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Formation of a Valid Contract Elements Requirements and Comparative Perspectives

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ABSTRACT

Valid contract formation requires offer, acceptance, and either consideration or genuine cause. This research compares formation requirements across common law and civil law systems. Common law jurisdictions require measurable consideration, while civil law relies on cause. Formation timing also differs, with postal rule and receipt rule producing different outcomes. Digital communication complicates traditional distinctions between instantaneous and non-instantaneous acceptance methods. Smart contracts and artificial intelligence further challenge conventional offer and acceptance doctrine. This research applies qualitative, doctrinal analysis of statutes and scholarly literature. Findings reveal convergence alongside meaningful divergence between the two legal traditions. Both systems share the goal of protecting genuine, serious contractual intention. Emerging technologies expose gaps existing formation doctrine cannot yet fully address. These findings offer guidance for businesses, lawyers, and policymakers worldwide. This research contributes a comparative framework addressing traditional and modern formation challenges. Contract formation law must continue evolving to address digital and automated commerce.

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I. Introduction

Contracts form the backbone of every economic exchange in modern society. A single broken promise can cost businesses millions of dollars worldwide. Every day, people enter contracts without truly understanding what makes them legally valid. Formation of a valid contract requires specific elements recognized across different legal systems. These elements include offer, acceptance, consideration, and mutual intention to contract. Without these components, an agreement remains a mere promise without legal force. Courts across common law and civil law jurisdictions apply different tests for validity. This creates real challenges for parties engaged in cross border commercial transactions. Understanding these requirements helps individuals and businesses avoid costly legal disputes. This article examines the essential elements required for contract formation globally. It also compares how various legal systems approach these foundational requirements. Such comparison reveals important differences in contract law across jurisdictions. This knowledge proves valuable for lawyers, students, and business professionals alike (Rakha, 2022).

Contract law traces its roots to ancient trade practices across old civilizations. Roman law first developed formal rules governing binding agreements between parties. English common law later built its own doctrine through centuries of decisions. Civil law countries followed a different path, codifying rules within written codes. Both traditions eventually agreed that certain elements must exist for validity. Scholars have written extensively about offer, acceptance, and consideration in isolation. Fewer studies examine how these elements interact across different legal systems. Most existing research focuses narrowly on domestic contract law within single jurisdictions. Comparative analysis of contract formation remains limited despite growing global commerce. International transactions increasingly cross borders between common law and civil law states. This growth exposes gaps in scholarly understanding of cross jurisdictional contract validity. Few works synthesize these differences into a single accessible comparative framework. This article addresses that gap through systematic comparative examination of formation rules (Poldnikov, 2022).

Legal scholars generally agree on the basic elements needed for contract formation. Offer, acceptance, consideration, and mutual intention appear across most legal systems. Yet significant disagreement remains about how these elements apply in practice. Common law courts require consideration, while civil law systems often reject this requirement. Determining the exact moment of contract formation also varies between jurisdictions. Some systems recognize acceptance upon dispatch, others only upon actual receipt. This inconsistency creates uncertainty for parties negotiating agreements across national borders. Businesses often cannot predict which rules will govern their contractual obligations. Existing literature rarely addresses these practical consequences for international commercial parties. The precise boundaries between common law and civil law formation rules stay unclear. This research identifies exactly where these systems converge and where they

diverge. It further examines why these differences persist despite growing legal harmonization efforts. Answering these questions clarifies formation requirements for practitioners and researchers alike (Ahsan et al., 2025).

Recent scholarship reveals growing interest in comparative contract formation across legal traditions. One study examined how digital communication changes the timing of contract acceptance. Another analysis compared consideration doctrine against the civil law concept of cause. Researchers found that electronic contracts complicate traditional rules about offer and acceptance. A separate study explored how artificial intelligence affects contract negotiation and formation processes. Scholars also carefully investigated smart contracts and their compatibility with existing formation requirements. One comparative work carefully analyzed formation rules across the United Kingdom and Germany. Findings showed civil law systems adapt faster to technological changes than common law systems. Another study focused on consumer contracts formed through mobile applications and websites. Researchers identified inconsistent judicial treatment of click wrap agreements across jurisdictions. These findings collectively highlight technology as a major disruptor of traditional formation doctrine. Yet most studies still treat individual jurisdictions separately rather than offering integrated comparison (Lima et al., 2025).

Further research between 2020 and 2025 addressed cross border contract formation disputes. One study carefully analyzed how courts resolve conflicts between competing national formation rules. Another examined the role of international conventions in harmonizing formation requirements globally. Findings suggested the United Nations Convention on Contracts helps reduce jurisdictional conflicts somewhat. A separate investigation studied consumer protection concerns within online contract formation practices. Researchers noted growing regulatory attention toward automated contract acceptance mechanisms worldwide today. One study compared judicial interpretation of silence as acceptance across several different jurisdictions. Another explored block chain technology and its implications for verifying contractual intention properly. Findings revealed significant gaps between technological capability and existing legal formation doctrine everywhere. Scholars called for updated frameworks addressing artificial intelligence generated contractual offers clearly. Despite these valuable contributions, comprehensive comparative frameworks still remain scarce within current literature. This article now builds upon these findings to offer an integrated comparative analysis (Vorng, 2025).

Existing literature offers valuable insight into individual aspects of contract formation. Studies on digital communication, smart contracts, and consideration doctrine remain largely fragmented. Few works connect these separate strands into one coherent comparative framework. Most research examines only two jurisdictions rather than a broader global comparison. Scholars rarely explain why common and civil law systems adapt differently. The interaction between artificial intelligence and traditional formation doctrine stays underexplored. Existing studies mention this issue briefly without offering detailed comparative analysis. Similarly, blockchain technology receives limited attention within

formation law scholarship overall. Few studies propose practical solutions for parties facing cross jurisdictional formation conflicts. This gap leaves practitioners without clear guidance for cross border transactions. This research fills that gap by comparing formation elements across multiple legal systems. It further proposes a framework addressing technological challenges within traditional formation doctrine. Future research should test this framework against emerging digital contracting practices worldwide (Prata et al., 2021).

To identify and explain the essential elements required for valid contract formation across different legal systems.

To compare how common law and civil law jurisdictions apply offer, acceptance, and consideration requirements.

To examine emerging challenges from digital communication, smart contracts, and artificial intelligence on traditional contract formation doctrine.

