

# THE TERMS OF THE CONTRACT

---

Once the parties form a contract, they are required to perform their contractual obligations. In this chapter, we explore exactly what those obligations entail. At first glance, the answer may seem rather trivial. In contrast to other areas of law—such as criminal or tort law—where substantive legal norms are established by statutes or case law, in contract law, the source of obligations stems from the voluntary promises the parties made during contract formation. In other words, the parties’ obligations are just whatever they agreed upon when they formed the contract. Simple, right?

Not quite. In one famous case, a seller promised to sell a certain quantity (measured by weight) of chicken. Clear enough, no? However, it turned out that young chickens and old chickens have dramatically different uses and prices. The dispute ended up before a federal court, where Judge Friendly famously opened his opinion with the question: “The issue is, what is chicken?” *Frigaliment Importing Co. v. B.N.S. Int’l Sales Corp.*, 190 F. Supp. 116, 117 (S.D.N.Y. 1960). The first issue, therefore, in determining the parties’ contractual obligations involves ambiguity. Even when the parties agree on the promises made, they may still disagree on what those promises actually mean. The language we use is often open to multiple interpretations. Like other forms of legal text, contracts must be interpreted to ascertain their true meaning.

But even if we fully understand the meaning of every word and phrase, we may still not know the complete scope of the parties’ obligations. Contractual duties can arise from a variety of sources, including (but not limited to) the written agreement (properly interpreted), the communications exchanged during contract formation, other documents incorporated into the agreement, industry standards, and terms implied by law when the parties have not explicitly addressed them. Examples of such implied terms include the duty of good faith and the warranty that sellers provide to buyers.

This chapter examines all these sources of contractual obligations and, crucially, the relationships and hierarchy among them.