



LEGAL ENGLISH COURSE

Torino, 10-17-24 Ottobre 2014

LESSON 1

Extracts and Exercises



CASES AND MATERIALS

CONTRACT FORMATION

Mirror Image Rule

Hyde v Wrench (U.K., 1840): the defendant offered to sell some land to the claimant for £1000 and the claimant replied by offering to purchase the land for £950. The defendant refused to sell for £950. So the claimant then wrote to the defendant agreeing to pay the £1000 but the defendant still refused to sell. It was held that there was no contract between the parties. The claimant's offer of £950 was a counter-offer which killed off the defendant's original offer so as to render it incapable of subsequent acceptance. It is this rule that acceptance must be unqualified which has given rise to difficulties in the battle of the forms cases.

Modified Acceptance

U.C.C. (Uniform Commercial Code, Section 2.207): Additional Terms in Acceptance or Confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.



(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this Act.

Vienna Convention on Contracts for the International Sale of Goods, Art. 19: “A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer. However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place of delivery, extent of one party’s liability to the other or the settlement of disputes are considered to alter the offer materially”.

LIABILITY AND EXCLUSION/LIMITATION CLAUSES

Rule against penalties

In common law countries, a liquidated damages clause is intended to estimate damages in the event of non-performance or breach of contract. A liquidated damages clause will be enforced where the court finds that the harm caused by the breach is difficult to estimate, but where the amount of liquidated damages is **reasonable compensation** and **not disproportionate to the actual or anticipated damage**. The intent of liquidated damages is simply to measure damages that are hard to prove once incurred. If the liquidated damages are disproportionate, they can, however, be declared a penalty. The clause is then void, and recovery will be limited to the actual damage that results from the breach. In common law countries the “**rule against penalties**” states that one party must not impose upon the defaulting party an obligation to pay which is manifestly intended to be **in excess** of the amount which would fully compensate the other party for the loss sustained.

It is significantly more difficult to find a consistent application of the concept of liquidated damages or other contractual “penalties” in civil code countries in the international marketplace. The UN Convention on Contracts for the International Sale of Goods (“CISG”), which has generally been an important tool in developing a more uniform international sales law, regulates neither



liquidated damages nor penalty clauses. In fact, the framers of the CISG agreed to leave these clauses out of the convention, in favor of regulation by domestic law, because of widely divergent approaches in different legal systems. The enforceability of liquidated damage and penalty clauses thereby depends on domestic law. One dilemma in the comparison between common and civil law is the confusion of terminology with regard to liquidated damages. This confusion arises because in some countries, whether under civil code or doctrine or case law, both concepts are recognized and the terms are used interchangeably.

Liquidated damages clause (sample)

“Each Party acknowledges and agrees that the Liquidated Damages payable under this Clause represent a **reasonable pre-estimate of the damages** which would be suffered by Supplier in the event of early termination of this Agreement and **do not constitute a penalty.**”



PURCHASE ORDER TERMS AND CONDITIONS

1. **ACCEPTANCE.** Any acceptance of this Purchase Order (“Order”) is limited to acceptance of the express terms contained herein. Any prior offer, proposal for additional or different terms or any attempt by Seller to vary the terms hereof in Seller’s acceptance is objected to and rejected. Commencement of work or shipment of any part of the Products covered by this Order constitutes acceptance of all its terms and conditions.

2. **RETENTION OF TITLE/DELIVERY.** Title to the Products shall pass to the Buyer only upon payment in full of the sale price of the Products. In the event of payment default by the Buyer and save as provided under article 3 hereunder, the Seller shall be entitled, without any formalities, including notice of default, to repossess all of the Products with respect to which title has not yet passed to the Buyer, wherever said Products may be situated; in addition, the Seller reserves the right to seek any other judicial remedies available to it in respect of the damages suffered and has the right to retain any part payment received for the Products by way of penalty.

Time is of the essence, and this Order may be terminated if delivery is not made or services are not performed by the date specified on the Order or if no date is specified, then within a reasonable time following acceptance of this Order or commencement of performance thereunder. No change in the scheduled delivery date or performance will be permitted without Buyer’s prior written consent. Acceptance of Products after the scheduled delivery date will not waive Buyer’s rights with respect to such late delivery nor shall it constitute a waiver of future compliance with the terms hereof.



3. **PAYMENT TERMS/TAXES.** Seller shall render to Buyer an invoice following shipment, showing quantities delivered at agreed upon prices, plus applicable transportation charges, taxes, and other charges. Invoices shall be due within thirty (30) days from date of the shipment, unless otherwise agreed by the parties. Interest at the rate determined by Seller's then-current policy (not to exceed the maximum rate permitted by applicable law) from the due date shall be charged on all overdue accounts. Unless expressly consented to in writing by an officer of Seller, the Buyer shall have no right to withhold any contract amount due to Seller because of any claim by Buyer against Seller.

