For many years, the legal expression *caveat emptor*, a Latin phrase meaning “let the buyer beware,” summed up consumer law. **Consumers**, or people who buy goods and services from a seller, had to look out for unfair and misleading sales practices before buying, or be prepared to suffer the consequences. Today the law is more balanced. Consumer law establishes a variety of rights and responsibilities to make the marketplace fair for both buyers and sellers.

**Chapters in Brief**

**Chapter 23** examines contracts and their elements. It also distinguishes between written and oral contracts and the merits of each. Illegal contracts are also discussed.

**Chapter 24** describes express and implied warranties and disclaimers.
Chapter 25 introduces the topics of credit and other financial services. It provides insight into the costs and risks of credit and discusses the importance of managing money wisely and building good credit.

Chapter 26 exposes common deceptive sales practices such as telemarketing scams and bait and switch techniques to help consumers avoid becoming victimized. Laws to protect consumers are also discussed.

Chapter 27 describes federal, state, and local laws and agencies that regulate sellers and protect consumers.

Chapter 28 presents issues of consumer awareness and understanding when financing, purchasing, and insuring a car.

Chapter 29 guides consumers through the hands-on skills needed to negotiate with landlords and sign leases. The issue of homelessness is also covered.
A contract is an agreement between two or more persons to exchange something of value. A contract legally binds parties to do what they promise. A party who fails to live up to such a promise has breached the contract. When you agree to buy something, you usually form a legal contract. If you pay to ride a bus, then you form a legally binding contract because you promise to pay money in exchange for the bus ride.

The law of contracts reaches into many aspects of our daily lives. For example, even when you buy lunch at a restaurant and tickets to see your favorite movie, you are entering into contracts. To protect yourself as a consumer, you need to understand how contracts are formed and how they affect your rights and responsibilities.

Elements of a Contract

To be legally binding, a contract must have certain elements. There must be an offer by one party and an acceptance by another. An offer must be directed to a specific person. For example, the menu at a fast-food restaurant listing the prices is not an offer, because it is not directed
at anyone in particular. When you place your order, however, you make an offer. When they begin cooking your food, the restaurant has accepted your offer, and a contract has been formed. The law infers acceptance from certain actions, such as signing a contract or beginning to carry out the terms of an agreement.

For a contract to be valid, there must also be an exchange of consideration. This means something of value is given for something else of value. For example, when you buy a new shirt at a store, your consideration is the money you pay, and the merchant’s consideration is the item you are buying. The items being exchanged do not have to be of the same value. The law allows consumers and merchants to make both good deals and bad deals.

People entering into a contract must be legally competent to make contracts. For example, they cannot be mentally ill or intoxicated. Also, agreements to do something illegal or against public policy are not enforceable.

If Lorenzo says to Christine, “I will sell you my cell phone for $50,” this is an offer. If Christine says, “OK,” or if she pays the $50 to Lorenzo, or if she signs an agreement to pay $50, then there is an acceptance. The exchange of the cell phone for the money is the exchange of consideration. Both parties are competent, and the agreement is not to do something illegal or against public policy. Therefore, a contract has been made.

You should not be too quick to enter into a contract. Always make sure that you understand and agree with all the terms of the contract before you accept them. Otherwise, it may be too late to back out of the deal.

**Problem 23.1**

Read each of the following situations and decide whether a contract has been made. Give your reasons.

a. An auctioneer says, “Do I hear a bid for this antique sofa?” Someone in the crowd says, “$300.”

b. Yukiko says to Basil, “I’m going to sell my car for $500.” Basil replies, “All right, here is the money. I’ll take it.”

c. The citizens of a small town collect $1,000 and offer it as a reward for the capture of a suspected criminal. The sheriff captures the suspect and seeks the reward.

d. Megan’s father promises to pay her $1,000 when she turns 18. On her eighteenth birthday, she seeks the money.

e. Standing at one end of a long bridge, Shelly says to Lynn, “I’ll give you $5 if you walk across the bridge.” Lynn says nothing but starts walking across the bridge.

