Contract Law - Tomás Burns

1. Terminology

1.1. A **contract** is a legally binding agreement that recognises and governs the rights and duties of the parties to the agreement.
1.2. In a contract, the proposition is called an **offer** and the agreement is called **acceptance.**
1.3. The **parties to the contract** are the persons who have created it.
1.4. The **offeror** is the party that makes the offer and the **offeree** is the party to whom the offer is made.
1.5. The **invitation to treat** is an invitation to the other party to enter negotiations, yet it isn't an offer.
1.6. The **invitor** is the party who makes the invitation to treat and the **invitee** is the party to whom the invitation is made.

2. Introduction to English Law

2.1. **English Law** is applied in both England and Wales. Both Scotland and Northern Ireland have independent legal systems, although they converge with the english system from time to time.
2.2. **Common Law**, defined as the legal system based on precedent instead of statutory laws, spawned from English Law and spread to most former British colonies, namely the United States, Canada, Australia, New Zealand and Singapore. However, many countries with the Civil Law legal framework were also influenced by Common Law.
2.3. Common Law systems, as we just saw, are largely based on **precedent.**

2.3.1. This means that Common Law countries follow a **doctrine of *stare decisis*** (stand by the decision). This means that lower courts are bound to follow an applicable holding of a higher court in the same jurisdiction.

2.4. The historical development of Common Law began with William I, following the Battle of Hastings in 1066. Before, there was no single national legal system, only a system of **custom** applied by a variety of local decision-making bodies. As King, William I implemented a centralised system of government and justice.

2.4.1. Following the Norman Conquest, **Royal Courts** began to emerge from the King's Council.
2.4.2. Judges were sent around the country to hold **assizes** (or sittings) to hear cases locally. This enabled the judges, over a period of roughly 200 years, to take the best local laws and apply them throughout the territory.

2.4.2.1. This allowed for the unification of the previously existing local systems of law, thus turning them into a single legal order enforced consistently throughout the nation, thus creating law which was common to the whole country.

2.4.3. As the work of the Common Law Courts grew, judges started using previous decisions as a guide for later cases, thus beginning the doctrine of precedent.

2.4.4. The King was regarded as retaining a residual discretion to dispense justice in appeals made directly to him, as disappointed litigants could present a **petition**, appealing to his conscience to provide them with justice.

2.4.4.1. The King progressively delegated this power to the Chancellor and, as the amount of cases grew, he created a Court of Equity, also known as the **Chancery**.

2.4.4.2. This created two parallel court systems, the **Courts of Equity** and the **Courts of Common Law**.

2.4.5. The Judicature Acts of 1873 abolished the Courts of Equity and established a unified and comprehensive judicial system with a Supreme Court structure, comprising of a **High Court** and several **Courts of Appeal**, capable of administering both Common Law and Equity Law.

2.4.6. The Constitutional Reform Act of 2005 created a **Supreme Court** that would be the highest authority for civil cases in the entire United Kingdom. It was established in 2009. Until then, the highest authority was the House of Lords.

3. Introduction to French Law

3.1. Unlike England, France draws from the Roman tradition of Law and has a **Civil Law** system, where statutory laws matter more than precedent. France is among the 150 countries that draw from this system.

3.2. Most Civil Law systems use **Codes of Law** to compile the bases of their legal order, and codified statutes are of primary importance.

3.3. In France, the legal system is based on the *Code Civil* of 1804, better known as the **Napoleonic Code**, since it spawned from Napoleon Bonaparte's rule as Emperor.

3.3.1. The Napoleonic Code lays down the rights and obligations of citizens, and the laws of contract, property, inheritance and anything relating to the personal relations of these. However, the original aim of the Code is to be a set of rules written in clear language, intelligible not only to lawyers, but to all citizens.

3.3.2. The *Code Civil* is applicable to the entire country of France, and draws from written Roman Law (***droit écrit)*** as well as customary German-Frankish Law (***droit coutumier***).

3.3.3. To this day, the Code Civil is the cornerstone of French Private Law and a reference point to other legal systems, and its Contract Law section has strongly influenced many countries in drafting their own contract policies. It is considered to be the World's first successful legal codification, but it isn't immutable, and has changed over time, most recently in 2016.

3.3.3.1. The French Civil Code was seen as outdated, incomplete and unattractive, and was losing influence abroad fast. This is what led to the 2016 reform that restructured the entire Contract Law section of the Civil Code, mainly in regards to its principles, to the formation of the contract, to the validity of contracts, to the extended protection against unfair terms, to unforeseen circumstances and to remedies. This made French Contract Law more accessible, predictable and attractive, even though it is far from perfect and complete.

3.3.3.2. The loss of international relevance was a key factor for the reform, considering that French Contract Law was far less attractive than Common Contract Law in international commercial contracts. The reform tried to make French Law more competitive, in order to face an increasingly globalized world.

3.3.3.3. The necessity for reform was clear, and its impact overwhelmingly positive. Quoting Solene Rowan: "The section of the Code on contract law had survived almost unaltered since 1804. While some saw this as a source of stability, and therefore a strength, most recognised that a code that contained obsolete principles and had become incomplete was a weakness."

3.3.3.4. The role of the Courts was vital for the reform, which was built on court-created boundaries and rules. However, extensive judicial re-interpretation of law of contract had saturated case law, making it another key factor in favour of reform. Although the reform has cut the influence of courts, they remain powerful figures in French Contract Law.

3.3.4. The *Code Civil*'s influence was predicted by Napoleon Bonaparte himself, who is quoted saying: "My real glory is not to have won forty battles. Waterloo will erase the memory of all these victories. What nothing will erase, what will live eternally, is my Civil Code".

3.3.5. The *Code Civil* is applied by the courts, the ***Cour de Cassation*** chief among them.

3.3.5.1. It has the power to confirm a judgment of a lower court or to quash and annul it, although it can only rule on points of law, not points of fact. These must be examined or re-examined, if needed, by the lower courts.

3.3.5.2. If quashed and annulled, the case is sent before a lower court in order to deliver a decision respecting the ruling of the *Cour de Cassation*. This process is called the ***renvoi***.

3.3.5.3. The lower courts include ***tribunaux d'instance***, **the** ***tribunaux de grande instance*** and ***cours d'appel***.

3.3.6. French judges are expected to apply the *Civil Code* faithfully. Quoting Jean Portalis: "The task of the legislator is to determine those principles most conducive to the common good, [while] the skill of the judge is to put these principles into action, to develop and extend them to particular circumstances by wise and reasoned application".

4. The Formation of a Contract - English Law

4.1. In English Law, three conditions must exist before a contract is formed: an **agreement** (an offer and an acceptance), an **intention to create legal relations** and **consideration**.

4.1.1. An agreement of the parties requires an offer by a party (the offeror) a corresponding acceptance by the other party (the offeree). In order to objectively determine if there is an agreement, one must resort to the **test of the reasonable man**.

4.1.1.1. The test of the reasonable man is an objective test that seeks to determine how proposal would be understood by a reasonable person in the position of the offeree or, in other words, **how could a reasonable person believe an offer has been made**.

4.1.1.2. This test suffers from a clear uncertainty around the definition of "reasonable man". Quoting John Baker: "Despite many judicial expeditions to find him, the reasonable man has not been reduced into captivity". Therefore, this criterion must be substantiated by reference to case law.

4.1.1.3. First and foremost, in order to decide whether a reasonable person would find that the parties reached an agreement, **consideration must be given to the words and conduct of the parties**. In deciding whether the parties have reached agreement, the first step is to consider whether an offer has been made. Sometimes, a series of propositions and counterpropositions will be made before an agreement can be reached.

4.1.1.4. **An offer is a proposition that is sufficiently precise and definite to be capable of being turned into a contract by acceptance**. Not every statement made by one person to another in the midst of negotiations is an offer. Sometimes, they can be invitations to treat.

4.1.1.4.1. **Invitations to treat are invitations directed to the other party to enter negotiations**. It doesn't constitute an offer and, upon receiving it, the offeree may propose an offer himself, leaving it to the invitor to accept or reject it.

4.1.1.4.2. In ***Gibson v. Manchester City Council*** (1979), the House of Lords strongly reasserted that agreement only exists when there is a clear offer mirrored by a clear acceptance. In this case, a man sought to purchase a house from his City Council, who sent him a letter saying they "may be prepared to sell the house at a fixed price". Although the man disagreed with the price at first, the Council remained adamant in the fixed amount and the man eventually agreed to carry on with the purchase. However, the City Council refused to sell him the house following a political halt

to government property sales. The man sued the Council, but was left disappointed when the House of Lords ruled that the language used by the Council made the statement an invitation to treat, inviting the man to make an offer to purchase, rather than an offer to sell which the tenant had accepted.

4.1.1.4.3. This distinction matter because, if an offer is accepted, it will result in a binding contract, whilst an invitation to treat, if accepted, won't. **Precision is key, and offers must be as clear as possible**.

4.1.1.5. **The offer will only be effective after it is communicated to the offeree**, because the offeree must be aware of the offer before he accepts. If the offer is contained in a letter which is posted, the offer is effective only when the letter is received by the offeree.

4.1.1.6. **Offers can be made to a single person, to multiple persons or the whole world**.

4.1.1.6.1. Advertisements can be considered as unilateral offers to the general public.

4.1.1.6.2. In ***Carlill v. Carbolic Smoke Ball Co.*** (1893), a company placed several ads in newspapers stating that a hefty reward would be given to any customer who became ill after using their product, and a sum of money was placed in a bank to prove their intentions. A woman, who got sick after using the product, tried to claim her reward, but the company claimed that the advertisement was not serious. The Court of Appeal ruled that an ordinary person would consider the advertisement an offer and that the amount deposited in the bank would be interpreted by an offeree as a sign of good faith. The Court interpreted the advertisement exactly how the public would interpret it, and determined it was an offer.

