

chedia 1998@yahoo.fr

13h

## THE STUDY OF LAW

### Lead-in

to enforce = to apply = to execute  
to put into practice

It is difficult to imagine going very long before making some kind of agreement enforceable by law. Whenever we buy goods and services, we enter into a contractual relationship.

Products = merchandise

↓ 1/3s pluraliel ⇒ Pour 1 bien = a merchandise

- 1 What kinds of contract have you entered into recently? Make a list of some of the goods and services you have bought or used over the past 48 hours. Compare your list with a partner. Is it always clear whether the above are goods or services? How would you classify the electricity you consume every day?

a suit: قضية

### Reading 1: Contract law

This text deals with some of the main features of contract law.

- 2 Read the first paragraph. What is necessary for a valid contract to be formed?
- 3 Now read the whole text. Which two remedies following a breach of contract are mentioned? Are any other options available in your own jurisdiction?   
rupture du c<sup>t</sup>  
(The Geographical situat<sup>n</sup>)
- 4 Read the text again and decide whether these statements are true (T) or false (F).
  - 1 In all legal systems, parties must give something of value in order for a contract to be formed. **F (P4, L3)**
  - 2 An offer must be met with a counter offer before a contract is agreed. **F (P2, L3)**
  - 3 Oral contracts are not always valid. **F (P4, L15) T**
  - 4 If in breach, the court will always force the party to perform the contract. **F (P6, L26)**
  - 5 Assignment occurs when one party gives its contractual rights to another party. **T**

to occur = to happen = to take place

= the majority of + P. Noun =  
(in most + plur Noun)

Contract law deals with promises which create legal rights. In most legal systems, a contract is formed when one **party** makes an offer that is accepted by the other party. Some legal systems require more, for example that the parties give each other, or promise to give each other, something of value. In common-law systems, this promise is known as **consideration**. In those systems, a one-sided promise to do something (e.g. a promise to make a gift) does not lead to the **formation** of an enforceable contract, as it lacks consideration.

When the contract is negotiated, the offer and acceptance must match each other in order for the contract to be binding. This means that one party must accept exactly what the other party has offered. If the offer and acceptance do not match each other, then the law says that the second party has made a **counter-offer** (that is, a new offer to the first party which then may be accepted or rejected).

- For there to be a valid contract, the parties must agree on the **essential terms**.
- These include the price and the subject matter of the contract.



Contracts may be made in writing or by spoken words. If the parties make a contract by spoken words, it is called an **oral contract**. In some jurisdictions, certain special types of contracts must be in writing or they are not valid (e.g. the sale of land).

Contracts give both parties **rights** and **obligations**. Rights are something positive which a party wants to get from a contract (e.g. the right to payment of money). Obligations are something which a party has to do or give up to get those rights (e.g. the obligation to do work).

When a party does not do what it is required to do under a contract, that party is said to have breached the contract. The other party may file a lawsuit against the **breaching party** for **breach of contract**. The **non-breaching party** (sometimes called the **injured party**) may try to get a court to award damages for the breach. **Damages** refers to money which the court orders the breaching party to pay to the non-breaching party in compensation. Other remedies include **specific performance**, where a court orders the breaching party to perform the contract (that is, to do what it promised to do).

(he, she)  
to teach = teaches

A party may want to transfer its rights under a contract to another party. This is called an **assignment**. When a party assigns ('gives') its rights under the contract to another party, the assigning party is called the **assignor** and the party who gets the rights is called the **assignee**.

to perform = to enforce.

5 Complete these sentences using the words in the box.

Key terms

breach counter-offer damages formation obligations oral contract terms

1 Usually, contract formation = happens occurs when an offer is accepted.

2 A new offer made by one party to another party is called a counter-offer.

to plead  
pleading

3 The price and the subject matter of a contract are the essential terms of a contract.

Plaidoirie

4 A contract which is not in written form but has been expressed in spoken words is called an oral contract.

5 Under a contract, a party has obligations (that is, certain things it has to do).

she  
he  
it } must  
has to do  
it

6 When a party does not do what it has promised to do under a contract, it can be sued for breach of contract. (to sue = to start a legal action) - against someone!

