**Post 1read and Respond to the post. If possible, use the following guidelines to create your responses:**

**Compare and contrast your posting with theirs. How did their posts influence your thinking?**

**What suggestions can you make to strengthen their posting?**

**How did their posting aid in your understanding of the topic?**

**Include any additional points that would be constructive and supportive for your peers. 50 words**

What is the difference between an agreement and a contract?

A contract is a legally binding agreement between two or more entities, but a legal agreement is not always a contract. Any agreement is considered to be legally binding and becomes a contract when three conditions are met. The conditions are Offer and Acceptance, intention to create legal relation and consideration. If any one of these conditions is not met then the contract is not legally binding and it cannot be enforced on the other party.

A contract comprises of terms and representation. Terms are contextual statements that become binding whereas representations are statements that might induce a contract, but are not terms of a contract. Contract may be terminated in four ways: through performance, breach of contract, frustration and through another contract. Mostly where contract is terminated by performance, the performance is 100%. Complete. If a serious term of a contract is breached then the affected party can terminate the contract. When the conditions are such that contract becomes impossible to perform , then the contract is terminated due to frustration. Parties of the contract may enter into another contract with mutual consent and can terminate the previous contract.

Agreement refers to meeting of minds at a certain point. Agreement may be on business views, commercial views or domestic views. If an agreement is not legally binding it cannot be enforced by law. Agreements where consent is not genuine are called voidable agreement s. An agreement becomes a contract when it is made legally binding and on meeting the three conditions.

When the parties enter into an agreement they define the terms and conditions of the agreement themselves, whereas in some specific contracts terms and conditions are implemented by law.

What is the difference between an offer and a contract?

The difference between a contract and an offer, is that a contract is an agreement between two or more parties, to perform a specific job or work order, often temporary or of fixed duration and usually governed by a written agreement, while an offer is a proposal that has been made or offer.

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If you offer $500,000 for a person's house and the person responds that they want $500,001, do you have a contract?

The short explanation is that, no, there is no binding contract here. To have a valid contract there are four requirements; agreement, consideration, contractual capacity, and legality. As for agreement there is none here, there needs to be an offer, and that offer has to be accepted. In this case there are two offers, but neither are accepted. These two parties haven't even reached the consideration phase. In purchasing a home, it could come after the home inspection, and the buying party sees things they want fixed, or compensation for, so that is then bargained for. The contractual capacity would also come after the agreement, so this is still in the future in this scenario, as well. Contractual capacity is that the parties entering into the contract are both able to do so by law. Lastly there is legality, this would also be something after the agreement stage. Legality is simply that the contract being entered into is something legal, and not against public policy. So for this scenario the two parties are no where near entering into a contract, there is nothing anywhere near legally binding.

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if a painter dies after making a contract to paint a house, should the painter's family be required to complete the job?

To be enforceable, a contract must be legally valid, and it must consist of an agreement, consideration and contractual capacity (Miller and Cross, 2014). There are ways courts look at to determine if there are as grounds for termination of a contract. Some grounds for termination would be fraud, a mistake was made, misrepresentation, breach of contract, previous agreement and impossibility (http://www.legalmatch.com). Contract terminations do not necessarily mean there was wrong doing.

There are also several defenses to a breach of contract. Some common affirmative defenses are: there was a mistake; you lacked capacity to contract (impossibility); you were fraudulently induced to enter into a contract; the contract is unconscionable, grossly unfair; estoppel; the contract is illegal and/or arguing in the alternatives (Stim). In contract law, impossibility is a justification for not the performing the agreed upon duties under a contract. There are several degrees of impossibility but the two most common are absolute impossibility (physically impossible to complete) and subjective impossibility (extremely, if not impossible to complete) (http://www.legalmatch.com).

In reviewing the question above, there are few unknowns. For example, is this a business with more than one painter employed? For my response I am assuming the deceased is self-employed and the only painter. Since the painter is now deceased and the only painter in the family, I believe the family would not be required to fulfill the contract. The family and/or business could request or pursue a termination of a contract based on absolute impossibility. Since the painter is deceased and the only painter in the business, it would be physically impossible to complete the work outlined in the contract.

If the client or customer pushed for fulfillment of the contract, the family and/or business could defend a breach of contract based on the lack of capacity to contract or absolute impossibility. Since the painter is deceased and the only painter, it would be physically impossible for him to complete the agreed upon work.

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If a painter does their very best, in good faith, to paint a person's house as promised in a contract but the paint job is very poorly done, is the painter entitled to payment, as promised in the contract?

When two or more parties come to an agreement that includes an Offer and Acceptance, Mutual Consent, Consideration, Competence and Legal Purpose, it is considered a legally binding contract. It will list specific details, absolute promises, acts that must be performed or the parties promising the acts will be in breach of contract.

 As in the above case with the painter, he completed the painting as stated in the contract. Considering the paint job was deemed to be very poorly done, this would be considered a “substantial performance’. This is when the party has performed the job in good faith, creating substantially the same benefits as those promised in the contract however containing minor defects that can be remedied by compensation (Cross, F. & Miller, R., 2012). Since this type of performance is not considered to be perfect, the other party is entitled to damages to compensate for the poorly done job. This is called “measure of damages” (Cross, F. & Miller, R., 2012). This would be the difference between the cost of the job done and what the cost of the job would have been if performed properly. In this case, the painter would be entitled to payment but not the payment promised in the contract.