

# Contracts as extensive part of protective services essay example

[Business](#), [Management](#)



## **Business and Organizational Security Management**

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Any business and organizational security manager can attest and confirm; contracts are an extensive part of protective services. Services being provided by contract firms are increasingly diversifying into areas like scheduling and training, risk assessment, attendance, and time, the use of contracts will continue to regulate the provision of protective services. Contracts refer to agreements between two or more parties with regards to performance of a particular act and legally binding or enforceable. For these agreements to result to a contract, they must not be an invitation to negotiate or mere offers. Contracts are legally binding and enforceable provided that the essential elements of a valid contract are present. In ordinary contract, there are conditions that are prerequisite for the formation. There must be an offer, an acceptance; the contractors must have the intention to create legal relations, and consideration. Offer is where one party invites others to purchase his goods, and it is distinguished with an invitation to treat which does not amount to offer. Acceptance is when the other party expressly agrees to buy the goods on offer. Intention to create legal relation is that both parties must have the intent to be a party to the contract for the resulting agreement to be legally binding and enforceable. Consideration is that there is some value or benefit exchanged between the parties. For example, money paid in exchange of goods. Another element, required often is that the parties contracting must have the capacity (Miles, 2011).

The particular offer must be accepted, and the agreement must declare the intention of the parties which will either be express or implied as express terms of the contract. For instance, promises made in employee handbooks or employment interviews by supervisory personnel that mention issues to do with salaries. Similarly, implied agreements are sometimes interpreted in service contracts from promises by sales representatives and advertising literature. In contracts reached through negotiation, for protective services, the process will consist of collaborative bargaining, competitive bargaining, or contingency bargaining. To ensure that the protective services are comprehensive, negotiations must include the substance of the agreement and then followed by a conclusion in which the parties consent to the terms as a matter of principle. To sum everything up, a follow-up occurs where new conditions and contingencies come into play.

The contract must also be signed by parties with the capacity to comprehend the contents of the contract. This means that mental incompetents, intoxicated persons, and minors cannot make contracts. Agreements or contracts cannot also not be made under a person is under duress or undue influence. The performance or promise of the parties to the contract must be valuable in the eyes of the law and be legally sufficient. A benefit or something of legal value must be presented and at the same time received by the other party. Release from liability that is duly signed by individuals who were detained must show some consideration in terms of substantial goods or money. There is a requirement in law that a third party witnesses the contract or these agreements (Miles, 2011).

## **How Risk Management Techniques Help Manage Liability**

The primary purpose of these risk management techniques is to support the vision and mission as it pertains to liability in times of emergency or uncertain events. Risk management technique involves identifying, evaluating, and preventing exposures to liability that may arise as a result of performance of certain services. It in addition establishes a monitoring mechanism to third party, volunteer and the employee safety as well as potential business, property and operational risks. A risk is an unexpected condition or event which, if it occurs, has a negative effect on the organization's mission and vision. An organization or individual should have procedures and policies set in place to identify these risks, have layers of protection to control the risks, and management to monitor and control these risks from occurring to reduce the chance of liability (Carroll, 2009). The risk management technique relies on subjective evaluation, but still proves effective in managing liability will expose a firm or an individual to financial losses. Risk identification is a critical technique in managing liability. Unless an organization or an individual identifies a risk, it has no framework for managing liability. This technique involves evaluating areas of specialization, client base, and the practice of the organization. At this stage, procuring assistance of an insurance professional and somebody familiar with risks in that area of operation is very essential. Once an organization identifies the risks in the field of operation, then they must quantify it to determine the level of liability that it can attract. For the majority organizations, simply ranking risk-generating activities through their potential because may be sufficient. There are three categories of risk

exposures that the first causing relatively small financial liability despite occurring frequently. The organization typically retains the risk which falls under this category. The organization typically insures these risks. Finally, risk may have catastrophic potential for liability and occur frequently at the same time. This category of risk is ordinarily eliminated by the organization to avoid liability.

In managing liability, risk management technique that work best is in ranking risk exposures is giving the highest priority to those risks with both severity and frequency. Managing the liability through risk management techniques requires organizations to determine tools that they can use to either transfer the liability to a third party or reduce the liability to acceptable levels. It is also essential that the organization identifies all elements of liability and treat them separately. The effectiveness of the organization in implementing the chosen techniques will determine the ultimate success of the organization in determining liability. This may sometimes compel the organization to forego some types of projects to eliminate liability-producing activity. Loss prevention mechanisms can also be used to reduce or manage liability. The majorities of loss prevention tools reduce liability to acceptable levels; however, do not eliminate the potential for liability completely as these need insurance. Moreover, effective risk management technique that manages liability combines the use of loss prevention tools and liability transfer techniques so that liability is both transferred and reduced. Several tools for loss prevention involve quality control and practice management. An effective risk management technique not only assists an organization to

manage liability, but also help in improving the overall quality of professional services (Carroll, 2009).