7 A court can award damages to the non-breaching party. (to sue for = pour suivre)

6 Match the verbs in the box with the nouns they go with in the text.

accept award breach enforce file form make negotiate perform  
reject

break an agreement

1 an offer = accept = make = reject

2 a contract = negotiate = perform = form = breach

3 damages = award = accept

4 a lawsuit = file

7 Which other verb-noun collocations are possible with the words in Exercise 6?



8 With a partner, take turns to look at each of the verbs in the box in Exercise 6 and discuss whether the following subjects can carry out the action in question:

- 1 a party    2 the parties    3 the court    4 a lawyer

EXAMPLE: Well, a party accepts an offer, and a lawyer can accept an offer, too. But I don't think you can say that a court accepts an offer.

## \*Reading 2: Remedies for breach of contract

9 Read this excerpt from a law textbook. What does the word *remedy* in the text mean? <sup>cezione</sup> <sup>extract = extrait</sup>

[Write a paragraph about Contracts in Tunisia]

in favor of = en faveur de

### REMEDIES FOR BREACH OF CONTRACT

If a contract is broken, the injured party <sup>models</sup> <sup>pourrait que</sup> might be expected to demand any of the following:

- to have what they gave returned to them ('restitution') <sup>Give back</sup>
- compensation for their loss ('damages') <sup>≠ gain = benefact = profit</sup>
- the other party <sup>oblige to</sup> to be forced to perform the contract ('specific performance') <sup>Court decisions</sup>

In the common-law tradition, damages is the usual remedy that a court awards for a broken contract. Restitution and specific performance are available only in certain circumstances. <sup>(conditions)</sup> <sup>conseq. logique</sup>

<sup>if + S. present (passive voice)</sup>, => <sup>might be</sup> <sup>(Petite Probabilité)</sup> <sup>will + infinitif (with to)</sup> <sup>(Futur ou Présent)</sup>

10 According to the text, what is the most common remedy for breach of contract in the legal systems of English-speaking countries? What is the most common remedy in your jurisdiction? <sup>↳ General Idea</sup>

## Listening 1: Asking for clarification and giving explanations

11 <sup>2.1</sup> Listen to the first part of a short conversation between two law students, who are discussing the law textbook excerpt in Exercise 9. What is the first student confused about?

12 <sup>2.1</sup> Listen again and tick (✓) the expressions the student uses to ask for clarification. <sup>△△△</sup>

- 1 What does that mean?
- 2 Sorry, I don't follow you.
- 3 I don't understand that.
- 4 I don't know what that word means.
- 5 That doesn't make sense to me.
- 6 I don't get it.

13 How would you explain to the student what the term *damages* means and how it differs from the word *damage*? Discuss this with a partner.

14 <sup>2.2</sup> Listen to the second part of the dialogue and compare your answer with what the second student in the dialogue says.



15 2.2 Listen again and tick (✓) the expressions the second student uses for giving an explanation.

- 1 Well, it's quite straightforward.
- 2 Allow me to clarify.
- 3 Let me explain.
- 4 What this word means is ...
- 5 It's like this.
- 6 In other words, ...

*le que ce mot veut dire c'est que*

*water (ie = idest est)*

16 Which of the expressions in Exercise 15 is the most formal? When would you use this more formal way of giving an explanation?

## Speaking 1: Terminology

17 With a partner, take turns choosing and explaining one of these terms in your own words. Can you guess which word your partner is defining?

- damages
- assignor
- the non-breaching party
- specific performance
- assignee
- the injured party
- restitution
- the breaching party
- remedy

## Listening 2: Contract law lecture

18 2.3 Listen to the beginning of a lecture on contract law. What is the general subject of the lecture?

19 2.4 Listen to the whole lecture and answer these questions.

- 1 Which of these terms does the speaker mention?
- agreement
  - consideration
  - negotiation
  - offer
  - counter-offer
  - acceptance
  - remedy

2 What topic will the lecturer talk about next time?

20 2.4 Listen again and complete this excerpt from a student's lecture notes by writing one word in each space.

