

# What is Contract Law?

The study of contracts is the legal enforcement of promises.

Among the basic conceptions of contract law, the most pervasive and indispensable is the principle of private autonomy. This principle "simply means that **the law views private individuals as possessing a power to effect, within certain limits, changes in their legal relations.**"

*What is the goal of contract law?*

# COMMON LAW CONTRACTS

Developed primarily through case law  
& (some) statutes (e.g. UK Contract (Rights of Third Parties) Act 1999; UCC in U.S.)

Main philosophy : Individual autonomy and freedom of contract, contracts are BARGAINS, not just agreements. Enforceable bargains.

Contrasts, Switzerland, codified: *Swiss Code of Obligations (OR)*.

Main philosophy: Good faith (Treu und Glauben, Art. 2 ZGB), Less formal, with moral and equitable considerations more integrated. Legally binding obligations.

When considering the law of contracts, in any jurisdiction, how does culture play a role? Or, in turn how do contracts potentially shape culture?

# What is Contract Law?

*What differences might you expect between the law of contracts in civil and common law?*

# What is a Contract?

A contract\* is a **binding** agreement between two or more people or parties. In other words...

*"A promise or a set of promises that the law will enforce"*

What are some examples?

Credit Card Agreement

Signed agreement related to a job

Online Agreement when creating a Facebook or Email Account

An agreement to buy something from a friend

# Sources of Law

## Precedent set by prior court rulings

- Not set in stone
- Decisions vary by state and by court
- Principles of the US common law of contracts outlined in the Second Restatement of the Law - Contracts, publ. American Law Institute

## US - Uniform Commercial Code (UCC)

- Uniform set of standards intended to regulate fairness in commercial transactions, primarily the sale of goods
- Adopted by nearly every state in the US
- 9 articles or laws and rules, Article 2 deals with Sales contracts
- Intention is to allow flexibility making contract formation easier to facilitate
- Terms do not have to be written or expressed (e.g. payment terms, delivery date, location), performance is enough (exception: Statute of Frauds)
- Might be codified in certain examples ( i.e. deeds or land title)

# Elements of a Contract

THE MAIN ELEMENTS OF A CONTRACT ARE:

- Offer
- Acceptance
- Consideration

[ *ENFORCABILITY* ]

- Intention to create legal relations/mutual assent
- Capacity (age and mental ability)
- Legally enforceable terms and conditions (the object of the contract)

# Elements of a Contract: OFFER

OFFER – Statement By One Party (Offeror) Of A Willingness To Enter Into A Contract On Stated Terms And Be Bound By Them If These Are In Turn Accepted By The Other Party/-ies (Offeree(s)).

Definite promise to be bound if accepted.



# Elements of a Contract: ACCEPTANCE

Acceptance – unqualified, absolute expression of assent to the terms proposed by the offeror. No acceptance by silence.

- If you respond with changes to the offer, it is a counter-offer
- Mirror Image Rule – acceptance must be for the exact same terms and conditions set out in the offer \*\*\* *See UCC 2-207*
- Mailbox Rule – an offer is considered accepted upon dispatch (post/email) vs termination which is effective upon receipt
- Revocation possible until acceptance (unless option contract).

# Elements of a Contract: ACCEPTANCE

## Compare Swiss Law:

- Offer (Art. 3–10 OR) and acceptance follow similar logic.
- However, emphasis on **mutual consent (consensus)** rather than strict offer/acceptance sequence.
- “Silence” may constitute acceptance in certain cases (Art. 6 OR).

# Elements of a Contract: OFFER + ACCEPTANCE

## The Recipe

While Kramer was home recovering from a bad cold, he developed a recipe for a caffeine-free latte that soothed his sore throat and opened his nasal passages. The next day, Kramer brought a cup of the latte to his friend Jerry because he had a cold too. Immediately upon drinking the special brew, Jerry exclaimed, “Kramer, you’ve cured me. I can breathe again!” Then Jerry said, “I must have this recipe. It is far better than anything the Soup Meister has ever made. Would you consider selling the recipe to me?”

After thinking for a moment, Kramer responded, “You know, Jerry, I was thinking of calling my attorney, Mr. Jack Chiles, and having him get a patent for me. This is really special stuff. Still, I might be interested in selling if the price was right. **Would you pay me \$50,000?**” To which Jerry responded, “I accept. Here’s my check.”

