



UNIVERSITY *of* NICOSIA

Session 5

# Contract Law

BLOC 513: Law and Regulation in Blockchain

# Session objectives

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To understand:

- the elements of a contract and how a contract is formed;
- contracts under the traditional legal approach;
- The basics of agency
- Torts

# Understanding Contract Basics

# Session outline

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If a contract is to be a legally enforceable agreement at law, the arrangement between the parties must exhibit certain key characteristics.

If those characteristics are not present, the agreement is not a contract and the courts will not assist in its enforcement.

The courts are quite insistent that all of the elements of a contract are required and must be met before it will be held that a valid and binding contract was formed.



In simple contracts that agreement must have:

offer;

acceptance;

and must be:

supported by consideration to establish the obligation;

the parties must intend that the agreement will have legal force;

the parties must agree on the same thing (their agreement must be mutual);

the parties must be legally capable of reaching a binding agreement; and

the subject matter of their agreement must be legal.

**All elements present = an enforceable contract**

# Key Differences Between US/UK Contract Law

# Key Differences in between US and UK contract law

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## Interpretation

Under English law the test in relation to an ambiguous clause is what would the clause reasonably mean to a person with all the background facts available to the parties at the date they entered into the contract.

The courts are not entitled to take into account parole evidence such as pre-contractual discussions or earlier drafts and agreements in order to construe the meaning of a particular clause.

The US system with regard to interpreting what the good faith intentions of the parties are no parole evidence is admissible.

## Mistake

The concept of unilateral mistake (i.e. where one party is mistaken) operates differently under US and English law.

Under US law the mistaken party can avoid the contract if enforcement would be **unconscionable and the innocent party did not know or have reason to know of the mistake.**

Under English law however, the contract would be **void only if the party that is not mistaken knew of the other party's mistake** (i.e. acting almost fraudulently) and the mistake relates to a fundamental part of the offer.

# Key Differences in between US and UK contract law

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## Implied duty of good faith

US law and English law differ as to good faith. Unlike most other common law countries (e.g. England), **US law does have a general duty of good faith** in the performance and enforcement of contracts.

**English law does not have a general implied duty of good faith** except in limited areas such as employment law and insurance law in relation to pre-contractual disclosure by a party seeking cover.

## Terminology – Style

The **choice of words in an American law and English law contract can cause different results**. For example, “best endeavours/reasonable endeavours” is the English law norm for endeavours clauses whereas “best/reasonable efforts” is the US norm.

The danger of using different terms to those regularly interpreted by the courts in a particular jurisdiction is that the courts **may consider that the parties intended something different** to what would generally be intended by the use of the correct terminology.

Another example would be the use of the word **merchantable quality** in relation to a sale of goods contract in contrast to **satisfactory quality** which is English law term. It is questionable whether an **English court will interpret merchantable quality as equivalent to satisfactory quality**.

**“Wilful misconduct” and “gross negligence”** are other US terms that are increasingly common in English law contracts without any long-standing judicial interpretation.



# Key Differences in between US and UK contract law

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## Limitation clauses

One prime example of the same language having very different effects under English law and under US law is that the words “indirect and consequential losses”.

In **US law expressly excludes loss of revenue, production and profit** that stem from a breach of contract.

**English law on the other hand often consider such losses as direct losses** and therefore in order to exclude such losses the party must expressly and properly exclude such losses by clear wording.

(“Key Differences in between US and UK/EU contract law” Charles Russell Speechlys LLP-2012

# Principles of European Contract Law

# Principles of European Contract Law

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## Conditions for the Conclusion of a Contract:

A contract is concluded if: (a) the parties **intend to be legally bound**, and (b) they reach a sufficient agreement without any further requirement. (2) A contract need not be concluded or evidenced in writing nor is it subject to any other requirement as to form. The contract may be proved by any means, including witnesses.

The **intention of a party to be legally bound by contract is to be determined from the party's statements or conduct** as they were reasonably understood by the other party.

## Good Faith and Fair Dealing

**Each party must act in accordance with good faith and fair dealing.**

The parties may not exclude or limit this duty.

