

# Contract Law and IP Law

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## Lecture 2: Introduction to Contract Law I

Nan Carr



# Contract Law Lecture Overview

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What is a Contract?

Making a Contract

Content of a Contract

Contract Performance and Breach

Damages/Remedies

Various Contracts



# What is a Contract?

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A contract is an agreement typically involves in the exchange of goods, services, money, or promise of those.

A contract is a legally binding agreement that recognizes and governs the rights and duties of the parties to the agreement.

- A contract is a “private law” between the parties
- A contract is legally enforceable when it meets the requirements and approval of the law
- When the contract is breached, the law will provide legal remedies to the injured party

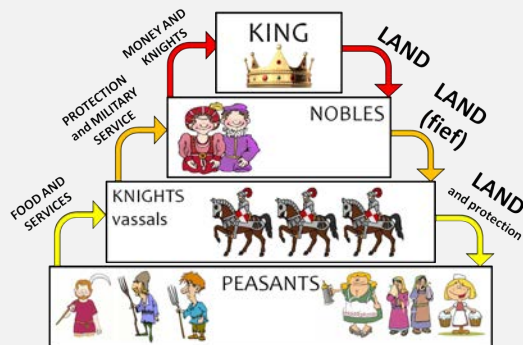


# What is a Contract?

Most familiar legal concept in modern society.

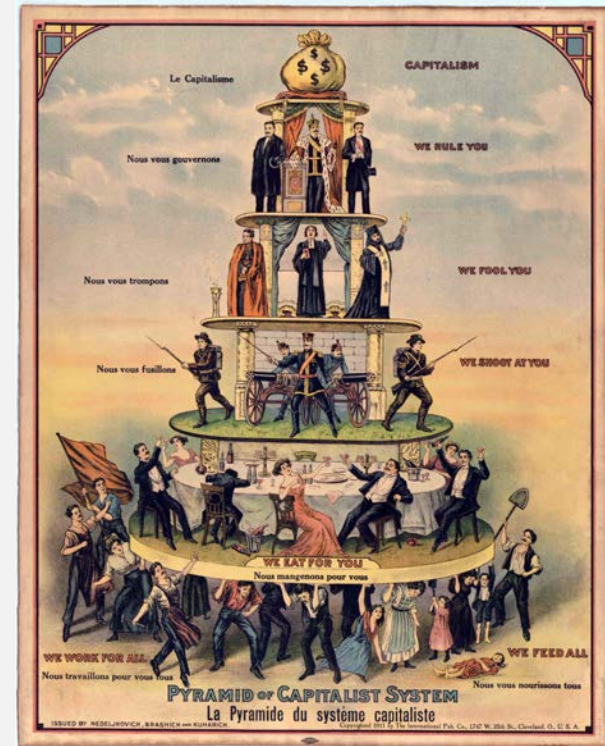
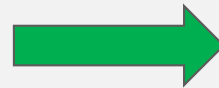
Contract law developed when feudalism dissipated and capitalism established.

Capitalism and contract law have developed together.



Feudal Pyramid of Power

Source: [the-nerdstream era](http://the-nerdstream-era.com)



Capitalism Pyramid (Source: [Wikipedia](https://en.wikipedia.org/wiki/File:Pyramid_of_Capitalism.jpg))

# What is a Contract?

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## Contract Law Performs three significant economic functions

- It helps maintain incentives for individuals to exchange goods and services efficiently.
- It reduces the costs of economic transactions because its very existence means that the parties need not go to the trouble of negotiating a variety of rules and terms already spelled out.
- the law of contracts alerts the parties to troubles that have arisen in the past, thus making it easier to plan the transactions more intelligently and avoid potential pitfalls.



Richard A. Posner, *Economic Analysis of Law* (New York: Aspen, 1973).

# What is a Contract?

Modern capitalism would not be possible without the contract law because contracts are the core of economic transactions.

In planned economies, such as pre-reformed China, contracts did not determine the nature of economic transactions

- Transaction were first set forth by the state's planning authorities;
- only thereafter were the predetermined provisions set down in a written contract.

As economic reform enables economic transactions between Chinese entities and foreign entities, China has adopted contract laws

- Current in force Revised Contract Law in 1999;
- New Civil Law, 中华人民共和国民法典, recently passed and will be enacted on January 1, 2021



# What is a Contract?

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Each country has its own laws to govern contracts.

