



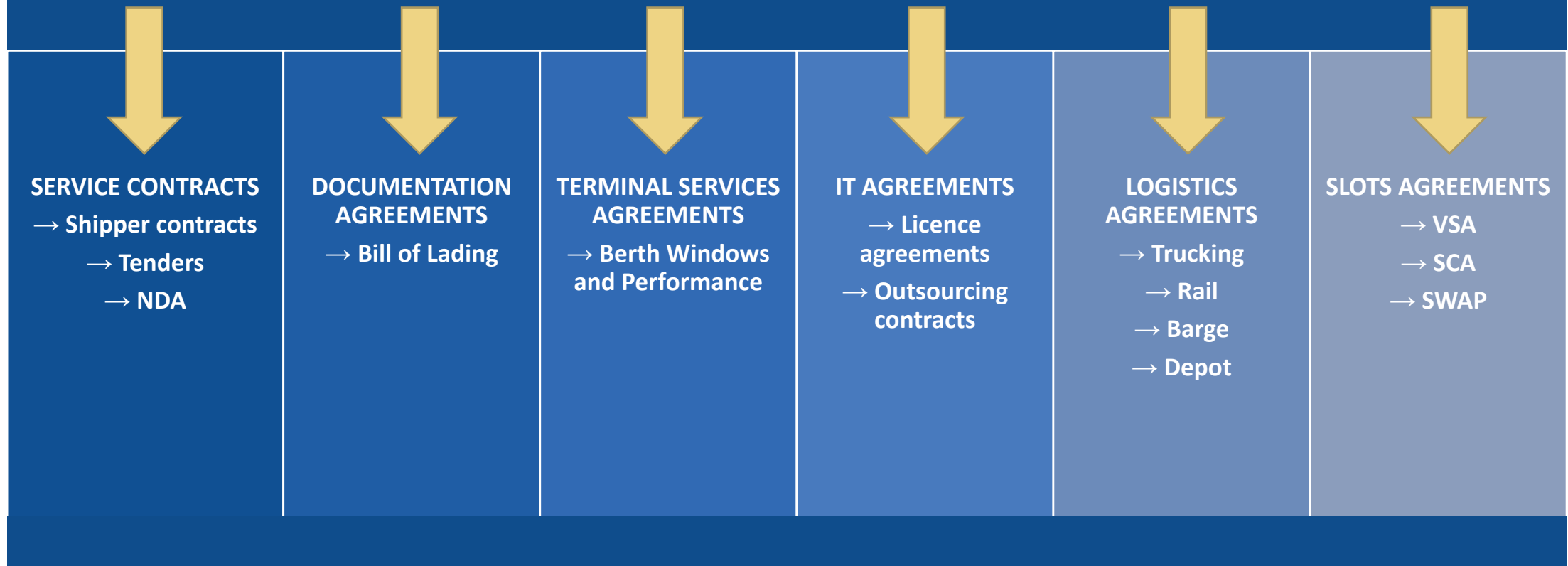
CONTRACTS

2022



CONTRACTS

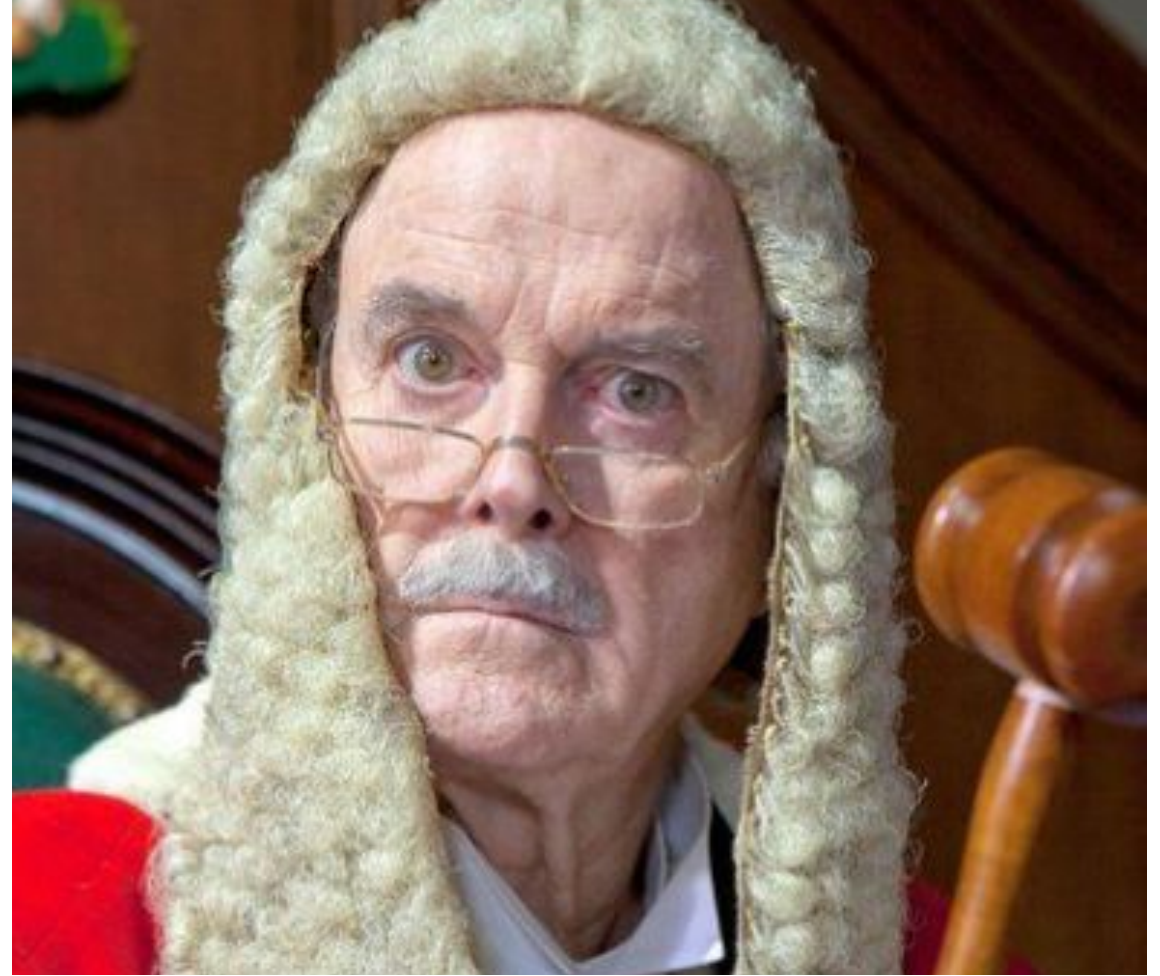
TYPES OF CONTRACTS



TWO MAJOR LEGAL TRADITIONS – COMMON LAW

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

2. CIVIL LAW

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

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.

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

FORMATION OF A CONTRACT

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

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 - No, an offer can be withdrawn at any time up until acceptance.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

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

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

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

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

1. CAPACITY

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

- 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

FORM OF CONTRACT

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

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

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

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

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