4.1.1.6.3. However, this case is an exception. Quoting Ewan McKendrick: "The general rule is that a newspaper advertisement is an invitation to treat rather than an offer". This rule exists to ensure the freedom of a business not to accept a customer, and is therefore an advantage for the seller. Since stocks may become depleted, one can't expect all advertisements to be offers, because businesses can't sell to all interested parties.

4.1.1.6.4. In ***Partridge v. Crittenden*** (1968), a man placed a newspaper ad, attempting to sell birds that were protected by a law that prohibited the sale of said birds. The High Court ruled in favour of the man, claiming that the ad in question was an invitation to treat. Quoting Lord Parker: "I think when one is dealing with advertisements and circulars there is

business sense in their being construed as invitations to treat and not offers for sale". The limited stock argument was also used in this case but, as Ewan McKendrick puts it, this argument is unsustainable since it may be implied that the offer is only capable of acceptance while stocks last.

4.1.1.6.5. In ***Fisher v. Bell*** (1961), a shopkeeper displayed an illegal knife in his shop window, and he was accused of illegally putting the knife up for sale. The High Court argued that it couldn't constitute an offer because the seller could refuse to sell if he wanted to. Quoting Lord Parker: "according to the ordinary law of contract, the display of an article with a price on it in a shop window is merely an invitation to treat.''

4.1.1.6.6. In ***Pharmaceutical Society of Great Britain v. Boots Cash Chemists*** (1953), a pharmacy operated a self-service store where there was no pharmacist near the shelves supervising the sale of medicine, which was illegal. However, the court ruled that the sale only occurred at the counter, and not when the customer self-serviced himself without supervision. Quoting Lord Goddard: "It is a well-established principle that the mere fact that a shop-keeper exposes goods which indicate to the public that he is willing to treat does not amount to an offer to sell. I do not think I ought to hold that there has been a complete reversal of that principle merely because a self-service scheme is in operation. In my opinion, what was done here came to no more than that the customer was informed that he could pick up an article and bring it to the shop-keeper, the contract for sale being completed if the shop-keeper accepted the customer's offer to buy. The offer is an offer to buy, not an offer to sell". In addition, Lord Somervell claimed that "once an article has been placed in the receptacle the customer himself is bound and would have no right, without paying for the first article, to substitute an article which he saw later of a similar kind and which he perhaps preferred". In sum, the display of the goods at the store was a mere invitation to treat, and only after the customer self-serviced himself with the good and took it to the counter where he would pay would we see an offer that could be accepted by the store, thus creating a contract.

4.1.1.6.7. As we can see, the advertisement and display of goods does not constitute an offer, except in the cases of **unilateral agreements**, or promises in exchange for an act, such as the agreement in the *Carlill* case. In that case, the advertisement does constitute an offer rather than an invitation to treat.

5. The Formation of a Contract - French Law

5.1. In French Law, three conditions must exist before a contract is formed: **free and informed consent from the parties**, the parties' **capacity to contract**, and a **certain and determined object**. Prior to the 2016 reforms, there was another requisite: a "lawful cause".

5.1.1. Article 1101º of the Civil Code provides that a contract is an agreement by which two or more persons express their willingness to create, modify, transfer, or extinguish obligations.

5.1.1.1. Article 1582º of the Civil Code provides that a **sale** is an agreement by which one person binds himself to deliver a thing, and another is required to pay for it.

5.1.2. Article 1113º of the Civil Code provides that a **contract is formed by the meeting of an offer and an acceptance expressing the parties' willingness to be bound**. Such willingness may be expressed in words or clearly implied from the relevant party's unequivocal conduct.

5.1.3. Article 1114º of the Civil Code provides that **an offer, whether it is made to a specific person or to the world at large, contains all the essential elements of the proposed contract and indicates the will of the offeror to be bound in case of acceptance**. Failing this, it is only an invitation to enter into negotiations.

5.1.3.1. In ***Dehen v. Société des Eaux de Vittel*** (1964), better known as the Exploding Lemonade Case, a customer was injured when a bottle of lemonade exploded before being purchased but after being placed in a basket after being displayed. The *Cour d'Appel* ruled that the offer was constituted the moment the bottle was placed in the customer's basket, and that the customer could claim damages in contract. This meant that displaying an item was an offer, as long as it was displayed with a price tag.

5.1.3.2. In ***Maltzkorn v. Braquet*** (1968), a man placed an advertisement in a newspaper proposing the sale of a plot of land with a fixed price. A potential buyer responded, accepting the terms, but the man refused to sell him the land, claiming the advertisement was a mere invitation to treat. The *Cour de Cassation* held that an offer made to the public at large binds the offeror vis-à-vis the first person who accepts it in the same way as an offer made to a specific person. Newspaper ads are presumed to be offers unless there is a factor proving otherwise.

5.1.3.2.1. This **reasoning** was applied in order to protect customers, in addition to other consumer protections such as the requirement to have an offer made by a certified professional.

5.1.3.2.2. The Limited Stock argument is disregarded, and the protection of the business sense is replaced with a **protection of the consumer**.

5.1.3.2.3. The only exception to this rule are **proposals of *intuitu personae***, where the identity of the offeree is a decisive factor.

5.1.3.2.4. Therefore, in France, most advertisements are considered offers. Quoting Phillippe Tourneau: "**A sufficiently precise and definite advertisement therein constitutes an offer to contract** which, when its terms are accepted by the customer, binds the advertiser, as the content is integrated into the contract. It is a way of ensuring truthfulness: in this instance, truthfulness to oneself, to one's word and writings, in a word, requiring that all professionals act consistently".

5.1.4. Regarding acceptance, Article 1118º of the Civil Code provides that acceptance indicates the offeree's willingness to be bound by the terms of the offer, and Article 1121º of the Civil Code provides that a contract is concluded as soon as acceptance is received by the offeror.

6. The Formation of a Contract - UNIDROIT

6.1. The International Institute for the Unification of Private Law is an independent intergovernmental organization whose goal is to unify and standardize private law all around the world. The Principles of International Commercial Contracts (UPICC) are one of their initiatives and constitute a **non-binding codification of the general part of international contract law**.

6.1.1. Article 2.1.2. of the UPICC provides that **a proposal for concluding a contract constitutes an offer** if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

6.1.2. Therefore, there are two requirements for an offer to be constituted: the **definiteness of the proposa**l and the **intention to be bound of the parties**. Generally speaking, the more detailed and definite the proposal, the more likely it is to be construed as an offer.

7. The Formation of a Contract - European Union Law

7.1. In an attempt at harmonization, the European Union created the **Principles of European Contract Law** (PECL), which were created in a commission led by Ole Lando.

7.1.1. Article 2:201 of the PECL establishes that **a proposal amounts to an offer if it is intended to result in a contract if the other party accepts it, and it contains sufficiently definite terms to form a contract**.

7.1.2. The article also provides that an **offer** may be made to one or more specific persons or to the public, and that a proposal to supply goods or services at stated prices made by a professional supplier in a public advertisement or a catalogue, or by a display of goods, is presumed to

be an offer to sell or supply at that price until the stock of goods, or the supplier's capacity to supply the service, is exhausted.

7.1.2.1. As we can see, the PECL establishes what all european countries have in common: The offer must be such that it creates a contract if accepted by the other party, which requires that the offer indicates both the **intention of the offeror to be bound** and the **terms by which the offeror is willing to be bound**.

7.1.2.2. Therefore, we can conclude that **proposals which are sufficiently definite and which can be accepted by anybody without respect of person are to be treated as offers**.

8. The Revocation of an Offer - English Law

8.1. An **offer is revoked once the offeror is no longer bound to it**. In English Law, the offer can be revoked at any time before it is accepted, even if offeror expressly includes a period during which his offer may be accepted.

8.1.1. In ***Payne v. Cave*** (1789), the Court ruled that revocation is possible and effective at any time before acceptance, and that up to this moment *ex hypothesi* no legal obligation exists. This rule remains paramount in English Law. Quoting Michael Furmston: "Nor, as the law stands, is it relevant that the offeror has declared himself ready to keep the offer open for a given period. Such an intimation is but part and parcel of the original offer, which must stand or fall as a whole."

8.1.2. In ***Routledge v. Grant*** (1828), a man offered to purchase a house and gave the owner six weeks to accept the offer. During this period, the man revoked his offer, but the owner subsequently accepted it. The Court of Common Pleas ruled that the offeror was entitled to revoke his offer, and as such it had been validly withdrawn and that the offeree's purported acceptance was ineffective, considering that one party cannot be bound without the other.

8.1.3. **English Law allows the revocation of offers in order to benefit the offeror**, granting him more freedoms, a permission consistent with the "business sense" ideology predominant in English legal circles. However, this permission clearly hurts the offeree who, relying on the offer, may have taken action as a result before formally accepting the offer.

8.1.4. In ***Mountford v. Scott*** (1975), the offeror offered to sell his house to an offeree for a fixed amount. The offeree paid for an option to purchase the house at that price, exercisable within six months. Before that time period lapsed, and before the option was exercised, the offeror revoked his offer. The Court of Appeals ruled that the offer could not be revoked within the six-month period because the offeror had promised to leave the offer open for six months and the offeree had paid him as consideration to keep his offer open for that time period. Therefore, there was another contract obliging the offeror to keep his offer for six months, making it an exception to the general rule.

8.2. **For a valid revocation the offeror must communicate his decision** to revoke to the offeree before he accepts the offer.

8.2.1. **An offer can be withdrawn using the same channel as the one used when the offer was communicated**, but for revocation by post to be effective, It must be received by the offeree before they post their letter of acceptance.