What essential elements determine contract formation validity across common law and civil law jurisdictions, and how do emerging technologies such as digital communication, smart contracts, and artificial intelligence challenge traditional formation doctrine within these comparative legal frameworks?

This research holds significant value for legal scholars, practitioners, and policymakers worldwide. It clarifies formation requirements often misunderstood across different national legal systems. Lawyers negotiating cross border contracts will gain clearer guidance from these findings. Judges deciding formation disputes may benefit from the comparative framework presented here. Legislators seeking to modernize contract law can draw upon these comparative insights. Business professionals engaged in international commerce need reliable knowledge about formation rules. This study bridges the gap between theoretical scholarship and practical commercial application. Academic literature currently lacks integrated comparative analysis addressing technological disruption fully. This research contributes original knowledge by connecting formation doctrine with digital realities. Its findings also inform ongoing debates about harmonizing international contract law standards. The growing volume of cross jurisdictional transactions makes this research timely. Without such analysis, parties remain vulnerable to unpredictable legal outcomes across borders. This study offers meaningful academic, practical, and societal contributions (Samuel, 2025).

II. Methodology

This research applies a qualitative research design suited for comparative legal analysis. Qualitative methods allow deep examination of legal doctrine, principles, and judicial reasoning. This approach fits research comparing formation rules across common law and civil law systems. The population for this study includes formation laws across multiple legal jurisdictions. The sample focuses specifically on contract formation rules within common law and civil law countries. This sample was chosen because these two traditions dominate global commercial legal practice today. Data collection relied on scholarly articles, statutes,

and official legal publications. Specific keywords guided the search, including contract formation, offer, acceptance, consideration, cause, and smart contracts. These keywords helped locate relevant scholarly literature and applicable legal provisions. Searches were conducted using recognized legal databases and official government publications. This structured approach ensured comprehensive coverage of relevant formation doctrine. The chosen methods align closely with the comparative nature of this research topic.

The primary instruments for this research included official legal texts and scholarly articles. Laws and regulations were retrieved directly from official government and legislative websites. Scholarly literature was retrieved from recognized academic databases containing peer reviewed publications. Validity and reliability were maintained by selecting recent scholarly publications from the past five years. Currently applicable laws were prioritized over outdated or repealed legal provisions. This approach ensured findings reflect present legal standards rather than historical positions alone. Selected sources included authors holding recognized academic or professional legal credentials. Each source was checked for peer review status and citation by other researchers. Data analysis relied primarily on doctrinal analysis of statutes, cases, and legal principles. Document analysis complemented this approach by examining scholarly articles and official reports systematically. Together these techniques allowed comparison of formation rules across different legal traditions. This combined analytical approach ensured accuracy and depth throughout the research process.

This research relied entirely on documents and information available within the public domain. Every reference used within this study cites the original scholarly article or source. This practice ensures proper credit to authors whose ideas informed this research. The researcher maintains no conflict of interest throughout this comparative legal study. This study was conducted solely for genuine academic and research purposes. Certain limitations affect this research despite careful methodological planning. Technology continues evolving rapidly, creating challenges for maintaining current legal analysis. Laws and policies addressing digital contracting can change without significant advance notice. This creates a delimitation regarding how long findings remain fully current. The research focuses specifically on common law and civil law formation doctrine. Other legal traditions, including religious and customary systems, fall outside this scope. This delimitation allows focused analysis while acknowledging broader comparative possibilities elsewhere. Readers should interpret these findings within this clearly defined methodological scope.

III. Results

This section presents findings addressing formation elements across common and civil law systems. These results directly respond to the research question guiding this comparative study. They reveal how offer, acceptance, and consideration operate within legal traditions. Findings also highlight timing differences between postal rule and receipt rule

jurisdictions. Digital communication emerges as a disruptor of traditional formation classifications established earlier. Smart contracts further complicate the conventional understanding of offer and acceptance. Each result connects directly to objectives outlined at the beginning of this research. Together, these findings illustrate convergence and divergence across legal formation doctrines. They demonstrate why comparative analysis remains essential for contract formation validity. The following results move from foundational elements toward emerging technological challenges. This progression mirrors the research objectives established earlier in this study. Readers will see how traditional doctrine interacts with modern commercial realities. These results collectively answer how legal systems define valid contract formation (Rakha, 2023).

Common law jurisdictions require offer, acceptance, and consideration for valid contract formation. An offer represents a clear promise made by one party to another. Acceptance occurs when the other party agrees to the exact terms offered. Consideration refers to something of value exchanged between both contracting parties. Courts consistently treat these three elements as mandatory across common law countries. Without an offer, no binding agreement can arise between negotiating parties. Similarly, acceptance must mirror the offer exactly under the mirror image rule. Any variation in terms creates a counteroffer rather than valid acceptance. Consideration distinguishes enforceable contracts from mere gratuitous promises lacking legal force. Courts refuse to enforce promises made without any accompanying consideration exchanged. This requirement reflects the common law preference for bargained exchanges between parties. English, American, and Australian courts apply these elements with remarkable consistency. This consistency provides valuable predictability for parties operating within common law systems.

Civil law jurisdictions replace consideration with cause or reciprocal obligation. Cause refers to the underlying reason a party enters a contract. French law traditionally required cause as an essential element for validity. German law instead focuses on the reciprocal nature of obligations exchanged. Both approaches ensure agreements involve genuine mutual exchange rather than empty promises. Unlike common law, civil law does not demand a specific bargained exchange. Courts examine whether each party assumes a real obligation toward the other. This obligation must have legitimate purpose recognized within the applicable legal system. Civil law scholars argue this approach offers greater flexibility than strict consideration rules. It allows enforcement of gratuitous promises made with genuine serious intention. This flexibility contrasts sharply with the common law requirement of measurable value. Such differences create complications for parties negotiating across these legal traditions. Understanding cause and reciprocal obligation therefore remains essential for cross border contracting.

The moment of contract formation differs between postal rule and receipt rule systems. Common law countries often apply the postal rule for accepting offers. Under this rule, acceptance becomes effective once posted, not when received. This means a contract forms even before the offer or learns of acceptance. Civil law countries typically follow the

receipt rule for contract formation instead. Under this approach, acceptance only takes effect once the offer or actually receives it. This creates a gap between when contracts form under different systems. Parties negotiating across these systems face genuine uncertainty about formation timing. A letter posted under common law rules may bind the offer or immediately. The same letter under civil law rules binds nobody until delivery occurs. Electronic communication further complicates these traditional rules developed for postal correspondence. Courts still debate whether email follows postal or receipt principles. This unresolved question still creates real risks for modern commercial transactions.

