

Candy Bar Contracts

Elementary School Level

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BACKGROUND INFORMATION

This activity was conceived by an attorney who was invited to school to explain what he did for a living. Understanding that early elementary children have limited life experience and substantive knowledge, the attorney was convinced that certain rudimentary principles of contract law are understood by many, if not all, five-year-olds.

Contractual arrangements permeate our society, and disputes over these arrangements are everyday occurrences for attorneys and laymen. Children, too, enter contractual relationships whenever they go to a movie or borrow library books. Children negotiate simple contracts whenever they promise to relinquish one comic book for another or trade baseball cards.

Disputes may arise after contracts are consummated for a variety of reasons — one party cannot or will not fulfill the agreement or is perceived as not living up to all or part of the terms of the contractual agreement. In the example of the children's exchanged promises, a comic book may have missing pages.

A complex legal issue that frequently arises is known formally as a "mistake of fact." According to *Black's Law Dictionary*, a "mistake of fact" is an unconscious ignoring or forgetting of a fact relating to a contract, or a belief that something material to the contract exists or has existed when, in fact, it does not nor ever has existed. It is not, however, a mistake caused by a party's neglecting a legal duty. A "mistake of fact" can be mutual or not, each with differing legal results.

Negotiating a contract and then resolving a dispute over a mistake of fact was the focus this attorney chose for explaining his work. This is a legal situation arising again and again in the real world of business and everyday life.

PURPOSE

This activity is designed to introduce lower elementary students to some of the main concepts involved in contract law and the attorney's role in resolving disputes concerning legal contracts.

NOTE: This activity requires the following props, which are to be provided by the teacher:

- ◆ Enough candy bars for the entire class, some plain and some with nuts.
- ◆ A black crepe-paper student-sized “robe.” A sheet of black crepe or tissue paper works quite well once a hole is cut in the center to go over a child’s head.

PROCEDURE

NOTE TO TEACHER: Remove the candy from one candy bar, hiding the candy and making the wrapper appear to be an actual candy bar. Before the attorney arrives, place both the empty wrapper and a real candy bar of the second type on a “judge’s table” at the front of the class. The children are to think that two candy bars lie on the table: one with nuts and one without nuts. The remaining candy bars should be kept out of sight until the end of the activity.

1. Upon arriving in class, assign one student to be the judge and give the student the “robe” to wear.
2. Take a “hands up” vote on chocolate bar preferences (with or without nuts).
3. Ask for two volunteers, one to represent each candy-bar preference.
4. Place a single bar of each of the two types of chocolate bars on the judge’s table in front of the class, and ask each of the two volunteers to stand behind *but not touch* the bar they *least* prefer.
5. Explain that, even though each has received the kind of bar they do not particularly like, they are free to talk to each other and work out an arrangement to exchange the assigned bar.
6. When both are satisfied that a “deal” has been reached, suggest that each pick up the candy bar obtained in the “negotiated” exchange.
7. Ask the “cheated” student to express his or her feelings. You can expect to hear every legal concept of “mistake of fact.”
8. Ask the student with the candy bar to express their feelings about the deal and what a fair resolution might be. Don’t be surprised to hear “a deal is a deal.”
9. Direct a discussion between the two volunteers aimed at settling their dispute, but minimize your direction as much as possible to allow the children to handle their own bargaining and dispute settlement.
10. Finally, call upon the judge to decide the dispute in a “mini mock trial.”

FOLLOW-UP DISCUSSION

Briefly tell the class about the attorney's role in deals and disputes. Explain that people constantly get into arguments because one person thinks that a situation, not necessarily another person, has been unfair, like the student who had expected a candy bar but got only paper. When someone feels hurt at losing to another what they think should rightfully be theirs, each person hires an attorney to solve the problem. Because lawyers are experienced and know the rules, they can make a deal for the person each represents (the client) and then help decide a fair result if the deal later turns out differently than expected. Because lawyers are not so involved (they do not get the candy bars from the agreement) they can more easily reach a bargain or deal and resolve a later dispute. Finally, if even the lawyers can't agree or persuade their clients to agree, the lawyers and clients can go to court and allow a judge to make a decision.

Keep in mind the following points as you discuss the exercise with the students:

- ◆ The students, even at their young age, were able to apply the concepts of fairness and common sense, which underlie the law in general, to the resolution of their dispute.
- ◆ Even though events may seem unfair to one party, there *is* something that can be done to rectify them in a reasonable way.
- ◆ Parties can exercise control within the rules, as the students did in negotiating their own deal. Only when the bargain struck by them was found lacking an expected element — a candy bar for each, was it necessary to rely on formal “rules” for achieving a fair resolution.
- ◆ Deals and business arrangements of many types may not always be completely satisfying to every party, but a sense of fairness and justice can be achieved within the limits imposed by factors outside the control of anyone. And that, after all, is the purpose of the law.

This presentation is to be ended with the distribution of candy bars to all children.