f. Liz offers Sharon $100 to steal four hubcaps for her new sports car. Sharon steals the hubcaps from a car dealership, brings them to Liz, and asks for the money.
Minors and Contracts

A minor is a person under the age of legal majority, which is 18 in most states. Minors may make contracts. However, as a general rule, they cannot be forced to carry out their promises and may cancel or refuse to honor their contracts. Minors who cancel contracts usually must return any goods or consideration still in their possession. This rule is designed to protect minors from being taken advantage of because of their age and lack of experience. As a result of this rule, minors may have a tough time getting credit. Many stores require minors to have a parent or other adult cosign any major contract. The adult cosigner is responsible for making payments if the minor does not honor the deal.

Minors may, however, be held to contracts that involve necessities, such as food, clothing, shelter, or medical aid. Minors can be required to pay for the reasonable value of such goods and services. In most states, a minor who continues making payments on a contract after reaching the age of majority is considered to have ratified (formally approved) the contract. After the contract has been ratified, it can no longer be canceled without some type of penalty.

Problem 23.2

Kara, 17, wants a computer of her own. She goes to a local electronics store to purchase a new computer system. The computer costs $950. She offers to put down $150 and make monthly payments on the remaining amount. Because Kara is only 17, the manager of the store refuses to sell her the computer.

a. Is this fair? Is this legal?
b. What concerns might the store manager have about selling a computer to a minor?
Written and Oral Contracts

Most contracts may be either written or oral (spoken). However, certain kinds of contracts must be in writing to be enforceable. These include contracts for the sale of land or real estate, contracts for the sale of goods priced at $500 or more, agreements to pay another person’s debt, and agreements for services that will not be performed within one year from the date of the agreement.

The law favors written contracts. For your protection, it is always better to have a written contract if possible. Otherwise, it can be difficult to prove that a party promised to do something. If there is a written contract, a court will not consider evidence of promises made before the signing of the contract, except when the written contract is unclear or one party was tricked into entering the contract.

Problem 23.3

Ruth made an oral agreement to sell her used racing bicycle to Mike for $400. A few days later, she got an offer of $600 from Paul and orally accepted this higher offer. Prior to delivering the bicycle, Ruth decided she did not want to sell it anymore. Both Mike and Paul sued her for breach of contract.

a. What will the court do?

b. Is this decision fair? Explain your answer.

c. How would the case be different if the agreement with Paul were in writing?

Illegal Contracts

Some contracts are unenforceable in court because they are illegal or against public policy. For example, an agreement between two persons for the sale of illegal drugs could never be enforced in court.

Courts sometimes find that a contract is so unfair, harsh, and oppressive that it should not be enforced. Such a contract is considered to be unconscionable. The law usually allows freedom of contract, and consumers are allowed to make bad deals as well as good ones.
The Unfair Contract

A furniture store required an unemployed woman on public assistance to sign its standard contract for credit every time she made a purchase at the store. One of the terms of the contract stated that the store would own every item the woman purchased until all the items were fully paid for. The woman made several purchases at the store, signing this same standard contract each time.

After several years of making all her payments, she purchased a couch and missed two payments. The store believed it had the right, under the contract, to take back all the items the woman had ever purchased there.

A court of appeals found a portion of the contract to be unconscionable and did not enforce this unfair term in the agreement. The woman had to return the couch, but she was able to keep all the items she had already paid for.

For example, courts will usually enforce a contract that requires someone to pay a very high price for something. On rare occasions, though, a court may not enforce an extremely unfair contract (or an unfair clause in a contract).

A court is more likely to find an extremely unfair contract unconscionable when (1) the consumer is presented with a contract on a take-it-or-leave-it basis, and (2) there is very uneven bargaining power between the parties (as when an experienced seller is dealing with an inexperienced consumer). But imagine trying to bargain with the utility company over the price of your electricity. Despite the uneven bargaining power and take-it-or-leave-it basis, the utility company can require you to pay your bill.