Does Kramer have to hand over the recipe?

## Mailbox Rule

The mailbox rule (or postal rule) in common law states that an acceptance becomes effective the moment it is properly posted, not when it is received by the offeror. This means a contract is formed as soon as the acceptance is mailed, even if the letter is delayed, lost, or never arrives.

Originated in early 19th century when postal communication was slow and unreliable.

Courts wanted to protect the offeree, who had done everything required to accept.

Once the offeree posts the letter, they lose control - so it's fair that the contract is formed at that point.

The law supports certainty and fairness for the party accepting. Deal is made when you do all you can do

### CH

In Swiss and other civil law systems, a contract forms when declarations of intent reach the other party.

The meeting of minds (Konsens) is essential, both parties must know and understand the agreement.

A declaration that never reaches the offeror cannot create consensus.

## Mailbox Rule

Alice owns a small café in Zurich. Ben, a local coffee supplier, and Cara, another supplier, both want to sell her beans. A series of emails and messages follows:

Monday 9:00 AM – Ben emails Alice: “I can offer you 50kg of premium beans at CHF 25 per kg, delivery next week.”

Monday 10:00 AM – Alice replies: “Sounds good, but could you do CHF 23 per kg?”

Monday 11:00 AM – Ben responds: “No, sorry, CHF 25 is my best price.”

Monday 11:30 AM – Alice emails: “Okay, I accept your offer.”

11:20 AM – (unknown to Alice) Ben had already sent another email saying: “I withdraw my offer — I’ve sold the stock elsewhere.”

Tuesday morning – Ben’s withdrawal email is read after Alice’s acceptance was sent.

## Mailbox Rule

Was there a contract?

When and where was it formed?

Does Ben's withdrawal take effect before or after Alice's acceptance?

Under Swiss Law

Would the same facts create a binding contract?

How does the timing of receipt of the withdrawal vs. acceptance affect the outcome?

*The "mailbox rule" shows the common law's preference for certainty and reliance, aimed at protecting the diligent actor who accepts.*

*The "receipt rule" in Swiss law shows the civil law's preference for mutual consent and transparency protecting the integrity of agreement.*

# Mailbox Rule

Concept	Common Law (Mailbox Rule)	Swiss Law (Receipt Rule)
When does acceptance take effect?	When sent (posted or emailed)	When received by offeror
When does revocation take effect?	When received	When received
Result in this case	✔ Contract formed at 11:30 Monday	✘ No contract — offer revoked when withdrawal reached inbox
Philosophy	Protects offeree's reliance and certainty	Ensures mutual awareness and genuine consensus
Underlying value	Individual reliance	Shared understanding & good faith

*Under common law, Alice's acceptance "crossed in the mail" and bound Ben*

*Under Swiss law, Ben's withdrawal reached her first, so there was no meeting of minds, no contract.*

# Elements of a Contract: CONSIDERATION

## CONSIDERATION = CORE DIFFERENCE IN COMMON LAW

A BENEFIT OR DETRIMENT THAT A PARTY RECEIVES WHICH REASONABLY AND FAIRLY INDUCES THEM TO MAKE THE PROMISE/CONTRACT.

- GRATUITOUS PROMISES (GIFTS) ARE NOT ENFORCEABLE
- IT DOES NOT HAVE TO BE REASONABLE OR FAIR - A '**PEPPERCORN**'

## QUALIFIES

- NO PAST CONSIDERATION OR CONSIDERATION TO A THIRD PARTY
- A promise is only enforceable if supported by consideration (something of value exchanged).
- Compare CH: No requirement of consideration: agreement plus lawful cause suffices (Art. 1 OR). Gratuitous contracts (e.g. donation) valid without exchange.

# Elements of a Contract: ACCEPTANCE

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## Elements of a Contract: CONSIDERATION

### *Hamer v Sidway (1891)*

- Sidway promised his nephew \$5,000 if the nephew would refrain from smoking, drinking, swearing, and gambling until he turned 21.
- The nephew turned 21, then wrote to his uncle that he had fulfilled the agreement.