Any tax, excise, fee, or other charge, or any increase therein, now or hereafter imposed directly or indirectly by law, upon Product sold or delivered to Buyer, or on the production, manufacture, storage, sale, transportation, or delivery thereof, which Seller is required to pay or collect, including import/export taxes, shall be paid by Buyer in addition to the Product price. In lieu thereof, Buyer shall furnish Seller with tax exemption certificate(s) acceptable to the appropriate taxing authorities, or other basis for exemption. Seller may include any such tax or taxes in the current invoice, or add them retroactively to the Product price.

4. **REPRESENTATIONS.** Seller represents and warrants that all Products, when delivered to Buyer, will be free and clear of all liens, claims, charges or encumbrances of every kind.

5. **DEFAULT.** Buyer may, subject to the provisions of paragraph 10, by written notice to Seller, cancel the whole or any part of this Order or exercise any other remedy provided by law or in equity including any remedy under the Uniform Commercial Code (U.C.C.), in any of the following circumstances:

a. If Seller fails to make delivery of the Products within the time specified therefore;



b. If in Buyer's good faith judgment, the Seller fails to perform any of the other provisions of this Order or fails to make progress as to endanger performance of this Order in accordance with its terms and does not cure such failure within a period of ten days, or such longer period as Buyer may authorize in writing, after receipt of notice from Buyer specifying such failure;

c. If Seller is in breach of any of the terms or conditions of this Order; or

d. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or if there shall be instituted by or against Seller any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt or insolvency law.

[...] *omissis*

EXERCISES – LESSON 1

Exercise n. 1. Please fill in the gaps by choosing the proper term/expression. You might have to use some terms more than once.

acceptance	legal	consideration	valid	capacity
offer	negotiation(s)	rejection	revocation	counter-
offer		value	formality	

A contract requires an _____ to be made by one of the parties, and to be accepted by the other party. The _____ must be unconditional, that is to say that it must not in any way alter the terms of the _____. If it does so, it will not constitute an acceptance, but will be construed as a _____ of the offer, and as the making of a _____.

To revoke or withdraw an offer, notice of _____ must be communicated to the person who has received the offer. The parties must have _____ to contract, and the objects of the contract must be _____.

The parties must conduct their _____ in such a way as to be shown to have the intention to create _____ relations.

A further requirement is that each party must provide _____ for the promise by the other. This means that a party must furnish some _____ to the other party. Additionally, some contracts may require _____.

Contracts for sale or other disposition of land must be evidenced in writing to be _____.

Exercise n. 2. Mix and match.

1. Obligation	(A) the fact of having or holding property in one's power
2. Liability	(B) the quality or state of being legally obligated as a consequence of a breach or a tort
3. Possession	(C) a legal duty to do or not do something
4. Title	(D) the right to possess, use and enjoy a property
5. Interest	(E) the right or permission to act legally on another's behalf
6. Binding	(F) a legal claim to or right in property
7. Ownership	(G) established, required or permitted by law
8. Power	(H) legal evidence of a person's ownership rights in property
9. Legal	(I) having legal force

Exercise n. 3. Please match each Italian term in bold characters to its equivalent English term.

Giuridico →	(a) Legal	(b) Judicial
Vincolante →	(a) Binding	(b) Enforceable
Inadempimento →	(a) Omission	(b) Default
Efficace →	(a) Valid	(b) Effective
Nulla →	(a) Voidable	(b) Void
Risoluzione →	(a) Cancellation	(b) Termination
Atto →	(a) Instrument	(b) Statement
Norma giuridica →	(a) Rule	(b) Law
Responsabilità →	(a) Liability	(b) Burden
Controversia →	(a) Default	(b) Dispute

Exercise n. 4. Please fill in the gaps in the following paragraph, by choosing the terms in the box below.

Buyer is interested in acquiring land to build a house. At the time of _____ the land is registered for agricultural use, but Seller has submitted an application for _____ as a residential area. If the application succeeds, the land can be used for housing development. If not, it must be used only for farming.

The _____ do not know the outcome of this application, but neither wants to delay contracting for fear that the other will lose _____ in the transaction. Buyer does not wish to totally _____ himself at this stage, because he does not wish to be bound to purchase just farmland. To solve this problem, the parties can make a _____ now for the sale of the land



and include a _____ in the contract providing that it will not be effective until the new registration is granted for the land.

contract	parties	registration	condition
commit	interest		negotiations

Exercise n. 5. Seller and Buyer have reached an agreement on the essential terms of a supply contract, but the Seller intends to apply its general terms and conditions of sale to the supply. As the Seller’s lawyer, please write an email to the Buyer with the following contents:

Step 1. Reference is made to the agreement between your client and the Buyer on the essential terms of the supply;

Step 2. You are sending your client’s general terms and condition of sale to the Buyer as an attachment to your email; these conditions will be incorporated by reference into the supply contract.