



Agricultural Contracting Basics

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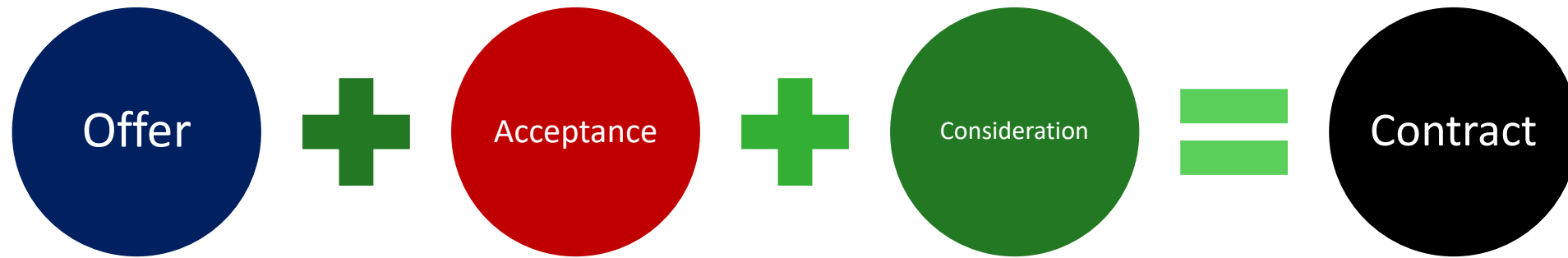
Agenda

Basic Contract Principles

Signature Issues

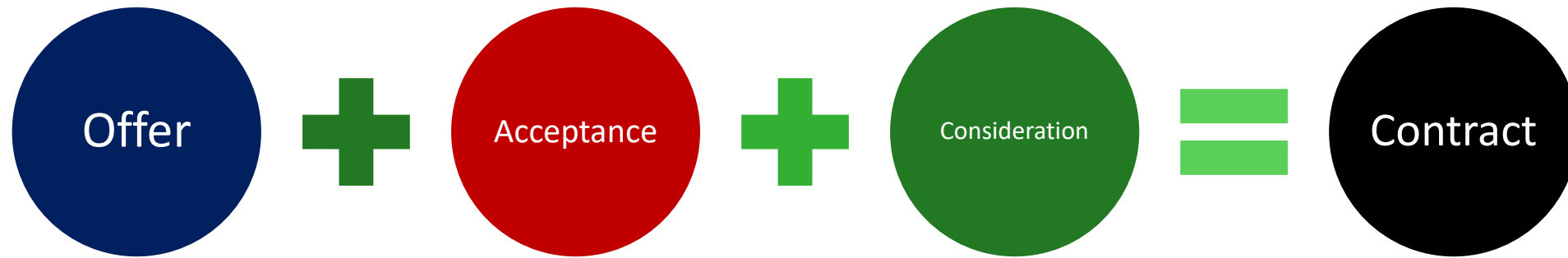
Boilerplate Provisions

What is a contract?



The enforcement of a promise.

Example 1



Farmer: I will harvest your land for \$10/acre.

Landowner: I accept your offer for 80 acres for \$10/acre.

Consideration: \$10/acre

**Valid
Contract**



Farmer: I have 1000 bu. No.2 corn for sale at 14% moisture for \$5.00/bu.

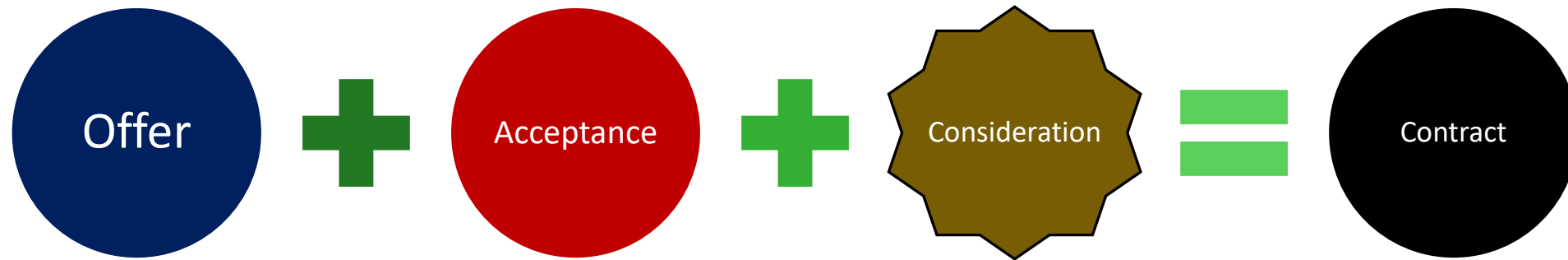
Landowner: I accept your offer but corn needs to be at 13% moisture.