*Is he entitled to \$5000?*

## Elements of a Contract: CONSIDERATION

### *Hamer v Sidway (1891) WHAT IF...*

- Sidway promised his nephew \$5,000 if the nephew turned 21.
- The nephew turned 21, then wrote to his uncle that he had fulfilled the agreement.
- *Is he entitled to \$5000? Under Swiss Law? Under US law?*

## Elements of a Contract: CONSIDERATION

### *Hamer v Sidway (1891)*

The court decided that the nephew should receive the money.

Consideration can be forbearance of something that someone is lawfully permitted to do; here, the nephew gave up things that he was allowed to do in exchange for \$5,000.

*The better question, though, is what Sidway got in exchange. Happiness? Knowledge that his nephew wouldn't screw his life up?*

## Elements of a Contract: MUTUAL ASSENT

Mutual Assent - Intention to be legally bound; a meeting of the minds; assumed in commercial context

*Lucy v. Zehmer 196 Va 493 (Va 1954)*

- Zehmer writes a contract to sell his 471 acres of land to Lucy for \$50,000
- After drinking a bottle of whiskey, they argued at length over price and Zehmer wrote the contract on a restaurant check
- When Lucy tries to enforce it, Zehmer claims it was a joke



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- Court ruled there was a valid contract. If the other party has a reasonable belief that the other party intends to enter an agreement, even if he does not, the contract is still enforceable



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- Swiss law?



# Elements of a Contract: MUTUAL ASSENT

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*Lucy v. Zehmer 196 Va 493 (Va 1954) WHAT IF...*

- Is there common intention? (Art. 18 OR) How or Why?
  - Joke vs. Serious
- Good faith? (Vertrauensprinzip)
  - Written signed statement
  - Intoxication/circumstances
  - Joke?



# Elements of a Contract: CAPACITY AND ENFORCEABILITY

## CAPACITY OF THE PARTIES

- Minors, insane persons, intoxicated persons, convicts, *not capable*

Legal Enforceability = Terms and conditions will be legally enforceable in a court of law

*Not enforceable:*

- Contracts for illegal actions or products cannot be enforced (e.g. gambling contracts)
- Undue Influence, Duress, Misrepresentation
- Unconscionability
- Public Policy and Illegality
- Mistake
- Force Majeure

# WHY INTERPRETATION MATTERS

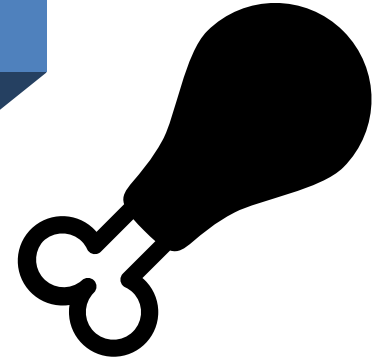
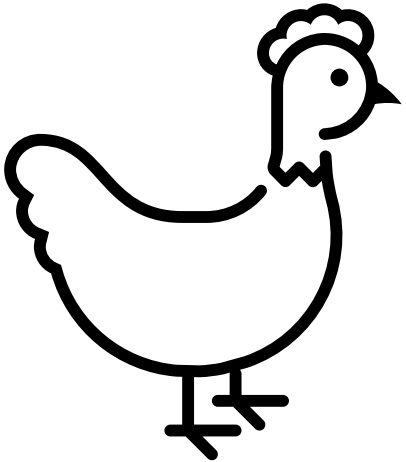
- Contracts depend not only on what is written, but on what the parties *meant*.
- Ambiguity arises when language allows more than one reasonable meaning.
- Courts must decide: Whose meaning governs?

## COMMON LAW

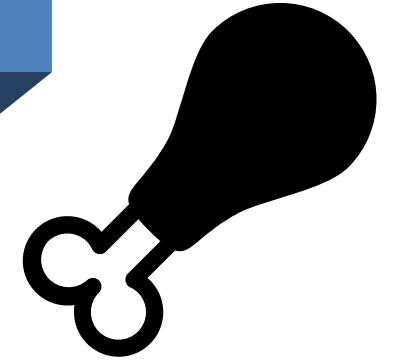
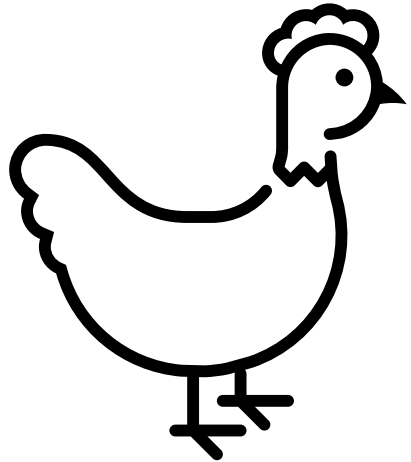
- Objective meaning, what a reasonable person in that context would understand.
- Interpretation guided by context, trade usage, and conduct (e.g. *Frigaliment*).

