

Non-commercial legal entities and contracts

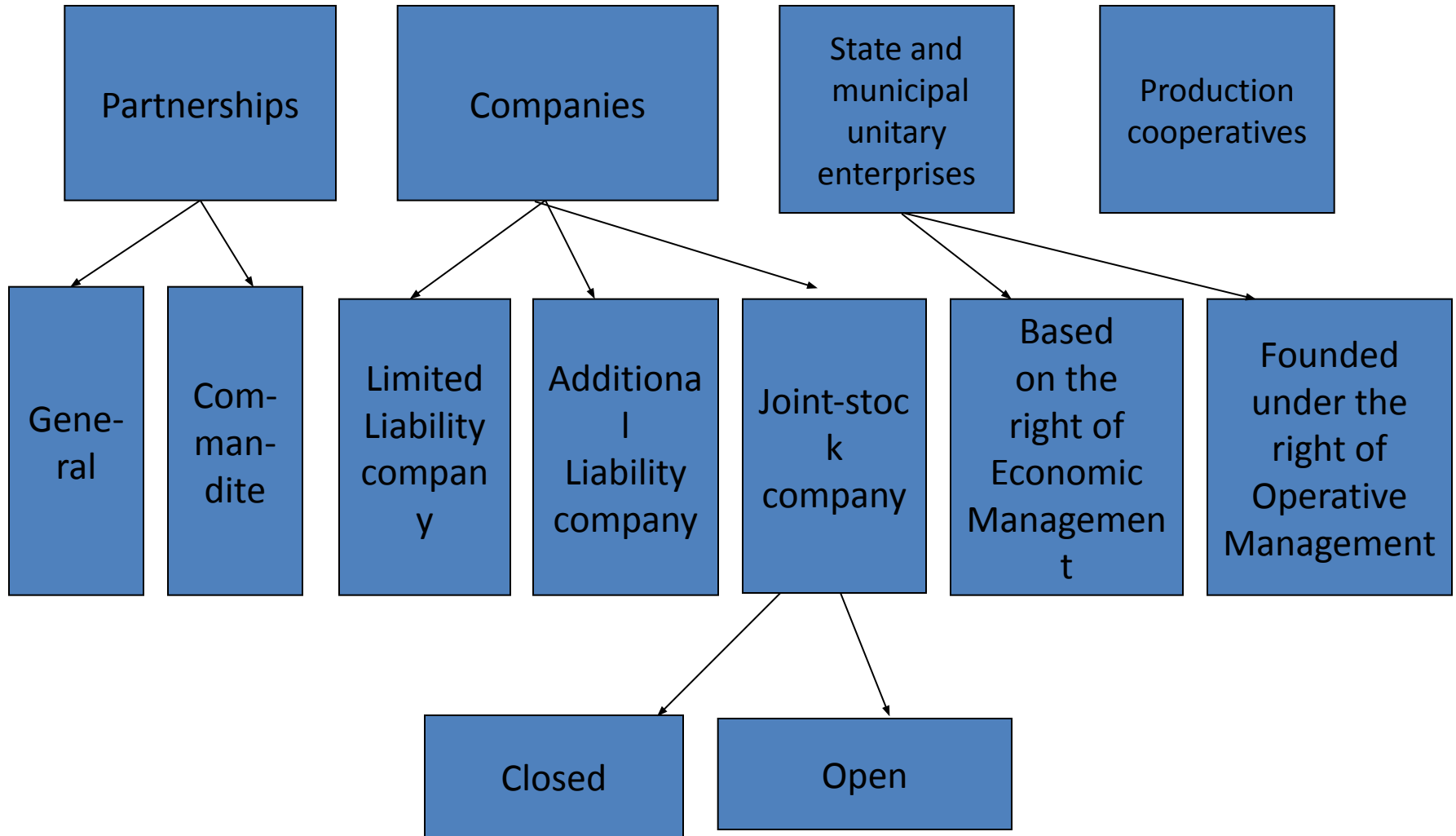
Legal entities

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graph TD; A[Legal entities] --> B[Commercial]; A --> C[Non-commercial];
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Commercial

Non-commercial

The organizational unities of commercial legal entities



The bodies of legal entities (Art. 53 of the Civil Code)