**NO
Contract**

Acceptance must mirror the offer



Example 3



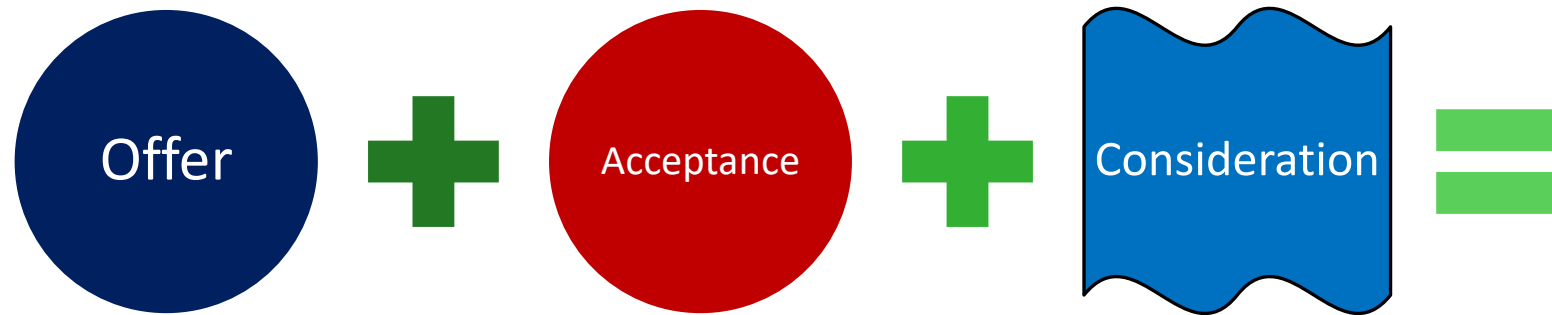
Farmer: I will harvest landowner's 80 acres of corn for 1 Reese's Peanut Butter Cup

Landowner: I accept your offer and here's your Reese's.

Any consideration is usually sufficient

Contract

Example 4



Todd: I will pay you, Brianna, \$20 if the Colts win the Superbowl next year.

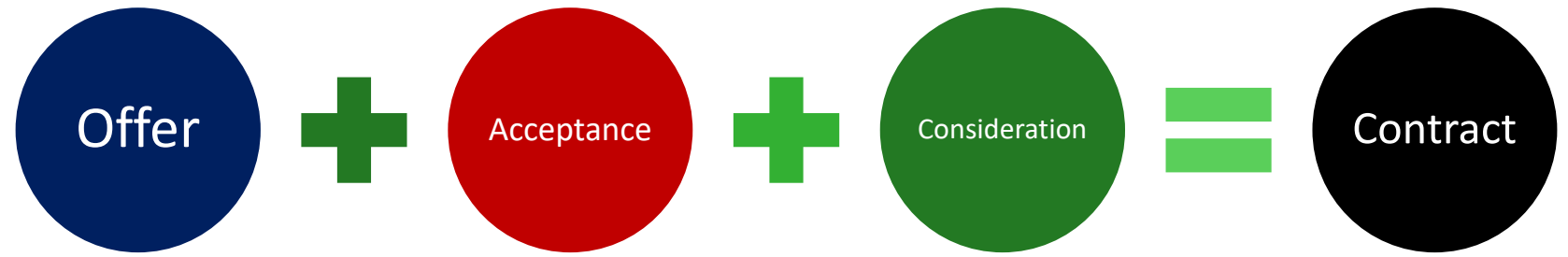
Brianna: I accept your offer.
Colts win the Superbowl.

NO Contract



No consideration.

Example 5



Farmer: I will pay you \$50/hour if you quit your Starbucks job and come work for me on the farm in Indiana.

Barista: I accept the offer. [Quits Starbucks and moves to the farm.]

