

CONTRACTS

(Torts も忘れない!!)

ARTICLE 2 applies ONLY to a **sale of goods**

[“goods” are moveable, personal property (not including real property)].

- A. **CONTRACT** is a **legally enforceable agreement**.
 - (1) **Express contract** is created by the parties' **words** (oral or written).
 - (2) **Implied contract** is created by the parties' **conduct**.
- B. **QUASI-CONTRACT** is **NOT a contract**, but an **equitable remedy** that applies whenever the application of contract law yields an **unfair or inequitable result**. Quasi-contract is not limited by contract rules, but is governed by equitable concepts. It protects against unjust enrichment.
- C. **BILATERAL CONTRACT** – A contract for which an offer can be accepted in **ANY reasonable way**.
- D. **UNILATERAL CONTRACT** – A contract for which an offer can **ONLY** be accepted by **performance**.

#2: CONTRACT FORMATION (必ず、Mutual Assent と Consideration を check する!!)

1. OFFER is a manifestation of an intention to be bound by the offeree, created by words or conduct.

- (i) Manifestation of a present intent to contract demonstrated by a promise, undertaking or commitment
- (ii) Definite and certain terms
- (iii) Communicated to an identified offeree

*Advertisement **IS an offer**, if it specifies: (i) **Quantity term** and (ii) **Who can accept**.

2. OFFER TERMINATION

A. **LAPSE**: An offer lapses after a **stated term**, or after a **reasonable time** has passed.

B. **REVOCATION**: An offer terminate when the offeror revokes the offer.

Generally, an offeror may revoke an offer any time before acceptance, either directly or indirectly.

<Exception> a. **OPTION Contract** (i) a **promise to keep the offer open** that is (ii) **paid for**.

b. **FORESEEABLE RELIANCE BEFORE ACCEPTANCE**:

c. **STARTING TO PERFORM A UNILATERAL CONTRACT** (Unilateral contract

d. **FIRM OFFER** (Article 2 = sale of goods):

In a sale of goods, if a **merchant** promises in a **signed writing** to keep an offer open,

* Here, a consideration is **NOT required**. Merchant is a person who **regularly deals in goods of the kind sold**.

C. **REJECTION**: An offer terminates when the offeree rejects the offer (inappropriate response)

ACCEPTANCE VARYING OFFER:

a. **COMMON LAW**: Acceptance must **mirror offer**. ("**Mirror Image Rule**")

b. **ARTICLE 2 (sale of goods)**:

They become part of the contract, ONLY IF:

- (A) Both parties are **merchants**;
- (B) The term is **not a "material" change**; AND
- (C) The offeror does NOT object within a reasonable time.

D. **DEATH**: Death of either party **terminates a revocable offer**. Regardless whether an offeree knew the offeror's death or not.

3. ACCEPTANCE

B. **STARTING PERFORMANCE** (履行開始)

1. **BILATERAL CONTRACT**:

Starting performance is acceptance of an offer to enter into a **bilateral contract**, and carries with it an **implied promise to finish the job**.

2. **UNILATERAL CONTRACT**:

Starting performance is **NOT** acceptance of an offer to enter into a **unilateral contract**; only completing performance is acceptance.

C. **IMPROPER PERFORMANCE** (不完全履行)

COMMON LAW: Improper performance operates as **acceptance and breach**.

SALE OF GOODS (Article 2): 原則と同じだが、

If the seller sends the **improper goods** (e.g., different goods, lesser amount) with a notice that the goods are an accommodation to the buyer, **NOT constitute an acceptance**.

MISTAKE: MUTUAL MISTAKE ABOUT A MATERIAL FACT: renders the contract voidable.

ASSUMPTION OF RISK: If the adversely affected party bore the risk that the assumption was mistaken, the party may NOT raise a mutual mistake defense.

UNILATERAL MISTAKE: usually does NOT render the contract voidable.

If the other party knew or should have known the mistake, and the mistake is about a material fact, the contract is voidable

CONTRACT MODIFICATION:

COMMON LAW: Generally, New consideration is required to **modify** a contract.

SALE OF GOODS: Consideration is **NOT** required, but **both parties** must be acting **in good faith.**

TIME BARRED DEBT: A written promise to **pay debt**, collection of which is **barred by Statute of Limitations**, is enforceable even without consideration.

4. CONSIDERATION

#3: STATUTE OF FRAUD

A. WHEN A WRITING IS REQUIRED:

1. **INTEREST IN REAL PROPERTY:** Transfer of an interest in real property (+ lease or easement which are more than 1 year).
2. **PERFORMANCE CANNOT BE COMPLETED WITHIN A YEAR**
3. **SALES OF GOODS FOR \$500 OR MORE (Article 2)**
4. **SURETYSHIP:** Suretyship is a **promise to "answer for" the debt of another** (* limited to **guarantees**).

