

A

Basic principles

The basic principles of contract law in the English system arise from established custom and rules and are fundamental to all areas of law in practice. Reference is made to these principles in **drafting and interpreting the provisions** of any legal agreement, such as a lease, a loan agreement, a sales agreement, a consultancy agreement, a hire purchase agreement, a hire contract, or a service contract, etc. The principles of contract law will determine whether and at what point a **binding agreement** has been made between the parties concerned.

Note: The words **contract** and **agreement** are interchangeable in the examples above. For example, a loan agreement / loan contract.

B

Formation of a contract

Formation of a contract requires the presence of four essential elements:

- Offer

The contract must contain the basic **terms of the agreement** and be **capable of acceptance** without further negotiation. This does not mean that the initial communication between parties will in itself constitute an offer. For example, in an **auction** situation, the seller, known as the vendor, may **make an invitation to treat** – invite an offer – by setting out the **conditions of sale** (for example when payment will be made) with the exception of the price. The offer is **submitted** by the purchaser, who offers to purchase at a specified price and will usually **incorporate the terms** of the invitation to treat into his/her offer.

- Acceptance

There must be an **unqualified agreement** to proceed on the basis set out in the offer and it must be **communicated to the offeror** – the person making the offer – in order to be effective. If the **offeree** – the person receiving the offer – states that he or she **accepts the offer subject to contract**, that is, some variation of the terms, then **no contract** is formed. This would be a **qualified acceptance**, which constitutes a **counter offer**.

Issues may arise as to whether the acceptance has been communicated. Two rules determine this:

- The **reception rule** applies to **instantaneous** forms of communication, for example telephone calls. The contract is said to be formed when the **acceptance is received** by the offeror.
- The **postal acceptance rule**, where there is a delay between the communication being sent and received, for example by post. The contract is formed when the **acceptance is sent** by the offeree.

To **avoid uncertainty**, the offeror may specify the method and timing of acceptance. Agreement on **essential terms**, for example price and delivery, must be certain and not vague.

- Consideration

For a contract to be **enforceable** something of value must be given, for example a price, even if it is of **nominal value**, say £1.

- Intention

It is assumed that **contracting parties** intend to create **legal relations**, particularly in commercial circumstances. This is, however, a **rebuttal presumption** – an assumption that can be contradicted – if there is contrary evidence.

31.1 Complete the conversations with the correct legal agreement from A opposite.

We rented a car for a week in Austria.	What did the (1) cover?
The office's windows are always dirty. I want them cleaned regularly by a firm of window cleaners.	You'll need a good (2)
I want to buy a new car but we can't afford to pay the whole price at once. I'm going to pay in monthly instalments.	You'll need to check the interest rate on the (3)
We're going to be living in London for about 18 months, so we're going to rent a flat.	Make sure you get a reasonable (4)
I'm going to have to borrow a large sum of money for about three years.	Try to get the best (5) you can from your bank.

31.2 Make word combinations from B opposite using words from the box.

contrary	offer	conditions of	avoid	sale	qualified
parties	essential	contracting	terms	contract	acceptance
counter	uncertainty	evidence	subject to	rebuttal	presumption

31.3 Find answers to these FAQs from a law firm's website. Find reasons for your answers in B opposite.

- 1 Building work started on a major construction project before all the elements of the contract had been agreed. Both parties expected that reaching an agreement would not be a problem. However, final agreement was never reached and eventually the claimants stopped work and claimed for work done. The defendants counter-claimed for the breach (break) in the contract.
Under English law, was there a contract?
- 2 Helena applied for shares in a company. The shares were allotted to her and a notice of allotment was posted to her. It never arrived.
Under English law, had she become a shareholder or not?
- 3 Two women went regularly to bingo sessions together and had an arrangement to share whatever they won. One of them won a bonanza (extra) prize of £1,107. She claimed it was not covered by the sharing arrangement.
Under English law, was their agreement legally binding?