Digital communication has clearly blurred distinctions between instantaneous and non-instantaneous acceptance methods. Courts historically classified telephone calls as instantaneous, treating letters as non-instantaneous communication. This classification determined which formation rule applied to a given transaction. Email communication does not fit neatly into either established category available. Messages sometimes arrive instantly, yet delays can occur due to technical issues. Courts struggle to classify email under existing instantaneous or postal frameworks. Similarly, text messages and instant messaging applications raise comparable classification difficulties. Some jurisdictions treat these methods as instantaneous, requiring receipt for valid acceptance. Others hesitate, citing potential delays similar to traditional postal correspondence delays. This inconsistency creates unpredictability for businesses relying on digital contract formation. Legal scholars increasingly argue for new rules tailored specifically to digital communication. Existing frameworks developed for telegrams and letters now seem increasingly outdated today. Modern commerce urgently demands clearer rules addressing instantaneous digital acceptance across jurisdictions.

Smart contracts challenge formation doctrine through automated, code based offer mechanisms. These contracts execute automatically once predetermined conditions within the code activate. Traditional formation doctrine assumes human parties negotiate terms through deliberate communication exchanges. Smart contracts instead rely on computer code without direct human negotiation involvement. This raises questions about whether genuine offer and acceptance actually occur here. Some scholars argue code itself constitutes a valid offer once deployed publicly. Others contend human intention behind the code satisfies traditional formation requirements adequately. Courts have not yet developed consistent rules addressing smart contract formation validity. Determining mutual intention becomes difficult when execution happens without ongoing human oversight. Errors within code may also complicate questions about genuine contractual intention. Existing legal frameworks struggle to accommodate contracts formed without conventional communication. This gap leaves smart contract enforceability uncertain across most jurisdictions today. Legislators must address these questions as block chain adoption continues expanding globally (Sotiropoulos, 2026).

IV. Discussion

A. Common Law Jurisdictions Require Offer, Acceptance, and Consideration for Valid Contract Formation

The common law truly demands three separate formation elements. The finding confirms offer, acceptance, and consideration remain mandatory across common law countries. Each element serves a distinct purpose within the broader formation framework. An offer signals genuine willingness to enter a binding legal relationship. Acceptance confirms mutual agreement between the offering party and the receiving party. Consideration ensures the agreement involves real exchange rather than empty promises. Together these elements distinguish enforceable contracts from casual social arrangements between people. Courts apply this three part test consistently across English, American, and Australian law. Judges rarely deviate from this established structure when assessing contract validity. This consistency answers the underlying question about formation requirements clearly. It confirms that common law treats these elements as strictly cumulative requirements. Missing any single element prevents formation of a legally binding contract entirely. This interpretation aligns with centuries of established common law precedent (Wagner, 2010).

This finding carries importance for parties entering agreements within common law systems. Businesses rely on predictable formation rules when structuring commercial transactions daily. Individuals also depend on clear rules when making everyday purchases and agreements. Without consideration, promises remain unenforceable regardless of good faith intentions expressed. This creates strong incentive for parties to formalize genuine bargained exchanges properly. Recent commercial disputes continue testing these formation requirements in evolving contexts. Courts recently examined consideration within subscription services and recurring digital payment agreements. These cases confirm consideration still matters despite changing commercial practices and technology. Policymakers in several common law countries have debated reforming strict consideration rules. Some scholars argue rigid consideration requirements block flexible modern commercial arrangements unnecessarily. Yet courts continue upholding consideration as a core formation requirement nonetheless. This shows lasting relevance of traditional elements within contemporary legal practice. Knowing this requirement helps parties draft clearly enforceable agreements with confidence.

Substantial evidence supports the requirement of offer, acceptance, and consideration in common law. Landmark English cases established these elements as foundational to contract validity centuries ago. Cargill against Carbolic Smoke Ball demonstrated how offers create binding obligations once accepted. This case remains a cornerstone example taught within common law jurisdictions worldwide. American courts similarly enforce consideration through numerous commercial and employment contract disputes. Australian jurisprudence follows comparable reasoning, reinforcing consistency across common law nations. Statutory frameworks in these countries also codify these formation requirements. Contract law textbooks across common law jurisdictions consistently teach these three elements. Legal

practitioners routinely draft agreements structured around these mandatory formation components. Arbitration tribunals handling common law disputes apply identical formation criteria regularly. This widespread application across courts, statutes, and practice confirms strong doctrinal consistency. Such consistent application across multiple sources strengthens confidence in this finding. The weight of accumulated evidence leaves little doubt here.

This finding carries certain limitations worth acknowledging. Analysis relies primarily on English, American, and Australian sources within common law tradition. Other common law jurisdictions, including many former colonies, receive less direct attention here. Formation rules may differ slightly within these less examined common law countries. Case selection also favors well documented, frequently cited judicial decisions over obscure rulings. This selection may overlook smaller disputes that reveal inconsistent judicial reasoning elsewhere. Consideration doctrine itself contains exceptions, including promissory estoppel and deeds under seal. These exceptions complicate the otherwise straightforward three element formation framework presented earlier. Statutory reforms in specific commercial sectors sometimes modify traditional consideration requirements substantially. This analysis cannot fully capture every sector specific statutory variation. Digital contracting practices continue evolving faster than existing case law addresses. Future judicial decisions may therefore refine or challenge these established formation principles. Readers should treat these findings as generally applicable, not universally absolute.

Comparing common law with civil law reveals sharp contrast in formation philosophy. Civil law systems reject consideration entirely, relying instead on cause or obligation. This contradiction highlights fundamentally different views about what makes promises legally binding. Common law demands measurable exchange, while civil law accepts genuine serious intention alone. Some scholars view consideration as a formality complicating straightforward agreements. Others defend consideration as essential protection against reckless or coerced promises. This disagreement reflects deeper philosophical differences between the two legal traditions. Common law prioritizes transactional exchange, while civil law emphasizes genuine intention and purpose. International commercial arbitration sometimes exposes these contradictions when parties dispute formation validity. Tribunals must then choose which framework governs the disputed agreement. This choice can produce dramatically different outcomes depending on the applicable system. Such contradictions demonstrate why comparative study matters for cross border commerce. Practitioners should recognize their assumptions may not travel across jurisdictions well.

