

## 12.1: Introduction

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Although businesses tend to use the terms “agreement” and “contract” interchangeably, legally the terms have very different meanings. An **agreement** is a mutual understanding between two or more parties about their rights and duties toward each other. A **contract** is a legally enforceable agreement between two or more parties. All contracts are agreements, but not all agreements are contracts.

When contracts are broken, or breached, the injured party can seek damages. In contracts, this usually means an amount that would make that party whole again.

Generally speaking, contracts are a form of **private law**, because the terms of the contract are binding on the parties to the contract but not anyone else. Parties may enter into contracts for whatever they wish and under any terms that they agree on. In other words, parties may assent to agreements even if those agreements represent bad bargains.

Contracts may restrict parties’ future activity. For example, a non-compete clause in an employment contract may be enforceable in the future against an employee after termination of employment.

However, contracts that are illegal or against public policy are not enforceable.

Contract law performs three significant economic functions:

1. It helps individuals and businesses exchange goods and services efficiently.
2. It reduces the costs of economic transactions because parties do not need to negotiate a variety of rules and terms with each separate transaction.
3. It alerts the parties to problems that have arisen in the past, making it easier to avoid potential pitfalls.

**Counselor’s Corner** We live in a world of contracts, which are the bread and butter of business transactions. However, many consumers, employees, and small businesses are afraid to read and understand contracts. That fear allows others to take advantage of them. Take the time to read contracts provided to you. Ask questions about anything you don’t understand *before* you sign. Have the courage to revise and edit contracts to ensure your interests are protected. Or even write your own. It’s not hard and the more you do it, the more confidence you will have to negotiate business transactions and protect your interests. ~Darnell T., attorney

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