

BUSINESS

LEAVING CERTIFICATE
HIGHER LEVEL

CONTRACT LAW



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Contract Law

A **Contract** is a legally binding agreement between two or more parties.

What does legally binding mean?

1. This means that if one party breaks the agreement, a judge can order that party to pay compensation or force them to carry out the contract as originally agreed.
2. For an agreement to be a contract it must contain **all** 8 elements of a contract.

1. Offer	2. Acceptance	3. Consideration	4. Intention to Contract
5. Capacity to Contract	6. Consent to Contract	7. Legality of Form	8. Legality of Purpose

1. Offer

An **Offer** when one party asks another party to enter a deal with them.

1. To be a valid offer, they must set out all the terms of the deal clearly, completely & without any conditions attached.
2. An offer may be in speaking, writing or *conduct*
3. An offer can be withdrawn at any stage before the other person accepts it.

Note! Do not confuse an offer with an INVITATION TO TREAT. A price tag on an item in a shop window is not an offer by the shop. It is an invitation to treat. They are only an indicator of the price that the seller is willing to consider and accept if offered. The seller/shop is free to reject any offers made by the customer.

NB: Make sure you know the difference between invitation to treat and an offer. It is a common question on Leaving Certificate.

2. Acceptance

Acceptance is when a party who receives an offer agrees to all the terms of the deal without any conditions.

1. They can accept it by speaking, in writing or by *conduct*.
2. The party who receives the offer must accept all the conditions exactly as the contract lays them out and cannot change them.

- For example, you are offering to buy groceries at the supermarket when you place them on the conveyor belt.
- The supermarket accepts your offer to buy the groceries when the shop assistant scans them.

1. To change any conditions is called a **counteroffer**. A counteroffer is considered as a new offer and as an automatic rejection of the first offer.

3. Consideration

Consideration for an agreement to be a contract each party must give something of value to the other party. This payment is also known as a consideration.

Example: In the supermarket case you get the groceries, and the shop gets the money. (The supermarket gives you groceries as consideration; you give them cash as consideration)

4. Intention to contract

Intention to contract both parties intend on the agreement to be a legally binding contract. They must be aware that they could end up in court if they break any conditions of the contract.

Irish law presumes that:

1. All business agreements are intended to be legally binding.
2. All social agreements are **not** intended to be legally binding.

(Between family members or friends.)

5. Capacity to contract

Capacity to contract this means that all parties involved in the agreement have the power and legal ability to make a contract which is enforceable by law.

The following people and businesses do not have the capacity to make a contract:

1. **Age** - People under the age of 18.
2. **Mentality** - People who mentally cannot make a sensible decision because they are drunk, on drugs or insane.
3. **Ultra Vires** - A company cannot enter a contract beyond their power as set out in their Memorandum of Association. Any activity not covered by this document is said to be ultra vires.

Diplomatic Immunity - Diplomats cannot enter a contract because they have diplomatic immunity. This means they cannot be taken to court. A person who cannot be sued cannot enter a contract because this is one of the remedies for a breached contract.

6. Consent to Contract

Consent to contract all parties entering a contract must do so on their own free will.

1. One party cannot force another into a contract.
2. Both parties must understand the conditions of the contract.

Example: You cannot be bullied (by threat or intimidation) into selling your own house.

Extreme Example: You are deciding on your will. Your son puts a gun up to your head and says he will kill his brothers and sisters unless you leave him 90% of your wealth. You are forced to leave him 90% of your wealth in your will however the will is not valid as you did not do so under your own free will.

This is an answer I came across while correcting papers. Not only was this student an absolute nutcase but **he also wasted valuable time.**

7. Legality of Form

Legality of Form; some contracts are not considered valid if they are not in written form.

Example: When buying a house, a contract must be in written form. Otherwise, the contract is invalid. The seller or buyer can pull out of the agreement up to any time before both parties sign the written contract.

8. Legality of Purpose

Legality of Purpose contracts that involve illegal actions are not considered valid.

Example: a judge will not award compensation to a drug dealer if his smuggler does not import drugs as promised.

NOTE: produce your own extravagant examples to help you remember the 8 elements of a contract.

Termination of a Contract

1. Agreement

The termination of a contract when **all parties involved agree to cancel the contract** before it is carried out. This happens when neither party benefits from the completion of a contract.

Example: In 2013 **The Jonas Brothers** and their **concert organisers** agreed to cancel their USA tour due to “appalling” ticket sales.

2. Performance

If both parties to the contract **fulfil their contract obligations**, the contract has been completely performed.

Example: One Direction are paid €2,000,000 to perform at Croke Park. Upon full payment and completion of the concert the contract is terminated as both parties have fulfilled their obligations.

3. Breach of Contract

If either parties fail to carry out their part of the agreement the contract will be terminated, this happens when they break a **condition** of the contract. This is known as a breach of contract.

Example: If three band members from one direction do not show up the contract is in breach, and they broke an essential condition of the contract.

4. Frustration

A contract ends if some **unforeseen event** occurs which makes it impossible to carry out the contract. Neither party is to blame.

Example 1: A one direction concert cancelled due to a hurricane.

Example 2: You order some clothes online from America. America enters a war and businesses stop shipping goods out of the country because of the high likelihood of ships being bombed. You do not receive your clothes, but you do receive your payment.

What's wrong with example number 2?

The difference between a Condition and a Warranty

Condition

A condition is an essential element which goes to the heart of the contract. Breach of condition is effectively breaking the contract.

Example: One Direction does not show up for a Concert. This is a breach of condition. The contract is terminated, and the concert organisers can sue One Direction.

Warranty

A warranty is a less important part of the agreement. A breach of warranty will often not break the contract. Breach of warranty results in a fine.

Example: One Direction do not show up for sound checks on the day of the concert. This is a breach of warranty. The contract is not terminated, and the concert still goes ahead. One direction may be fined for this breach of warranty.

Breach of Contract if any condition of a contract is broken then breach of contract is said to have occurred.

1. Sue for Damages

The aggrieved party takes the other party to court. The aggrieved party receives financial compensation for the loss suffered because of the breach. This is known as suing for damages.

Example: The Concert organisers sue Coldplay for damages and loss of potential earnings.

2. Specific Performance

This involves the judge ordering the contract to be carried out as had been agreed. If the contract is not carried out as agreed the aggrieved party may then sue for damages.

Example: Coldplay redo the concert later.

3. Rescind the contract

The contract will be cancelled. Both parties return to the same position they were in before the contract started. This is a common remedy for contracts involving frustration.

Example: Coldplay repay the concert organisers the €2,000,000 and both parties go their separate ways.