These findings carry implications for parties drafting cross border agreements. Businesses expanding into common law jurisdictions must include measurable consideration within contracts. Failing to include consideration risks leaving promises unenforceable under common law rules. Legal advisors should inform clients about this requirement before finalizing international agreements. Contract drafters can strengthen enforceability by explicitly documenting exchanged value between parties. This applies equally to commercial deals, employment contracts, and consumer agreements generally. Recent trade agreements

increasingly encourage harmonized contract standards across participating member countries. Such initiatives may reduce friction caused by differing formation requirements. Until harmonization advances, parties must remain attentive to jurisdictional formation differences. Templates used across countries should account for consideration where common law applies. Legal education programs should highlight these distinctions for students entering international practice. These findings apply to commercial law, contract drafting, and dispute resolution. Recognizing these requirements protects parties from unexpected unenforceability in cross border deals.

B. Civil Law Jurisdictions Replace Consideration with Cause or Reciprocal Obligation Between the Parties

The civil law truly abandons the consideration requirement entirely. The finding confirms civil law systems replace consideration with cause or reciprocal obligation. Cause refers to the legitimate reason motivating a party to contract. Reciprocal obligation instead focuses on mutual duties assumed by both parties. Both concepts serve a similar function to consideration within different legal reasoning. They confirm an agreement involves genuine commitment rather than casual conversation. French law historically emphasized cause as central to contract validity assessment. German law instead developed reciprocal obligation through its own distinct doctrinal tradition. Despite different terminology, both approaches prevent enforcement of empty, meaningless promises. This answers the underlying question about how civil law defines binding agreements. It confirms civil law prioritizes genuine intention over measurable economic exchange. This distinguishes civil law formation philosophy sharply from common law reasoning. The interpretation reveals two different paths toward the same contractual protection goal (Ahsan et al., 2025).

This finding carries importance for parties contracting within civil law jurisdictions. Businesses operating in France, Germany, and similar countries must satisfy different formation standards. Unlike common law, these systems do not require measurable economic exchange. Gratuitous promises may still bind parties if genuine serious intention exists. This flexibility allows enforcement of agreements that common law would likely reject. Recent civil law reforms have clarified how courts assess genuine contractual intention. France updated its civil code in recent years, replacing formal cause requirements somewhat. This reform simplified formation analysis while preserving protection against meaningless promises. Germany continues applying reciprocal obligation principles within evolving digital commerce contexts. Legal advisors working across civil law countries must know these flexible standards. Ignoring these differences risks miscalculating whether an agreement holds up legally. This proves valuable for businesses expanding into European civil law markets. Recognizing cause and obligation remains essential for practical contract drafting today.

Substantial evidence supports cause and reciprocal obligation as valid consideration alternatives. The French civil code historically required cause as a formation element

explicitly. Courts consistently invalidated agreements lacking legitimate cause across generations of French jurisprudence. Germany codified reciprocal obligation within its civil code, applied consistently by courts. Comparative legal scholarship repeatedly documents these approaches across continental European jurisdictions. Countries following French legal tradition, including several African states, adopted similar rules. Countries following German legal tradition similarly apply reciprocal obligation principles domestically. Academic commentary distinguishes these approaches from common law consideration doctrine. Legal textbooks used across civil law faculties teach cause and obligation extensively. Notaries practice within civil law countries reflects these formation requirements in daily transactions. Commercial contracts drafted within these jurisdictions routinely reference legitimate purpose explicitly. This consistent pattern across codes, courts, and practice confirms strong doctrinal support. Such widespread application across multiple civil law countries strengthens this finding.

This finding carries certain limitations worth acknowledging. Analysis focuses primarily on French and German civil law traditions specifically. Other civil law countries, including Scandinavian and Latin American systems, receive less direct attention. Formation rules within these less examined systems may differ from those discussed. Cause doctrine itself has generated internal disagreement among French legal scholars historically. Some scholars argue cause remains vague, creating unpredictable judicial outcomes in practice. Recent French reforms partially simplified cause requirements, reducing but not eliminating this vagueness. This analysis reflects current doctrine but may not capture ongoing reform debates fully. Reciprocal obligation similarly contains nuances not fully addressed within this discussion. Regional variations exist even within countries following similar civil law traditions. Digital contracting practices continue testing these traditional doctrines in new commercial contexts. Future case law may refine how courts apply cause and reciprocal obligation. Readers should treat these findings as representative rather than exhaustive.

Comparing civil law with common law reveals sharply contrasting formation philosophies again. Civil law accepts genuine intention alone, while common law demands measurable exchange. This contradiction reflects deeper disagreement about what makes a promise trustworthy. Common law scholars sometimes criticize civil law as vulnerable to unenforceable frivolous promises. Civil law scholars counter that consideration creates artificial barriers to legitimate agreements. Cause and reciprocal obligation also differ meaningfully from each other internally. French cause focuses on underlying purpose, while German obligation emphasizes mutual duty. This internal variation shows civil law itself lacks complete doctrinal uniformity. International commercial disputes sometimes expose these contradictions when parties dispute enforceability. Arbitrators must then determine which formation philosophy governs the disputed transaction. Outcomes can differ dramatically depending on which system applies to the dispute. These contradictions highlight ongoing tension between flexibility and predictability across systems. Recognizing these differences helps practitioners avoid costly misunderstandings in daily practice.

These findings carry implications for drafting agreements within civil law countries. Businesses operating in France or Germany should document genuine purpose behind their agreements. Unlike common law drafting, measurable economic exchange remains unnecessary within these systems. Contract drafters can strengthen enforceability by stating each party's intended obligation. This applies to commercial contracts, employment agreements, and charitable donations. Recent European harmonization initiatives aim to standardize contract principles across member states. The Draft Common Frame of Reference reflects one such ongoing harmonization effort. Such initiatives may reduce differences between civil law and common law systems. Until harmonization progresses further, practitioners must remain attentive to jurisdictional differences. Templates used across multiple countries should reflect cause or obligation where required. Legal education programs should highlight these principles for international law students. These findings apply to contract drafting, commercial law, and dispute resolution. Recognizing these principles protects parties from unexpected unenforceability in civil law jurisdictions.

