marking period he refuses to do so. C or NC

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9. The cell phone service provider Maria uses begins charging her for data without notifying her of the new charges. C or NC

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To find out more about your rights and responsibilities as a citizen, go to <https://goo.gl/UNZrmZ> or <https://goo.gl/B1D173>

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Name \_\_\_\_\_ Date \_\_\_\_\_

## The Judicial Branch: Equal Justice & Limited Government

Read the following passage from the Constitution, Article 1, Section 10.

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Answer the following questions:

1. Who is being limited by this section of the Constitution? \_\_\_\_\_

2. What does it mean by "No State shall enter into any...Law impairing the Obligation of Contracts...?"

\_\_\_\_\_

\_\_\_\_\_

In the court case *Dartmouth College v. Woodward*, the New Hampshire state legislature wanted to change Dartmouth College from a private college to a public college, even though it was created by a charter from the King of England as a private college. Does the state have a right to change or alter the charter if it is a legal contract between the king and the trustees of the college?

Using the website below or handout, answer the following question about the *Dartmouth* case and find out!

Link: <http://goo.gl/sjCUhN> \*

1. What was the issue in the case? \_\_\_\_\_

\_\_\_\_\_

2. What was at stake in this case? \_\_\_\_\_

\_\_\_\_\_

3. What was the final decision and how did Chief Justice John Marshall decide the case?

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\_\_\_\_\_

4. How could this decision have helped businesses and corporations in the future?

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\_\_\_\_\_

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**Advanced Learners:** Students can practice negotiating various types of contracts. There are many great lessons from the University of Washington School of Law web site under the heading “Consumer Law/Contracts.”

| **Link:** <https://goo.gl/nYyzAU> \*

**Going Further:** If you have time and are open to it, you can have students negotiate a classroom contract for rules & procedures and behavior expectations. More information on classroom contracts can be found at:

| **Link:** <http://goo.gl/JInf8c> \*

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## CONTRACT LAW

Contract Law Tutorial for Judges in New Mexico

### How to Approach Contract Law

Contract law follows the dictates of common sense and fairness. After looking at all the facts and circumstances, you should answer the following questions:

1. Was there an agreement?
2. What did each party commit to do?
3. Did either party – or both – fail to do what he or she promised?
4. If yes, how do you measure the cost to the nonbreaching party?

The usual objective of remedying contract claims is to put the parties in the position they would have occupied if the contract had not been breached.

### What is a Contract?

Contracts are agreements that the law will enforce. Contracts are individual, or private, rights and duties created by oral or written agreement and consent of the parties. Contracts may include obligations imposed by law even if the parties are not aware of those obligations.

Chapter 8 of the New Mexico Uniform Jury Instructions provides a useful overview of the basic principles of contract law. See UJI 13-801 through 13-861.

### What are the Different Types of Contracts?

**Express Contract:** The promises are communicated by language, either oral or written. Example: John promises to paint Dan's car in return for Dan's promise to pay him \$100.

**Implied Contract:** The conduct of the parties indicates that they consented to be bound. Example: Toni fills her car with gas at Tina's gas station. There is a contract for the purchase and sale of gas.

**Unilateral Contract:** A person accepts an offer by performing a requested act. The terms of the offer must clearly indicate that an act is required for acceptance. Example: John tells Dan that he will pay Dan \$100 if Dan paints his car, and that Dan should show acceptance of the offer by the act of painting the car. Dan accepts by painting the car.

**Bilateral Contract:** A person accepts an offer by promising to do the requested act. Example: Red Company offers to buy 100 widgets from Green Company for \$100. Green Company promises to deliver the 100 widgets to Red Company.

### Who Can Enter into a Contract?

Minors (individuals under age 18) and people who are mentally incompetent do not have the legal capacity to enter into contracts. All other people are considered to have the legal capacity to enter into contracts. In New Mexico and most states, the legal age for entering into contracts is 18 (see NMSA §28-6-1). A contract between a minor and an adult may be cancelled upon request of the minor, but is binding on the adult. The test for mental capacity to enter into a contract is whether the person had the ability to understand the nature and consequences of the agreement.

Corporations have the power to enter into contracts through the acts of their agents, officers and authorized employees. Generally, individuals associated with the corporation are not held personally responsible for the corporation's debts and liabilities, including liability for breach of contract, although there are some exceptions.