## **Preparing and Enhancing Professional Approach to Testifying in Court**

Juries are like other audiences in hearing cases; therefore, the way that an individual prepares and enhance professional approach while testifying in court is very essential. Over the years, it is not unheard of where witnesses become directionless as retaining counsel and opposing counsel engage in fights before the jury to shape facts. This occasionally results from attorneys unawareness of the things that witness knows and witness having to clue to their attorney's narrative. It should be noted that testifying in court involves something more than a recitation of facts in a timely fashion or manner.

Long prior to the trial, the witness should have a clear understanding of what to expect at the trial and where they fit in the attorney's story. This is because the jury determines the facts and the opposing counsel will always attempt to discredit the testimony of the witness and diminish the weight of the testimony to the jury.

In a professional approach in testifying in court or before the jury requires that the retaining counsel meet with the witness before the jury trial to ensure that the witness fully understands the trial process. The witness should also have a clear strategy in which he or she is to answer questions while testifying in court. They should familiarize themselves with the questions to be asked during both cross and direct examination, and this should be inclusive of potential attacks on their personal and professional credibility. The retaining attorney should record trial preparation as well as

having expert review any video to strengthen their body language and their responses. This is also an excellent platform for suggesting clothing changes. For instance, a suit with a bow tie will add credibility to a witness testimony. The retaining attorney should also ask the witness for any credibility issues, background vulnerabilities, or case facts that have not been covered. This is the point at which the use of diagrams and charts should be discussed as a means of presenting the case facts. The witness should also know of the strategies or tactics used by then opposing counsel to discredit their testimony. For example, the opposing counsel may be having the tendency of challenging witness's qualification, as opposed to their conclusions. Witnesses should also avoid stating unnecessary or potentially damaging information. He or she should carefully listen to the questions and only give answers to questions asked either under direct or cross examination. They must trust the retaining counsel to ask follow up questions to provide more information or clarification to the jury. He or she must briefly pause when asked to by the attorney to give ample time for objections. In the event that the attorney raises any objection, they witness must await a ruling from the presiding judge. They should stick to their testimony and avoid any concern with legal theories or thematic concepts. If the opposing counsel steer the facts towards an incorrect conclusion, the witness should respond with correct facts. Witnesses should avoid excessively technical or complicated answers unless it is the only way to present their testimony. Similarly, they must desist from over-simplifying answers or talking down. The objective should also be to educate and engage the jury, but not to frustrate or bore them. This sometimes become challenging for witnesses with love of their

voice and large egos. Desire to please retaining attorney or large egos can also encourage witness to testify beyond their knowledge, hence jeopardizing their credibility.

## **Four Elements of Proving Negligence**

The general rule is that the persons who seek to sue and recover on the basis of negligence must essentially prove four elements. This usually occurs both in the investigation stage and court proceedings. These include a duty of care, breach, causation, and damages. With regards to duty of care, the general rule is that the party bring an action on negligence must prove that the defendant owed him or her duty of care to act appropriately and reasonably in the performance of some procedures. For example, in medical negligence, their requirement is that the patient proves that the physician was responsible for providing a particular treatment or care to the patient with the required standard of care (James & Richard, 2013).

In terms of breach, there is a general requirement that the claimant proves that the defendant breached the duty she or he owes the plaintiff or claimant. The claimant must prove that the defendant was responsible for providing care that fell below the required standard of care. The element of causation also requires the claimant to prove that the defendant's breach of duty of care directly contributed or caused some injuries or harm to him or her. The harm to the claimant must have a direct relationship with the breach of duty of care. The element of damages also requires the claimant to prove that he or she sustained injuries as a result of the defendant's mistake. The general rule is that, in cases where the defendant breaches his



or her duty of care but causes no injuries to the claimant, he or she cannot make a claim for damages.

In court of law negligence claim can, the claimant must prove the four elements above. For instance, the case of *Alexander Glancy v The Southern General Hospital NHS Trust* held there is a legal duty by the physician towards to the patient because there was a professional relationship between the patient and the surgeon. In addition, in the event that a doctor performs a surgical procedure to the patient, there is a presumption of a reasonable duty of care to the patient. The negligence doctrine of *res ipsa loquitur* applies in cases of obvious breach of duty of care. With regards to causation, there must be a direct relationship between the subsequent injuries and the negligent acts of the defendant. In addition, there exists a proximate causation between the injuries and the breach of duty of care (Kiyana, 2012).

## References

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