B. SATISFACTORY WRITING:

1. **SALE OF GOODS:** To satisfy SOF, a writing **MUST** contain a **quantity term (no need price term)**, and be signed by party who is charged with **breach of contract**.
3. **OTHER CONTRACTS:** A writing must contain **all material terms** ("who" and "what"), AND be signed by party who is charged with the breach.

C. EXCEPTIONS

1. REAL PROPERTY: PART PERFORMANCE :

There must be **either 2** of the following 3: (1) Some payment; (2) Improvements on land; (3) Possession.

2. ONE YEAR PRONG: Full performance of service contracts that is not performable within 1 year **removes** the bar of the SOF.

3. SALE OF GOODS FOR \$500 OR MORE (Article 2)

(1) GOODS ACCEPTED OR PAID FOR BY BUYER

(2) MERCHANTS' CONFIRMATORY MEMO:

- (i) **BOTH parties** are "**merchants**";
- (ii) The writing claims that there is a **prior oral agreement**;
- (iii) The writing includes a **quantity term**;
- (iv) The writing is **sent** to the other party; AND
- (v) The recipient does **NOT object in writing within 10 days** after the writing is **received**.

4. SURETYSHIP: If the surety's main purpose in making the promise was to **benefit himself, writing is NOT required.**

5. <Promissory Estoppel> against all SOF.

#4: CONTRACT TERMS

PAROL EVIDENCE RULE : keeps out evidence of a **prior agreement** (either **oral** or **written**) that **contradicts a later writing**, on the theory that the prior agreement was subsumed into the later written instrument.

<EXCEPTIONS> a. **TO CORRECT A CLERICAL ERROR**

b. **TO ESTABLISH A DEFENSE TO THE FORMATION** of an agreement.

c. **TO ESTABLISH A CONDITION PRECEDENT** to effectiveness of the written contract.

d. **TO INTERPRET A VAGUE OR AMBIGUOUS TERM** in the written contract.

e. **TO SUPPLEMENT A PARTIALLY-INTEGRATED WRITING:**

IMPLIED WARRANTY

(1) IMPLIED WARRANTY OF MERCHANTABILITY: The goods are fit for their **ordinary purpose**.

- (i) Seller is a **merchant**;
- (ii) Who **deals in goods of the kind**.

(2) IMPLIED WARRANTY OF FITNESS FOR (BUYER'S) PARTICULAR PURPOSE

The goods are **fit** for the **buyer's special purpose**: (i) Buyer has **special purpose in mind**;

- (ii) Buyer is **relying on seller to select suitable goods**; and,
- (iii) **Seller knows or has reason to know both of these facts.**

#5: PERFORMANCE OF THE CONTRACT

A. For the SALE of Goods (Article 2): Perfect Tender Rule

OPTION TO CURE:

A. TIME FOR PERFORMANCE HAS NOT EXPIRED:

The seller may "cure" by: (i) Giving reasonable notice of her intention to do so; and
(ii) Making a new tender of conforming goods.

B. TIME FOR PERFORMANCE HAS EXPIRED

If the seller **reasonably believed** that the tender would be acceptable, he has a **further reasonable time** beyond the original contract time to make a conforming tender.

INSTALLMENT SALES CONTRACTS (Perfect Tender Rule does NOT apply to an installment sales contract.)

i. BUYER'S RIGHT TO REJECT AN INSTALLMENT:

A buyer has the right to reject an installment, ONLY IF there is **substantial impairment** in the installment **that CANNOT be cured.**

ii. BUYER'S RIGHT TO REJECT THE ENTIRE CONTRACT:

A buyer has the right to reject **the entire contract**, ONLY IF a defect in an installment **substantially impairs** the value of the whole contract.

BUYER'S REJECTION & ACCEPTANCE OF THE GOODS

A. REJECTION: In order to reject the goods, the buyer must seasonably notify the seller within a reasonable time after delivery or tender.

B. IMPLIED ACCEPTANCE: Implied acceptance occurs, when the buyer keeps the goods without objection, after having an **opportunity to inspect**

BUYER'S REVOCATION OF ACCEPTANCE OF THE GOODS

Generally, once a buyer accepts, the buyer CANNOT revoke his acceptance of goods, but can revoke it if:

(i) The non-conformity **substantially impairs** the **value of the goods**, AND

(ii) **Either:**

(a) The non-conformity was difficult to discover (i.e., it was a **latent defect** (隠れた瑕疵)); **OR**

(b) The buyer accepted the non-conforming goods on reasonable belief that it would be cured.

B. Performance of Common Law Contracts

1. MINOR BREACH: The obligee gains the **substantial benefit of her bargain**, despite the obligor's defective performance.

a. DAMAGES: The aggrieved party may recover damages due to the minor breach.

b. NO EXCUSE: The aggrieved party is NOT excused from her duty of performance under the contract; unless it is "time is of the essence."