### Introductory lecture on Contract Formation

- Three requirements for formation:
  - 1) .....
  - 2) .....
  - 3) intention to create ..... relations
- Agreement: when 4) ..... become a settled deal
- When an offer is made and 5) ....., there is agreement.
- Questions about offers: e.g. who makes an offer in an auction? Is a 6) ..... list an offer? Is an advertisement an offer? ...
- Questions about acceptance: does acceptance have to be 7) ..... ? Accept by 8) ..... ?
- Consideration basically means the 9) ..... . If there is no consideration, the contract is not legally 10) .....
- Next week's lecture will cover rules of 11) .....

ability  
Can  
Could



Possibility  
might  
would  
could  
should  
may





# Speaking 2: Summarising the lecture

21 A fellow student missed the introductory lecture on contract formation and has asked you to explain the most important points to him. Taking turns with a partner, explain in your own words what the lecturer said about the following topics. If you don't understand something, ask for clarification. When your partner has finished explaining, say whether your partner has left something out or whether you understand it differently.

- agreement: what it is and when it occurs
- questions about offers
- questions about acceptance
- consideration: what it is

## LAW IN PRACTICE

### Lead-in

Lawyers are often consulted by clients who need advice in contract disputes. What kinds of things could lead to such disputes?

When meeting with a client to discuss a dispute, a lawyer will generally explain how the law relates to the contract in question. This may mean helping the client to understand technical terms and important legal concepts. It will often be necessary to examine a particular clause, or section of the contract, carefully.

### Reading 3: Contract clause

22 Read the clause from a contract and answer these questions.

- 1 Which word means *ship* or *boat*? *vessel (military or business context)*
- 2 What does the clause deal with? *All the necessary info for the delivery of goods by ship.*
- 3 What words are used to refer to each party to the contract? *a buyer / seller*
- 4 What do you think *probable readiness* means? *b the first date on which is most likely available to the seller for the transport of the goods mentioned in the contract.*
- 5 What does the word *shall* mean in the context of this clause? *(model: Polite way)*
  - a The buyer shall nominate the date of shipment. The buyer shall give the seller at least two weeks' notice of probable readiness of vessel(s) and of the approximate quantity to be loaded.
  - b Upon notification of probable readiness of vessel(s), the seller shall nominate a port for the loading of goods.
  - c Shipment is required no later than 22 May 2008.

*shipment = load + carry = transport*

23 Complete these lists of obligations using your own words. How are the obligations expressed in the actual contract clause?

Buyer must:

- 1 *fix the date of shipment (notify the seller of the approximate quantity of goods)*
- 2 *decide on the date that the goods will be transported by ship. (will be shipped)*
- 3 *notify the seller of this date at least 2 weeks in advance.*

Seller must:

- 4 *arrange that at which the goods will be loaded on a ship.*

24 Discuss with a partner what can go wrong in connection with a clause like the one in Exercise 22. What might the consequences be?

to compensate: to give in exchange of a loss.

⇒ boat < ship < vessel ⇒ means of maritime transport

The Crow = Equipage. To sink = sink



# Listening 3: Conditions and warranties

25 2.5 You are going to hear a conversation between a lawyer (Mr Dawe) and his client (Mr McKendrick, Director of Export Threads, the seller referred to in the contract extract in Exercise 22). Listen to them discussing the case and answer these questions.

- 1 What is the name of the buyer in this dispute?
- 2 Why does Export Threads want to terminate the contract?
- 3 Does a breach of contract automatically allow one party to terminate the agreement?
- 4 Does the lawyer think that Export Threads has a strong case?
- 5 What *legal* grounds might Export Threads have for terminating the contract?

26 Read the audio transcript of the dialogue on pages 125–126. Underline the phrases which mean *I don't understand* and those used for giving an explanation.