8.2.1.1. In ***Byrne and Co. v. Van Tienhoven*** (1880), the offeror posted a letter containing the offer. The offeree, based abroad, received the letter a few days later and sent a telegram communicating his acceptance. However, during those days, the offeror decided to revoke his offer and communicated this decision through post, and it only reached the offeree after he had accepted the offer. The High Court held that there was a contract since the withdrawal had not been communicated when the offer was accepted. This rule was applied since no one can rely on an unreceived postal offer. Therefore, postal revocation takes effect not when posted but when received by the offeree. The revocation of the offer was ineffective since a valid revocation must be communicated.

8.2.2. Revocation of an offer does not need to come exclusively from the offeror, as a **notification of an offer's withdrawal by a third party can also be effective.**

8.2.2.1. In ***Dickinson v. Dodds*** (1876), a man offered to sell his house to a potential buyer for an agreed sum, specifying that the offer would remain open for a limited amount of time. The day before the time limit lapsed, a third man informed the offeree that the offeror was revoking his offer and selling the house to someone else. Flabbergasted, the offeree sent a letter of acceptance to the offeror, who replied that he was too late. The Court of Appeal held that communication by a third party that the offer had been withdrawn was valid. Presiding Judge William James stated: "Of course it may well be that the one man is bound in some way or other to let the other man know that his mind with regard to the offer has been changed; but in this case, beyond all question, [the offeree] knew that [the offeror] was no longer minded to sell the property to him as plainly and clearly as if [the offeror] had told him in so many words, 'I withdraw the offer.'" Since there was no agreement between the two men, no contract could be formed. In addition and concurrence, presiding Judge George Mellish stated: "Once the person to whom the offer was made knows that the property has been sold to someone else, it is too late for him to accept the offer, and on that ground I am clearly of the opinion that there was no binding contract for the sale of this property".

9. The Revocation of an Offer - French Law

9.1. In French law, **the offeror can revoke his offer before it is accepted after a reasonable period of time has passed**. However, revocability may lead to injustice. Since revocation can be considered as abusive, if it frustrates the legitimate expectations of the offeree (for example, if the offer contains a time period within which it is to be accepted, or if the offeree could reasonably believe that the offer would remain open for a reasonable time), French Law is far stricter in regards to it, and revocation must be carried out in accordance with good-faith (*bonne-foi*).

9.1.1. Article 1104º of the Civil Code provides that contracts must be negotiated, concluded and performed in **good faith**.

9.1.1.1. Before the 2016 reform, this precept only imposed a **good-faith requirement** on performance. After the reform, case law was codified extending the requirement to the pre-contractual negotiation and formation phases as well.

9.1.2. Article 1112º of the Civil Code specifies that parties are free to enter, proceed with, and withdraw from pre-contractual negotiations. These **negotiations** must meet the requirements of good faith. In the event that one of the negotiating parties was at fault, any compensation awarded by the court shall not extend so far as to entitle the injured party to expectation damages.

9.1.3. Article 1115º of the Civil Code provides that the offeror is **free to withdraw** the offer so long as it has not yet been received by the offeree.

9.1.4. Article 1117º of the Civil Code provides that the offer shall lapse upon expiry of the time limit prescribed by the offeror or, if no such time limit has been prescribed, after a **reasonable period of time**.

9.2. There are legal consequences of **abusive revocation** of an offer. The contract is deemed not to have been formed and the offeror can be liable in tort.

9.2.1. Article 1116º of the Civil Code provides that **the offer may not be revoked before the time limit prescribed by the offeror** or, if no such time limit has been prescribed, before a reasonable period of time has passed. Where an offer is revoked in breach of this restriction, no contract shall be concluded. The offeror may be held liable in tort under the provisions laid down by law, but shall have no obligation to provide damage for anticipated profits. This is the main difference between the English rules and the French rules.

9.2.1.1. In ***Chastan v. Isler*** (1958), a man tried to sell his chalet to a potential buyer, providing an expected price. Interested, the potential buyer fixed a date to visit the chalet before purchasing it, and the seller agreed to the arranged date. However, the day before the expected visit, the offeror sold the chalet to another man. After the visit, the potential buyer was adamant in accepting the offer and purchasing the chalet.

The *Cour de Cassation* ruled that the fact that the offeror had agreed for the offeree to visit the chalet on a certain date meant that it was implied that his offer would not be revoked before then, and that whilst an offer may in principle be revoked at any time prior to its acceptance, that is not the position where the person making it has expressly or impliedly undertaken not to revoke it before a certain date. Therefore, the court ruled the offeror was acting in bad-faith.

9.2.2. Article 1240º of the Civil Code provides that any act of man which causes **damage** to another obliges the person by whose fault it occurred to compensate it.

9.2.3. Article 1241º of the Civil Code provides that everyone is liable for the damage he causes not only by his intentional act, but also by his negligent conduct or by his **imprudence**.

9.3. **Acceptance can also be withdrawn** by the offeree as long as it hasn't reached the offeror.

9.3.1. Article 1118º of the Civil Code states that acceptance indicates the offeree's willingness to be bound by the terms of the offer, and that it may be freely withdrawn at any stage before it reaches the offeror, provided that this **withdrawal** reaches the offeror before the acceptance.

10. The Revocation of an Offer - European Union Law

10.1. Although not as restrictive as French Law, **EU Law also restricts the right to revoke** granted to the offeror in similar terms, through the PECL.

10.1.1. Article 2:202 of the PECL states that **an offer may be revoked if the revocation reaches the offeree before it has dispatched its acceptance**, and that an offer made to the public can be revoked by the same means as were used to make the offer.

10.1.2. The same article does not permit revocation in the cases where the offer indicates that it is **irrevocable**, where the offer states a **fixed time** for its acceptance, or if it's **reasonable for the offeree to rely on the offer** as being irrevocable and the offeree has acted in reliance on the offer. If any of these possibilities are verified, then the revocation is ineffective.

11. The Acceptance of a Contract - English Law

11.1. In English Law, an offer can come to an end in many ways, yet **there is only one way an offer can become a contract, and that is through acceptance**.

11.1.1. Specifically, the termination of an offer can happen due to a multitude of reasons, namely: **rejection from the offeree, revocation from the offeror, counter-offer from the offeree** (thus reversing the playing field), **lapse of time** (either due to a predicted time limit or to a reasonable time limit) and **death of the offeror or the offeree.**

11.2. **An acceptance is an unequivocal expression of consent to the proposal contained in the offer**. Quoting Guenter Treitel, it is: "a final and unqualified expression of assent to the terms of an offer." It must be unconditional and all-encompassing, immediately binding both parties into a contract.

11.2.1. **English Law follows the Mirror Image Rule**, where the offer must be met with an acceptance if it is to survive and become a contract, and if it is met with a counter-offer, it shall be destroyed.

11.2.1.1. In ***Hyde v. Wrench*** (1840), a man tried to sell a farm for a fixed price to a potential buyer. The buyer counter-offered a lower price, and the seller refused to meet his terms. A few days later, the potential buyer accepted the original terms, but the seller refused to sell his farm nonetheless. Soon enough, surprised that the seller wasn't standing by his initial offer, the potential buyer sued him for breach of contract. a counter-offer destroys the original offer. The Rolls Court ruled that the offer was no longer in existence when the offeree purported to "accept" the original offer, after having made a counter-offer which was refused by offerer. The counter-offer therefore quashed the initial offer. Quoting Lord Langdale, who presided over the case: "I think that it was not afterwards competent for him to revive the proposal of the [offeror] by tendering an acceptance of it, and that, therefore, there exists no obligation of any sort between the parties".

11.2.2. **It's important to distinguish between an acceptance and a counter-offer**, since the former will result in a binding contract, while the latter will result in the termination of the original offer, and it will require acceptance if it wishes to become a binding contract.

11.2.2.1. In many negotiations these days, it's common for the parts to partake in a so-called "**battle of forms**", where a series of offers and counter-offers are exchanged until final terms are reached and a contract can be performed.

11.2.2.1.1. Different countries handle the battle of forms differently. In the Netherlands, a **First Shot Rule** prevails, wherein the first terms offered by the offeror survive, unless they were explicitly rejected in the acceptance. In France, a **Knock-Out Rule** is applied, where the terms for which the forms do not match will cancel out each other, and therefore be purged from the contract and replaced by an alternative.

11.2.2.1.2. In England, a **Last Shot Rule** prevails, where each new reference to general conditions constitutes a counter-offer, and if this offer is accepted by performance of the obligation, the offeree is presumed to have accepted the general conditions referred to in the latest offer.

11.2.2.1.2.1. In ***British Road Services v. Arthur Crutchley Ltd.*** (1967), a shipment was sent for storage under specific "conditions of carriage" set by the sellers. The buyers, upon receiving the shipment, stamped it with a note stating that the shipment was received under the buyers' conditions. This stamp was seen as a counter-offer, and as it was apparently accepted, the Court of Appeal ruled that it constituted the final terms of the contract. Quoting Edwin Peel: "The decision in *Crutchley* gave some support to the so-called last shot doctrine, to the view that, where conflicting communications are exchanged, each is a counter-offer so that if a contract results at all it must be on the terms of the final document in the series leading to the conclusion of the contract".

11.2.2.1.2.2. In ***Butler Machine Tool Company Ltd. v. Ex-Cell-O Corp.*** (1979), the sellers offered to supply equipment on their own terms, including a clause on price variation, for a fixed price. The buyers agreed to the purchase, but under their own terms and conditions, which didn't include a clause on price variation. The equipment was delivered and the sellers added unexpected delivery costs to the billing. The Court of Appeals ruled that the buyer's order did not constitute an acceptance of the initial offer from the seller but a counter-offer which had been accepted by the sellers. Therefore, the contract should be completed with price variation. Quoting Lord Denning: " Where there is a battle of the forms, there is a contract as soon as the last of the forms is sent and received without taking objection to it. In some cases, the battle is won by the person who fires the last shot. He is the person who puts forward the latest terms and conditions, and if they are not objected to by the other party, they may be taken to have agreed with them."