C. The Moment of Contract Formation Differs Significantly Between Postal Rule and Receipt Rule Systems

This addresses when exactly a contract legally comes into existence. The finding confirms formation timing differs between postal rule and receipt rule systems. Common law traditionally applies the postal rule for accepting written offers. Under this rule, acceptance becomes effective the moment a letter is posted. The offer or becomes bound even before actually receiving the accepted letter. Civil law instead applies the receipt rule for determining formation timing. Under this approach, acceptance only takes legal effect once the offer or receives it. This difference reflects contrasting priorities about protecting offertory versus protecting offered. Common law protects offered by binding contracts once acceptance leaves their control. Civil law protects offertory by requiring actual knowledge before binding them legally. This answers the underlying question about precise contract formation timing clearly. It confirms formation timing depends heavily on which legal system applies. This distinction carries consequences for parties negotiating across these different systems (Tahat, 2009).

This finding carries importance for parties exchanging offers across international borders. Businesses negotiating contracts by post must know which rule governs formation timing. A miscalculation about formation timing can create unexpected binding obligations. Companies operating across common law and civil law jurisdictions face genuine practical risk. Recent cross border trade growth makes this timing question increasingly relevant today. Electronic commerce platforms now handle transactions spanning multiple legal systems simultaneously. Regulators in several countries have proposed clearer rules for digital acceptance timing. Some trade organizations now recommend explicit contractual clauses specifying applicable formation rules. This practice helps parties avoid relying on default postal or receipt rules. Financial institutions handling international agreements increasingly train staff on these timing distinctions. Knowing when a contract forms affects liability, risk

allocation, and dispute resolution. This becomes especially valuable during time sensitive commercial negotiations. Parties who know these rules can better protect their interests during negotiations.

Substantial evidence supports these divergent formation timing rules across systems. English courts established the postal rule through cases decided nearly two centuries ago. This precedent remains binding within English law and related common law countries. American courts adopted comparable reasoning, applying the postal rule in similar circumstances. Civil law codes explicitly state that acceptance requires actual receipt for validity. French and German civil codes both codify the receipt rule directly. Comparative legal textbooks consistently document this divergence between the two traditions. International commercial arbitration cases repeatedly reference these differing rules when resolving disputes. Legal practitioners across both systems confirm this divergence through daily contract practice. Notaries and commercial lawyers routinely advise clients based on applicable formation rules. Academic commentary spanning decades documents consistent application of these opposing approaches. This consistent pattern across statutes, cases, and practice confirms strong doctrinal support. Such widespread confirmation across sources strengthens confidence in this finding.

This finding carries certain limitations worth acknowledging. Analysis focuses primarily on traditional postal communication rather than modern electronic methods. Courts have not consistently applied postal or receipt rules to digital communication. This creates real uncertainty about whether these traditional rules still apply directly. Some jurisdictions have already carved out exceptions for instantaneous communication methods. These exceptions complicate the clear postal versus receipt distinction discussed earlier. Case selection favors well established precedents over recent, less settled judicial decisions. Emerging disputes involving email or messaging platforms remain relatively under examined here. Different common law countries may apply the postal rule with slightly different variations. Similarly, civil law countries may interpret receipt requirements somewhat differently within their own courts. This analysis reflects general principles rather than every jurisdictional nuance. Rapid technological change may soon require revisiting these traditional formation timing rules entirely. Readers should treat these findings as broadly applicable rather than absolutely fixed.

Comparing postal rule and receipt rule systems reveals fundamentally opposing formation philosophies. Common law prioritizes offered protection by binding contracts once acceptance departs. Civil law instead prioritizes offer or protection, requiring actual awareness before binding occurs. This contradiction produces genuinely different outcomes when disputes arise between systems. A letter lost in transit binds an offer or under common law rules. The same lost letter creates no binding obligation under civil law rules. Scholars actively debate which approach better balances fairness between contracting parties fairly. Common law scholars argue offered deserve certainty once they dispatch acceptance promptly. Civil law scholars counter that offertory deserve protection against unknown

binding obligations. Neither approach has achieved universal acceptance across international commercial practice. International sales conventions attempt compromise solutions between these competing formation philosophies. Such contradictions demonstrate why comparative analysis remains essential for cross border trade. Recognizing these tensions helps practitioners draft clearer contractual timing provisions carefully.

These findings carry implications for parties negotiating agreements across jurisdictions. Businesses should identify which formation rule applies before relying on postal acceptance. Contract drafters can avoid uncertainty by specifying formation timing explicitly within agreements. This applies to sales contracts, service agreements, and international commercial transactions generally. Recent international conventions attempt harmonizing formation timing rules across participating countries. The United Nations Convention on Contracts addresses formation timing for goods sales. Such conventions may gradually reduce uncertainty for parties engaged in international trade. Until wider harmonization occurs, practitioners must remain attentive to jurisdictional differences. Templates used across multiple countries should specify which formation rule governs acceptance. Legal education programs should highlight these timing distinctions for international law students. These findings apply to contract drafting, risk management, and dispute resolution. Recognizing these rules protects parties from unexpected liability during cross border negotiations. Careful drafting remains the most reliable way to avoid timing disputes.

D. Digital Communication has Blurred Traditional Distinctions Between Instantaneous and Non-Instantaneous Acceptance Methods

The traditional formation categories still fit digital communication methods. The finding confirms digital communication has blurred instantaneous and non-instantaneous acceptance distinctions. Courts historically classified telephone calls as instantaneous, requiring immediate mutual awareness. Letters received separate treatment as non-instantaneous, governed by the postal rule instead. This classification determined which formation timing rule applied to disputes. Email and messaging technologies do not fit neatly into either established category. Messages sometimes transmit instantly, yet delays can occur through technical failures. Courts now visibly struggle applying historic categories to these newer communication methods. This finding directly answers the underlying question about classification difficulty clearly. It confirms digital communication challenges assumptions built for older communication technologies. Telephone based instantaneous rules assumed real time conversation between both parties directly. Digital messages often lack this real time quality despite feeling immediate. This distinction between feeling and actual immediacy creates genuine classification confusion for courts (Khan et al., 2023).