2. MATERIAL BREACH: The obligee does NOT receive the **substantial benefit of her bargain**, due to failure to

a. DAMAGES: The aggrieved party may **recover damages** due to the material breach.

b. EXCUSE: The aggrieved party is **excused** from her duty of performance under the contract.

#6: EXCUSE FOR NON-PERFORMANCE BASED ON LATER EVENTS

A. OTHER PARTY'S BREACH: may provide an excuse for non-performance.

B. ANTICIPATORY REPUDIATION: occurs when:

(i) In a contract with **executory** (i.e., unperformed) **duty on both sides**;

(ii) The **promisor, prior** to the time set for performance of his promise, **indicates unequivocally** that he will **NOT perform** when the time comes.]

C. LATER AGREEMENT: A **later agreement** between the parties may provide an excuse for non-performance.

1. RESCISSION: A rescission agreement is an agreement to **cancel the contract.**

2. MODIFICATION: A modification agreement is an agreement **replacing** an existing contract with a **new contract.**

3. ACCORD AND SATISFACTION:

(i) **Accord** is an agreement in which **one party to an existing contract** promises to **accept**, in lieu of the performance that she is supposed to receive from the other party, **some different performance.**

(ii) **Satisfaction** is performance of the accord.

4. NOVATION: A novation is an agreement to **substitute a new party** for an existing one.

D. IMPOSSIBILITY: may provide the seller with an excuse for non-performance.

#7: REMEDIES

LIQUIDATED DAMAGES (損害賠償額の予定):

- (i) The damages were **difficult to estimate in advance**, AND
- (ii) The provision is a **reasonable forecast of probable damages**.

EXPECTATION DAMAGES (履行利益):

Expectation damages put an injured party **in as good a position as full performance**.

INCIDENTAL DAMAGES:

- Incidental damages involve:
- (i) Cost of **storing, shipping and returning** the goods,
 - (ii) Cost of **caring for goods after breach**, and
 - (iii) Costs associated with **arranging a substitute transaction**

CONSEQUENTIAL DAMAGES (信頼利益):

Consequential damages are damages that are **special to this plaintiff** and were **reasonably foreseeable** by the **breaching party** at the time of the **contract**.

Rule of Mitigation: An injured party CANNOT recover damages he could have avoided (mitigated) with reasonable effort.

#8: THIRD-PARTY BENEFICIARIES

*INTENDED/INCIDENTAL BENEFICIARY:

- (1) A person who is **intended** to benefit from a contract made by others is an **intended beneficiary**.
- (2) A person who just **happens** to benefit is an **incidental beneficiary**.

*CREDITOR/DONEE BENEFICIARY:

If performance will satisfy a debt the promisee owes to the third party, the third party is a **creditor beneficiary**; otherwise, the third party is a **donee beneficiary**.

RESCISSION AND MODIFICATION: Generally, the promisor and promisee can rescind or modify the contract, UNTIL the rights of the third party beneficiary have "**vested**." Third-party beneficiary's rights have "**vested**," if:

- (i) The third party beneficiary **assents** to the promise;
- (ii) The third party beneficiary **brings suit** to enforce the promise; OR
- (iii) The third party beneficiary **relies** on the promise.

MULTIPLE ASSIGNMENTS

- a. **GRATUITOUS ("GIFT") ASSIGNMENTS:** The **last** gratuitous assignee in time **prevails over** earlier gratuitous assignees, because a **later** gift assignment **revokes** an earlier one.
- b. **REVOCATION:** A gratuitous assignment may be **revoked**, either by:
 - (i) **Notice of revocation** communicated from assignor to **either assignee or obligor**;
 - (ii) **Subsequent assignment** of the same right by the assignor to another;
 - (iii) The **assignor takes performance** (e.g. receives payment of debt) by the obligor; OR
 - (iv) **Death or bankruptcy** of the assignor.
- d. **ASSIGNMENTS FOR CONSIDERATION:** Generally, The **first** assignee for consideration **prevails**, because assignments for consideration are much more durable.
<EXCEPTION> A **later** assignee for consideration prevails, if:
 - (i) He does **NOT know** of the earlier assignments; AND
 - (ii) He is the **first** to get **payment** from or a **judgment** against the obligor.

商人性が問題となる事項のまとめ		
1	Optionつき Offer	双方とも商人でなくてもよい。
2	Firm Offer	申込者が商人でなければならない。
3	Additional Term	双方が商人
4	Merchant Confirmation Memo	双方が商人
5	Implied Warranty of Merchantability	売主が商人
6	Implied Warranty of Fitness for Specific Performance	双方とも証人でなくてもよい。
7	Warranty of Title and against Infringement	(1) 商人でない売主は Title のみ担保 (2) 商人である売主は Title+Infringement まで担保
8	Risk of Loss for Delivery without Common Carrier	(1) 売主が商人: 現実の占有移転で Risk が移転 (2) 売主が商人でない: 弁済の提供で Risk が移転