11.2.3. **Acceptance is generally communicated through the same means as the offer**. However, if the offer specifies a different method of communicating acceptance, then it will have to be complied with.

11.2.3.1. When the method of acceptance is merely proposed in the offer, and an equally expeditious method would suffice, the precise method does not have to be followed, so long as the communication by the alternative method results in the acceptance being delivered at the same time.

11.2.4. **Communication of acceptance concludes the contract**, and it can be instantaneous or non-instantaneous.

11.2.4.1. **Communication of acceptance is instantaneous when the acceptance takes effect when and where the acceptance reaches the offeror** (for example, communication during a face-to-face conversation). The offeree will generally know when his acceptance was not communicated to the other party, and can try again.

11.2.4.1.1. In ***Entores Ltd. v. Miles Far East Corp.*** (1955), a company based in London sent an offer to a company based in Amsterdam for the sale of electrical equipment. The offer was made and accepted by telex, a form of instant communication. Since telex was a recent form of communication, the case attempted to respond to the legal issue of when the acceptance took place (when the acceptance was received or when it was sent). The Court of Appeal ruled that the postal rule didn't apply to instantaneous communications, and since telex is a form of instant communication, acceptance took place when the message by telex was received. Quoting Lord Denning, who compared telex communications to face-to-face and telephone conversations: "Suppose, for instance, that I shout an offer to a man across a river or a courtyard but I do not hear his reply because it is drowned by an aircraft flying overhead. There is no contract at that moment. If he wishes to make a contract, he must wait till the aircraft is gone and then shout back his acceptance so that I can hear what he says. Not until I have his answer am I bound". This means that without an answer of acceptance received by the offeror, there cannot be a contract, in the case of instantaneous communications.

11.2.4.2. **Communication of acceptance is non-instantaneous when it is sent indirectly** (for example, via post). In this case, the postal rule is applied, which means acceptance takes effect when a letter communicating it is posted, making it an exception to the *Entores* doctrine, where acceptance takes effect when communicated to the offeror.

11.2.4.2.1. The postal rule exists to enforce the "meeting of the minds" necessary to form a contract, which occurs at the exact moment where acceptance is sent via post by the person accepting it. The rationale for this rule is quite practical, since it's far easier to prove that a letter was posted than to prove a letter was received.

11.2.4.2.2. This clearly favours the offeree by putting the risk of late or lost acceptance on the offeror and by limiting the possibility of revocation by the offeror.

11.2.4.2.2.1. In ***Adams v. Lindsell*** (1818), the offerors sent a letter proposing to sell a product. The letter was misdirected, and it only reached the intended offerees some time after they were supposed to receive it. The offerees posted their acceptance, yet the offerors sold the product a day after, having received the letter just a couple of days later. The High Court ruled that the offer had been accepted as soon as the latter had been posted. This because no contract could ever be completed by post, for if the offerors were not bound by their offer when accepted by the offerees until the answer was received, then the offerees ought not to be bound until after they had received the notification that the offerors had received their answer and assented to it. And so it might go on *ad infinitum*.

11.2.4.3. When done by post, an offer made is not effective until received by the offeree, and acceptance is effective as soon as it is posted. For revocation to be effective it must be received by the offeree before they post their letter of acceptance

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11.2.5. In some very specific cases, silence can be tantamount to acceptance. However, **the general rule is that silence isn't sufficient**, and the offeree must communicate his acceptance to the offeror for a contract to be concluded.

11.2.5.1. In ***Felthouse v. Bindley*** (1863), a man informed his uncle that he was auctioning his horse. The uncle wrote to his nephew that if he spoke no more of the horse, the animal would become his and a fee would be paid. However, the auctioneer still sold the horse, even though the man had informed him the horse was no longer for sale, since it now belonged to his uncle. The Court of Common Pleas ruled that silence is not sufficient acceptance and that the offeree must communicate his acceptance to the offeror for a contract to be concluded. Quoting presiding Judge James Willes: "It is clear that the nephew in his own mind intended his uncle to have the horse at the price which [the uncle] had named, but he had not communicated his intention to his uncle, or done anything to bind himself."

11.2.5.2. This rule exists to protect the offeree, as it can lead to some particularly abusive and absurd situations.

11.2.5.3. **Communication isn't**, however, **necessary in unilateral contracts**, where the offeror impliedly waives the need to communicate acceptance and only the performance of an act is required.

11.2.5.3.1. In ***Carlill v. Carbolic Smoke Ball Co.*** (1893), a case we have already studied, it was ruled that unilateral contracts, such as the one discussed in the case, did not require communication, only performance. Quoting presiding Judge Charles Bowen, regarding advertisements of rewards for lost dogs: "it is not necessary for those who wish to try and find the dog and claim the reward to write a letter to the advertiser declaring their intention to accept. All they have to do is to perform the required act (finding the dog)".

11.3. **In English Law, there is no general duty of good faith in the negotiation phase**, nor a special rule of pre-contractual liability when no contract results. The lack of these protections promotes pragmatism, predictability and certainty.

11.3.1. **There is no duty to disclose information** during pre-contractual negotiations as well, since there is no general duty of disclosure in English law. Generally, no liability arises if a party does not disclose information to the other during pre-contractual negotiations, this being based on the idea that the relationship between the parties during pre-contractual negotiations is at arm's length.

11.3.1.1. In ***Smith v. Hughes*** (1871), a farmer sells a batch of oats to a horse trainer. The offeree believed that the oats were appropriate for his horses, especially after sampling them, but upon receiving them he realized the oats were not the type he was promised. He refuses to pay for the oats, and the farmer sues him for breach of contract. The King's Bench ruled that the contract was binding., and that the offeror was under no duty to inform oferee of his mistake about the kind of oat. Quoting presiding Judge Alexander Cockburn: "the oats were what they were sold as. The buyer persuaded himself they were old oats, but the seller neither said or did anything to contribute to his deception. He has himself to blame. The question is not what a man or scrupulous morality or nice honour would do under such circumstances"

12. The Acceptance of a Contract - French Law

12.1. In French Law, an acceptance requires three elements: it indicates **the offeree's willingness to be bound by the terms of the offer, it may be freely retracted at any stage**, so long as it has not been received by the offeror, **and it must be unconditional**. If it does not correspond to the offer, it constitutes a counter-offer. In addition, it can be communicated in various forms.

12.1.1. Article 1118º of the Civil Code states that **acceptance is the manifestation of the will of the offeree to be bound on the terms of the offer.** As long as the acceptance has not reached the offeror, it may be withdrawn freely provided that the withdrawal reaches the offeror before the acceptance.

12.1.2. Article 1121⁰ of the Civil Code provides that **a contract is concluded as soon as the acceptance reaches the offeror**. It is deemed to be concluded at the place where the acceptance has arrived.

12.1.3. Regarding the battle of forms, we have already stated that France follows the **knock-out rule**, wherein the terms for which the forms do not match will cancel out each other, and therefore be purged from the contract and replaced by an alternative.

12.1.3.1. Article 1119⁰ of the Civil Code provides that **general conditions put forward by one party have no effect on the other party unless they have been brought to the latter's attention and that party has accepted them**. In case of inconsistency between general conditions relied on by each of the parties, incompatible clauses have no effect.

12.1.3.2. Article 441-6 of the Commercial Code lays out specific regulations for sales contracts entered into by professional parties, attributing preference to the general conditions of the seller.

12.1.3.3. Where both parties to a contract have attempted to impose differing sets of conditions, those **conditions which conflict are without effect**, and the contract will only be upheld if the parties have agreed on the core obligations.

12.1.4. Article 1120⁰ of the Civil Code states that silence does not count as acceptance except where so provided by legislation, usage, business dealings or other particular circumstances.

12.1.4.1. As a general rule, silence can't constitute acceptance in France. However, when silence is accompanied by a whole range of surrounding circumstances, it may be allowed. In that case, we have circumstantial silence (***silence circonstancié***).

12.1.4.1.1. In the ***Amusement Park Case*** (1998), the *Cour de Cassation* decided that exercising an option to purchase an amusement park for a fixed price, even though there was no communicated acceptance, constituted implied acceptance, in these circumstances.

12.1.5. In France, **there is a duty to disclose information during pre-contractual negotiations**, in accordance with good faith.

12.1.5.1. Article 1112⁰-A of the Civil Code provides that the party who knows information which is of decisive importance for the consent of the other, must inform him of it where the later legitimately does not know the information or relies on the contracting party.

12.1.5.1.1. In addition to the good faith requirement in the pre-contractual negotiations, this article imposes a general duty to provide information (***devoir d'information***). A party has a duty at the pre-contractual stage to disclose any information that is relevant and material to the other party's consent to enter into the transactions, although that duty does not extend to the value of the promised performance.

12.1.5.1.2. The failure to provide the necessary information carries with it legal consequences, since the party at fault can be liable in damages and the contract can be annulled if the information was withheld with an intention to deceive.

12.1.5.1.3. The *devoir d'information* is seen as an essential principle for ensuring balance in contractual relations. It illustrates a certain moral vision of contract taken by French Law, different from the English vision, which can be seen as more pragmatic. Quoting Hugh Beale: "English law can appear harsh and unfair [to French lawyers], but many English lawyers support this individualistic approach. **What in France constitutes abusive behaviour is in England considered as necessary behaviour for business**".

13. The Acceptance of a Contract - European Union Law

13.1. Under EU Law, acceptance is regulated similarly to French Law, as the reception theory is here applied as well.

13.1.1. Article 2:204 of the PECL states that **any form of statement or conduct by the offeree is an acceptance if it indicates assent to the offer** and that silence or inactivity does not in itself amount to acceptance.

13.1.1.1. **Inertia selling**, a form of acceptance through silence, is strictly prohibited to ensure that no contract is formed when there is no positive response from the offeree.