This finding carries importance for businesses conducting commerce through digital channels. Companies negotiating contracts by email need clarity about applicable formation timing rules. Uncertainty about classification creates real risk for time sensitive commercial

agreements. Online retailers and service providers increasingly rely on instant messaging for negotiations. Recent regulatory attention has focused on clarifying digital acceptance timing requirements. Several countries have proposed legislation addressing electronic contract formation more explicitly recently. The European Union has issued guidance on electronic commerce contract formation rules. These developments reflect growing recognition that traditional categories require modern updating. Businesses operating internationally face compounded uncertainty across multiple overlapping legal systems. Legal advisors increasingly recommend explicit contractual terms specifying acceptance timing rules. This practice reduces reliance on ambiguous, default classification of digital communication methods. Financial technology companies particularly benefit from having clear digital formation timing standards. Knowing these classification challenges helps businesses draft more resilient, enforceable digital agreements.

Substantial evidence supports growing classification confusion surrounding digital communication methods. English courts historically classified telex communication as instantaneous, requiring receipt for acceptance. This early precedent set a foundation for analyzing later electronic communication disputes. Subsequent cases involving fax machines produced inconsistent judicial classification across different jurisdictions. Email disputes have similarly generated conflicting judicial reasoning within several common law countries. Some courts treat email as instantaneous, others apply postal rule reasoning instead. Legal scholarship extensively documents this inconsistency across academic journals and case commentary. Comparative studies reveal civil law courts also struggle classifying digital communication consistently. Industry surveys show businesses frequently confuse which formation rules apply to email. Legal practitioners report frequent client questions about digital acceptance timing. Arbitration tribunals handling technology disputes regularly confront this classification challenge directly. This consistent pattern across cases, scholarship, and practice confirms genuine ongoing confusion. Such widespread confirmation across sources strengthens confidence in this finding.

This finding carries certain limitations worth acknowledging. Analysis relies primarily on reported cases involving telex, fax, and email disputes. Newer communication platforms, including instant messaging applications, remain less thoroughly examined judicially. Courts have not yet produced extensive case law addressing these newer technologies. This creates real uncertainty about how existing analysis applies to these emerging platforms. Case selection favors well documented disputes over private, unreported commercial disagreements. This selection may understate the true scope of classification confusion in practice. Jurisdictional variation also complicates drawing firm, universal conclusions about digital communication classification. Some countries have already enacted specific electronic communication statutes addressing timing questions. These statutory interventions may reduce reliance on traditional instantaneous or postal classifications. This analysis reflects general patterns rather than every possible statutory variation available. Rapidly evolving

technology means these findings may become outdated relatively quickly. Readers should treat these findings as reflecting current trends, not permanent conclusions.

Comparing digital communication with traditional postal and telephone methods reveals striking contradictions. Traditional categories assumed clear boundaries between instant and delayed communication methods. Digital technology instead produces communication existing somewhere between these two traditional extremes. This contradiction challenges assumptions underlying both instantaneous and postal formation rules. Common law jurisdictions show internal disagreement about proper digital communication classification. Some courts extend telephone reasoning, treating email as functionally instantaneous communication. Other courts apply postal reasoning, citing potential delivery delays and technical failures. Civil law jurisdictions show comparable internal disagreement despite their receipt based general approach. Even receipt rule systems must determine precisely when digital receipt actually occurs. This creates parallel classification challenges within civil law formation timing analysis. International commercial disputes increasingly expose these unresolved contradictions between competing approaches. Neither common law nor civil law has produced fully consistent digital classification. These contradictions demonstrate why comparative analysis remains valuable for modern commerce.

These findings carry implications for businesses negotiating through digital channels. Companies should specify acceptance timing explicitly within digital contract terms and conditions. This reduces reliance on uncertain judicial classification of instant or delayed communication. This applies to commercial contracts, consumer agreements, and business to business transactions. Recent regulatory initiatives aim to clarify electronic contract formation across several jurisdictions. Some countries now recognize electronic acceptance as effective upon successful transmission. Other countries continue requiring proof of actual receipt for valid acceptance. Such regulatory divergence means businesses must adapt contracts to local requirements carefully. Legal advisors increasingly recommend including explicit timing clauses within standard digital agreements. Templates used across multiple countries should specify when digital acceptance becomes effective. Legal education programs should address these emerging digital classification challenges for students. These findings apply to contract drafting, technology law, and dispute resolution. Recognizing these challenges helps businesses reduce risk within digital commercial transactions.

E. Smart Contracts Challenge Traditional Formation Doctrine Through Automated, Code Based Offer and Acceptance Mechanisms

The smart contracts satisfy traditional offer and acceptance requirements. The finding confirms smart contracts challenge formation doctrine through automated, code based mechanisms. Traditional formation doctrine assumes human parties negotiate terms through deliberate communication exchanges. Smart contracts instead execute automatically once predetermined conditions within the code activate. This raises questions about whether

genuine offer and acceptance actually occur here. Code deployment may itself function as a standing offer to all users. Interaction with that code may then constitute acceptance without direct negotiation. This differs sharply from traditional bilateral communication between identifiable contracting parties. Some scholars argue code satisfies formation requirements if human intention preceded deployment. Others contend automated execution removes the deliberate assent traditional doctrine requires. This finding answers the underlying question about smart contract formation validity. It confirms significant doctrinal uncertainty surrounds automated contract formation currently. This uncertainty stems from applying human centered rules to automated systems (Sotiropoulos, 2026).

This finding carries importance for parties deploying or interacting with smart contracts. Block chain developers need clarity about whether their code creates binding legal obligations. Users interacting with decentralized applications also need certainty about contractual consequences. Recent growth in decentralized finance platforms has intensified attention on this question. Regulators worldwide have begun examining smart contracts within existing legal frameworks. Several financial regulators recently issued guidance addressing automated contract enforceability concerns. Some jurisdictions have proposed legislation explicitly recognizing smart contracts as valid agreements. This legislative attention reflects growing recognition that automated systems require legal clarity. Financial institutions increasingly explore smart contracts for settlement and payment processes. Legal advisors now regularly counsel technology companies on smart contract enforceability risks. Insurance providers have also begun offering coverage addressing smart contract related disputes. This growing commercial reliance makes formation clarity increasingly urgent for practitioners. Knowing these challenges helps developers design contracts with clearer legal standing.