## CONTRAST CH

- Subjective meaning: search for the true common intent of the parties (Art. 18 OR).
- If intent unclear → interpret by good faith (Vertrauensprinzip).



# WHY INTERPRETATION MATTERS



## Tools of Interpretation

- **Text:** the plain meaning of words
- **Context:** negotiations, correspondence, conduct
- **Trade Usage:** industry meanings and customs
- **Good Faith:** fairness and trust in performance and interpretation
- **Contra proferentem:** ambiguity resolved against the drafter

## Contract Interpretation: When words matter

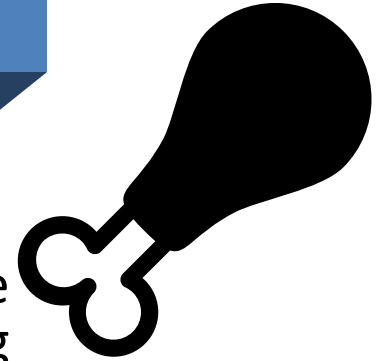
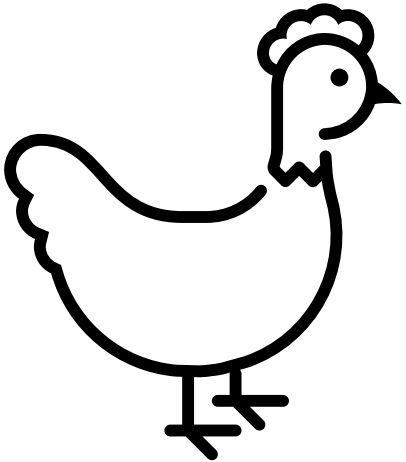
### "WHAT IS CHICKEN?"

BNS sold chickens to Frigaliment, a Swiss Company. When the chickens arrived, Frigaliment discovered they were "stewing hens," not "broiler chickens," the former being lower-quality.

BNS was American and "chicken" was ambiguous - in English it could refer to any bird of that species, while Frigaliment claimed it referred only to young, tender broilers. This case is about determining the definition of a word when each party has a different interpretation of an ambiguous word.

### *WHO WINS?*

*\*Consider: The key question isn't just what the words say, but what the parties meant and reasonably understood.*

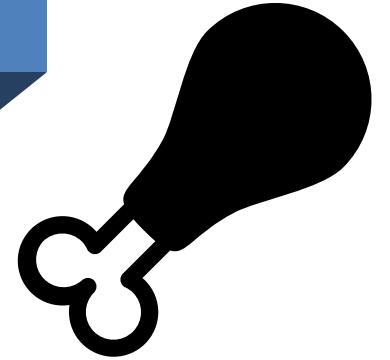
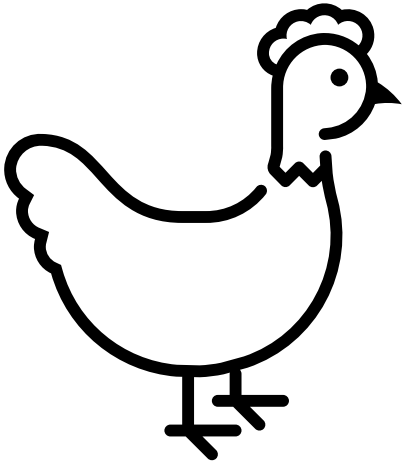


## Contract Interpretation: When words matter

"WHAT IS CHICKEN?"