- **The legal entities act through their bodies (organs).**
- **The acts of the bodies are considered the acts of the legal entities.**

The bodies of legal entities

- The sole (one-man) bodies
- The collective bodies

The sole bodies

- Director (or Director-general) –
директор

Chairman of the board –
председатель правления

- Chairman of the board of directors – *председатель совета директоров*

The collective bodies

- The general meeting of participants –
общее собрание
- The board of directors (or council of
directors, or supervisory council) –
совет директоров
- The board (or directorate) - правление
- The audit commission

The bodies of a legal entity

- The management bodies – органы управления (adopt decisions)
- The executive bodies – исполнительные органы (execute decisions of the management bodies)

The management bodies (organs)

- The general meeting of participants
- The board of directors (or council of directors, or supervisory council)

The executive bodies (organs)

- **Board** (or directorate)
and
- Director (or Director-general)
or
- Chairman of the board

The highest organ

- **The general meeting of participants**

The organizational unities	Bodies
Partnerships	<p>Have no bodies, because the participants <u>run the partnership all together and each participant has the right to operate on behalf of the partnership</u></p>
Limited liability companies (companies limited by stakes)	<p><u>The management bodies :</u> <i>A general meeting of participants</i></p> <p><u>The executive bodies:</u> A board (or directorate), A director</p> <p><u>Can be created:</u> A board of directors (the supervisory council) A chairman of the board of directors</p>
Additional Liability company	The same

The organizational unities

Bodies

Joint-stock companies (companies limited by shares)

The management bodies :

A general meeting of participants

A board of directors (the supervisory council)

A chairman of the board of directors

The executive bodies:

A board (or directorate),

A director

State and municipal unitary enterprises

The management body (it is also the executive body):

A director

Production cooperatives

The management bodies :

A general meeting of participants

The executive bodies:

A board (or directorate),

A director

Can be created:

A board of directors (the supervisory council)

