

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

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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?

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: 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)

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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- When Lucy tries to enforce it, Zehmer claims it was a joke
- 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



THANK YOU



PLEASE FEEL FREE TO
CONTACT WITH
QUESTIONS



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Portions of this lecture
were created or assisted
by AI (Hypotheticals,
etc.)

