

I. Contract Law

Contract: legally binding agreement / 2+ people / consent

guarantee vs. warranty
(money back) (repair)
(nonexistence) (insurance)
(seller)

Requirements for a contract:

- offer and acceptance
- Intention to create legal relations
- clarity and certainty for the agreement terms
- form (oral, writing, conduct) (electronic) ✓

Termination of an offer:

- one death before acceptance
- non-acceptance within a time
- revocation before acceptance
- rejected by offeree

Communication is necessary before acceptance - (but it changes nowadays for fair) e.g. German

offer valid when it reaches the offeree
acceptance valid when it is posted

Revocation of an offer is possible

- before the acceptance
- communicated to the offeree
- come from the offeror or a reliable source

counter-offer means

- terminate the original offer
- give another offer in return

silence ≠ acceptance must be communicated to the offeror

Form of acceptance that is demanded by offeror is necessary, unless another way accomplishes as well, or even better. (e.g. fax > e-mail)

Contents of a contract:

Terms

- express terms
- implied terms

contractual terms or mere representation?

• freedom of contract

trade practices
↓
e.g. interterms / good quality in Contract of Sale.

silence → acceptance if with traders (in Germany)

II. Intellectual Property Rights (IPR)

• Copyright: • automatically generates • expression

→ things w.r.t software are changing in EU.

• Patents: • monopoly in a limited period of time • function/idea (technical result) (product)

• Trademarks: "®" "TM" "SM"

• Personal Identity Rights: • Right of Publicity • Data protection laws • "domain name" also

III. Torts

Definition of "tort": • a civil wrong • two persons • damage claim • remedy

Not - crime - breach of contract - necessarily concerned with government.

Faer elements to claim damage:

- Duty $\left\{ \begin{array}{l} \text{Foreseeability} \\ \text{standard of care} \end{array} \right.$
- Breach $\left\{ \begin{array}{l} \text{negligence} \\ \text{Intention} \end{array} \right.$ & strict liability
- Causation $\left\{ \begin{array}{l} \text{Actual Causation} \\ \text{Proximate Causation} \end{array} \right.$ • "But for" test • Substantial Factor Test • Foreseeability Test
- Injury / Damage

Defenses to Negligence:

- Contributory negligence
- Mutual fault
- Assumption of Risk
- Emergency Doctrine
- Custom

IV. Product Liability

the liability of the maker for negligence in the design or production of the product.

- Manufacturing defect $\left\{ \begin{array}{l} \text{only one or a few products of a whole line} \end{array} \right.$
 - Design defect $\left\{ \begin{array}{l} \text{all the products of a line} \end{array} \right.$
 - Failure to warn $\left\{ \begin{array}{l} \text{dangerous if incorrectly used} \\ \text{unable to be made any safer} \end{array} \right.$
- strict liability standard
- causation and burden of proof

V. Company Law

- Types of business:
- individual proprietorship / sole trader
 - partnership --- [unlimited liability]
 - limited companies $\left\{ \begin{array}{l} \text{private limited company "GmbH or UG"} \\ \text{public limited company "AG"} \end{array} \right.$ [limited liability] the money it invested
- offer its shares for sale on the open stock market.

Founding a company:

- Memorandum of Association
- Articles of Association
- Premises
- Authorised share capital
- "Off-the-shelf" company

VI. CISG

Definition: United Nations Convention on Contracts for the International Sale of Goods
or Vienna Convention (exception: Britain, India, Pakistan)

discretionary when both parties agree
automatic application $\left\{ \begin{array}{l} \text{if the seller is connected with CISG states} \\ \text{if national civil law of one party (in the states) is applicable} \end{array} \right.$

Sphere of application:

- sale of goods contracts
- parties whose places of business are in different states

Remark

- If the buyer supply the substantial materials to the seller, Vienna Convention is not applied.
- Vienna Convention will not include contract of labour or other services.

Types of contract:

$\left\{ \begin{array}{l} \text{general buyer} \\ \text{no manufacture} \end{array} \right. \bullet \text{sale} \quad \left\{ \begin{array}{l} \text{the debtor owes seller} \\ \text{goods to the special wishes of customer} \end{array} \right. \bullet \text{labour} \quad \bullet \text{work and labour} \quad \left\{ \begin{array}{l} \text{debtor owes effort} \\ \text{to labour being successful} \end{array} \right. \bullet \text{service} \quad \left\{ \begin{array}{l} \text{sell \& manufacture} \\ \text{work \& supply material} \end{array} \right. \bullet \text{supply} \quad \bullet \text{SLA (Service Level Agreement)}$
time of reaction / to solve the problem / support / responsible persons / escalation procedure