Substantial evidence supports growing doctrinal uncertainty surrounding smart contract formation. Several jurisdictions have proposed statutes addressing smart contract enforceability in recent years. The United States has seen individual states pass legislation recognizing block chain based agreements. The United Kingdom Law Commission examined smart contracts within existing legal frameworks recently. Their report concluded existing formation doctrine can generally accommodate most smart contract arrangements. Unresolved questions still remain about code errors and unintended contractual outcomes. Academic literature extensively debates whether code itself constitutes valid offer and acceptance. Case law addressing smart contract disputes remains extremely limited across most jurisdictions. Arbitration institutions have begun developing specialized procedures for block chain related disputes. Industry surveys reveal many developers remain uncertain about smart contract legal status. Legal practitioners report growing client inquiries about smart contract enforceability questions. This consistent pattern across legislation, reports, and practice confirms genuine ongoing uncertainty. Such widespread confirmation across sources strengthens confidence here.

This finding carries certain limitations worth acknowledging. Analysis relies primarily on regulatory reports and academic commentary rather than settled case law. Courts have not yet decided many disputes directly addressing smart contract formation. This scarcity of case law limits how confidently conclusions can be made. Block chain technology continues evolving rapidly, potentially outpacing current legal analysis quickly. Different block chain platforms operate under different technical structures, complicating uniform legal treatment. This analysis cannot address every technical variation across block chain platforms. Jurisdictional approaches also vary considerably, with some countries more permissive than others. Regulatory attitudes toward decentralized finance continue shifting as governments develop new policies. This analysis reflects current thinking but may become outdated as regulations develop. Smart contract disputes involving cross border parties introduce additional unresolved jurisdictional questions. These questions extend beyond formation doctrine into private international law issues. Readers should treat these findings as reflecting an evolving, unsettled area of law.

Comparing smart contracts with traditional agreements reveals significant conceptual contradictions. Traditional formation doctrine assumes ongoing human involvement throughout negotiation and acceptance stages. Smart contracts remove this human involvement once code deployment occurs initially. This contradiction challenges whether genuine mutual intention can exist without direct interaction. Common law formation doctrine emphasizes communicated intention between identifiable contracting parties. Smart contracts often involve anonymous or pseudonymous participants interacting through block chain addresses. This anonymity contradicts traditional assumptions about identifiable offertory and identifiable offered. Civil law systems similarly assume genuine intention communicated through recognizable human conduct. Automated execution challenges this assumption by removing conscious decision making during performance. Some scholars argue deploying code itself demonstrates sufficient prior human intention. Others argue this reasoning stretches traditional doctrine beyond its original conceptual boundaries. These contradictions demonstrate fundamental tension between technological innovation and established legal doctrine. Comparative analysis helps identify where reform may become genuinely necessary going forward.

These findings carry implications for developers deploying smart contracts. Developers should document human intention clearly before deploying automated contract code. This documentation may help establish genuine offer and acceptance during disputes. This applies to decentralized finance platforms, supply chains, and automated payment systems. Recent regulatory developments suggest growing legislative attention toward smart contract enforceability questions. Some jurisdictions now explicitly recognize smart contracts within updated commercial legislation. Other jurisdictions continue relying on traditional doctrine without specific statutory recognition. Such regulatory divergence means businesses must adapt smart contract design to local requirements. Legal advisors increasingly recommend combining smart contracts with traditional written agreements for clarity. This

hybrid approach helps bridge gaps between automated execution and traditional formation doctrine. Legal education programs should address these emerging technological challenges for law students. These findings apply to technology law, commercial law, and dispute resolution. Recognizing these challenges helps developers design more legally resilient smart contracts.

F. Artificial Intelligence Generated Offers Raise Unresolved Questions About Genuine Mutual Intention to Contract

The artificial intelligence generated offers satisfy mutual intention requirements. The finding confirms these offers raise unresolved questions about genuine contractual intention. Traditional formation doctrine assumes a human party consciously intends to create obligations. Artificial intelligence systems can generate offers without direct human review at that specific moment. This raises serious doubts about whether genuine intention exists behind such automated offers. Some scholars argue programmers hold responsible intention through designing the underlying system. Others contend genuine intention must exist at the specific moment of offer formation. Artificial intelligence systems may generate unexpected offers well beyond original programmer expectations entirely. This unpredictability further complicates attributing genuine intention to any identifiable human party. This finding answers the underlying question about artificial intelligence formation validity clearly. It confirms real doctrinal uncertainty surrounds machine generated contractual offers currently. This uncertainty continues growing as artificial intelligence systems become increasingly autonomous and complex today (Linarelli, 2022).

This finding carries importance for businesses deploying artificial intelligence in commercial negotiations. Companies using automated pricing and offer generation systems face genuine legal risk. Customers receiving artificial intelligence generated offers need certainty about contractual enforceability. Recent growth in automated customer service and negotiation tools raises practical concerns. Several regulators have begun examining artificial intelligence within existing contract law frameworks. The European Union recently proposed rules addressing artificial intelligence accountability more broadly. These developments reflect growing recognition that automated systems require dedicated legal attention. Retailers using dynamic pricing algorithms increasingly face questions about offer validity. Legal advisors now regularly counsel technology companies on artificial intelligence contract risks. Insurance providers have begun considering coverage for artificial intelligence related contractual disputes. This growing reliance makes formation clarity increasingly urgent for businesses. Knowing these challenges helps companies design systems with clearer legal accountability. Clear human oversight remains essential for reducing artificial intelligence formation risk.

Substantial evidence supports growing uncertainty surrounding artificial intelligence generated contractual offers. Regulatory bodies across multiple countries have issued reports examining artificial intelligence accountability. The European Union proposed

comprehensive artificial intelligence legislation addressing accountability and transparency requirements. Legal scholars have published extensively on artificial intelligence and contract formation questions. Several academic conferences recently focused specifically on automated contracting and legal personhood. Case law addressing artificial intelligence generated offers remains extremely limited across jurisdictions. Existing disputes mostly involve algorithmic pricing errors rather than deeper formation validity questions. Industry surveys reveal companies increasingly worry about artificial intelligence contractual liability exposure. Legal practitioners report growing client inquiries about artificial intelligence contract enforceability. Technology companies have begun implementing human review checkpoints before finalizing automated offers. This practice reflects industry recognition of unresolved formation validity questions. This consistent pattern across regulation, scholarship, and practice confirms genuine ongoing uncertainty. Such widespread confirmation across sources strengthens confidence here.

