

## A Few Contract Principles

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As far as I can tell, there is no firm rule against interviewing yourself for an article. That's particularly true when you need an answer, can't find one, are willing to engage in flagrant speculation and can't readily be proved wrong.

In preparation for this article, I wanted to know the number of contracts made in the United States in 2009. Articles frequently begin with similar startling statistics. That's a way of telling the reader that the article's topic must really be important. After Googling myself silly for the answer, I gave up and decided that a shameless guess by me might be the best I could do.

Mr. Brown: Thanks for taking the time to meet with me.  
 Mr. Brown: My pleasure.  
 Mr. Brown: How many contracts were made in the U.S. in 2009?  
 Mr. Brown: More than 300 million.  
 Mr. Brown: Wow, that's amazing!  
 Mr. Brown: Yes, it really is.

So, there you have it—authoritative proof that there were more than 300 million contracts in the United States in 2009. With such a colossal number of contracts last year alone, it's certainly important that you read an article about basic contract principles. As good fortune would have it, you're already doing so. Here are a few fundamental contract principles.

**Most contracts can be oral.** Although contracts for the sale of land must generally be in writing to be enforceable, most contracts can be oral. For example, a construction contract that does not involve the sale of land can be oral. So can a subcontract for construction work. Plainly, it's better to have a written contract. As the saying goes, "a verbal contract is not worth the paper it's written on."

**Parol evidence can't vary a written contract.** Once parties execute a written contract, the law presumes that it and only it contains the entire agreement between them. This is known as the "contract merger" doctrine. Its kissing cousin is the "parol evidence rule," which generally prevents parties from introducing oral, or even written, statements made prior to or at the time of the written contract for the purpose of adding to, taking away from or otherwise varying its terms. In short, generally, the written contract controls.

**Parol evidence can vary a written contract.** Yes, this is the exact opposite of the last one. As with many general rules of law, the parol evidence rule has exceptions. Its most significant exception is for ambiguities in written contracts. An ambiguity is an uncertainty in meaning. If a contract contains an ambiguous term, which they do with stunning frequency, parol evidence may be admissible to explain the parties' intentions regarding that term, but only that term. Since, once a dispute arises, parties often disagree about their intent, ambiguities should be studiously avoided.

**Perfect compliance with a contract is not required.** While you may strive to perfectly perform your contract obligations, the law generally does not require perfect compliance. It requires substantial compliance. Sure, debate can arise about the meaning of "substantial" in a given setting, but the point is that you are not held to the elusive standard of perfection.

**If parties disregard terms of a written contract, so will the court.** It is not uncommon for parties to ignore the terms of their written contract. This often happens with change orders. Construction contracts almost always require them to be in writing and signed by the parties. Unfortunately, parties frequently ignore those

requirements. If they mutually ignore them, court will generally do likewise and enforce oral agreements relating to changes. This "mutual departure" rule can apply to other terms of written contracts, too.

**Damages must be mitigated.** A party damaged by a breach of contract has a legal obligation to take reasonable steps to "mitigate" or lessen the damages resulting from that breach. The damaged party can't recover those damages that could have been avoided through reasonable measures. Thus, for example, a home owner with a roof leak can't recover damages that could have been avoided by promptly bringing the leak to the attention of the builder or fixing the roof if the builder fails to do so.

**Punitive damages cannot be recovered.** Punitive damages can't be recovered for a breach of contract. They can only be recovered for some tort claims.