13.1.1.1.1. Article 27º of the EU Directive on Consumer Rights provides that the absence of a response from the consumer following such an unsolicited supply or provision shall not constitute consent.

13.1.2. Article 2:205 of the PECL states that **if an acceptance has been dispatched by the offeree the contract is concluded when the acceptance reaches the offeror.** In case of acceptance by conduct, the contract is concluded when notice of the conduct reaches the offeror. If by virtue of the offer, of practices which the parties have established between themselves, the offeree may accept the offer by performing an act without notice to the offeror, and the contract is concluded when performance of the act begins.

13.1.3. Article 2:208 of the PECL states that **a reply by the offeree which states or implies additional or different terms which would materially alter the terms of the offer is a rejection and a new offer**. A reply which gives a definite assent to an offer operates as an acceptance even if it states or implies additional or different terms, provided these do not materially alter the terms of the offer. The additional or different terms then become part of the contract.

13.1.3.1. The exception to the general rule on modified acceptance, provided by this article, guarantees that acceptance which is different to the offer will be effective only if the differences are not material.

13.1.4. Article 2:209 of the PECL states that **if the parties have reached agreement except that the offer and acceptance refer to conflicting general conditions of contract, a contract is nonetheless formed.** The general conditions form part of the contract to the extent that they are common in substance. However, no contract is formed if one party has indicated in advance, explicitly, and not by way of general conditions, that it does not intend to be bound by a contract on the basis of paragraph or, without delay, informs the other party that it does not intend to be bound by such contract.

13.1.4.1. **European Union Law also applies the knock-out rule** to battles of form, just like French Law. The general conditions form part of the contract only to the extent that they are common in substance. The conflicting conditions must 'knock out' each other out. The idea is that as neither party wishes to accept the general conditions of the other party, neither set of conditions should prevail over the other.

13.1.5. Article 2:301 of the PECL states that a party is free to negotiate and is not liable for failure to reach an agreement. However, a party who has negotiated or broken off negotiations contrary to good faith and fair dealing is liable for the losses caused to the other party. It is contrary to good faith and fair dealing for a party to enter into or continue negotiations with no real intention of reaching an agreement.

14. The Intention to Create Legal Relations - English Law

14.1. **The intention to create legal relations is the second condition necessary for a contract to exist**, in English Law.

14.1.1. The formation of a valid contract requires that both parties agree on the same thing, a dynamic called the "**meeting of the minds**", and on the fact that what they agree upon shall be binding by law.

14.1.2. To determine if there is an intention to create legal relations, courts must bring back the "**reasonable man**". Quoting Lord Denning: "[The Court] looks at the situation in which [the parties] were placed and asks if reasonable people would regard the agreements as intended to be binding?"

14.1.2.1. **Social or family arrangements** are considered, by English Law, to be non-legal relations, and courts have regularly dismissed supposedly legal obligations created in the context of these relationships.

14.1.2.1.1. In ***Balfour v. Balfour*** (1919), a man living in Ceylon promised his wife, who lived in England, a monthly allowance. In the meantime, their relationship soured and the man stopped paying the allowance, which his wife tried to claim in court. The Court of Appeal ruled that, since the couple was on amicable terms when the allowance was promised, there was no intention to create binding legal obligations. Quoting Lord Atkin: "In agreements between certain persons such as husband and wife, there is no contract, as the parties did not intend to sue each other if the promisor was unable to fulfil the promise."

14.1.2.1.2. In ***Jones v. Padavatton*** (1968), a woman convinced her daughter, who lived in Washington, to move to London and study there. The woman provided her with a house and an allowance. However, after a few years, both women began quarrelling and the mother filed an action to take over the house. The daughter contested the action, claiming that the agreement between herself and her mother was legally binding. The Court of Appeals held that there was no binding contract, since there is a presumption that domestic agreements are based on mutual trust, ties and affection, and there was insufficient evidence to rebut this presumption, since the women were very close to each other until the quarrel began.

14.1.2.1.3. However, English Courts have recognized some exceptions to this rule, and **there are situations in which the presumption that parties to a social or family arrangement did not intend to create legal relations can be rebutted.**

14.1.2.1.3.1. In ***Merritt v. Merrit*** (1970), a man left his wife and moved in with another woman. He and his wife agreed on the payment of a monthly allowance and that the house they both owned would become the wife's sole property once she paid off the mortgage. After she paid the mortgage, the husband refused to transfer the house, in breach of their agreement. The Court ruled that, since the couple was not on amicable terms and separated, there was an intention to create legal relations. Quoting Lord Denning: "[in cases where] the parties were living together in amity their domestic arrangements are ordinarily not intended to

create legal relations. It is altogether different when the parties are not living in amity but are separated, or about to separate. They then bargain keenly. They do not rely on honourable understandings. They want everything cut and dried. It may safely be presumed that they intend to create legal relations."

14.1.2.2. **Contracts of a commercial nature** are presumed to be made with an intention to create legal relations. However, this presumption can be rebutted with the usage of specific and express words.

14.1.2.2.1. In these cases, the burden of proof lies on the party accepting the offer. The party must prove there was no intention, which is very difficult in practice.

14.1.2.3. **Gratuitous transactions** are usually unenforceable, unless the donative promise is put in a deed (a document signed and attested by a witness).

15. The Intention to Create Legal Relations - French Law

15.1. In French Law, the intention to create legal relations isn't expressly considered as a condition for the validity of a contract. However, it is seen as of the underlying principles of Contract Law.

15.1.1. In French Law, the contract is seen as a "meeting of intentions" (***rencontre de volontés)***.

15.1.2. Article 1103º of the Civil Code states that contracts which are lawfully formed have the binding force of legislation for those who have made them.

15.1.2.1. This article is the real life application of the theory of autonomy (***théorie de l'autonomie de la volonté)*** and the principle of the binding force of contracts. The article is based on the fact that the binding force of the contract's only source is the will of the parties, and that the law does not create this binding force, it protects only the expression of the will.

15.1.2.1.1. **Each party has to perform the obligation it took upon itself**. If it fails to do so, the court can intervene at the request of the other party. The contract becomes as binding as a statute. No one is forced to enter into a contract, but if one does, they will be bound by it the same way as if the rules had been made by the legislator.

15.1.2.1.2. The theory of autonomy has been a constant in European legal systems since the times of Canon Law, which imposed the respect of the word. It was later upheld by the philosophers of the Enlightenment.

15.1.2.1.2.1. Jean-Jacques Rousseau said that **the agreement is the basis of all authority among men** in his *manifesto* *The Social Contract*.

15.1.2.1.2.2. Immanuel Kant highlighted that **a person cannot be subject to laws beyond those he provides for himself** in his book *The Metaphysics of Morals*.

15.1.3. Article 1102⁰ of the Civil Code provides that **everyone is free to contract or not to contract**, to choose the person with whom to contract, and to determine the content and form of the contract, within the limits imposed by legislation.

15.1.3.1. This article enshrines the **freedom of contract**, or the idea that each individual should be allowed the autonomy to make the choices they desire, which entails that a person is allowed to conclude a contract on whatever terms they deem fit, whenever they desire and with whoever they want.

15.1.3.1.1. Although freedom of contract is a longstanding and uncontroversial principle of French Contract Law, it was not legally enshrined until the 2016 reform.

15.1.3.1.2. Freedom of contract knows a number of important limitations in French law whereby the French legislator and the courts intervene to protect the interests of the weaker party and to ensure the **principle of good faith** is respected.

15.1.4. In French Law, just like in English Law, **there are some agreements that don't constitute legally binding obligations**.

15.1.4.1. **Acts of kindness** or courtesy do not normally give rise to liability in contract.

15.1.4.2. **Contracts of a commercial nature** are assumed to be made with an intention to create legal relations , but this presumption can be rebutted by evidence to the contrary, being that the standard of proof is the "balance of probabilities". However, certain arrangements can be binding in honour only.

15.1.4.3. **Gratuitous transactions** aren't binding unless the promise is formalized in a notarial deed.

16. The Intention to Create Legal Relations - European Union Law

16.1. European rules regarding intention in contract are very lax.

16.1.1. Article 2:201 of the PECL states that **a contract is concluded if the parties intend to be legally bound, and they reach a sufficient agreement without any further requirements**. A contract doesn't need to be concluded or evidenced in writing nor is it subject to any other formal requirements and it may be proved by any means.

17. Consideration - English Law

17.1. Common Law countries, such as England, require **consideration** for contractual validation. Quoting Alexandros Chloros: "Under English law the absence of consideration is fatal to a contract, in continental law a mutual exchange of declarations may be binding even though performance may be contemplated by one side to a contract only."

17.1.1. There is a large discussion surrounding the definition of consideration, and the most popular is the one set by Frederick Pollock, who defined **consideration as "an act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable"**.

17.1.1.1. Consideration can be an **act** (here the consideration is active), but it can also be a **forbearance** (here the consideration is passive). It can also be a **promise** to act or to forbear. It may be something promised or something done.

17.1.1.2. **Consideration must be valuable**, either money or money-worth.

17.1.2. For a promise to become binding, consideration is necessary. **The promisee must give consideration in exchange for the promisor's promise**. Both parties must present consideration for a contract to become effective.

17.1.2.1. This requirement stems from the idea that the contract is defined as an exchange, as a **bargain**. Each party to the agreement must give, do, or promise something of value in return for a promise. Consideration acts as the proof a bargain was concluded.

17.1.2.2. Historically, consideration served as a way to restrict the expansion of binding contracts, since anyone could bring a claim for damages for any unperformed promise. This way, only bargains could be considered as legally enforceable agreements.

17.1.2.3. A promise, in English Law, can only be legally binding if it's written in a **deed** or if it **performed through consideration**.

