



# English Contracts

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# What is a Contract?



# Key Concepts: Freedom of Contract



# Key Concepts: Private Law

A branch of the law that deals with the relations between individuals or institutions, rather than relations between these and the state.

In a contract, the parties mutually create a law that binds both of them

# Key Concepts: Questionable Contracts

1. **Void** (gambling, surrogacy)
2. **Voidable** (mistake, fraud/misrepresentation, undue influence, duress)
3. **Unconscionable** (“shocks the conscience of the court”)

# Key Concepts: Sources of Contract Law

1. Common Law
2. EU Law
3. UNIDROIT Principles of International Commercial Contracts

# Key Concepts: Express/Implied Contracts





# Key Concepts: Bilateral/Unilateral Contracts





# Elements of a Valid Contract

1. Offer
2. Acceptance
3. Consideration
4. Legality
5. Capacity

# What is an “Offer”?

A explicit proposal to contract which, if accepted, completes the contract and binds both the person that made the offer and the person accepting the offer to the terms of the contract.

# What is NOT an “Offer”?

1. Made in jest
2. Expressions of opinion
3. Preliminary negotiations
4. Price quotations (“I will charge 10,000 pounds for my car if I decide to sell it”)
5. Advertisements
6. Invitations to bid (construction)

# What is “Acceptance”?

An individual demonstrates acceptance when he or she creates a binding contract by speaking or acting in agreement with an offer and its suggested or required terms. An acceptance of an offer forms a promise.

1. Bilateral/unilateral acceptance – contrast?
2. Unequivocal

# What is NOT an “Acceptance”?

1. “I will think about it and call you tomorrow”
2. Counteroffer (“Would you take 15,000 pounds instead of 30,000 pounds for your Maserati?”)

# Potential Problems Related to “Acceptance”

1. Duration (how much time does the offeree have to act after an offer has been made?)
2. Lapse of time (result?)
3. Revocation (by offeror)
4. Death or incapacity of the offeror/offeree
5. Supervening illegality (e.g. a new law that would make the contract illegal)
6. Irrevocable offers (part performance or detrimental reliance by offeree)

# The Two Biggest Problems?

## 1) Genuineness of Assent (“Meeting of the Minds”) and 2) Indefiniteness

1. Mistake (bilateral/unilateral)
2. Fraud, misrepresentation
3. Undue influence
4. Duress
5. Absence of necessary terms (price, quantity, delivery)



# What is “Consideration”?

The exchange by the parties of benefits and burdens required by the contract. These benefits/burdens must be bargained for, and represent something of value.

Contrast “consideration” with “gift”

# Problems Associated With “Consideration”

1. Absence of mutual benefits/burdens
2. Lack of bargaining (Past Consideration)
3. Promissory Estoppel (lack of bargaining, but the court, out of fairness, will treat the transaction as a contract)

# What is “Capacity”?

The ability to intellectually understand:

1. The terms of the contract
2. The enforceability of the contract

# Problems Associated With “Capacity”

1. Minors
2. Mental Incompetents
3. Parties under the influence of substances

# What is “Legality”?

A contract must have a legal purpose to be enforceable

# Types of Illegal Contracts

1. Gambling
2. Usury
3. Covenant not to compete (is a clause under which one party--usually an employee--agrees **not** to enter into or start a similar profession or trade in competition against another party (usually the employer))

# (Continued)

4. Unlicensed transactions
5. Exculpatory clauses (part of an **agreement** which relieves one party from liability. It is a **provision** in a contract which is intended to protect one party from being sued for their wrongdoing or negligence)
6. Contrary to public policy (surrogacy)
7. Unconscionable



# Special Rules: Statute of Frauds

A law that applies to certain oral contracts.  
Generally speaking, a **statute of frauds** requires that certain contracts be in writing and signed by the parties.

# Examples of Contracts Subject to the Statute of Frauds

1. Land
2. Novations (the act of replacing an obligation to perform with another obligation; or. adding an obligation to perform; or. replacing a party to an agreement with a new party)
3. Pre-nuptials
4. Contracts requiring more than a year to complete

# Special Rules: Parole Evidence Rule

This rule governs what kinds of evidence parties to a contract dispute can introduce when trying to determine the specific terms of a contract.

Generally, one may not use evidence made prior to the written contract to contradict the writing.

# Contract Conditions

All contracts are performed in a time sequence:

1. Concurrent (both parties perform simultaneously)
2. Conditions precedent (one party performs first)
3. Conditions subsequent (one party performs following the completion of the contract)

# Breach of Contract

This occurs when one or both parties to the contract cannot or will not perform:

## Types of Breach:

- ▶ Substantial performance
- ▶ Anticipatory Repudiation
- ▶ Impossibility (unforeseeable Act of God; political upheaval)
- ▶ Impracticability (too costly)
- ▶ Frustration of Purpose (performance of the contract would be pointless)

# Remedies for Breach of Contract

Remedies exist both at law and in equity:

Equitable remedies include:

- ▶ Rescission
- ▶ Specific Performance
- ▶ Reformation

# Remedies (continued)

Remedies at law include:

1. Nominative
2. Compensatory (“out of pocket losses”)
3. *Quantum Meruit* (for services rendered)
4. Punitive
5. Liquidated
6. Mitigation of Damages



# Assignment and Delegation of Contracts

An **assignment of contract** occurs when one party to an existing contract (the "**assignor**") transfers the contract's obligations and benefits to another party (the "**assignee**").

Ideally, the assignor wants the assignee to “step into his shoes” and assume all of his contractual obligations and rights

**Example:** Rick, a rock star, assigns his payment for a sold-out performance to his girlfriend, Peggy

## (Continued)

**Delegation** is the act of giving another person the responsibility of carrying out the performance agreed to in a contract.

**Example:** Nigel, an automobile mechanic, delegates a repair job to Tim, his junior mechanic

# Can You Draft a Contract?



# Questions?