### Art. 18 O.R.

1 When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.



# Contract Interpretation: When words matter

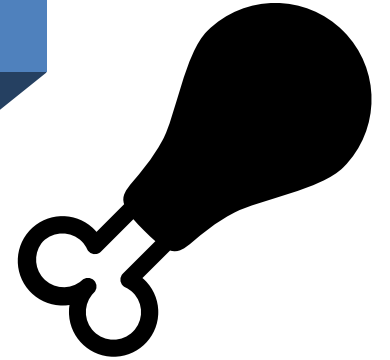
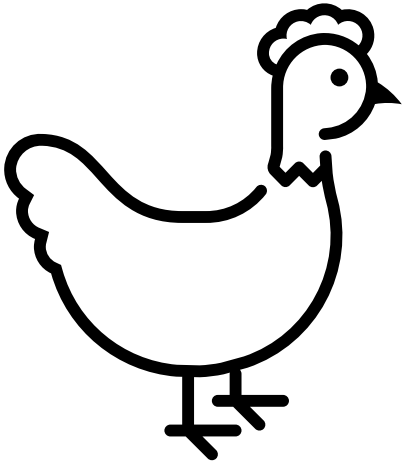
## "WHAT IS CHICKEN?"

### Common Law Approach:

- What would a reasonable person in that context (chicken trade) understand?
- Whose burden is it to prove the meaning?

### Swiss Law (Art. 18 OR):

- Is there a common intent?
- If not, what meaning follows from good faith (Vertrauensprinzip)?



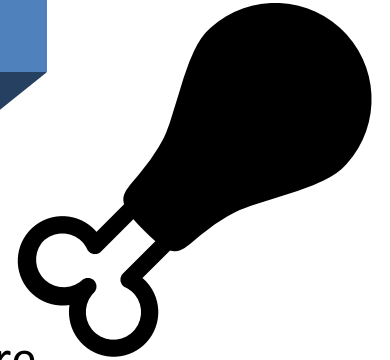
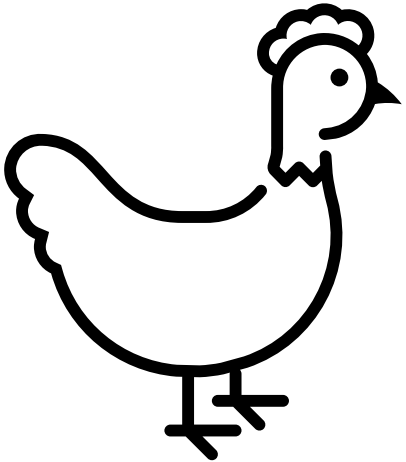
# Contract Interpretation: When words matter

## "WHAT IS CHICKEN?"

Common Law Approach:

- *Whose burden is it to prove the meaning?*
- The burden of proof rests on the party asserting the narrower or more unusual meaning of an ambiguous contractual term
- Because Frigalment wanted the court to adopt a special, narrower meaning, it bears the burden of proving that *both* parties intended that narrower definition when they made the contract.

In contract interpretation, the party departing from the ordinary or trade meaning of a term *must prove that the other party shared that understanding*. This preserves fairness and predictability. Courts won't (and shouldn't?) rewrite contracts based on one party's subjective expectation.

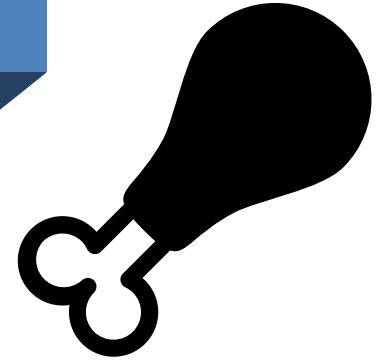
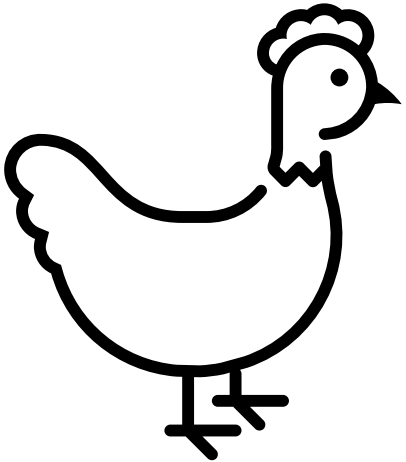


## Contract Interpretation: When words matter

### "WHAT IS CHICKEN?"

When one of the parties is not a member of the trade or other circle, his acceptance of the standard must be made to appear by proving either that he had actual knowledge of the usage or that the usage is so generally known in the community that his actual individual knowledge of it may be inferred.