17.1.2.3.1. This has led to the misunderstandment that consideration is a formal requirement, even though it doesn't provide external evidence for the contract. Although in some situations written form may be required, general English Law imposes no formal demands on contracts. This makes English Contract Law far less demanding than continental legal systems, such as the French, the German and the Italian, who impose strict formal requirements to some, but not all, contracts, sometimes through the notarial system.

17.1.3. **Past consideration** is consideration which is given before the promise is made. It is generally not considered as sufficient consideration to support a contract, as the consideration and the promise must be part of the same transaction, otherwise it is unenforceable.

17.1.3.1. In ***Eastwood v. Kenyon*** (1840), a man raised a woman after her father had died, expecting her to reimburse him for her education. The woman fulfilled these payments, and eventually got married. Her husband promised to continue these payments but failed to do so, and was sued by the man. The High Court ruled that this promise was a purely moral obligation, not supported by consideration, since it was not part of an exchange. This case established that past consideration means no consideration.

17.1.3.2. In ***Roscorla v. Thomas*** (1842), a man sold a horse for a fixed price. After the contract was finalized, the man told the buyer the horse was free from vice. Later on, the buyer became aware that the horse was unwell, and he sued the seller for breach of contract, since the horse wasn't free from vice. The High Court ruled that the promise that the horse was sound was not part of the bargain, so no consideration had been given in exchange for the promise. Quoting Lord Denman: "it may be taken as a general rule that the promise must be coextensive with the consideration, and that a consideration past and executed will support no other promise than such as would be implied by law". Past conduct, therefore, is not sufficient consideration to support a contract.

17.1.3.3. In ***Re McArdle*** (1951), a woman paid for construction work on a house where she and her husband lived, but was part of the estate of the husband's mother, an estate the husband shared with his siblings. The siblings promised to pay for the construction work after it had been done and paid for, but failed to do so. However, the Court of Appeal ruled that the woman had already performed the work before the relatives had made the promise. Her consideration was in the past, and therefore the agreement was unenforceable, since the relatives' promise wasn't even part of the original transaction.

17.1.3.4. However, this rule isn't without its **exceptions**. Certain circumstances of past consideration can give rise to an implication to pay some money or confer a benefit on the promisee.

17.1.3.4.1. In ***Re Casey's Patents*** (1892), two men hired a patent manager to handle their patents, and after doing so, the men promised the manager a small share of the patents' profits. However, they backed down on this promise, and the manager was left unpaid for his work. The Court of Appeal ruled that the manager had an expectation for payment, since he didn't work out of goodwill. Quoting presiding Judge Charles Bowen: "a

past service raises an implication that at the time it was entered it was to be paid for".

17.1.3.4.2. In ***Pao-On v. Lau-Yiu-Long*** (1980), a man owned the shares of a company that owned a building that another company wanted to buy. He sold the company and the building in exchange for shares of the company that bought the building. Fearing a drop in stock value, another arrangement was negotiated forcing the man to hold on to his recently-acquired shares. This made the man to propose a new arrangement, where he would be paid back in case the stock value did plummet. The company agreed to this offer, yet when its value dropped, it refused to pay the man back. The Supreme Court of Hong Kong ruled that an act done before a promise was made was good consideration for that promise if it was done at the promisor's request and the parties understood the act was to be paid for at a later date, and the payment or benefit would have been enforceable had it been promised in advance.

17.1.3.4.3. As we can see, past consideration constitutes consideration when the **promisor requested the promisee to carry out the act**, when **both parties understood that the promisor intended to pay the promisee for his services** (and was not requesting the services as a favour), and when **the promise would have been legally enforceable if consideration had been given in advance**.

17.1.4. Future consideration, called "**executory consideration**", constitutes proper consideration.

17.1.5. In accordance to English Law and the doctrine of freedom of contract, **consideration does not have to be adequate** and it does not have to be fair or equal in value to the promisor's promise, thus holding both parties responsible for their bargains.

17.1.5.1. In ***Thomas v. Thomas*** (1842), a man on his deathbed told his wife that she could have the house they lived in for the rest of her life. Therefore, the woman arranged with her late husband's executors to pay a one-pound yearly rent for the house for the rest of her life. Later on, the executors tried to dispossess her. The High Court ruled that the woman was entitled to the house since she had provided sufficient, albeit inadequate, consideration. Quoting Lord Patteson: "Motive is not the same thing as consideration. Consideration means something which is of some value in the eye of the law."

17.1.5.2. Although consideration must be sufficiently valuable, it does not have to be money.

17.1.5.2.1. In ***Bainbridge v. Firmstone*** (1838), a man lent his son a sum of money on the condition that he stopped

complaining about the distribution of property in his will. It was ruled that the promise to not complain wasn't sufficient consideration, since it didn't carry any monetary value.

17.1.5.2.2. In ***Chappell and Co. Ltd. v. Nestlé Ltd.*** (1960), a company offered to sell records to customers who presented special chocolate wrappers. Another company sued for breach of copyright law and, in the process, the House of Lords ruled that the chocolate wrappers were sufficient consideration, even though they weren't intrinsically valuable and would be thrown away by the company right after receiving them, since, in this context, they were stipulated as valuable between the parties.

17.1.5.2.3. This rule can differ among the various Common Law countries. In the United States, a **forbearance on the exercise of a legal right**, which constitutes a non-monetary promise, can be seen as consideration.

17.1.5.2.3.1. In ***Hamer v. Sidway*** (1891), a man promised his nephew a large sum of money if he refrained from alcohol, tobacco, gambling and swearing until he turned 21 years of age. The nephew complied with his respective promise but, in the meantime, his uncle died and his executors refused to pay the promised sum. The Court of Appeals of the State of New York ruled that the promise was enforceable because the nephew had provided consideration by restricting his freedom of action.

17.1.6. Fulfilling an existing legal duty does not constitute consideration. However, exceeding such duties does.

17.1.6.1. In ***Stilk v. Myrick*** (1809), a ship captain promised his crew extra pay from the salaries of two sailors who had deserted. The crew's work contract foresaw such emergency situations, and provided that the crew had to serve in those situations as well. Once the ship docked at port, the captain refused to pay the promised sum. The High Court held that they weren't entitled to the sum since they provided no consideration, being that the obligation to serve in emergency situations was a pre-existing condition imposed by their work contract.

17.1.6.2. In ***Harley v. Ponsonby*** (1857), a ship captain promised his crew extra pay after a large part of it deserted, shifting duties and forcing the sailors to improvise in order to maintain a functioning ship. Once the ship was docked, the captain refused to uphold his promise. The High Court held that, since so many crewmen had deserted and since the nature of the sailors' duties had changed because of those desertions, the

sailors exceeded their original contractual obligations, thus providing new consideration.

17.1.7. The doctrine of consideration is one of the most controversial aspects of English Contract Law, and its definition isn't set in stone.

17.1.7.1. In ***Currie v. Misa*** (1874), a man was in outstanding debt to a bank, and sold some bills of exchange to another bank. The first bank then tried to execute those bills, claiming that the debt constituted consideration and that it had a right to said bills. The House of Lords ruled that the first bank didn't have such right, since the debt was a pre-existing fact. More importantly, the House defined consideration as "some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other".

17.1.7.2. In ***Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge and Co. Ltd.*** (1915), a company sold tyres to a dealer who promised not to sell them below an arranged price. The dealer also promised to arrange an equal agreement with the retailers. The retailers, after agreeing to these conditions, sold the tyres for a different price, and the company sued for damages. The House of Lords ruled that the company couldn't sue for damages since they weren't a party to the contract between the dealer and the retailers, and that there was no consideration provided. In this case, the House defined consideration as: "an act or forbearance of one party, or the promise thereof, is the price for which the promise of the other is bought, and the promise thus given for value is enforceable", following Frederick Pollock's definition.

17.1.7.3. Some authors believe that the doctrine of consideration is a relic from the past and should be abolished since it frustrates the legitimate intentions of the parties to a contract and since it strays English Contract Law even further away from its European counterparts, making harmonisation harder and making English Law less efficient by, for example, heavily restricting gratuitous transactions, as Frederick Lawson points out. In fact, according to Alexandros Chloros, most case-law regarding consideration mostly tries to fix its pernicious effects, since it can lead to situations of injustice where, for example, a party can take advantage of the absence of consideration to evade undertakings which have been solemnly entered into.

18. Cause - French Law

18.1. **Cause** is a former condition imposed by French Law on contracts, and it can be vaguely defined as a **reason to enter a contract that isn't morally pernicious and that isn't contrary to the public order** (*ordre public).*

18.1.1. From 1804 to 2016, cause was central to French Contract Law. Quoting Jacques Maury, cause was a justification for the economic change brought about by the contract (*la notion justificative dans le droit*). It provided contracts with a lawful ***raison d'être***.

18.1.2. As we have seen, the 2016 reform brought groundbreaking change to the French legal system, and one of its main innovations was the removal of cause. Unstable judicial interpretation of the concept allowed it to be used to interfere with contracts and its restrictions stifled the commercial efficiency of French contracts, thus contributing to the loss of French Private Law's influence worldwide. **The concept became redundant**.

18.1.2.1. Article 1128º of the Civil Code imposes three conditions on French contracts: **free and informed consent** from the parties, the parties' **capacity to contract**, and a **certain and determined object**. Before the reform, Article 1108º imposed **cause** as a condition as well, and Article 1131º provided that contracts with no cause had no effect.

18.1.2.1.1. Curiously, nowhere in the Civil Code was cause properly defined, which led to what some consider to be one of the greatest legal discussions in French history. However, one may divide cause in an **objective dimension** (abstract goal of the contract) and a **subjective dimension** (specific reasons why the parties decided to enter contract)

18.1.2.1.2. The requirement of cause was two-fold: **a cause must exist and be lawfu**l.

18.1.2.1.3. In order to avoid such a rule destroying legal certainty, the concept must be **strictly interpreted**. To avoid abuse, the tendency in case law when looking at the cause is to look at the obvious reason behind the cause, the immediate aim driving each contracting party.

