

# Legal English

## 法學英文

邱彥琳/著



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# Introduction

Legal English is an essential skill for professional jurists working in an international setting. Notably in Taiwan, legal English is since 2011 a new professional subject, which is tested on national bar exams. In light of these recent developments, the author hopes that this book might help students prepare for the national exams, but also promote their future legal careers in a globalized world.

This book introduces six legal topics focusing on contract law (Chapter 1), tort law (Chapter 2), company law and securities regulations (Chapter 3), constitutional law (Chapter 4), criminal law and criminal procedure (Chapter 5), as well as civil procedure law (Chapter 6). It thus offers a comprehensive and systematic overview that covers the broad scope of legal English as required by the national exams. Each chapter starts with a summary of Anglo-American law that explains some of the most significant rules and principles, including English-Chinese translations of basic words and phrases. The second part provides excerpts from respective laws in the Republic of China (Taiwan), which contain important key terms or are interesting from a comparative perspective. The third part encourages students to apply and practice their newly acquired knowledge by filling out certain exercises that will help them to become familiar and remember special terminologies. The correct answers can be found in the last part of each chapter, thus offering a useful tool for review and self-check.



## 導 讀

法學英文是法律人於國際上執業的必備能力。尤其在臺灣自民國一百年起法學英文已被新增為國家考試的專業科目。就此趨勢發展而言，作者希望本書既可協助學生準備國考，並且也能促進學生將來在全球化的世界裡足以應付法律執業生涯。

本書介紹六個法學領域，集中於契約法（第一章），侵權法（第二章），公司與證券交易法（第三章），憲法（第四章），刑法與刑事訴訟法（第四章），以及民事訴訟法（第六章）。因此本書提供整體性的概述，涵蓋國家考試所必要理解的法學英文範圍。每一個章節首先解釋英美法中的核心規定與原則，包含基本單字及片語之英中翻譯。第二部分摘錄中華民國相關法律，特別是若有提到重要關鍵字或從比較法角度來看是有趣的條款。第三部分透過填寫練習，鼓勵並促進學生能應用新掌握到的知識，逐步讓學生熟練並記住專門術語。每章末附正確答案，即實用且有益於複習和自我能力檢視。



Hoping that this book may serve as a valuable contribution for legal English courses taught at universities, as well as for objectives of self-study, the author would like to express her deep gratitude for the support from Fu Jen Catholic University, School of Law, its faculty members, administrative staff, and student assistants!



希望本書對於法學英文教學課程及學生自主學習目標能有所幫助，作者在此謹向輔仁大學、法律學院之教師同仁以及行政人員和教學助理等對本書寫作的支持，致上最深切的感謝。



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## Chapter 1 第一章

# CONTRACT LAW 契約法

### 單元一 英美契約法 ANGLO-AMERICAN CONTRACT LAW

#### Definition 定義

A contract is an agreement that is enforceable by court.

- contract 契約
- agreement 合約、協議、協定
- enforceable 可執行
- court 法院

What is a contract?

Contract = agreement + enforceable by court

Contract = promise(s) + remedy

- promise 認諾
- remedy 救濟

AGREEMENT

ENFORCEABLE  
BY COURT

CONTRACT

PROMISE(S)  
認諾

REMEDY  
救濟

CONTRACT  
契約

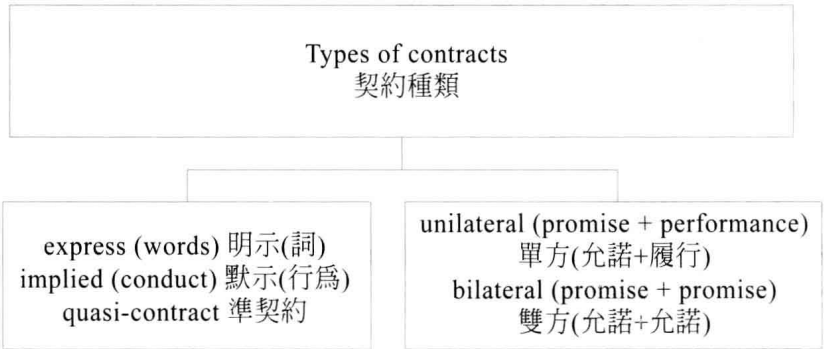


Governing law 準據法

Anglo-American contracts are governed by Article 2 UCC (sale of goods), the Restatement (Second) of Contracts and common law.

- Uniform Commercial Code (UCC) 美國統一商法典
- sale of goods 貨物買賣
- Restatement (Second) of Contracts 美國法律整編契約法（第二版）
- common law 習慣法、普通法

Types of contracts 契約種類



An express contract is formed by words. An implied contract is formed by conduct. A quasi-contract is not a contract in a legal sense. It applies equitable principles to prevent unjust enrichment.

- express contract 明示契約
- implied contract 默示契約
- quasi-contract 準契約
- equitable principles 衡平法原則
- unjust enrichment 不當得利



A unilateral contract is a promise in exchange for a performance (e.g. Anton offers to pay \$1000 to the person who brings back his lost dog; Anton does not want a promise, Anton wants action/performance).

A bilateral contract is a promise in exchange for a promise (e.g. Anton offers to pay Berta \$1000 if Berta promises to bring back his lost dog; Anton is satisfied with a promise).

