1. **What is a contract?** A contract is simply a legally binding agreement between two or more parties. There are certainly numerous and varied types of contracts; however, the first threshold of the definition is that the agreement is something that the law will acknowledge is binding on all concerned.

Not all agreements are binding, either because the agreement may be illegal or simply because the public policy disfavors it. For example, any agreement to do any illegal act is not binding, regardless of whether any or all of the other formal requirements are met. A contract to marry someone is an example of a contract that violates public policy. While not illegal, the law will not recognize and bind someone for such an agreement.

2. **What is a breach of contract?** A breach of contract is a legal term of art that indicates that an agreement has taken place and met the formal requirements of a contract to the point that it has become binding on each of the parties. To breach a contract is for one of the parties to fail to do what was required of them. Under the law, such a failure has harmed the non-breaching party, and as a result, the non-breaching party should receive a remedy or damage award. The harm may be slight or large. The degree of award for damages is weighted by the amount of the harm done, not by the severity of the breach. A slight breach may cause tremendous harm, or a huge breach may cause little to no harm.

3. **What are the basis elements of a contract?** For a contract to be binding, the contract must demonstrate five specific elements.

   The first element required is that two or more parties must have had a meeting of the minds to the extent that there is a mutual agreement. Whether or not there is a mutual agreement is a decision for a jury in contested cases. In other words, it is an issue of fact to determine whether there was a mutual agreement via a meeting of the minds.

   The second essential element is whether each of the parties to the agreement was legally competent to enter into an agreement. For a party to be legally competent under the law, the parties must first be at least 18 years of age. There are rare circumstances in which the age requirement can be modified, but for our purposes one must be an adult (18 years of age) to enter into a contract. Beyond being an adult, all parties must be mentally competent. That is, all parties must have the subjective mental state of understanding that they are entering into a legally binding agreement. It is not necessary that any of the parties have any in depth expertise or knowledge of contract law, but it is essential that each of the parties understand that the agreement may be specifically enforced against them by the law if they fail to perform (breach the contract).

   The third element is that each of the parties has performed or promised to perform and that there exists between consideration. Consideration is whatever compensation either of the parties may have promised to the other. For example, with a contract to build a home, the contractor gives the consideration of the promise to build the home and the buyers provide consideration by providing a specified sum of money to the contractor. Consideration is not always money. It may be anything of value, goods or services. However, it is also true that for the most part, at least one of the parties tends to use money as consideration.

   The fourth requirement is that the contract must be for a legal act on each of the parties’ sides. Again, it may also not be recognized by public policy as well.

   The fifth requirement is very rare. It is that a very small number of contracts are required to be made under seal, that is under the seal of a recognized public official (for example, a notary public). In this
instance, there must exist a state statute that requires such a seal (very rare). In the absence of a law requiring a seal, none is required.

4. What are the distinctions between valid, void and voidable contracts?
A valid contract is simply a legally binding contract, recognized by the law. A void contract is the antithesis of the legally binding contract. That is to say, a void contract has NO legal recognition and is as if the parties never contracted, or attempted to contract at all. An example of a void contract would be a contract for someone to steal something. The agreement is illegal; therefore, the contract is void (as if there never was such a contract).

The voidable contract is a little trickier. In some rare instances in the law, there may exist an agreement in which one of the other parties may be lacking in legal competency to enter into an agreement. An example is a minor entering into an agreement with an adult. Here, the minor could enforce the agreement against the adult, but the adult could not enforce the agreement against the minor. If one, but not the other, of the parties may enforce a contract against the other, then the law deems that contract to be voidable. Another instance might occur if two adults entered into an agreement, however at the time of the agreement, one of the adults was under the influence of a powerful, narcotic medication. If the medicated party literally did not realize that he was entering into a contract at the time, he may properly ask a court to set aside the contract as voidable. But it could also be the case that though the contract was voidable, even the medicated party believed that the contract was one in which both parties benefited, therefore choosing to remain bound to the agreement.

5. What distinguishes express and implied contracts?
An express contract is a contract in which the terms have been set forth clearly in words (either written or spoken). The express contract has each of the parties setting forth what they each offer and expect in return from the other. It is often mistaken belief that all contracts are required to be in writing. Indeed, to the contrary, all oral contracts are equally binding unless there exists a specific law or statute that requires that particular contract to have been written (there are many instances of this, for example contracts involving the sale of real property are required to be in writing in most states).

Implied contracts are agreements in which there are no express words between the parties setting forth the terms of the contract, but rather that their respective actions, in a particular circumstance, may demonstrate that there exists an agreement. For example, if one were to enter a convenience store, grab a soft drink and place money on the counter, it would be apparent that there exists an implied agreement that one wanted to purchase the soft drink and was offering the purchase price (money) in return. The sale of relatively inexpensive merchandise is often within the context of an implied contract.

All contracts also may be defined as formal or simple contracts. As we stated earlier, very rarely there may exist a statutory requirement that a contract be witnessed by a public official (such as a notary public) as well as evidenced by an official mark or seal (such as a notary stamp, or a certification mark from a bank or financial institution). If such a requirement exists for that particular subject matter or type of contract, then we classify that rare contract as a formal contract. The vast majority of contracts are NOT formal requirements.

A simple contract by definition is any and all contracts that are NOT formal contracts (most contracts by far).