*Frigaliment Importing Co. v BNS International Sales Corp*  
(New York 1960)

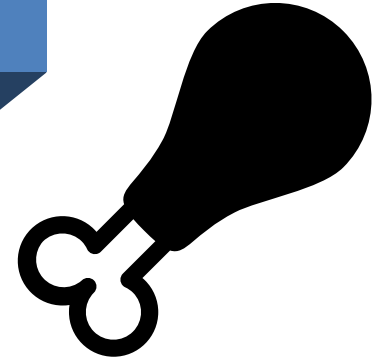
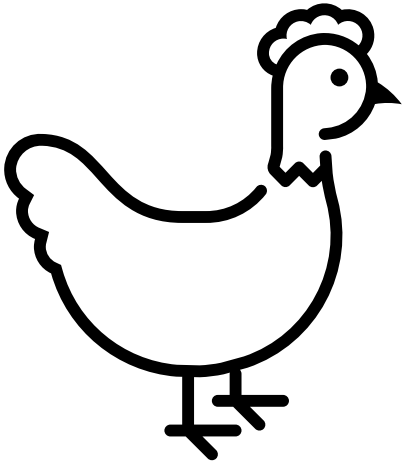


# Contract Interpretation: When words matter

## "WHAT IS CHICKEN?"

Swiss Law (Art. 18 OR):

- *Is there a common intent?*
- First, seek the actual shared (subjective) intent of the parties, not impose an objective burden of proof as in common law.
- Evidence based fact finding, correspondence, trade practice, etc, no burden on Frigaliment specifically, reasoning is cooperative rather than adversarial.
- (If that shared intent cannot be established, apply good faith = how a reasonable person in that trade would understand it)



## Contract Interpretation: When words matter

"WHAT IS CHICKEN?"

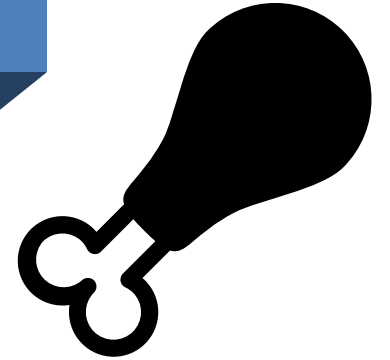
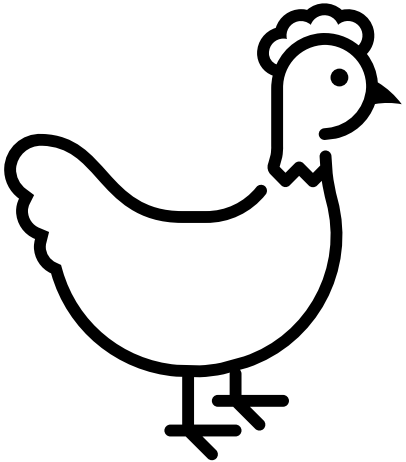
Common Law Approach:

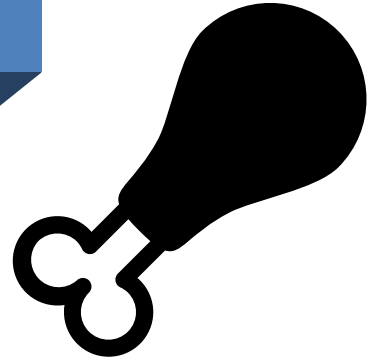
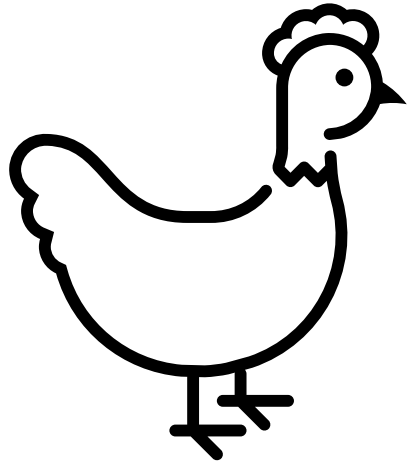
**"You want a special meaning – prove it"**

Swiss Law (Art. 18 OR):

**"What did you actually mean, and what should you have reasonably understood (in good faith)"**

Coming back to culture here...