- unilateral contract 單方契約
- bilateral contract 雙方契約
- promise 允諾
- performance 履行

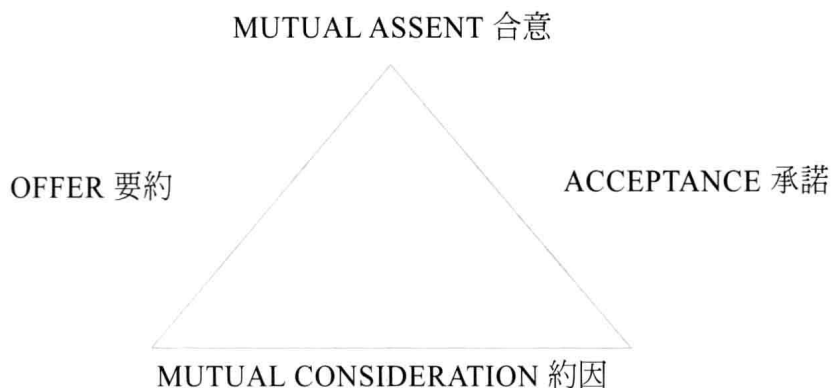
### Contract formation 契約之成立

The essential elements of a contract are offer, acceptance and consideration.

- offer 要約
- acceptance 承諾
- consideration 約因

How is a contract formed?

Contract = offer + acceptance + consideration





## Offer 要約

An offer is a manifestation of willingness to enter into a contract, which creates a power of acceptance. The person who makes an offer is called the offeror. The person to whom the offer is made is called the offeree.

- manifestation 表明、顯示
- willingness 自願
- power of acceptance 接受要約權
- offeror 要約人
- offeree 受要約人、要約相對人

A valid offer exists if:

1. The offeror makes a promise or commitment. Note that mere advertisements or preliminary negotiations are not offers.
  - promise or commitment 允諾、承諾
  - advertisement 廣告
  - preliminary negotiations 初步談判、締約前商議
2. The offer must contain the essential terms, e.g. subject matter, offeree, time. But missing terms can be substituted by reasonable terms or subsequent performance.
  - essential terms 必要之點 / 條款
  - reasonable terms 合理條款
3. The offer must be communicated to the offeree, so that the offeree has knowledge of the offer.
  - communication 溝通、通知



4. The offer is not revoked. As a general rule, an offer can be revoked any time before acceptance, unless there is (i) an option (ii) a firm offer (= signed writing by a merchant to keep his offer valid for a maximum period of three months, see Article 2-205 UCC) or (iii) part performance / detrimental reliance.

- revoke 撤回
- option 選擇權
- firm offer 確定要約
- part performance 部分履行
- detrimental reliance 信賴損害

What is a valid offer?

Offer = promise + essential terms + communication

- promise 允諾、承諾
- essential terms 必要之點、條款
- communication 溝通、通知

Acceptance 接受要約：（要約之）承諾

Acceptance is the offeree's manifestation of assent to the terms of the offer. The power of acceptance is terminated once the offeree rejects the offer or makes a counter-offer, the offer is revoked or time has lapsed.

- assent 同意
- reject 拒絕
- counter-offer 反要約
- revoke 撤回
- lapse of time 時間經過、期限已屆至



The requirements for valid acceptance are:

1. Unequivocal assent by offeree: The offeree must have knowledge of the offer and accept as specified in the offer (e.g. by registered mail); if the offer does not specify the method of acceptance, the offeree may use any reasonable method.
  - unequivocal assent 明確的同意
  - reasonable method 合理方法
  
2. Under common law, the terms of the acceptance must be the same as those of the offer (“mirror image rule”). In contrast, the UCC (see Article 2-207 UCC) provides a more flexible rule: If the acceptance includes additional terms and one of the parties is not a merchant, they become part of the contract if the offeror explicitly assents. If both parties are merchants, the additional terms automatically become part of the contract, unless they materially alter the original offer or the offeror objects. If the acceptance includes conflicting terms, they do not become part of the contract (“knock out rule”), instead UCC gap fillers or common law applies.
  - mirror image rule 鏡子形象規則
  - additional terms 附加條款
  - merchant 商人
  - explicitly assent 清楚的 / 明確的同意
  - materially alter 重要變更
  - to object, objection 反對、異議
  - conflicting terms 衝突條款
  
3. Communication of the acceptance: According to the “mailbox rule”, the acceptance is effective upon dispatch, if not otherwise provided in the offer.

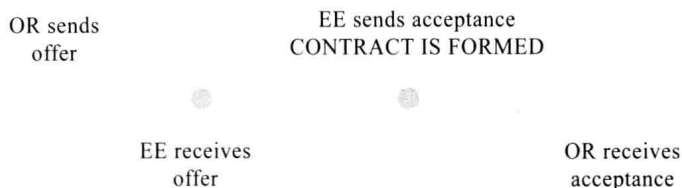


- communication 溝通、通知
- mailbox rule 發信原則

Examples:

Offeror sends offer > offer is valid when received by offeree.

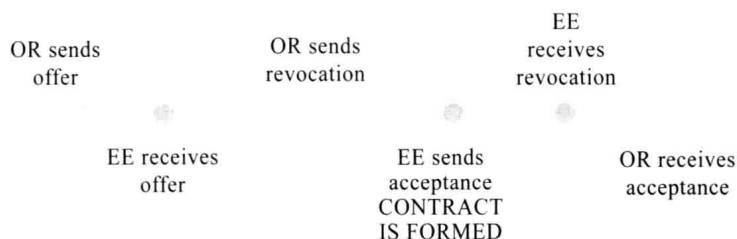
Offeree sends acceptance. Contract is formed when offeree sends acceptance (mailbox rule).



Offeror revokes offer.

Offeree sends acceptance before receiving revocation.

Contract is formed when offeree sends acceptance (mailbox rule).



Offeree first sends acceptance, then rejection.

Contract is formed when offeree sends acceptance (mailbox rule).