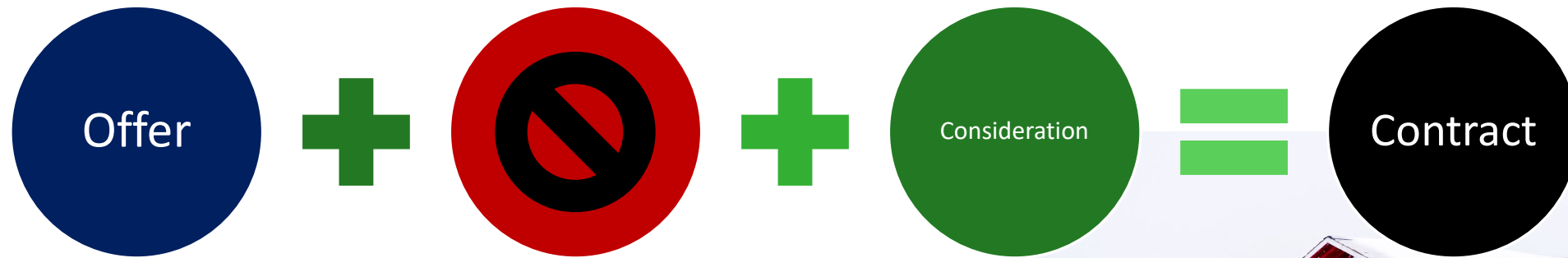
Farmer: Sorry, I no longer have any work for you.



Promissory Estoppel

But court will enforce a *promise* without consideration due to one party's detrimental reliance on that promise.

Example 5



Landowner: I'll pay you \$1,000 to paint my barn.
Painter says nothing, paints the barn.

Unilateral Contract





Signature Issues

Signature Issues

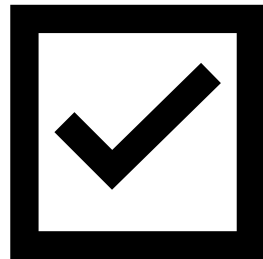
I never signed the contract.

Sign Here



Signature Issues

I never signed the contract.
I only clicked a check box.



I accept these terms.



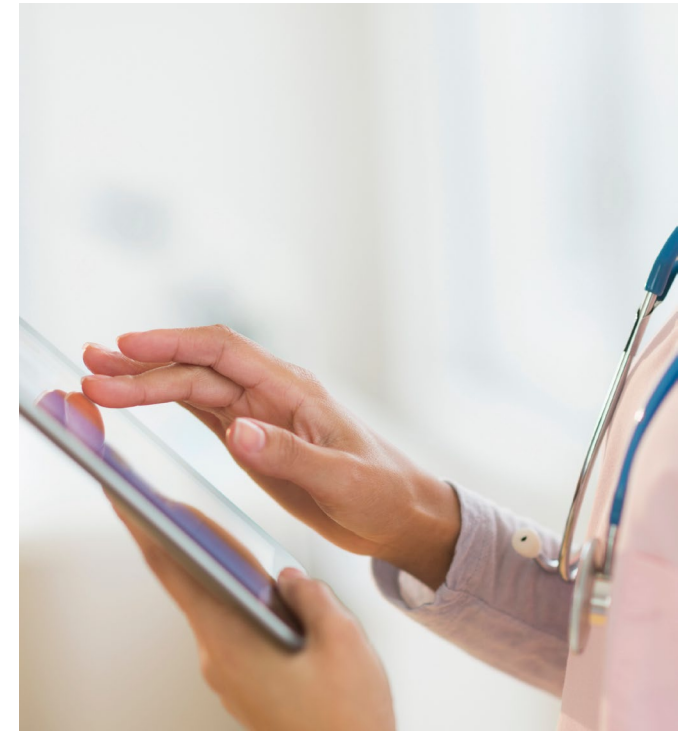
E-Signatures

Electronic Signatures in Global and National Commerce Act (E-SIGN). 15 U.S.C. § 7001 et seq.

“a signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form”

Uniform Electronic Transactions Act Ind. Code § 26-2-9-106

“a record or signature may not be denied legal effect or enforceability solely because it is in electronic form”



“I never read the contract I signed.”



“A man who can read and does not read an instrument which he signs is, as a general rule, guilty of negligence...”