6. How are executory and executed contracts discerned?
The terms executory and executed refer specifically to whether or not the terms of contract (promises made by agreement) have been completed or not. For example, if John Johns enters into a contract with a local lawn service to have his lawn mowed for a period of one year, at payment of $50 per week, then the contract may only be deemed executed once the one year period has been completed. Up until the time that the year is completed, the contract remains executory (not all of the terms have been filled or completed).
If John Jones contracts with the law service to have his lawn cut one time by the service, once the lawn is cut and the lawn service paid their fee, the contract is considered fully executed.

7. Define unilateral and bilateral contracts.
To understand the distinction between unilateral contracts and bilateral contracts we must consider the issue of precisely what it is that one would request of another when entering into a contract. The law distinguishes between the concept of the request for exchange of promise and the request for performance.

If I offer to my neighbor's college age son that, if he will wash my car, I will pay him $10.00, what I have actually done is promise $10.00 for the performance of an act (the washing of my car).

Notice how this would differ from a scenario in which I offer to my neighbor's son that if he promises to wash my car (at a later date), I will pay him $10.00.

In the first instance, I was not requesting a promise; I was in fact requesting performance. Upon the completion of the car having been washed, I obligated myself to pay $10.00.

In the second instance, I offered to pay $10.00 for a promise from my neighbor's son that he would wash the car (at a future date, perhaps, but not necessarily, in the very immediate future). In the second instance, I was not insisting upon immediate performance, I was willing to accept a promise of performance at a later date.

8. What are the basic elements of an offer and acceptance?
All binding contracts must start out with an exchange of an offer and an acceptance between the parties.

The party making the offer is called the offeror. The party to whom the offer is made is the offeree.

For an offer to be valid, three conditions must be met. First, the offer must be clear and definite as to the request. Secondly, the offer must be made purposely and with true intent (not a jest, or game). Finally, the offer must be communicated to the offeree.

The requirement of a clear and definite request of an offer is straightforward. For example, if a potential buyer enters a used car lot and states, "I want to buy the car from you for $10,000.00," this offer would fail for lack of definiteness. Which car is the potential buyer referring to? However, if the buyer states, "I will buy the green 1995 Honda Accord from you for $10,000.00," then the offer is clear and definite. Normally, when there is a problem, the definiteness requirements, most often unclear, concern which specific item and at what specific price. However, there are numerous ways in which the offer may lack in definiteness, such as how long a service is to be performed and to what extent is a service to be performed.

The requirement that an offer be seriously intended is usually straightforward. Whether someone intended a particular offer to be serious or not is an issue of fact for the jury in a contested case. The question becomes thus: Would a reasonable, objective and neutral person, having witnessed the offer, have believed it to be serious? If the answer is yes, then the offer shall be deemed purposeful and serious, even if the offeree actually made the offer in jest.

The final requirement of the offer is that it must be communicated to the offeree (no one except the intended offeree may accept an offer). There are many methods in which an offer may be communicated, including through the use of a third-party agent, but, in the final analysis, all that is important is that the offeree actually received the offer (regardless of the form and method of transport of the offer). It logically follows that, if the offer never reaches the intended offeree, then the offer cannot be valid.
Sometimes, during the preliminary stages of a negotiation, statements can be made that might have the appearance of being a valid offer, but, in fact, they are not. For example, "I would like to talk to you about me purchasing your home". This statement is not an offer, although it resembles one. The law defines statements like this as *invitations to make offers*, or *invitations to negotiate*. In addition to statements like this, the Invitations to Negotiate also include any and all advertising, of any type, commercial or personal. Therefore, even a published classified ad in a newspaper cannot be considered an offer; it is rather an invitation to negotiate.

Once an offer has been made, there is often an issue of how long the offer remains effective. The general rule is this: The offer remains open for a reasonable time (not to exceed three months) or until the offer is revoked. What constitutes a reasonable period of time depends entirely on the circumstances. It could be a very brief period of time (minutes) or as much as three months.

A valid offer may be revoked any time prior to having been accepted. Once accepted, the offeror becomes bound.

Further, unless the offeror had sold an option to the offeree, an offeror can revoke an offer even if he insisted that he would keep the offer open for a specified period of time.

For a revocation of an offer to be effective, however, the revocation of the offer must be communicated to the offeree AND the offeree must have actually received the revocation.

Other acts that serve to revoke an offer include the death of the offeror, rejection of the offer by the offeree or counteroffer by the offeree.

9. How may an offer be accepted?
There are no required formal methods of accepting an offer. The important thing is that the acceptance is clearly communicated to the offeree. The acceptance may be communicated in writing, verbally or even non-verbally (such as a hand-shake), however, there must be a definite indicator of acceptance.

The offeror, if he wishes, may dictate exactly how an offer must be accepted, for example, "in writing, postmarked no later than June 30, 2006." In the absence of a specific, required means of acceptance, the offeree may use any reasonable method to accept the offer.

10. What is the effect of a counteroffer to the original offer?
If an offeree (person receiving an offer) may choose not to accept the offer from the offeror, but rather to make a counteroffer, such a choice should be considered carefully, because a counteroffer from the original offeree serves to immediately reject the original offer. Once an offer has been rejected, then it may not be accepted. The original offerer may choose to make an identical offer (identical to the original offer); however, this does not constitute a resurrection of the original offer. It is simply a new offer on identical terms to the first. A good way to remember this is that once an offer has been rejected (either specifically or by a counteroffer), then that offer is DEAD and remains dead. Do not confuse a later offer on identical terms as the same as the original offer. The original offer is gone forever.