



# CONTRACTS

2022



# CONTRACTS

## TYPES OF CONTRACTS



**SERVICE CONTRACTS**  
→ Shipper contracts  
→ Tenders  
→ NDA



**DOCUMENTATION AGREEMENTS**  
→ Bill of Lading



**TERMINAL SERVICES AGREEMENTS**  
→ Berth Windows and Performance



**IT AGREEMENTS**  
→ Licence agreements  
→ Outsourcing contracts



**LOGISTICS AGREEMENTS**  
→ Trucking  
→ Rail  
→ Barge  
→ Depot



**SLOTS AGREEMENTS**  
→ VSA  
→ SCA  
→ SWAP



# TWO MAJOR LEGAL TRADITIONS – COMMON LAW

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## 1. COMMON LAW

- Tradition emerged in England during the Middle Ages and was applied within **Britain** and its colonies.
- It is generally *uncodified*. No comprehensive compilation of legal rules & statutes. Based on *precedent*.
- The judges have an enormous role.
- Two opposing parties present their case before a judge
- A jury of ordinary people without legal training decides on the facts of the case.
- The judge then determines the appropriate sentence based on the jury's verdict.



# TWO MAJOR LEGAL TRADITIONS – CIVIL LAW

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## 2. CIVIL LAW

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Tradition developed in continental Europe and later adopted by countries such as Russia or Japan.

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It is *codified*. Countries with civil law systems have comprehensive, continuously updated legal codes that specify all matters capable of being brought before a court, the applicable procedure, and the appropriate punishment for each offense.

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The judge's role is to establish the facts of the case and to apply the provisions of the applicable code.

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# **FORMATION OF A CONTRACT**

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# CONTRACTS

## DEFINITION

In legal terminology, a contract is an agreement between 2 or more persons which creates an obligation to do or NOT to do a particular thing and is legally binding.

Every purchase is a contract, whether you buy a train ticket, a newspaper, a pair of socks or a house.

There are **4 key elements** to reach a legally binding document

1. Offer
2. Acceptance
3. Consideration
4. Meeting of minds



# **THE KEY ELEMENTS OF A CONTRACT**

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# 1. OFFER

## DEFINITION

- States the terms of the proposed contract.
- Voluntary but conditional

## DURATION

- Is an offer open forever?
  - The offer can have a closing date (ie: Freight quote valid for 14 days).
- Are you bound by the offer until the time quote expires?
  - No, an offer can be withdrawn at any time up until acceptance. Any withdrawal must be communicated.





# 1. OFFER

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If an offer is rejected or if the customer makes a counteroffer, the initial offer elapses.

*Example:*

- You offered NY to HKG for 800 USD, customer makes a counteroffer at 650 USD.
- If customer says no, the offer is void.
- If customer makes a counteroffer of 650 USD, the original offer is void.
- If the customer does this in effect he has made a new offer of 650 USD and you can say yes or no.



## 2. ACCEPTANCE

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### DEFINITION

Response to an offer which must exactly match the offer and not change its contents.

For example, «Yes, I accept»

It can have a deadline, if not acceptance has to be made within a reasonable time.

(what is unreasonable?)

### EFFECT

Acceptance takes effect when and where received



### 3. CONSIDERATION

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In **Civil law** countries, the price has to be serious and fair: To agree to sell your Ferrari car for 1USD would not be a legally binding contract. But it would be in **Common law** countries if all other elements are met.

In **Civil law**, there is an obligation on the parties to negotiate contracts in good faith. Such concept does not exist *per se* in the Common law: You are in business and of course you are doing the best to get the best advantage.



## 4) INTENTION TO CREATE LEGAL RELATIONSHIP

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A Binding contract cannot be made without the intention to contract.

### OBJECTIVE TEST

- Would a reasonable person regard the agreement as legally binding? For example, was it a serious offer intending to be bound if accepted over some drinks? Be careful, a lot of business is done while entertaining.



## **OTHER IMPORTANT ELEMENTS**

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# 1. CAPACITY

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The law limits the capacity of certain persons to bind themselves by contract:

- Minors
- Persons lacking mental capacity
- Corporation & Public Authorities: has legal personality distinct from the individuals of whom it is formed.



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# REASONS FOR LAWS

Who has the authority to enter into contract on behalf of MSC?

- In Geneva, the Trade Register lists the authorized signatories. POA (Power of Attorney) entitles some to act on behalf of MSC GVA
- In the agencies, the MD has an implied authority to do *anything falling within scope of office.*
- Implied authority: In contract law the implied ability authorizes to make a binding contract. It does not have to be stated.



## 2. LAWFUL PURPOSE

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- Condition of enforceability (not against the law)
- Freedom of contract is very wide provided you do not do something illegal or against public policy. These factors can make a contract in whole or in part unenforceable.



# **FORM OF A CONTRACT**

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# FORM OF CONTRACT

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## Does a contract have to be in writing?

- Oral contracts are legally enforceable. However, proving there was a contract and its T&C is very difficult.
- In French law (civil law) the law of evidence makes the rule easy: Any transaction above 1,500 EUR must be evidenced in writing.
- A written contract may be required by law (to fulfil registration requirements)



# FORM OF CONTRACT

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## Advantages of a written contract in common law countries:

Parole evidence rule: No other evidence can be admitted to add, vary or contradict the **written terms!** So, if you need it, make sure it is in the contract.

Contractual interpretation is that the contract must be read as a whole. Not just as a single clause. This is because some terms can affect the scope of or override other terms.



# FORM OF CONTRACT

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## What is the value of signing the contract?

- There can be several versions - offer and counteroffer
- Signing the contract makes clear which was the version both parties agreed to
- Reduce future disputes.
- Both parties should sign.
- Signing a contract has powerful consequences. The most important is that the signer is bound by its terms even if they have not read them.





# TRADITION OF LAW AND CONTRACTS

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**The same term can have a different meaning from one jurisdiction to another**

*Example : Liquidated damages*

- Common law does not allow penalties in contracts  
Exception: The anticipated loss at the time the contract was entered into was known and in the contract
- Civil law does allow for penalties to encourage performance of contractual obligations but cannot be excessive.



# CONCLUSION & REVIEW

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COMMON AND CIVIL LAW HAVE DIFFERENT PERSPECTIVES AND INTERPRETATIONS OF CONTRACTS.

A CONTRACT MIGHT BE ORAL OR WRITTEN, BUT RECOMMENDATION IS TO WRITE ALL TERMS TO AVOID PROBLEMS IN THE FUTURE