18.1.2.1.4. In **bilateral contracts**, the cause of the obligation of each of the parties lies in the obligation of the other.

18.1.2.1.5. According to Jean Domat: the *summa divisio* [of cause] is **onerous contracts** and **gratuitous contracts**. With onerous contracts, the cause of the obligation of one of the parties is always the benefit received or expected by the other, with gratuitous contracts the agreement of the person who commits himself is based on some reasonable, fair reason".

18.1.2.2. This change follows a worldwide tendency to drop such requirements. The Netherlands also removed cause as an imposition in a 1992 reform to their Civil Code.

18.1.3. Since they were both requirements to the formation of contracts in their respective countries, cause was regularly compared to consideration, and the effects of both were often seen as similar.

18.1.3.1. First and foremost, it's important to draw the line and state that **cause and consideration operate in two different planes**, since cause is essentially a justification and consideration isn't.

18.1.3.2. Another big difference is that **cause doesn't necessarily correspond to a bargain, unlike consideration**, that always refers to a bargain. For example, a gratuitous contract can have a good cause whilst it can't have good consideration. Another example would be past promises, which can have good cause but not good consideration.

18.1.3.3. **Cause relates to motive, while consideration has nothing to do with it**.

18.1.3.4. Another difference between the two is that **consideration does not have to be adequate** or correspondent with any good-faith requirement, whilst **cause must always be compatible with the *ordre public***.

18.1.4. Cause appeared in French Law as a way to restrict the excess of legally enforceable contracts. In Roman Law, only certain types of contracts were enforceable. As the roman-influenced legal systems evolved, such as the french, the validity of mutual declarations was based upon the principle of ***pacta sunt servanda***. This led to an excess of legally enforceable contracts since all agreements made by consent could be enforced. Cause appeared as the best criterion to distinguish between binding and non-binding agreements.

18.1.5. Nowadays, although cause no longer exists, the gaps its removal created are mostly filled with other rules and formal requirements, more specific yet more effective. Nonetheless, consideration abolitionists might point to the abolition of cause to prove that contracts can be valid with mere ***consensus ad idem***.

18.1.5.1. Article 1162º of the Civil Code provides that a contract cannot derogate in its terms or aims from public policy, thus maintaining the spirit of subjective cause.

18.1.5.2. Article 1169º of the Civil Code provides that the benefit of an onerous contract cannot be illusory or derisory at the time it is made, thus maintaining the spirit of objective cause.

19. The Content of a Contract - English Law

19.1. Contracting parties are generally considered to contract at **arm's length** and, as we know, English Law does not recognize a general **principle of good-faith**, mostly due to five specific reasons.

19.1.1. **Good-faith requires the parties to take into account the legitimate interests of one another**, in contradiction with the individualistic and liberal approach of English contract law which is based on adversarial self-interested dealings.

19.1.2. **The concept of good-faith is too vague**, and thus threatens legal certainty.

19.1.3. **Good-faith may require an inquiry into the subjective state of mind of the parties** to understand why a party acted in a certain way, which goes against the objective approach of English law.

19.1.4. **Good-faith restricts the autonomy of the contracting party**, which is inconsistent with the principle of freedom of contract.

19.1.5. **Good-faith has a lesser role to play in commercial contracts**, which are the most litigated contracts in english courts.

19.2. Despite the lack of a general principle of good faith, English Contract Law isn't a dog-eat-dog system, and it uses a number of doctrines which have a similar function, namely the doctrine of **promissory estoppel** and doctrines relating to the terms of contracts (**implied terms**) and how they are to be interpreted.

19.2.1. The doctrine of **promissory estoppel** has been developed to promote and ensure justice and fairness. As we know, a promise made without consideration is generally unenforceable. However, **the court may be prepared to enforce a promise made without consideration on the basis that it would be unconscionable for the promisor to renege on his promise**. This is what constitutes the doctrine of promissory estoppel, an equitable doctrine established by precedent.

19.2.1.1. In ***Hughes v. Metropolitan Railway Co.*** (1877), a landlord instructed his tenant to repair his property in six months under threat of eviction. During those six months, the parties began negotiating the sale of the premises and the tenant informed the landlord that he would suspend repairs until negotiations ended. After a while, negotiations broke down and, once six months went by, the landlord nevertheless evicted his tenant. The House of Lords ruled that the landlord had led the tenant to believe that, while the negotiations for the sale were in progress, the tenant was not obliged to repair the premises, under the doctrine of promissory estoppel.

19.2.1.2. In ***Central London Property Trust Ltd. v. High Trees House Ltd.*** (1947), a company leased a block of flats to another company to rent. World War II broke out and occupancy rates fell, so both parties agreed to reduce rent by half, without determining for how long this arrangement would last. Once the war ended, the flats were fully occupied and the leasers brought an action to recover the rent at the original rate. The House of Lords ruled that the promisor had made a promise to reduce the rent and the promisee had relied on the promise and acted on it, so the promisee should not be permitted to go back on his promise. Quoting Lord Denning: "A promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted on by the person to whom it was made and which was in fact so acted on."

19.2.2. One can say the doctrine of promissory estoppel applies when **five criteria** are met.

19.2.2.1. The promisor makes a **clear and unambiguous promise** to the promisee which was intended to create legal relations.
19.2.2.2. The promisee must have **acted in reliance of that promise**.
19.2.2.3. The promisor must have **known that the promisee was going to act on the promise**.
19.2.2.4. It would be **inequitable** for the promisor to go back on his promise.
19.2.2.5. The promisor and the promisee are in an **existing contractual or other legal relationship**.

19.2.3. Promissory estoppel is based on a promise not to enforce some pre-existing rights. In these cases, we say the promisor will be estopped from relying on their legal rights.

19.2.3.1. In English Law, **promissory estoppel can only be used as a defenc**e and does not give rise to a cause of action. Quoting Lord Denning: "**The doctrine can only be used as a shield, not a sword**". In contrast, in American Law, promissory estoppel can be used as a basis of a cause of action.

19.2.3.1.1. In ***Combe v. Combe*** (1951), a woman divorced her husband and, in correspondence with her, the husband promised his wife a yearly allowance, to which she gave no consideration. After the divorce, the man didn't deliver on his promise, and the woman sued him relying on the principle of promissory estoppel. The House of Lords held that the wife could not enforce the husband's promise as she had not given consideration, since the doctrine of promissory estoppel could only be used as a shield but not as a sword, meaning that one cannot bring an action against anyone using the principle of promissory estoppel. Quoting Lord Denning: "the principle of promissory estoppel does not create new causes of action and consideration is always essential for the formation of a contract."

19.2.4. A contract consists of the terms agreed upon by the parties. English law distinguishes between express and implied terms. **Express terms** are agreed between the parties and are specifically mentioned at the time of entering into the contract. **Implied terms** are terms which have not been expressly agreed by the parties, but are implied into contracts in certain situations.

19.2.4.1. In ***Hutton v. Warren*** (1836), a tenant farmer of land claimed that it was custom for the landlord to pay a reasonable allowance for seed and labour after the farming tenancy had expired. The landlord contested this claim, stating that there was no such provision in the lease. The Court of Exchequer ruled that the tenant was entitled to such payment since the custom was imported in the lease as an implied term. Quoting presiding Judge James Parke: "We are of the opinion that this

custom was, by implication, imported into the lease. It has long been settled that, in commercial transactions, extrinsic evidence of custom and usage is admissible to annex incidents to written contracts, in matters with respect to which they are silent."

19.2.4.2. English Law has developed two tests to prove the existence of implied terms, these being the **officious bystander test** and the **business efficacy test**.

19.2.4.2.1. In ***Shirlaw v. Southern Foundries Ltd.*** (1939), a man was hired as managing director of a company, a position he would hold for a fixed term. The company got new ownership who altered the pre-existing articles of association, empowering two directors and a secretary to remove a director. The man was sacked before his term ended, and he filed an action against the company for breach of contract. The Court of Appeal ruled that the fixed term established by the man's work contract implied he wouldn't get fired during that time period. Quoting presiding Judge Frank MacKinnon: "*Prima facie* that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying, so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in the agreement, they would testily suppress him with a common 'Oh, of course!'". This decision and, specifically, this quotation created the officious bystander test, and it was later upheld by the House of Lords.

19.2.4.2.2. In ***Re The Moorcock*** (1886), the owners of a ship paid the wharfingers to dock and load and unload cargo. As the riverbed was uneven, the ship's hull was damaged at low tide. The ship's owners claimed that the wharfingers were responsible for the safety of the ship while docked, even though there was no express term that the riverbed was suitable for mooring the ship. The Court of Appeal ruled that a term that the river bed was suitable for mooring the ship was implied and awarded damages for breach of contract. Quoting presiding Judge Charles Bowen: "In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties". This decision and, specifically, this quotation created the business efficacy test.

19.2.4.2.3. In some cases, **English Law will imply terms in certain common types of contractual relationships**.

19.2.4.2.3.1. In ***Liverpool City Council v. Irwin*** (1976), a couple living in a rented council flat refused to pay rent since the common parts of the building were constantly being vandalised. The City Council tried to evict them, but the tenants argued that the landlord had a duty to keep the common parts of the building in a decent state. The City Council claimed there was no such obligation in the tenancy agreement, in fact, there were no landlord obligations present in the agreement, only tenant obligations. The House of Lords ruled that the landlord had an obligation to take reasonable care to keep the common parts of the block in reasonable repair and usability, being of the view that to leave the landlord devoid of obligations would have been inconsistent with the landlord/tenant relationship. Quoting Lord Wilberforce: "Such obligation should be read into the contract as the nature of the contract itself implicitly requires a test of necessity".

19.2.5. In case of doubt about the meaning of contractual terms, English Law seeks to find the **common intention of the parties**, and if a common intention cannot be found, English Law looks for the r**easonable meaning to be given to the terms**, based on the perspective of the reasonable person in the position of the contracting parties, which leaves some room for introducing elements of fairness into the contract.