**READ:**

*SEC v. W.J. Howey Co., 328 U.S. 293 (1946)*

<https://supreme.justia.com/cases/federal/us/328/293/>



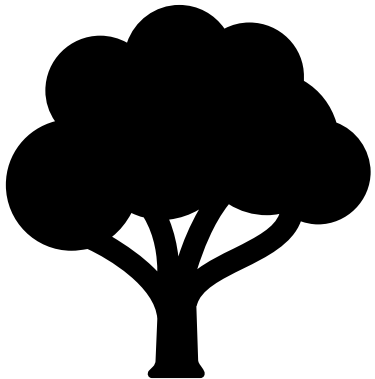
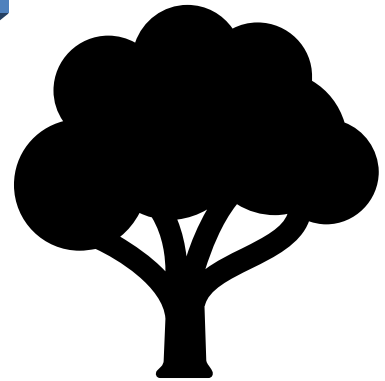
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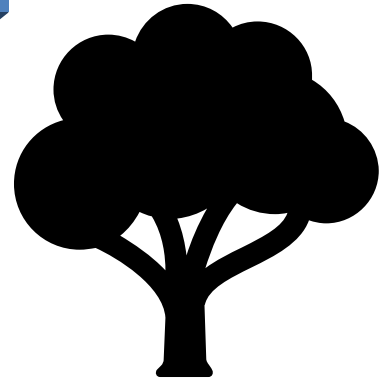
Contracts presume a direct reciprocity, but what about when multiple parties get involved and performance/reliance is not necessarily equal?

Asking the question – what is actually promised and who is relying on who.

BRIDGING THE LAW WITH PRIVATE AND PUBLIC

*At what point does a private agreement stop being a contract and become a public investment?*



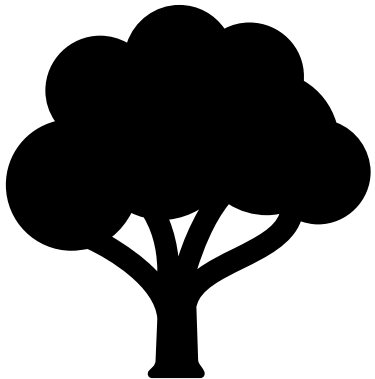


*SEC v. W.J. Howey Co., 328 U.S. 293 (1946)*

Florida citrus company sold land parcels + service contracts to cultivate and sell oranges.

Seems like a simple contract?

What if Howey had just sold the groves?



A **contract** is fundamentally a private agreement, a deal (bargain) between parties who freely decide their terms

Each party controls its own performance (you pay, I deliver).

The law's job is simply to enforce what the parties agreed, not to judge whether the deal was wise or fair.

The underlying assumption: both sides have equal information and bargaining power.

A deal stops being just a contract and becomes **an investment** when:

1. One party (the investor) contributes money or value,
2. Into a common or pooled enterprise,
3. With the expectation of profit,
4. Relying on the managerial efforts of someone else.

-Howey Test

# Why Draw The Line?

Investors are passive and vulnerable, they need protection through:

- Disclosure obligations
- Anti-fraud rules
- Registration and oversight

## Market Stability

When many individuals invest together, risk becomes systemic, not just personal. If one fraudulent scheme collapses, it can undermine market trust.

*What about blockchain/crypto?*

Is it a contract or an Investment?

When a project sells tokens to raise funds:

If buyers purchase them for use (like paying for coffee)

→ it's a contract.

If buyers purchase them for profit, relying on the project's future success?

→ it's an investment contract (a security).

## **Utility Token/Payment Token/Investment Token/Pre-Sale Token**

A blockchain project launches “CaféCoin,” a token you can spend in participating cafés for coffee discounts and loyalty points.

The token is usable immediately. Buyers spend it like store credit, not to profit.

There’s no promise that its value will rise.

What if...

“BuildNet” sells tokens to fund a decentralized network still under development.

Tokens can’t yet be used.

Funds are pooled to build the system.

Promoters tell investors: Buy now, token value will rise when we launch.

# THANK YOU



PLEASE FEEL FREE TO  
CONTACT WITH  
QUESTIONS



HOLLY.HOCH@IUS.UZH.CH



Portions of this lecture  
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