## Written Modification

A clause in a written contract requiring any modification or ending by agreement to be made in writing establishes only a presumption that an agreement to modify or end the contract **is not intended to be legally binding unless it is in writing**.

A party may by its statements or conduct **be precluded from asserting such a clause to the extent that the other party has reasonably relied on them.**

# Principles of European Contract Law

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## Fraud:

A **party may avoid a contract when it has been led to conclude it by the other party's fraudulent representation, whether by words or conduct, or fraudulent non-disclosure of any information** which in accordance with good faith and fair dealing it should have disclosed.

A party's **representation or non-disclosure is fraudulent if it was intended to deceive.**

In determining whether good faith and fair dealing required that a party disclose particular information, regard should be had to all the circumstances, including:

- (a) whether the party had **special expertise**; (b) **the cost to it of acquiring the relevant information**; (c) whether the other party could reasonably acquire the information for itself; and the apparent importance of the information to the other party.

*(Principles of European Contract Law is an amalgamation of contract law principles in Europe by the "Commission on European Contract Law" **which is not an official body**)*

# Understanding Agency

# Agency Law

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**Agent:** *A person appointed by another (the principal) to act on his behalf,* often to negotiate a contract between the principal and a third party. If an agent discloses his principal's name (or at least the existence of a principal) to the third party with whom he is dealing, the agent himself is not normally entitled to the benefit of, or liable on, the contract. [...] (A Dictionary of Law- Oxford, 2018)

## Types of authority

**Actual Authority:** Either the principal may have expressly conferred authority on the agent, or authority may be implied.

