

# WHAT IS A CONTRACT?

When did you last make a contract? Surprisingly, you don't have to look far back—perhaps yesterday, or even this morning. Did you buy a sandwich? Place a coin in a soda machine? Get a haircut? These transactions involve entering into a contract.

A contract is a legally binding agreement between two or more persons, also called parties. One party promises to do something and the other party promises to do something in return. For example, Pat promises to cut Robin's lawn once a week and Robin promises to pay Pat \$10 per week. In this simple situation, Pat and Robin have a contract.

More complicated contracts exist when we enter into major agreements, like buying a house or borrowing money from a bank.

For a contract to be enforceable, there must be something of value (also called consideration) exchanged. Each party must receive a benefit. In our lawn-mowing example, Pat's labour has been exchanged for a fixed sum of money from Robin.

Not all promises are legally binding contracts. For example, social engagements are not legally enforceable contracts. If Pat agrees to meet Robin for lunch tomorrow and does not show up, neither Pat nor Robin expects any legal action as a result. Neither of them intended to create a legally enforceable agreement when they agreed to meet for lunch.

Promises of a gift are also not legally binding contracts. Your uncle could promise you a trip to Europe for successfully completing high school, but he would be under no legal obligation to give you the trip when you graduate.

## WHAT'S IN A CONTRACT?

A contract must contain three things:

**OFFER** – a serious proposal which will lead to a contract being formed

**ACCEPTANCE** – an unconditional acceptance must be given that follows the terms of the offer: acceptance can be either spoken or clearly indicated by actions

**CONSIDERATION** – something of value exchanged to fulfil the contract

Let's see how offer, acceptance, and consideration could play out in real-life scenarios...

**PAT:** I'll give you \$20 for those skates. (Offer)

**ROBIN:** It's a deal! (Acceptance)

Pat gives Robin \$20 (Consideration) in exchange for the skates.

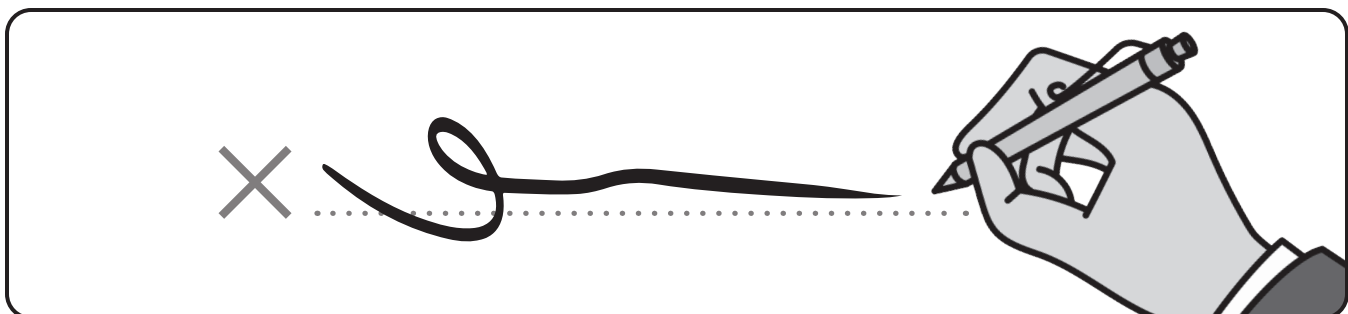
If the offer, acceptance, or consideration is missing, there is no contract.

**PAT:** I'll give you \$20 for those skates. (Offer)

**ROBIN:** Well... I'm not sure. (No Acceptance)

**PAT:** On second thought, I think I'll buy a new pair instead. (Offer withdrawn)

**ROBIN:** No, don't. I'll take the \$20. (Acceptance is too late – there is no contract)



# WHAT IS A CONTRACT?

Once you have entered into a contract, you cannot cancel or alter it simply because you change your mind, unless the other party also agrees to cancel or alter it. If you refuse to perform your part of the contract, the other party can sue you in court.

The court can enforce the contract either by ordering you to perform your part of the contract or by ordering you to pay damages to the other person for breach of contract. A breach of contract is the legal term used when one person fails to perform their part of a contract.

## ARE PRICE STICKERS AN OFFER?

Imagine going to an electronics store and finding a big-screen television with a \$25 price tag stuck to it. This is probably an error. But does the \$25 price sticker mean that you can purchase the TV for \$25?

Unfortunately for you, the price sticker is not considered an offer for sale. Instead, a price sticker is considered an Invitation to Treat. In other words, the price sticker is an invitation for you to make an offer. The retailer can either accept or reject your offer. The retailer has no obligation to sell merchandise for the price on the tag.

The retailer does not necessarily have to accept any offer that you make for their merchandise, either. As long as their reason for refusing your offer is not in violation of human rights legislation, such as refusing to sell to you based on gender, religion, race, or sexual orientation, the retailer is within their rights to refuse the offer.

## SCANNERS AND PRICE ACCURACY

What happens if you go to the checkout at a major retailer, and when the item is scanned, the price that comes up is different than the price tag on the shelf? You may be entitled to a discount, or even to have the item for free.

If the item costs over \$10, you are entitled to a \$10 discount. If the item costs less than \$10, you can receive it for free. The only exceptions to this rule are prescription drugs, behind-the-counter cosmetics, and items with an individual price sticker.

These rules are spelled out in the Retail Council of Canada's *Scanner Price Accuracy Code*. The code was created in 2002, to give consumers confidence that the shelf sticker price would match the price at the cash register.

The *Scanner Price Accuracy Code* is not a law. It is a voluntary agreement that many major retailers have signed onto. Shelf stickers are still considered an Invitation to Treat, just like a price tag stuck onto an item is an Invitation to Treat.

