

Contract Law: General Theory and Formation of Contract

Contract law represents one of the most dynamic and practical areas of private law. While the law of obligations provides the general framework for legal relationships, contract law focuses specifically on those obligations that arise from the agreement of wills. In modern legal systems, contracts are the primary tool through which individuals organize their economic and social interactions.

A contract can be defined as an agreement between two or more persons intended to create legal obligations. This definition highlights two essential elements. First, there must be an agreement, meaning a meeting of wills between the parties. Second, this agreement must have legal consequences, that is, it must create obligations that are recognized and enforceable by law.

The importance of contract law lies in the fact that it allows individuals to freely structure their relationships. This idea is expressed through the principle of freedom of contract. According to this principle, individuals are free to decide whether or not to enter into a contract, to choose the person with whom they contract, and to determine the content of their agreement. However, this freedom is not absolute and is limited by legal rules relating to public order and morality.

Alongside freedom of contract, another essential principle governs contractual relations: the binding force of contracts. Once a contract is validly formed, it has the force of law between the parties. This means that the parties are legally required to perform their obligations as agreed.

A third fundamental principle is that of good faith. Contracts must not only be formed freely, but also executed honestly. Good faith requires that parties act fairly, refrain from deception, and respect the legitimate expectations created by the agreement.

In order for a contract to exist, it must be properly formed. The formation of a contract is based on the meeting of two essential elements: the offer and the acceptance. The offer is a clear and precise proposal made by one party, indicating the intention to be bound in case of acceptance. The acceptance is the expression of agreement to the terms of the offer.

The moment at which the offer and acceptance meet is crucial, as it marks the birth of the contract. At that moment, the parties become legally bound, even if the execution has not yet started.

However, the mere existence of an agreement is not sufficient for a contract to be valid. The law requires that certain conditions be fulfilled. These conditions are traditionally four: consent, capacity, object, and cause.

Consent refers to the agreement of the parties and must be free and genuine. Capacity refers to the legal ability of a person to enter into a contract. The object must be lawful, possible, and clearly defined, while the cause must also be legitimate.

One of the most important aspects of contract formation concerns the defects of consent. Consent is considered defective when it does not reflect a true and free will. This occurs in cases of error, fraud, or duress.

Error refers to a mistake concerning an essential element of the contract. Fraud involves intentional deception by one party in order to mislead the other. Duress refers to situations where a person is forced to contract under threat or pressure.

In conclusion, contract law ensures that agreements are formed under fair and lawful conditions. It balances freedom and protection by allowing individuals to contract while safeguarding the integrity of their consent.