Fraud and misrepresentation are also grounds for invalidating a contract. Fraud is a false statement about an important fact that is made to induce, or persuade, a person to agree to a contract. For example, if a sports memorabilia salesperson fakes a famous baseball player’s signature on a baseball card and sells it, the unsuspecting buyer can cancel the contract and may win damages in court after uncovering the fraud. Although salespersons may not lie about

Problem 23.4

a. Why did the court refuse to enforce the entire agreement in this case?

b. Was the court’s decision fair to the owner of the furniture store? Explain.

c. What should the contract have said to make it fair to both parties?
a product’s features, they are usually not required to volunteer information about the negative aspects of a product unless they are asked. Only in rare instances, when a special relationship of trust exists between buyer and seller, will courts require the disclosure of negative information. Therefore, it is important for consumers to examine products carefully and to ask a lot of questions before buying.

**Breach of Contract**

When a contract is formed but one party fails to carry out its end of the bargain, then there has been a breach of the contract. In civil court, you can ask for a number of different remedies for breach of consumer contracts. First, you can sue for expectation damages. **Expectation damages** are the difference between the value that would be expected if the breaching party had fulfilled its promise and the value of what the injured party actually received. For example, assume you order ten compact discs through a mail-order catalog and pay $100, but the company sends you only six compact discs. Assume that the market value of the six discs is $60. The expectation damages would be $40—the difference between the full value of what you were promised ($100) and the value of what you actually received ($60) in the mail. You would not have to return the discs you received.

Another remedy is **rescission** and **restitution**. When you ask the court for this remedy, you ask it to cancel, or rescind, the contract (rescission) and order the person you are suing to give back, or refund, any money you have already paid (restitution). This releases you from any further obligations under the contract, but you will have to return any benefit already received under the contract. Assume, for example, that you sign a contract to purchase a set of cookware and a pan melts the first time it is exposed to a direct flame. In such a case, you might seek rescission and restitution. You would get your money back and would have no further obligations under the contract, but you would have to return the cookware set.
A third type of civil remedy is specific performance. With this remedy, the buyer asks the court to order the seller to carry out the specific terms of the agreement. For example, if you ordered goods that were never delivered, the court could order the company to deliver the goods to you. In the case of specific performance, you would still have to pay for the goods.

A suit for breach of contract in which you sue for expectation damages or for specific performance is designed to place you in approximately the same position you would have been in had the contract been successfully completed. A suit for rescission and restitution is designed to return both the buyer and the seller to the positions they were in before the contract began.

The amount of damages awarded for breach of contract is often affected by the duty to mitigate damages. Mitigate means “to make less severe.” The law usually requires an injured party to take reasonable steps to mitigate damages. For example, suppose Martin received several offers of $100 for the used compact disc player he was selling. Gina agreed to buy the item for $150, but she later refused to follow through on the purchase. Martin would be required to mitigate his damages. In other words, if he could still sell the used compact disc player for $100, his damages for a breach of contract claim against Gina would be only $50.

The discussion above deals with breaches of contract by the seller. When the situation is reversed and the buyer breaches the contract, it usually means that agreed-upon payments have not been made. The specific remedies available when the buyer is in breach of contract are included in the discussion on credit in Chapter 25, pages 306–309.

**Problem 23.5**

Read each of the following situations in which a consumer has a problem with the seller. If the consumer has to go to court, what is the best remedy? Why? Could either of these situations result in a criminal prosecution? Explain your answers.

**a.** Jeanine takes a formal, floor-length dress that originally belonged to her mother to the local dry cleaner. When she picks up the dress, she finds several holes in it. The attendant at the dry cleaner claims the holes were there when the garment was brought in. Jeanine is certain that they are the result of the cleaning.

**b.** The Zhou family hires the Weed Out Chemical Company to spray their lawn twice a month during the spring and summer months of May, June, July, and August. Weed Out sends a monthly bill to the Zhous. By June 10, Weed Out has not yet sprayed, although it sent a bill in May, which the Zhou family paid. Weed Out is behind schedule with its spraying with many of its customers because there is great demand for its product, which contains a successful new formula that is not yet available from other local companies.