A chairman of the board of directors

Legal entities

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graph TD; A[Legal entities] --> B[Commercial]; A --> C[Non-commercial];
```

Commercial

Non-commercial

Commercial legal entities

Commercial legal entities

Commercial legal entities are

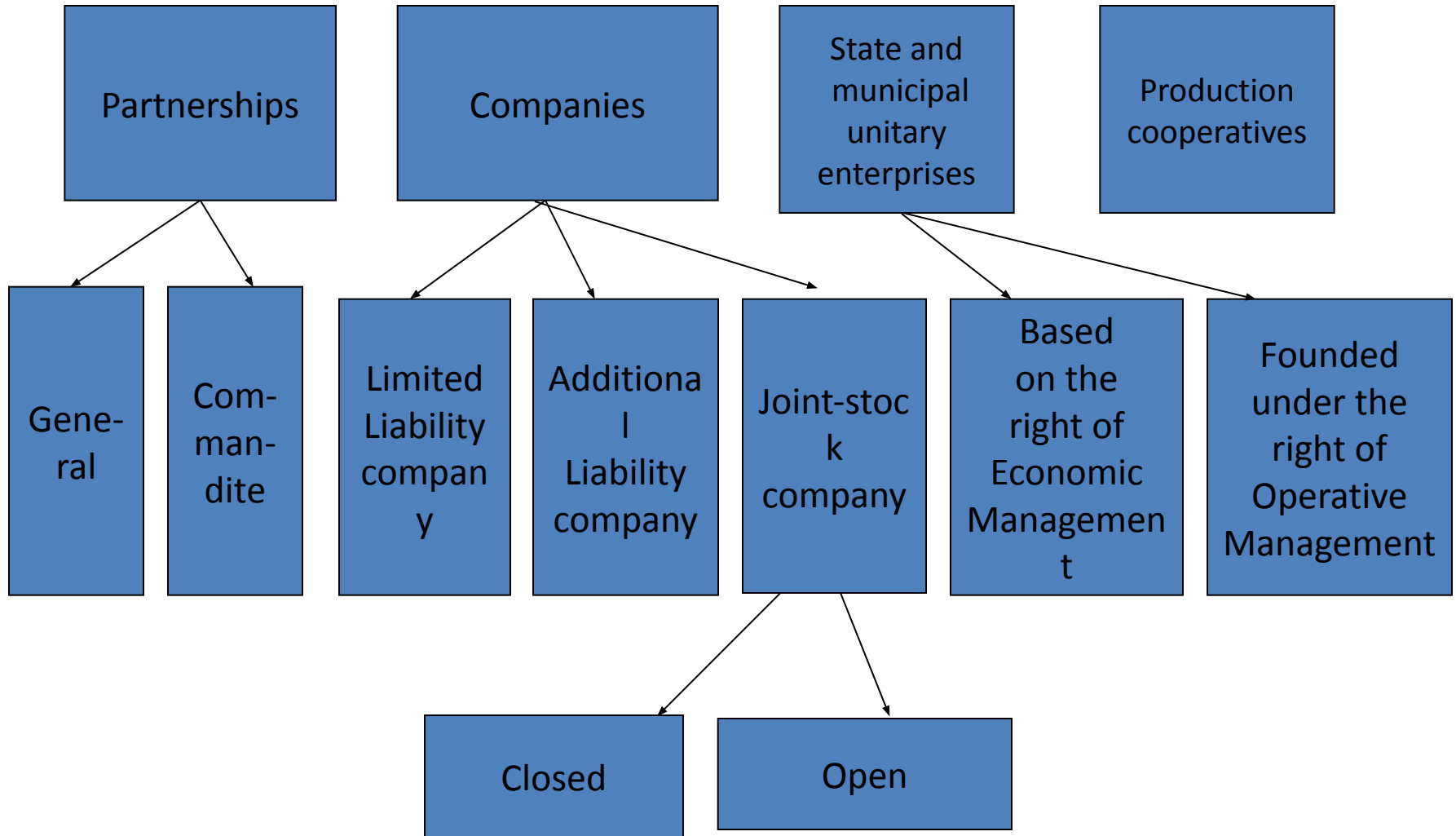
- organizations which have **profit** as the main purpose of their business

Commercial legal entities

- They have **general contractual capacity:**

they may engage in any legal business activity.

The organizational unities of commercial legal entities



The main forms of commercial organizations in France

- The general partnership
- The commandite partnership
- The joint-stock company
- The limited liability company

The main forms of commercial organizations in Germany

- **The general partnership**
- **The commandite partnership**
- **The joint-stock company**
- **The limited liability company**
- **The commandite limited by shares**

The commandite limited by shares in Germany

- The commandite limited by shares in Germany **looks like** the commandite partnership, but *there are shareholders instead of contributors* to the partnership here.

- **The partners of the commandite limited by shares:**
 1. **Full partners**
 2. **Shareholders**

- **The partners of the commandite partnership:**
 1. **Full partners**
 2. **Contributors to partnership**

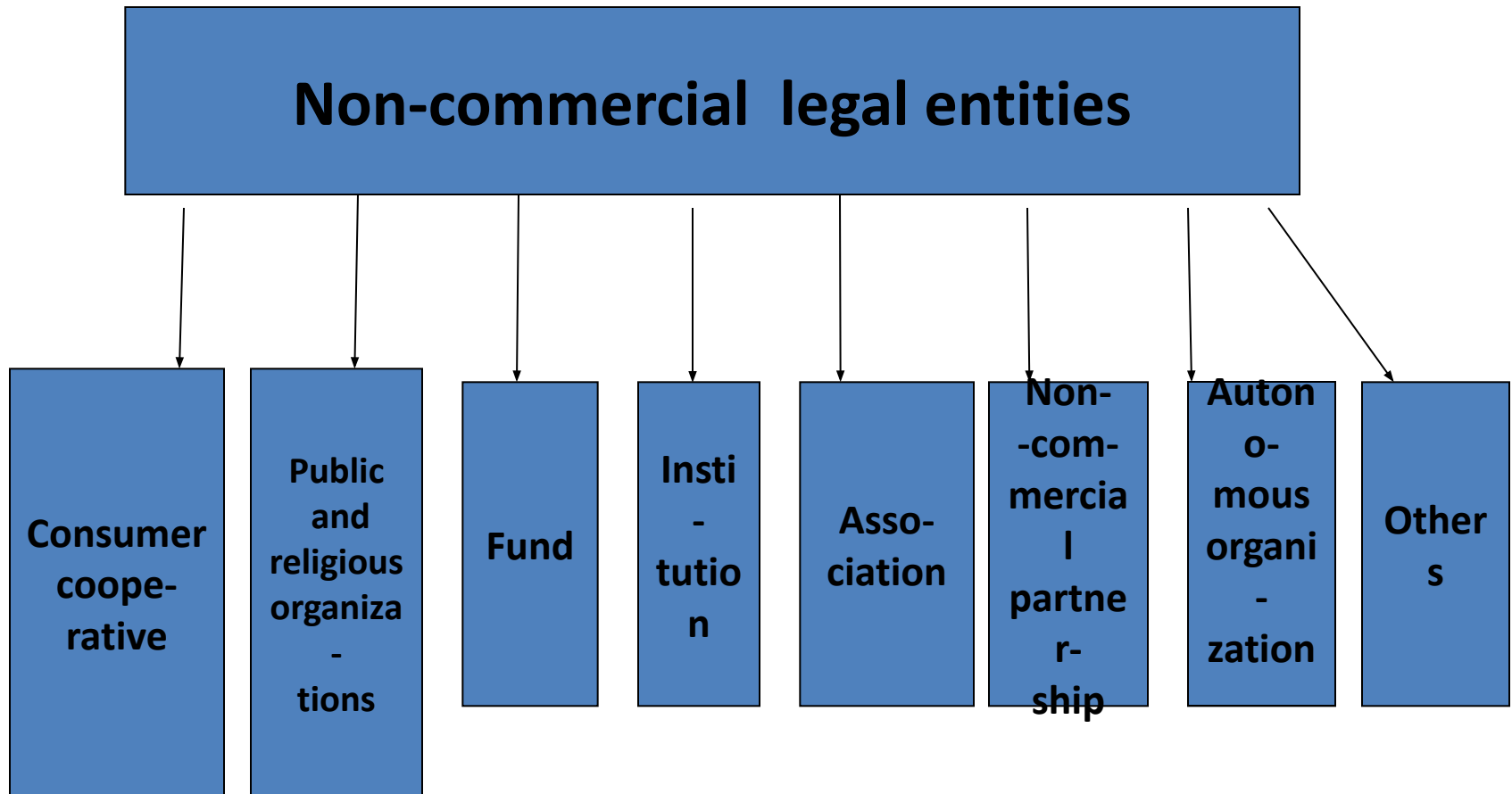
The main forms of commercial organizations in Great Britain

- **The partnership**
- **The limited partnership**
- **The public company**
- **The private company**

The main forms of commercial organizations in USA

- **The general partnership**
- **The limited partnership**
- **The business corporation**
- **The closed corporation**
- **The limited liability partnership (LLP)**
- **The limited liability company (LLC)**

The organizational unities of non-commercial legal entities



Non-commercial legal entities

Non-commercial legal entities execute their activities on the base of

- **Civil Code** and
- **The Federal Law No 7- FZ
«On Non-commercial Organizations», dated
12 January 1996**
- **Other special Federal Laws**

Non-commercial legal entities

Non-commercial legal entities are

- organizations **which do not have profit** as *the main purpose* of their business,
- their main purposes can be **social, political, educational, public, sports, to enlighten and so on.**

Activity of non-commercial legal entities

Non-commercial legal entities have **special (not general) capacity:**

They can have only such rights and obligations, which correspond to the aims of the activity of the legal entity, stipulated in the constituent documents.

Non-commercial legal entities

may engage in the business activity only in case:

1. it helps them to achieve the goals, they have been established for,
2. the business activity is of the kind that corresponds to these goals,
3. non-commercial legal entities does not distribute the profit among their founders (members).

(Art. 50 of the Civil Code)

A task

- Is Financial University commercial or non commercial legal entity?
- What is its main purpose?
- May the University engage in the business activity?
- What kind of activity can the University perform?
- May the University deal in selling of footwear?
- Or in selling of textbooks?

Liquidation of the legal entities (Art. 61 of the Civil Code)

- A legal entity may be liquidated by:
 1. a decision of its founders
 2. a decision of a court (for example, in the event of effectuation of activity prohibited by a law or with a violation of the Constitution of the Russian Federation or with other repeated or flagrant violations of a law or other legal acts)

Contracts

The definition of the contract **in Russia (and in the other countries** **of the Romano-German law)**

- **According to Russian law (Art. 420 CC) - a contract is an agreement (between two or more parties), which is given legal effect:**

**it creates rights and obligations,
which are recognized by law**

A contract is a sort of transactions.

What is a transaction (a deal)?

Concept of transaction

(Art. 153 of CC)

- The actions of citizens and legal entities directed towards the establishment, change, or termination of civil rights and duties shall be deemed to be **transactions**.

Transactions

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graph TD; A[Transactions] --> B[unilateral]; A --> C[bilateral and multilateral];
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unilateral

bilateral
and
multilateral

Unilateral **transactions**

- The will of one party is necessary and sufficient.
- For example:
- **Drawing a will** (написать завещание)
- **Drawing a promissory note** (выдать простой вексель)
- **Issuance of a bank guarantee** (предоставить банковскую гарантию)

Bilateral and multilateral transactions

- The expression of the will **of two parties** (bilateral transaction), **or three or more parties** (multilateral transaction) are necessary.
- For example:
- **A purchase-sale contract**

Others:

- **Contract of Hire-Sale**
- **Finance lease**
- **Contract of commercial concession**
- **Carriage -перевозка**
- **Loan and Credit – заем и кредит**
- **Insurance -страхование**

- A contract is an agreement between two or more parties.
- So a contract is *a bilateral or multilateral transaction.*
- Is a drawing a will a contract?

Forms of transactions (contracts)

- Transactions can be concluded **orally** or **in written form** (Art. 158).

A written form (Art. 160 and 161):

