

The elements of a valid contract are:

## 2. Insurance contracts - Special features

### a) Uberrima Fides or Utmost Good Faith

This is one of the fundamental principles of an insurance contract. Also called uberrima fides, it means that every party to the contract must disclose all material facts relating to the subject matter of insurance.

A distinction may be made between Good Faith and Utmost Good Faith. All commercial contracts in general require that good faith shall be observed in their transaction and there shall be no fraud or deceit when giving information. Apart from this legal duty to observe good faith, the seller is not bound to disclose any information about the subject matter of the contract to the buyer.

The rule observed here is that of “**Caveat Emptor**” which means **Buyer Beware**. The parties to the contract are expected to examine the subject matter of the contract and so long as one party does not mislead the other and the answers are given truthfully, there is no question of the other party avoiding the contract

**Utmost Good Faith:** Insurance contracts stand on a different footing. Firstly, the subject matter of the contract is intangible and cannot be easily known through direct observation or experience by the insurer. Again there are many facts, which by their very nature, may be known only to the proposer. The insurer has to often rely entirely on the latter for information.

Hence the proposer has a legal duty to disclose all material information about the subject matter of insurance to the insurers who do not have this information.

**If utmost good faith is not observed by either party, the contract may be avoided by the other.** This essentially means that no one should be allowed to take advantage of his own wrong especially while entering into a contract of insurance.

It is expected that the insured should not make any misrepresentation regarding any fact that is material for the insurance contract. The insured must disclose all relevant facts. If this obligation did not exist, a person taking insurance might suppress certain facts impacting the risk on the subject matter and receive an undue benefit.

The policyholder is expected to disclose the status of his health, family history, income, occupation etc. truthfully without concealing any material fact so as to enable the underwriter to assess the risk properly. In case of non-disclosure or misrepresentation in the proposal form which may have impacted the underwriting decision of the underwriter, the insurer has a right to cancel the contract

### b) Material facts

**Material fact** has been defined as a fact that would affect the judgment of an insurance underwriter in deciding whether to accept the risk and if so, the rate of premium and the terms and conditions.

Whether an undisclosed fact was material or not would depend on the circumstances of the individual case and could be decided ultimately only in a court of law. The insured **has to disclose** facts that affect the risk.

Let us take a look at some of the types of material facts in insurance that one needs to disclose:

#### **Breach of Utmost Good Faith**

We shall now consider situations which would involve a Breach of Utmost Good Faith. Such breach can arise either through Non-Disclosure or Misrepresentation.