19.2.5.1. English Contract Law centers on an idea of **objective interpretation** that gives priority to the objective declaration over the party's subjective intention. To maintain neutrality in this interpretation, english courts sometimes must interpret contracts in the way a reasonable person would construe them.

19.2.5.1.1. In ***Napier-Ettrick v. R.F. Kershaw Ltd.*** (1999), several people, namely a Lord, insured by an insurance company lost large sums of money, and the question of how to deal with the distribution of recovery proceeds between an insurer and its insured came up. The House of Lords provided the rules of apportionment and created the figure of the "reasonable commercial person". Quoting Lord Hoffman: "Loyalty to the text of a commercial contract read in its contextual setting is the paramount principle of interpretation. But in the process of interpreting the meaning of the language of a commercial document the court ought generally to favour a commercially sensible construction.. Words

ought therefore to be interpreted in the way in which a reasonable commercial person would construe them."

19.3. As a result of the European Directive on Unfair Terms in Consumer Contracts, **the United Kingdom has adopted the notion of good faith in consumer contracts**.

19.3.1. The Consumer Rights Act of 2015 prescribes that contractual terms, which are "contrary to the requirement of good faith" cause a significant imbalance in the contract to the detriment of the consumer, are not binding on the consumer.

20. The Content of a Contract - French Law

20.1. French Law is inspired by social values and the principle of good-faith (***bonne-foi***) is central in its Contract Law, playing a role in the entire life of the contract, from the very first negotiations until the very last part of performance.

20.1.1. Article 1104º of the Civil Code provides that **contracts must be negotiated, formed and performed in good faith**, and that this provision is a matter of public policy.

20.1.1.1. As a result from this article, **french courts may control the content of a contract to make sure it is compatible with the good faith requirement**. Quoting Loic Cadiet: "From the legal demand of good faith, the jurisprudence has inferred a duty of loyalty in execution of contracts".

20.1.2. Article 1162º of the Civil Code provides that **a contract cannot derogate from public policy** either by its stipulations or by its purpose, whether or not this was known by all the parties.

20.1.3. Article 1171º of the Civil Code provides that **any term of a standard form contract which creates a significant imbalance in the rights and obligations of the parties to the contract is deemed not written**. The assessment of significant imbalance must not concern either the main subject-matter of the contract nor the adequacy of the price in relation to the act of performance.

20.2. One can say that the obligation of good faith in the performance of the contracts has many **facets**: a **duty to cooperate** placed upon the parties to facilitate the execution of the contract, a **duty of transparency** to promote contractual honesty, **fidelity to the spirit of the agreement**, a **respect for the interests of the other party**, and a **duty to renegotiate contracts** that have become profoundly imbalanced in the course of their execution due to a change in circumstances. They are justified through four specific reasons:

20.2.1. They lead to outcomes that are more **fair and just**.

20.2.2. They promote **trust and cooperation**.

20.2.3. Good-faith can provide **security** against opportunists and unfair dealing.

20.2.4. Good-faith equips courts with an **instrument to respond to the different circumstances of the case.**

20.3. French Law is far less centered in objective interpretation, and always interprets contracts in accordance to the **common intentions of the parties** and to how a **reasonable person** would interpret it.

20.3.1. Article 1188º of the Civil Code provides that a contract is to be interpreted according to the common intention of the parties rather than stopping at the literal meaning of its terms. Where this intention cannot be discerned, a contract is to be interpreted in the sense which a reasonable person placed in the same situation would give to it.

21. The Content of a Contract - European Union Law

21.1. European Union Law also imposes a **principle of good-faith** on contracts.

21.1.1. Article 1:102 of the PECL states that parties are free to enter into a contract and to determine its content, subject to the requirements of good faith and fair dealing, and the mandatory rules established by these principles.

21.1.2. Article 1:201 of the PECL states that each party must act in accordance with good faith and fair dealing and that the parties may not exclude or limit this duty.

21.2. Regarding interpretation, European Law also interprets contracts in accordance to the **common intentions of the parties** and to how a **reasonable person** would interpret it, and adds that **if the other party could not have been unaware of the first party's intention, the contract is to be interpreted in the way intended by the first party**.

21.2.1. Article 5:101 of the PECL states that a contract is to be interpreted according to the common intention of the parties even if this differs from the literal meaning of the words. But if it is established that one party intended the contract to have a particular meaning, and at the time of the conclusion of the contract the other party could not have been unaware of the first party's intention, the contract is to be interpreted in the way intended by the first party. If an intention cannot be established according, the contract is to be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

21.2.2. There are, however, some **exceptions** to these rules and, in some specific situations, where there is doubt about the meaning of a term, the interpretation most favourable to the weakest party is generally to prevail.

21.2.2.1. Article 5º of Directive 93/13, on unfair terms in consumer contracts, provides that where there is doubt about the meaning of a term, the interpretation most favourable to the consumer will generally prevail.

22. The Effects of a Contract - English Law

22.1. In English Law, a contract's effects are usually limited to its parties, thanks to the **doctrine of privity**, that states that only the parties can acquire rights and be bound by duties under the contract. This means that third parties, cannot generally acquire rights or be bound by duties from a contract between two other parties, and that only the parties to a contract can enforce it.

22.1.1. **Third parties are beneficiaries of a contract when both parties agree that a third party obtains a right that is enforceable against one of them**. Thus, the third party obtains an independent right against the promisor and can claim performance as well as damages in case of breach.

22.1.2. Generally, **English law does not require parties to take into account the interest of third parties**, and the idea of third party beneficiary of a contract has not been extended to third parties suffering a loss as a result of a contract entered into by other people.

22.1.2.1. This legal gap has led to some ethical implications, namely when multinational companies profit from the lower standards in its supply chain but aren't responsible for the working conditions of the employees of its suppliers and subcontractors, even when claim to respect human rights, labor standards and environmental protections. The discussion is even more intense in American Law.

22.1.2.1.1. In ***Doe v. Wal-Mart Stores*** (2009), employees of a company's foreign suppliers in third-world countries filed a class-action lawsuit against the parent corporation over working conditions. They claimed that they could benefit from the standards set by the corporation in its contract with the suppliers, which required them to adhere to local laws and local industry standards regarding minimum working conditions like pay, hours, forced labour, child labour and discrimination. The United States Court of Appeals for the 9th Circuit infamously ruled that the foreign suppliers' employees could not be regarded as third party beneficiaries of the standards for suppliers and had no legitimacy to file these proceedings against the parent company.

23. The Effects of a Contract - French Law

23.1. In French Law, a contract's effects are, when it comes to obligations, limited to both parties, but third parties may acquire benefits from them, in accordance to the principle of relativity (***principe de l'effet relatif des contrats***).

23.1.1. Article 1199º of the Civil Code provides that **a contract only creates obligations between the parties**. Third parties may neither claim performance of the contract nor be constrained to perform it, and they must respect the legal situation created by it.

23.1.2. Article 1205º of the Civil Code provides that a **person may make a stipulation for another person**. This means that one of the parties to a contract (the stipulator) may require a promise from the other party (the promisor) to accomplish an act of performance for the benefit of a third party (the beneficiary). The third party may be a future person but must be exactly identified or must be able to be determined at the time of the performance of the promise.

23.1.2.1. In some cases, French Law has also **extended the notion of third party beneficiaries** of a contract in certain cases of harm suffered by indirect third parties due to a contract.

23.1.2.1.1. In ***The Contaminated Blood Case*** (1954), a hospital patient received a blood transfusion that carried syphilis from an independent service. However, since the blood transfusion service had only contracted with the hospital, the patient couldn't sue for damages. However, the *Cour de Cassation* ruled that the patient was considered third-party beneficiary of the contract between the hospital and the supplier of the blood, and therefore could file an action against the blood transfusion service.

23.1.2.1.2. In ***Venel v. Areva*** (2011), an employee of a factory in Niger sued the factory's parent company after he contracted cancer from exposure to aluminum dust. Although the *Tribunal d'Instance* ruled that the man was indeed a third party-beneficiary, since the factory was a subsidiary of the parent company, the *Cour d'Appel* in Paris overturned this ruling by claiming that the company merely exercised a degree of control over the factory, making the connection between them and the employee rather tenuous.

24. The Effects of a Contract - European Union

24.1. **European Union Law allows third parties to be bound by duties and to acquire rights** from contracts.

24.1.1. Article 6:110 of the PECL states that a third party may require performance of a contractual obligation when its right to do so has been expressly agreed upon between the promisor and the promisee, or when such agreement is to be inferred from the purpose of the contract or the circumstances of the case. The third party need not be identified at the time the agreement is concluded.

25. The Remedies of Contracts

25.1. In Common Law countries, such as England, the claimant is usually only entitled to **monetary compensation**, for example, through damage claims. However, there can be some **exceptions**.

25.1.1. When monetary compensation may be inadequate, specific performance, such as forcing the defaulting party to carry out the agreement, may be granted.

25.1.2. A negative requirement, such as a requirement not to work for other employers, in a contract can also be enforced by injunction.

25.1.3. In certain cases, a right to terminate the contract is granted.

25.2. In France, there are **several remedies** provided by the Civil Code.

25.2.1. Article 1217º of the Civil Code provides that a party towards whom an undertaking has not been performed or has been performed imperfectly, may **refuse to perform or suspend performance** of his own obligations, **seek enforced performance** in kind of the undertaking, **request a reduction in price**, **provoke the termination of the contract**, or **claim reparation of the consequences of non-performance**. Sanctions which are not incompatible may be combined and damages may always be added to any of the others.

25.3. European Union Law envisages four specific remedies in chapter 9 of the PECL, these being a **right to performance, termination of the contract, price reduction, damages** and **interest**.

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