

700.03 Proof of Formation of Contract

As stated in Instruction 1, the first element of a contract claim [plaintiff's name] must prove is the existence of a contract. There is a contract if [plaintiff's name] proves there was an offer by one party, acceptance by the other party [parties] and consideration between the parties.

[plaintiff's name] claims the parties entered into a contract which had the following terms:

[state material terms of alleged contract]

To prove the existence of a contract between [among] [plaintiff's name] and [defendant's name], [plaintiff's name] has the burden of proving each of the following propositions:

First [plaintiff's name] must make or have made an offer to [name of offeree].

An “*offer*” is a communication of a willingness to enter into a contract. The communication must satisfy four conditions:

- [1] the communication must have included a definite promise by the person making the communication, showing a willingness to make an agreement;
- [2] the important and necessary terms must be definite;
- [3] the terms must be communicated by words or conduct to the other party [parties]; and
- [4] the communication must give the other party [parties] the power to agree to its terms.

Second [name of offeree] accepted the offer made by [name of offeror].

“Acceptance” of an offer is a communication of agreement to the terms of the offer. For the acceptance to be valid:

- [1] [name of offeree] must agree to all of the material terms in the offer; and
- [2] [name of offeree] must have communicated agreement to [name of offeror].

[according to the terms specified in the offer][by writing, spoken words, actions or any other conduct that would indicate agreement to a reasonable person] [performed the act(s) specified by the offer], or [performed the act(s) that the offer specified.]

Third the agreement included an exchange of promises or value, which is known as consideration. There is sufficient consideration if [plaintiff's name] can prove that something of value was bargained for by the parties and given by one party in exchange for the other's promise.

“Something of value” may consist of a promise, an act, a promise to act or not act, or any payment that was of benefit to one party or a disadvantage to the other.

You will address these issues in questions ____ and ____ on your verdict.

Notes on Use

This instruction should be given when there is a dispute as the formation of the contract. The instruction assumes all of the itemized/numbered issues are contested, and, if an issue is not contested, it should be eliminated from this instruction and the corresponding verdict form. It should be given in conjunction with Instruction 700.02. The appropriate question number on the Verdict shall be filled in. Contract cases often include multiple defendants who should all be added by name to this instruction. The set of instructions must end with 700.18V.