

In essence, a contract is a **meeting of the minds**.

Contracts, Common Law

Important

Definition 9.1: Elements of a valid Contract

Always required for contract formation:

1. **Agreement** between the parties,
2. **Consideration** provided by each party,
3. **Capacity** of each party, and
4. **Legal purpose** of the agreement

Sometimes required for contract formation: **Statute of Frauds**.

We will now break down into these components and discuss their meanings.

Agreement

An agreement must be **outwardly manifested**. An agreement requires a valid offer and acceptance. There are two tests we can apply to check the validity of an **offer**.

Important

Definition 9.2: Definite Offer Test

An definite offer must include these essential terms:

- Subject matter
- Time
- Price
- Payment, and
- Duration

Without sufficing these terms, there is **NO** definite offer. **If there is no definite offer and acceptance, then the contract is void.**

Counter-Offer

A counteroffer is inherently a **rejection** and a **new offer**. In essence, anything that is **NOT an acceptance** is a **rejection**.

The other way to examine the validity of the offer is the **Mirror Image Rule**.

Important

Definition 9.3: Mirror Image Rule

An offer must be accepted exactly with no modifications to the original terms; else, it's a **rejection**.

An exception to this is advertisement.

Void and Voidable Contracts

Important

Definition 9.4 Void and Voidable

A **voidable contract** is a **real contract**, but **defected**. The participants have the legal option to bail out of the contract (1) during the time that one is still subject to it, or (2) as soon as the contract ends.

A **void contract** is **NOT** a contract and has **NO legal capacity**.

Duress and Fraud

Contracts formed under duress or fraud are **defected** and **voidable**.

- Duress: acquiescence, threats, blackmails, illegal forces
- Fraud: disclosure of **necessary information** is required, otherwise seen as fraudulent

Consideration

Consideration essentially means something **of legal value**.

- Each party has to give something of legal value to the other party in a contract
- E.g. time, money, favor

This **distinguishes a contract from a gift**.

There are two types of contracts by consideration.

- **Bilateral contract**
 - Consideration, or promises of consideration are given from **both sides**
 - Most common
- **Unilateral contract**
 - **The consideration is the acceptance of contract**; signed and finished at the same time
 - E.g. rewards

Capacity

An individual has the capacity to engage in contracting unless they are affiliated with circumstances such as:

1. Intoxication
2. Minority (underage)
3. Mental incompetence (judicially determined)

Contracts made **WITHOUT capacity** are **voidable**.

- They are **void**, however, if the contracting party is decided to be **mentally incompetent** by the court

Legal Purpose

Contracts **CANNOT be illegal**. Illegal contracts are **void**.

- Agreements to break the law
- Violations of public policy
 - E.g. wrongful discharge, non-competes

Non-Competes

Non-competes are often included as **parts of the contract** and are enforced by jurisdiction.

Important

Definition 9.5: Non-Compete

An agreement where one party promises not to engage in conduct that would increase competition for the other party **for a specific period of time post-employment**.

Most jurisdictions will enforce a non-compete agreements if

1. The non-compete protects the employer's legitimate business interest, and
2. The restrictions it imposes are reasonable with respect to
 - **Duration**: mostly expires in **six months**, the maximum is **two years**
 - **Geography**: limited
 - **Activity**: restricted

If a non-competition agreement does not serve a lawful purpose, it is **void**.

The trend is that most non-competes are under high scrutiny for protection of low-wage workers; California has made non-competes entirely **void**.

Note

Non-compete mostly applies to **high-skill workers** only.

Statute of Frauds

It applies to contracts involving

- Sales of real estate
- Contracts **CAN'T BE** completed in one calendar year, etc.

Contracts of the above categories that are not signed in writing are **voidable**.

Important

Definition 9.6: Statute of Frauds

A statute requiring certain contracts to be **in writing and signed** by the parties bound by the contract. The purpose is to prevent fraud and other injury.

Contract Breach and Remedy

A legal breach in contract would require some legal source: [morality clause](#)

Otherwise, an injured party has the right to claim a breach in contract and seek corresponding remedy.

