

13-816. Mutual assent; definition.

Mutual assent requires a showing of agreement by the parties to the material terms of the contract. Mutual assent may be shown by the parties' written or spoken words, by their acts or failures to act, or some combination thereof. Ordinarily, when one party makes an offer, and the other party accepts the offer, there is mutual assent.

[When the parties attach materially different meanings to the words of an offer, there is no mutual assent if:

1. Neither party knows or has reason to know the meaning attached by the other; or
2. Each party knows or has reason to know the meaning attached by the other.]

USE NOTES

When the existence of mutual assent presents a question for a jury, this instruction should be given. The bracketed language should be included when a case presents a jury question as to whether a misunderstanding resulted in the absence of mutual assent required for the formation of a contract.

[Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]