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## ELEMENTS OF A CONTRACT

### When Does a Contract Exist?

When a party files a suit claiming a breach of contract, the first question the judge must answer is whether a contract existed between the parties. The complaining party must prove four elements to show that a contract existed:

- 1. Offer** - One of the parties made a promise to do or refrain from doing some specified action in the future.
- 2. Consideration** - Something of value was promised in exchange for the specified action or nonaction. This can take the form of a significant expenditure of money or effort, a promise to perform some service, an agreement not to do something, or reliance on the promise. Consideration is the value that induces the parties to enter into the contract.

The existence of consideration distinguishes a contract from a gift. A gift is a voluntary and gratuitous transfer of property from one person to another, without something of value promised in return. Failure to follow through on a promise to make a gift is not enforceable as a breach of contract because there is no consideration for the promise.

- 3. Acceptance** - The offer was accepted unambiguously. Acceptance may be expressed through words, deeds or performance as called for in the contract. Generally, the acceptance must mirror the terms of the offer. If not, the acceptance is viewed as a rejection and counteroffer.

If the contract involves a sale of goods (i.e. items that are movable) between merchants, then the acceptance does not have to mirror the terms of the offer for a valid contract to exist, unless:

- (a) the terms of the acceptance significantly alter the original contract; or
- (b) the offeror objects within a reasonable time.

- 4. Mutuality** - The contracting parties had "a meeting of the minds" regarding the agreement. This means the parties understood and agreed to the basic substance and terms of the contract.

When the complaining party provides proof that all of these elements occurred, that party meets its burden of making a prima facie case that a contract existed. For a defending party to challenge the existence of the contract, that party must provide evidence undermining one or more elements.

### Does a Contract Have to be Written?

In general, there is no requirement that a contract be in writing. Although the Statute of Frauds requires certain types of contracts to be in writing, New Mexico recognizes and enforces oral contracts in some situations where the Statute of Frauds does not apply.

One important difference between oral and written contracts is the statute of limitations that creates deadlines for filing lawsuits concerning the contract. For oral contracts, the statute of limitations is four years. NMSA §37-1-4. For written contracts, the general statute of limitations is six years. NMSA §37-1-3. However, if the written contract is for the sale of goods, the statute of limitations is four years unless the parties contract for a shorter period. NMSA §55-2-725. The shorter period cannot be less than one year.

### How Is a Contract Interpreted?

The court reads the contract as a whole and according to the ordinary meaning of the words. Generally, the meaning of a contract is determined by looking at the intentions of the parties at the time of the contract's creation. When the intention of the parties is unclear, courts look to any custom and usage in a particular business and in a particular locale that might help determine the intention. For oral contracts, courts may determine the intention of the parties by considering the circumstances of the contract's formation, as well as the course of dealing between the parties.

### SOURCE:

| **Link:** <http://jec.unm.edu/education/online-training/contract-law-tutorial>

| **Link:** <http://jec.unm.edu/education/online-training/contract-law-tutorial/contract-fundamentals-part-2>



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## *Dartmouth College v. Woodward* (17 U. S. 518, 1819)

Contract Clause, Limitations on the Powers of the States

### The Issue

Under the Constitution, can a state legislature change the charter of a college?

### What's at Stake?

Whether Dartmouth College would remain private or become a state school. More broadly, what is protected by the Constitution's "contract" clause?

### Facts and Background

In 1769 the King of England granted a charter to Dartmouth College. This document spelled out the purpose of the school, set up the structure to govern it, and gave land to the college. In 1816, the state legislature of New Hampshire passed laws that revised the charter. These laws changed the school from private to public. They changed the duties of the trustees. They changed how the trustees were selected.

The existing trustees filed suit. They claimed that the legislature violated the Constitution. They said that Article 1, Section 10, of the Constitution prevented a state from "impairing" (that is, weakening or canceling) a contract.

### The Decision

By a 5-1 margin, the Court agreed with Dartmouth. The Court struck down the law, so Dartmouth continued as a private college. Chief Justice Marshall wrote the majority opinion. He said that the charter was, in essence, a contract between the King and the trustees. Even though we were no longer a royal colony, the contract is still valid because the Constitution says that a state cannot pass laws to impair a contract.

### The Impact of the Decision

Historians believe that the decision greatly encouraged business investment and growth. Corporations are also chartered by states. If states can't pass laws to impair those charters, then businesses are more secure. They are also more apt to attract investors, employ workers, and to add to the national prosperity.

Link: [http://www.americanbar.org/groups/public\\_education/initiatives\\_awards/students\\_in\\_action/dartmouth.html](http://www.americanbar.org/groups/public_education/initiatives_awards/students_in_action/dartmouth.html) \*