There are similarities among contract laws in various legal systems

- Similar elements in a contract:
  - agreement,
  - contractual intent; and
  - consideration.
- Similar requirements for forming a valid contract, such as capacity, legality

There are significant differences among contracts in different systems

- Include choice of law clause in contracts for international transactions; or
- Default to the law governing the contract and jurisdiction dispute



# What is a Contract?

## Source of Law

### Common Law System

- Case law; and
- Statutory Law (e.g, UCC, restatement of contracts)

#### American Restatement 2nd of the Law of Contracts

##### Chapter 6

###### § 154 - When a Party Bears the Risk of a Mistake

A party bears the risk of a mistake when

- (a) the risk is allocated to him by agreement of the parties, or
- (b) he is aware, at the time the contract is made, that he has only limited knowledge with respect to facts to which the mistake relates but treats his limited knowledge as sufficient, or
- (c) the risk is allocated to him by the court on the ground that it is reasonable in the circumstances to do so.

###### § 155. When Mistake Of Both Parties As To Written Expression Justifies Reformation

Where a writing that evidences or embodies an agreement in whole or in part fails to express the agreement because of a mistake of both parties as to the contents or effect of the writing, the court may at the request of a party reform the writing to express the agreement, except to the extent that rights of third parties such as good faith purchasers for value will be unfairly affected.

###### § 157 - Effect of Fault of Party Seeking Relief

A mistaken party's fault in failing to know or discover the facts before making the contract does not bar him from avoidance or reformation under the rules stated in this Chapter, unless his fault amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing.

##### Chapter 9 - The Scope of Contractual Obligations

###### Topic 2 - Considerations of Fairness and the Public Interest

### Civil Law System

- Contract Code, e.g 中华人民共和国合同法合同编

#### 第三编 合同

##### 第一分编 通则

##### 第一章 一般规定

第四百六十三条 本编调整因合同产生的民事关系。  
第四百六十四条 合同是民事主体之间设立、变更、终止民事法律关系的协议。

婚姻、收养、监护等有关身份关系的协议，适用有关该身份关系的法律规定；没有规定的，可以根据其性质参照适用本编规定。

第四百六十五条 依法成立的合同，受法律保护。

依法成立的合同，仅对当事人具有法律约束力，但是法律另有规定的除外。

第四百六十六条 当事人对合同条款的理解有争议的，应当依照本法第一百四十二条第一款的规定，确定争议条款的含义。

合同文本采用两种以上文字订立并约定具有同等效力的，对各文本使用的词句推定具有相同含义。各文本使用的词句不一致的，应当根据合同的相关条款、性质、目的以及诚信原则等予以解释。

第四百六十七条 本法或者其他法律没有明文规定的合同，



# Making of a Contract

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Formation of a Contract

Bilateral Contracts v Unilateral Contracts

Express Contracts v Implied Contracts



# Formation of a Contract

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## Elements of forming a contract

- Offer (要约)
- Acceptance (承诺)
- Consideration in Exchange (报酬/交换条件)



# Formation of a Contract



# Formation of a Contract

An offer is an expression of willingness to contract on specified terms

- An offeror
- An offeree (or offerees)
- Reasonably certain or definite terms



# Formation of a Contract

## Is it an Offer?



# Formation of a Contract

## Is it an Offer?



# Formation of a Contract

An offer is  
Terminated When:



Accepted



Rejected



# Formation of a Contract

An offer is  
Terminated When:



A counteroffer is made



Revoked



# Formation of a Contract

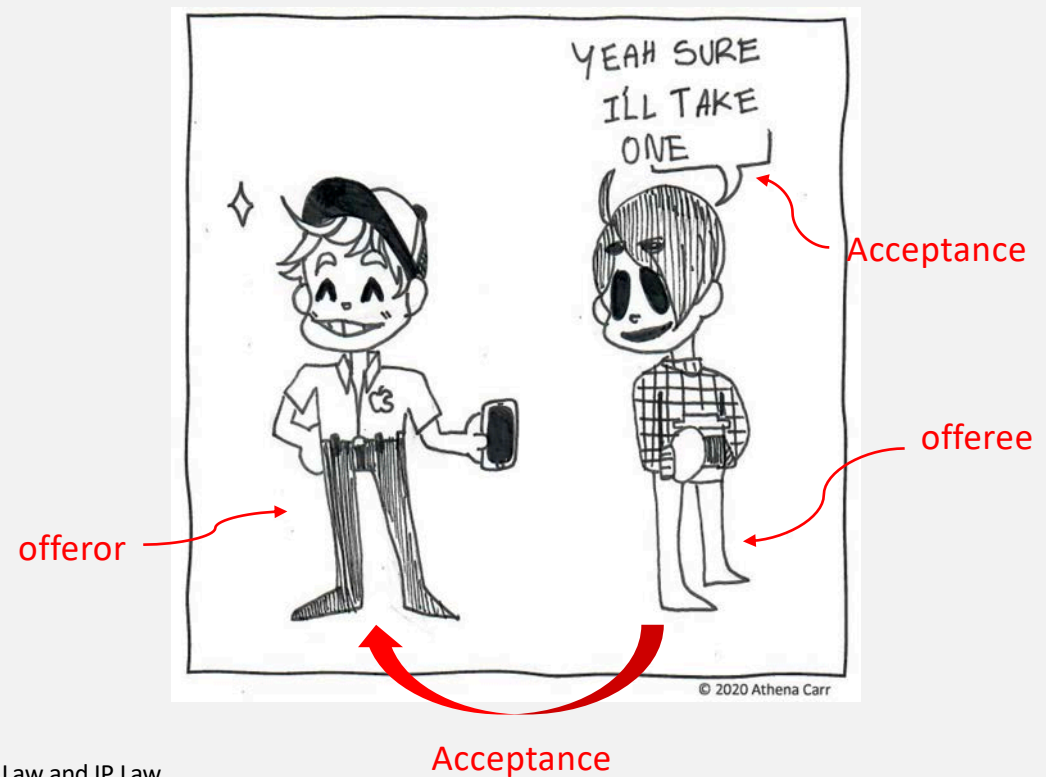
An offer is  
Terminated When:



Expired

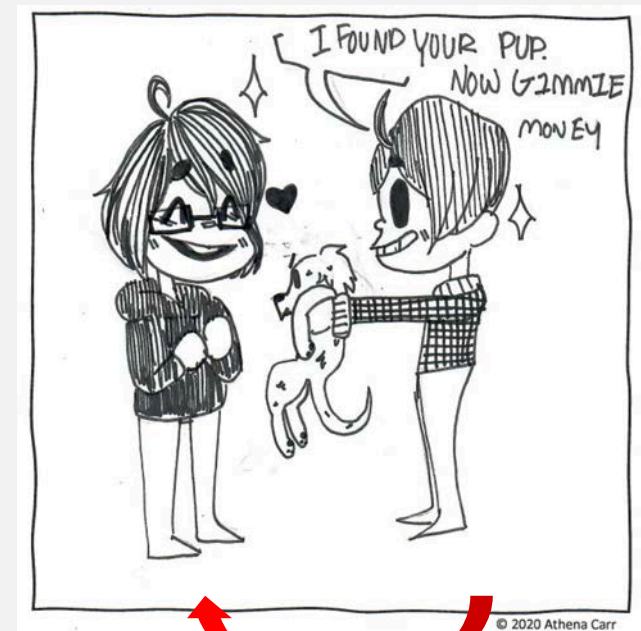
# Formation of a Contract

An acceptance is a final and unqualified expression of assent to the terms of an offer.



# Formation of a Contract

Acceptance in a unilateral contract is done by performance.



Acceptance and Performance

# Formation of a Contract

Consideration is something of value which is given for a promise, usually is detrimental to the promisor.

- Payment of a buyer is consideration for the seller's promise to deliver the goods;
- Delivery of the goods of the seller is consideration for the buyer's promise to pay.

Promise to deliver an iPhone 9



promise to pay \$999



# Formation of a Contract

Consideration is required in the common law for a contract to be binding.



No consideration from the kiddo, bad parenting, but no contract



# Formation of a Contract

Consideration is required in the common law for a contract to be binding.



Nintendo Switch from the parent



No consideration from the kiddo, this is a gift, not a contract performance



# Formation of a Contract

Consideration is required in the common law for a contract to be binding.

Promise to give a Nintendo Switch



Promise to study hard



Bad parenting, Breach of Contract

# Bilateral Contracts v Unilateral Contracts

In unilateral contract, there is an offer on one side, and the other side accepts by taking the action requested.

For example, an offer of a reward—for catching a criminal or for returning a lost pet.



Bilateral Contract



Unilateral Contract



# Express Contracts v Implied Contracts

An implied contract is one that is inferred from the actions of the parties. When parties have not discussed terms, an implied contract exists if it is clear from the conduct of both parties that they intended there be one.

A patron in a restaurant who orders for a pizza to go has made a contract and is obligated to pay when the pizza is made.



Express Contract



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Implied Contract

# Homework

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1. An implied contract
  - a. must be in writing
  - b. is one in which the terms are spelled out
  - c. is one inferred from the actions of the parties
  - d. may be avoided by one party
  
2. When Able tells Bob that he has several iPads for sell and asks Bob if he wants to buy one,
  - a. Able makes an offer to Bob
  - b. Able invites Bob to make an offer
  - c. Able makes an implied offer
  - d. Able makes a unilateral contract



# That is all for today.

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