**Apparent Authority:** A situation where a reasonable third party would understand that an agent had authority to act.

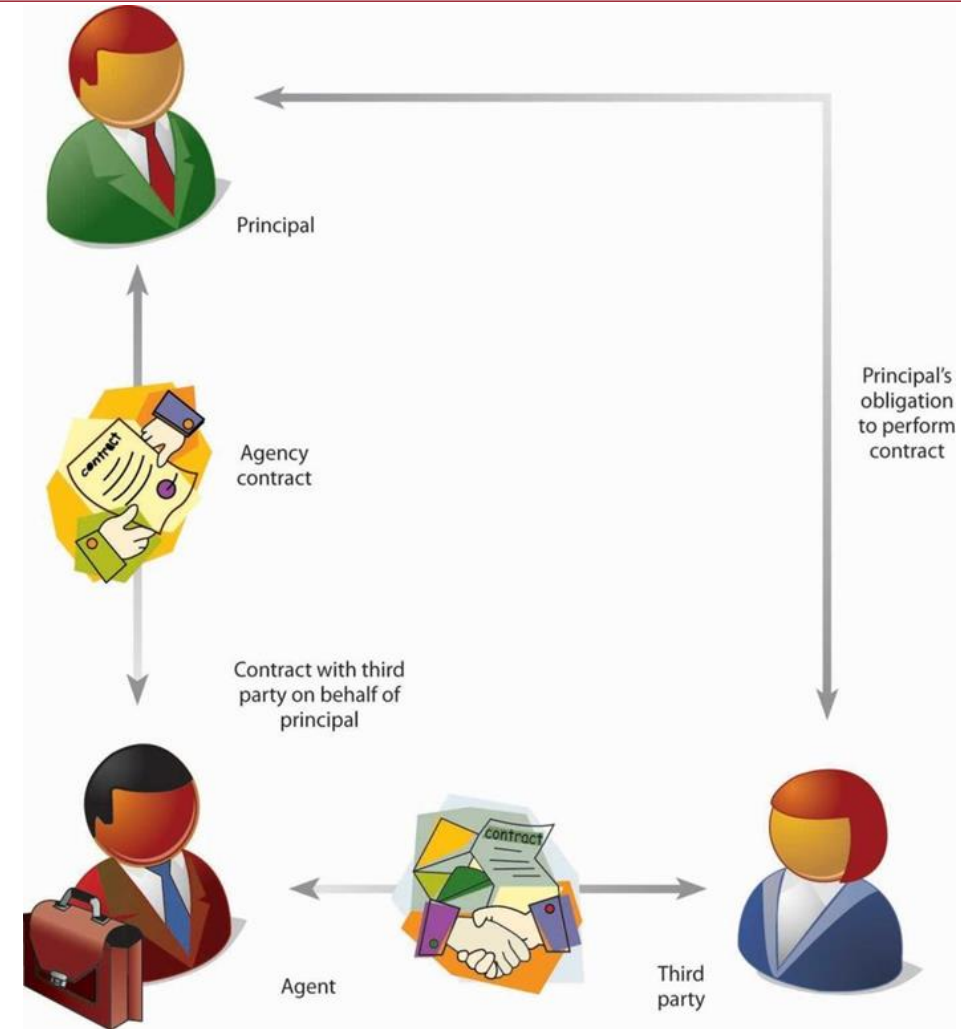
# Agency Law

The agency relationship:

is formed between the principal and the agent;  
is a fiduciary (or 'good faith') relationship; does not require a contract between the principal and agent; is a consensual arrangement undertaken for the benefit of the principal; involves authorization being granted (limited in scope or not) means acts are undertaken on behalf of or under the principal's control;

means **the principal can be bound by and is liable for the agent's words or actions**; means the principal can be liable for the consequences of the agent's authorized acts;

recognizes that both principal and agent can be a person, corporation, partnership or other entity.



# Agency Law

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Express, implied and apparent authority:

The **principal's grant of authority to an agent to act in its name** may be **express** or **may be implied from the circumstances**.

The agent has authority to **perform all acts necessary** in the circumstances to **achieve the purposes** for which the authority was granted.

A person is to be treated as having granted authority to an apparent agent if the person's statements or conduct induce the third party reasonably and in good faith to believe that the apparent agent has been granted authority for the act performed by it.

Subagency

An agent has implied authority to appoint a subagent to carry out tasks which are not of a personal character and which it is not reasonable to expect the agent to carry out itself. The rules of [Agency] apply to the subagency; acts of the subagent which are within its and the agent's authority bind the principal and the third party directly to each other.



# Agency Law

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## Agent acting in exercise of his authority

Where an agent is acting within its authority, its acts bind the principal and the third party directly to each other. The agent itself is not bound to the third party.

# Torts

# Torts

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## ○ Definition

- *A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers*

## ○ Remedies

- The law recognizes torts as civil wrongs and allows injured parties to recover for their losses. Injured parties may bring suit to recover damages in the form of monetary compensation or for an injunction, which compels a party to cease an activity. In certain cases, courts will award punitive damages in addition to compensatory damages to deter further misconduct.

## ○ Distinguishing Torts from Other Bases of Liability

- Torts are distinguishable from crimes, which are wrongs against the state or society at large. The main purpose of criminal liability is to enforce public justice. In contrast, tort law addresses private wrongs and has a central purpose of compensating the victim rather than punishing the wrongdoer.<sup>2</sup> Some acts may provide a basis for both tort and criminal liability. For example, gross negligence that endangers the lives of others may simultaneously be a tort and a crime.<sup>3</sup>

Source: Cornell, LIS

# Required Reading

# Required Reading

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- Contracts/Agency
  - U.S o Legal Information Institute (Cornell University)
    - <https://www.law.cornell.edu/wex/contract>
    - <https://www.law.cornell.edu/wex/agency>
- Principles of European Contract law (University of Oslo)
  - Article 2:101 -104
  - Article 2:201-205
- Basics of UK Contract Law
  - <http://www.a4id.org/wp-content/uploads/2016/10/A4ID-english-contract-law-at-a-glance.pdf> (Allen and Overy)

Further reading

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- Contractual Unpredictability in the Context of Covid-19 Pandemic (Patraus & Ofim)
  - Athens Journal of Law (pages 1-5,12-16)
- <https://doi.org/10.30958/ajl.X-Y-Z>



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## Questions?

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