For the full rules of the Code and a list of participating retailers, check out [www.retailcouncil.org/scanner-price-accuracy-code/](http://www.retailcouncil.org/scanner-price-accuracy-code/)



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## THE LETTERBOX RULE

It is now commonplace to conduct business through e-mail, telephone, and other instantaneous forms of electronic communication. However, not long ago most business was done through the mail. From this, the Letterbox Rule came to be. While antiquated, the rule is still in force.

When an offer is sent through the mail, the letterbox rule will apply. It considers the post office the Long Arm of the Recipient. Therefore, the moment that the acceptance is placed in the mail, it is considered to be in the hands of the recipient. The date the letter is received does not matter. This rule even applies if the letter is lost in the mail or delayed due to a postal strike. An offer cannot be withdrawn once acceptance is placed in the mail.

## DOES 👍 MEAN "I ACCEPT"?

A Saskatchewan court recently concluded that a thumbs-up emoji constituted acceptance of a contract.

In a phone call, representatives from South West Terminal and Achter Land & Cattle Ltd. discussed and agreed to a flax contract. South West Terminal then sent a photo of the contract to Achter with the text message: "Please confirm flax contract."

Achter responded with a thumbs-up emoji. In the past, the two formed contracts in a similar way. South West Terminal would send a photo of the contract to Achter, and Achter would accept it with a few words, such as "Looks good," "OK," and "Yup."

However, when it came time to deliver the flax for this contract, Achter never came through. So South West Terminal took Achter to court.

Justice T.J. Keene ruled that "there was a valid contract between the parties that the defendant breached by failing to deliver the flax."

The judge observed that "a [thumbs up] emoji is a non-traditional means to "sign" a document." However, the two parties had a longstanding relationship of creating contracts in a similar manner. Therefore, the judge ruled "this was a valid way to convey the two purposes of a "signature" – to identify the signator (with a unique cell phone number) and . . . to convey Achter's acceptance of the flax contract." In short, the thumbs up emoji was ruled to be an electronic signature.

Achter Land & Cattle Ltd. was ordered to pay damages to South West Terminal for breaching the contract.

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## DISCUSS

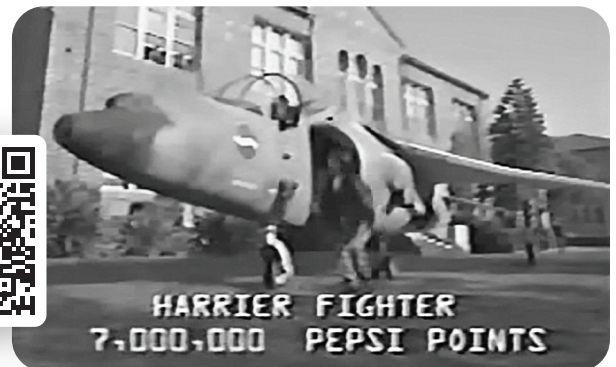
- Consider the following everyday scenarios. Decide if a contract exists.
  - You buy a bike for \$25 at a yard sale.
  - You invite your friend to come over to see your bike.
  - Your aunt promises to pay you \$50 to stop riding your bike in traffic.
  - You buy a bike helmet from the hardware store.
  - You bring your bike to the sporting goods store for a tune-up.
- List and describe the three elements that must be in place for a contract to exist.

- In 1996, Pepsi introduced the Pepsi Points promotion. People could collect points from pop bottles to earn merchandise. A television advertisement that featured items that could be purchased with Pepsi Points humorously ended with a student landing at school in a Harrier jet, with the line "7,000,000 Pepsi Points" appearing on the screen.

Additional Pepsi points could be purchased to make up for point shortfalls. This led one Pepsi customer to present the Pepsi company with 15 Pepsi Points and a cheque for \$700,008.50 (to cover the excess points and shipping and handling) for the jet.

Pepsi refused to give him a Harrier jet. He sued.

Did the advertisement constitute an offer?



- Brad likes doing business in old-fashioned ways. He sends a letter to Carol on September 1st offering to sell his car for \$2,500. Carol receives the letter on September 5th, and mails back an unconditional acceptance the same day. Brad receives Carol's acceptance on September 10th.

In the meantime, Rachel approached Brad on September 7th and offered him \$3,000 for the car. He accepted the offer.

Did Brad breach his contract with Carol? Explain.

1. a) You buy a bike for \$25 at a yard sale. **YES**
  - b) You invite your friend to come over to see your bike. **NO – this is a social invitation**
  - c) Your aunt promises to pay you \$50 to stop riding your bike in traffic. **NO – this is a promise of a gift**
  - d) You buy a bike helmet from the hardware store. **YES**
  - e) You bring your bike to the sporting goods store for a tune-up. **YES**

2. **List and describe the three elements that must be in place for a contract to exist.**

- *offer – a serious proposal which will lead to a contract being formed*
- *acceptance – an unconditional acceptance must be given that follows the terms of the offer*
- *consideration – something of value exchanged to fulfill the contract*

3. **Did the Pepsi advertisement constitute an offer?**

*With a contract, any offer that is made must be serious. In the case Leonard v. Pepsico, 1996, the contract for the jet was not considered valid because the advertisement was not deemed to be a serious offer.*

4. **Did Brad breach his contract with Carol?**

*All the elements of a contract (offer, acceptance, and consideration) exist here, so the contract between Brad and Carol is valid. The fact that Brad mailed the offer, and Carol mailed the acceptance before Rachel entered into a contract to purchase the car means that the letterbox rule applies. Brad has breached his contract with Carol.*

*Unfortunately, by also entering into a contract with Rachel, Brad has created a contract with her that he cannot carry out. Brad no longer had the right to sell the car. This means that Rachel would have the right to sue Brad for any damages she may have incurred because of the void contract between her and Brad.*