The **legal damage** is determined by approximating the differences between the scenario in which both parties would be in **without the breach, at the end of the contract**, and **reality**.

However, the injured party has the **duty to mitigate**. That is, it must take **reasonable steps** to mitigate damages suffered.

- E.g. looking for a comparable job

Note

If the party failed to show efforts in mitigate, there will be **NO remedy**. If the party did show efforts of mitigation, then they can be compensated by the original offeror for the **differences** between the payout assumed no breach of contract and the status quo.

Contracts, UCC

Uniform Commercial Code (UCC)

Our focus is in Article 2, which deals with sale of goods. The motivation behind the UCC is to

- Establish uniformity
- Make it easier to make deals happen as the common law is too complicated

UCC distinguishes **merchants** from **non-merchants**.

Important

Definition 9.7: Goods

Goods are **tangible properties** that are **movable** at the time of contracting.

Goods can turn into a service, and vice versa.

Important

Definition 9.8: Merchant

A merchant is defined as an **expert** or knowledgeable person in the goods they sell.

- Deals professionally in specific types of goods

The definition of a merchant is **relative**: it only applies to certain fields.

The UCC also requires the [four elements of contract](#), however with different internal structure.

Agreement

The agreement clause only requires that there is **evidence** that two parties have the **intention to agree** on.

- Doesn't matter whether there is concrete terms or not
 - Definite offer and the Mirror Image Rule **DO NOT apply**
- Much easier to establish/modify than in the common law

Consideration

If the merchant puts **in writing** of the offer, then one can accept the offer **WITHOUT consideration**.

- Easy to form a contract without knowing what it entails

UCC, Additional Terms

A UCC contract has additional three terms that a contract must adhere to.

- **Uncontested terms**
 - Terms both parties agree on; if both parties agree, then the term is part of the deal
- **Knock-out rule**
 - If a term is **actively disagreed** by any party, then it is **NOT** part of the deal
- **Default rule**
 - The contract consists any default terms and additional terms by default
 - If one would like to object a term from the contract, that term becomes **contested** and the knock-out rule will apply

Statute of Frauds

The UCC has a different **statute of frauds**. It applies when the **transaction value** is larger than \$500 and requires the contract to include the **quantity of units being sold**.

- The transaction could involve multiple goods
- **DOES NOT** have to be in writing and can be signed electronically

Warranties

Important

Definition 9.9: Warranty

A warranty is a **promise** of the **quality** or the **utility** of a good. If a good doesn't perform as planned or lived up to the warranty, it is seen as a **breach of contract**.

There are three main types of warranties under the UCC.

Expressed Warranty

A warranty that is **explicitly and actually** represented by the **merchant**. The represented function or feature consists of part of the reason of the purchase. This is the **basis of bargain**.

- E.g. label, manual
- Breach of contract if expressed warranty is invalidated

The more **central** the feature is to the warranty, the **more the court** will lean towards in its judgement.

Note

Puffing is not a type of warranty.

Implied Warranty of Merchantability

A warranty that states that a good should reasonably fit with the **purpose** they are sold.

- Only applies when the seller is a **merchant**
- Breach of contract if the features of the good doesn't fit with the reasonable expectation

Note

The more specific a good is about its features, the more expressed warranty and the less implied warranty it has.

Implied Warranty of Fitness and Particular Purpose

A niche category of **implied warranty**. It implicitly guarantees that a good must satisfy some functions if it is in the case that

- The Buyer has specific needs, and
- The seller is aware of the need, and whose expertise is **relied on** to make a decision

This applies to **ALL** types of sellers and is really close to **expressed warranty**.

Remedy

The UCC provides remedy to put the plaintiff **as close to** where they would've been as if the contract weren't broken. It gives the plaintiff two options:

1. Sue for damages
2. Cover: get to where they would've been
 - Could incur extra costs, which one could subsequently sue for

The actual damage would be the same across the two options.

The difference between common law remedy is that the plaintiff has the option to cover but doesn't have to, yet under the common law one has to cover.

Summary

Key differences and applications between contracts under the common law and the UCC.