- Shall be effected in **the simple written form**,:
- 1) *the deals of the legal entities* between themselves and with the citizens;
- 2) *the deals of the citizens* between themselves *to the sum at least ten times exceeding the minimum size of wages* (4611 rubles x 10 = 46110 rubles),
- 3) and in the law-stipulated cases - *regardless of the sum of the deal (for example – foreign economic transactions).*

Article 163.

The Notarially Certified Deal

1. Some transactions (deals) need to be *notarially certified*.
2. The notarial certification of the deals shall be obligatory **in the cases** :
 - 1) *pointed out by the law* (art. 1124: a will must be certified by a notary);
 - 2) *in the cases, stipulated by the parties' agreement*, even if this form is not required for the given kind of the deals by the law.

Oral transactions (Art. 159):

- A transaction *for which the written (simple or notarial) form has not been established* may be concluded **orally.**

What are the rules of the concluding of a contract?

- The parties must reach **agreement**,
- **in the required form**,
- the agreement must have **all the material conditions**

(Material conditions (art. 432) –

- 1. a subject of the contract,**
- 2. conditions, which are named in law as material,**
- 3. conditions, which are necessary for contracts of the particular type.**

For example (art. 454):

- What are the material (essential) conditions of a contract of **purchase-sale**?
 - **The name** and **quantity** of the good.

An agreement

The contract shall be concluded by way of sending an offer (a proposal to conclude a contract) by one party and its acceptance (acceptance of the proposal) by the other party.

An offer (art.435)

Requirements for Offer:

- **It must indicate a clear intent to make a contract**
- **It must be communicated to the other party**
- **The subject of the contract and the other essential conditions must be indicated in the offer**

An acceptance (art. 438)

- **An acceptance must be clear and unqualified**
- **The acceptance that modifies the offer is a counteroffer, that is, a rejection of the original offer and the making of a new offer**

Moment of conclusion of contract

(Art. 433)

- A contract shall be deemed to be concluded *at the moment of receipt* *by the person who has sent an offer of its acceptance.*

There are some essential elements of a valid contract in English law:

- Mutual agreement or meeting of the minds
(a valid offer and acceptance)
and
- Consideration (something of value given in exchange for a promise)

Consideration

- Consideration means “**something for something**”
- The mutual promises must be **real, not illusory**
- Consideration **can't be past**
- A moral obligation is not consideration

A question

- Can English people conclude **a contract of Gift?**