Sphere of non-application:

- of consumer purchases
- of stocks, shares, investment securities, negotiable instruments or money
- of ships, vessels, hovercraft or aircraft
- of electricity
- by auction
- on execution or otherwise by authority of law

From Germany's point of view, the CISG applies to:

- all export business transactions
- all imports from Contracting States
- all ~~delivery~~ of goods contracts, if parties have habitual branch in different states and adopt national ^{law}

does not apply to:

- all purely domestic business transactions
- contracts which exclude the CISG
- all imports from any Non-Contracting State if with no comment on CISG

Contents of Regulation: (not exhaustive)

• Formation of the contract

- offer withdrawal before reaching offeree / revoke ^{sending} before acceptance
- acceptance ineffective until it reaches offeror
can be withdrawn if withdrawal reaches before acceptance reaches
- Communication indication of intention becomes effective when it reaches addressee
sending party does not bear the risk of error in transmission

• Obligations

• of the seller

• delivery — place, carriage, date

• contractual conformity

• Duty of examination (Buyer)

Lack of conformity — Time limitation $\begin{cases} \text{discovery of the lack} \Rightarrow \text{reasonable time} \\ \text{delivery} \Rightarrow 2 \text{ years} \end{cases}$

"Bad faith" \Rightarrow no time limitation

Remedies of the buyer

• Performance & Fulfillment

• Delivery of substitute goods $\begin{cases} \text{fundamental breach} \\ \text{give notice to the seller within a reasonable time} \end{cases}$

• Repair $\begin{cases} \text{lack of conformity} \\ \text{give notice to the seller} \end{cases}$

• claim damage: equal to the loss

• Additional time-limit

• Reduce the price: $\frac{\text{goods delivered}}{\text{goods conforming to the contract}} \cdot 100\%$

• Avoidance of the contract $\begin{cases} \text{fundamental breach} \\ \text{non-delivery / late-delivery / ...} \end{cases}$

• of the buyer

• Take delivery

• Pay the price

$\begin{cases} \text{fix the price (with seller)} \end{cases}$

$\begin{cases} \text{place of payment} \end{cases}$

$\begin{cases} \text{time of payment} \end{cases}$

$\begin{cases} \text{seller's place} \\ \text{where handing over takes place} \end{cases}$

$\begin{cases} \text{seller determine} \\ \text{buyer determine payment with a chance to examine} \end{cases}$

Incoterms (International commercial terms)

• standardized shipping terms by ICC (the International Chamber of Commerce)

[Remark]

• don't determine when title to goods passes

• EXW (Ex-works) • Group F (FCA: free carrier) • FOB Liverpool (free on board)

• Group C (carriage seller) • Group D (all bill destination) • CFR (cover "cost and freight" - no insurance)

• CIF (ins. with insurance) • CPT (carriage paid to) • CIP (carriage and insurance paid)

• DAF (delivered at frontier) • DES (delivered ex ship) • DEQ (delivered ex quay)

• DDP (delivered duty-paid) • DDU (delivered duty-unpaid)

passage of title:

• Risk of loss • Rejection of goods • Payment for goods • Rights of action

Dispute resolution

- Litigation 诉讼
- mediation 调解
 - neutral third party (mediator)
 - assist in negotiation
 - not binding *
- arbitration 仲裁
 - a panel of one or three third parties (arbiters/arbitrators)
 - a hearing
 - render a ruling, which is binding *

procedural rules: International Chamber of Commerce

(International Commercial Rules of the American Arbitration Association)

VII. Data Protection

(Protection of the right to privacy, and to exercise control over processing and using)

European legislation

- EU Directive 95/46/EC ("Data Protection Directive")
processing of personal data & free movement
- EU Directive 2002/58/EC ("E-Communications Directive")
telecommunication: telephony, e-mail, SMS, etc.
supplemented by "Cookie Directive"

German legislation:

Federal Data Protection Act

- to complete the GDPR

EU General Data Protection Regulation (GDPR)

- not a directive (no need legislation transformed in national law)
- apply to both controllers and processors — Cloud Providers not excluded
- Accountability
 - Documentation Duties
 - Order Data Processing Agreements
- Consent Concept
 - Right to Forget, Erasure Concept
 - Duty to notify
- Data Security Concept
 - Privacy by Design
 - Data Protection Impact Assessment

penalties: up to 4% of annual worldwide turnover of €20 million whichever is greater

Data Processing

- consent
- contract
- legal obligation
- for vital interests/public functions
- legitimate interests

Technical and organizational measures