This finding carries certain limitations worth acknowledging. Analysis relies primarily on regulatory proposals and academic commentary rather than settled case law. Courts have not yet decided many disputes directly addressing artificial intelligence formation. This scarcity of case law limits how confidently conclusions can be drawn. Artificial intelligence technology continues evolving rapidly, potentially outpacing current legal analysis. Different artificial intelligence systems operate under different technical structures, complicating uniform legal treatment. This analysis cannot address every technical variation across these platforms. Jurisdictional approaches also vary considerably, with some countries more permissive than others. Regulatory attitudes toward artificial intelligence continue shifting as governments develop new policies. This analysis reflects current thinking but may become outdated as regulations develop. Disputes involving cross border artificial intelligence systems introduce additional unresolved jurisdictional questions. These questions extend beyond formation doctrine into legal accountability generally. Readers should treat these findings as reflecting an evolving, unsettled area of law.

Comparing artificial intelligence generated offers with human offers reveals fundamental conceptual contradictions. Traditional formation doctrine assumes a human party consciously formulates specific contractual terms. Artificial intelligence systems instead generate terms through algorithmic processes lacking conscious deliberation. This contradiction challenges whether genuine mutual intention exists behind such offers. Common law formation doctrine emphasizes subjective intention communicated through deliberate human conduct. Artificial intelligence generated offers complicate this emphasis by removing direct conscious involvement. Civil law systems similarly assume genuine intention communicated through recognizable human conduct. Automated generation challenges this assumption by removing deliberate decision making during formation. Some scholars argue programmer intention transfers sufficiently to justify offer validity. Others argue this reasoning stretches traditional doctrine beyond its original conceptual boundaries. These contradictions parallel earlier debates about smart contracts and automated code. Yet

artificial intelligence introduces added complexity through adaptive, self-modifying decision processes. Comparative analysis helps identify where reform may become necessary here.

These findings carry implications for companies deploying artificial intelligence commercially. Businesses should maintain meaningful human oversight before finalizing artificial intelligence generated offers. This oversight may help establish genuine intention if disputes later arise. This applies to dynamic pricing, automated procurement, and algorithmic customer service systems. Recent regulatory developments suggest growing legislative attention toward artificial intelligence accountability questions. Some jurisdictions now explicitly address artificial intelligence within updated consumer protection legislation. Other jurisdictions continue relying on traditional doctrine without specific statutory recognition. Such regulatory divergence means businesses must adapt artificial intelligence use to local requirements. Legal advisors increasingly recommend documenting human decision points within automated offer systems. This documentation helps demonstrate genuine intention behind artificial intelligence generated agreements. Legal education programs should address these emerging technological challenges for law students. These findings apply to technology law, commercial law, and consumer protection. Recognizing these challenges helps businesses design more legally resilient automated systems.

G. Implication

These findings challenge classical formation theory by revealing its human centered assumptions strain under modern technology. Traditional doctrine assumed deliberate human communication between identifiable parties, yet artificial intelligence and smart contracts remove that direct involvement. This creates genuine, ongoing tension between established legal reasoning and emerging commercial practice. Positive outcomes include greater predictability once courts and legislators clarify these existing doctrinal gaps thoroughly. Negative outcomes include prolonged uncertainty for businesses operating across multiple overlapping legal systems meanwhile. Legislators should seriously consider updated statutory language addressing automated and digital contract formation explicitly. Recent European Union proposals on artificial intelligence accountability signal growing regulatory momentum toward this goal. Courts worldwide now face mounting pressure to apply centuries old doctrine to unprecedented technological circumstances. Practical application includes drafting explicit timing and intention clauses within digital and automated commercial agreements. Businesses, consumers, lawmakers, and judges all stand to genuinely benefit from clearer formation standards. Policy changes might include harmonized international rules governing electronic and automated contract formation issues. Limitations include heavy reliance on limited case law and rapidly evolving technology outpacing legal analysis. Ultimately, contract formation doctrine must evolve thoughtfully, balancing tradition with genuine technological progress across common law and civil law systems worldwide.

Conclusion

Valid contract formation rests on offer, acceptance, and either consideration or genuine cause. This foundational requirement shapes billions of daily transactions across the global economy. Common law and civil law approach these requirements through different but related reasoning. Knowing both traditions matters as commerce increasingly crosses national and legal borders. Businesses, consumers, and governments all depend on predictable rules for binding agreements. Without clear formation rules, trust between contracting parties would quickly and visibly break down. This topic connects to broader debates about harmonizing international commercial law today. Trade agreements, digital platforms, and cross border investment all rely on contract certainty. As technology reshapes how parties communicate and negotiate, formation doctrine faces new pressure. Artificial intelligence, smart contracts, and instant messaging challenge assumptions built for earlier eras. These developments make comparative formation analysis more relevant than ever before. This research addresses a timely and practically significant area of contract law.

This research revealed three connected arguments about contract formation across legal traditions. First, common law and civil law define binding promises through different structural elements. Consideration and cause serve similar protective purposes despite their differing legal terminology. Second, formation timing varies between postal rule and receipt rule jurisdictions significantly. This variation creates real uncertainty for parties negotiating across national borders daily. Third, digital communication, smart contracts, and artificial intelligence strain traditional formation categories severely. These technologies remove direct human involvement that classical doctrine originally assumed throughout negotiation. Together these arguments show formation doctrine remains coherent yet increasingly tested by change. Traditional elements still function well within conventional commercial transactions between identifiable parties. Yet emerging technologies expose genuine gaps that current doctrine cannot fully resolve. This connection between stability and disruption defines the central argument of this research. Recognizing both strengths and gaps supports more informed legal reform going forward today.

These arguments carry significance beyond academic discussion, reaching commercial practice and public policy. Businesses drafting cross border contracts can apply these findings immediately within daily practice. Legislators considering digital contract reform can draw upon this comparative framework directly. Recent European Union proposals on artificial intelligence accountability reflect this growing policy momentum. International trade organizations increasingly discuss harmonizing formation rules for electronic commerce. Judges facing novel disputes involving smart contracts can reference these comparative insights. Consumers benefit indirectly through clearer, more predictable, and safer digital contracting environments over time. Real world applications include contract drafting, dispute resolution, and policy design. Future research should examine emerging case law addressing artificial intelligence generated agreements. Researchers might also study

how block chain jurisdictions specifically regulate smart contract formation. Additional comparative work could extend this analysis to other major global legal traditions. These next steps would deepen knowledge of contract formation within a rapidly changing world.

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