Ruff v. Charter Behavioral Health System of Northwest Indiana, Inc., 699 N.E.2d 1171, 1175 (Ind. Ct. App. 1998)

Contract

Texting Contracts



Merchant: I have 86 tons of flax
for \$17/bu. Please confirm.

Farmer:



Contract



Acme Corporation

By: Wiley E. Coyote, President
Acme Corporation

Signatories and Parties

- Use full corporate name
- Identify title of person signing
- Identify signatory



Boilerplate Provisions

Force Majeure



FORCE MAJEURE. Neither party shall be liable to the other party for failure or delay in performance caused by **any Act of God, natural or manmade catastrophic event, high winds, floods, fires, explosions, earthquakes, tornados or a disease event** that makes raising swine at the facility impossible for a period of time (each considered a “**Force Majeure Event**”). Financial hardship is not a Force Majeure Event. A Force Majeure Event shall not be a breach of this Agreement, but shall suspend performance. The parties shall diligently work to resume full performance of this Agreement following a Force Majeure Event.

- **What is it?** Suspends the contract until the unforeseen event is gone.
- **Why include?** You cannot predict everything.
- **Pointers:** Make specific. Exclude financial hardship. Include duty to resume performance when event is over, or termination after long period of time.

Integration



INTEGRATION. This agreement contains the entire understanding and agreement of the parties, supersedes all prior understandings and agreements and cannot be changed orally.

- **What is it?** Merges all negotiation and discussions into the contract.
- **Why include?** Prevents parties from arguing the agreement was different than the contract.
- **Pointers:** Make sure the contract actually does contain the entire agreement.

Liquidated Damages



LIQUIDATED DAMAGES. In the event that Seller breaches this Agreement, Seller shall return the Earnest Money down payment of \$10,000 to Buyer. The return of the Earnest Money is a reasonable estimate of the damages and shall be Buyer's sole remedy.

- **What is it?** Eliminates arguments about the amount of damages for breach of contract.
- **Why include?** To compel performance. To avoid disputes about damages owed.
- **Pointers:** Courts will reject liquidated damages that are viewed as punitive. Must reasonable and related to actual damages.

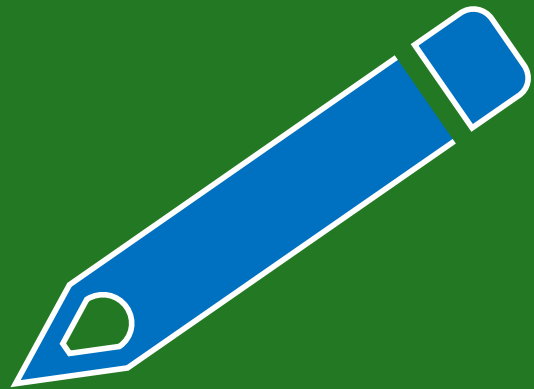
Choice of Law & Forum Selection



CHOICE OF LAW. This contract shall be governed by Indiana law. Any disputes involving this contract shall be litigated in the Marion County Superior Court, Indianapolis, Indiana or the federal courts located in the Southern District of Indiana.

- **What is it?** The parties can choose where to litigate any disputes.
- **Why include?** Allows the parties to control which judges and juries will decide any dispute.
- **Pointers:** Push back on out of state law and forum selections.

Severability



Blue Pencil Doctrine

Severability. If any provision of this Agreement is held to be invalid or unenforceable as a matter of law, such provision shall be ineffective only to the extent held to be invalid or unenforceable, and the remainder of such provision or the remaining provisions of this Agreement shall remain in effect.

- **What is it?** Means that judge can strike out provisions in the contract that are unenforceable.
- **Why include?** Allows the contract to remain in place even if one provision is found to be illegal.



Uniform Commercial
Code

Merchants - Customers



NGFA Trade Rules

Grain and Feed Sales



Packers and Stockyards
Act

Livestock, Meat and
Poultry Transactions



Perishable Agricultural
Commodities Act

Perishable fruits and
vegetables

Outside
Ag Contract
Influencers

Takeaways



Offer + Acceptance + Consideration = Contract



Contracts should always be understood by the person signing.



“Google” contracts are just as good at lawyering as Dr. Google is at healthcare advice.

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Thank you