27 a In the dialogue, the lawyer says that his client *relied* on the seller to notify him of the date of shipment. The term **reliance** refers to depending on someone's promises. Read these definitions of reliance (1–3) and match each with its source (a–c).

to have confidence on s.o.  
to rely on s.o. / sth

1

**reliance**

- 1 The act of relying on someone or something; trust.
- 2 The condition of being reliant or dependent.
- 3 A person or thing which relies on another.

Reliance: trust  
- I place complete reliance on his judgment

2

**reliance** *n.* the act of relying; taking action as a result of another person's promises or assurances. Compensation may be available for losses incurred by a claimant resulting from such reliance (*reliance damages*).

incurred

المسؤول

3

**reliance** /rɪ'laɪəns/ noun [U]  
when you depend on or trust in something or someone:  
*The region's **reliance** on tourism is unwise.*  
*You place too much **reliance** on her ideas and expertise.*

Verb

break / demand  
Restitute  
Perform  
Clarify  
agree  
Negotiate

Noun

breach // demand  
Restitution = Give back  
Performance = execution  
clarification  
damages = £20 (for injured Party)  
agreement  
Negotiation  
Acceptance

- a The Cambridge Advanced Learner's Dictionary 3
- b an online legal dictionary 2
- c The Wiktionary (an online dictionary created by its users) 1

- b Which of the dictionaries did you find most useful? Why?
- c What role do you think reliance plays in this contract?

damage = hurt (not legal harm)



# Language Use: can / could / may / might X

Models (extra info about the verb used)

In his conversation with his client, Mr Dawe talks about a number of possibilities, for example the possibility that Drexler might sue him for breach of contract.

There are several ways to talk about possibilities in English:

○ can / could (but not may / might) are used to say something is generally possible:

I really don't see how they **can / could** sue us. (= I don't see how it is / would be possible for them to sue us.) (No arms or arguments)

I really don't see how they **may / might** sue us.

○ may / might / could (but not can) are used to talk about the chance that something will happen or is happening: (medium Possibility)

They **may / might / could** sue you. (= It is possible they will sue you.)

They **can** sue you.

○ may not / might not (but not could not) are used to talk about a negative possibility in the future:

Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **might not** take any action against us? (= It is possible they won't take action.)

○ In the above example, using could not would change the meaning from possibility to ability:

Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **couldn't** take any action against us? (= They would not be able to take action.) (ability)

informal use {  
can (ability)  
could (ability)  
may (Possibility)  
might (Probability)  
formal use {  
shall = must  
should  
will (formal request)  
would

modal + Base inf:

might < may.

Could = Possibility or Probability in the future.

## 28 Rewrite these sentences using a suitable form of can, could, may or might.

1 I don't see how it is possible for them to sue us.  
I don't see how they can / could sue us.

2 If we offer a generous out-of-court settlement, it is possible that they will not sue us. might

If we offer a generous out-of-court settlement, they might not sue us.

3 You shouldn't breach the contract. It is possible they will sue you. could  
They may / might sue you if you breach the contract.

4 If you can assure us that such a breach will not happen again, then it is possible that we won't take any further action.

If " " " we might not take any further action.

5 I think it is possible for us to work together again in the future.

I think we could work together again in the future.

6 If you raised your prices, it would not be possible for us to work together.

If you raised your prices, we can't / couldn't work together.

- They can / should / could / would / may sue you.

I really don't see why they can / might / could / may sue us.

- They can't / couldn't / may not / shouldn't take any action against us.

a price = a cost / a prize = an award.

Ing = tivity



# Text analysis: Email of advice

Standard

29 This email summarises the discussion between the lawyer, Mr Dawe, and his client. It contains four errors of fact. Find and correct the errors.

**Topic**

**Subject:** The termination of your contract with Drexler Inc.

Dear Sir/ Sirs (don't know name)  
 Dear Mr McKendrick  
 Dear Ms (Miss or Mrs)

Opening Phrase: Email format  
 Screen Page.

Thank you for coming to see me on 30 May when we discussed the termination of your contract with Drexler Inc. I am writing to summarise our discussion and to confirm your instructions.

You told me that Drexler Inc. agreed to purchase a large quantity of goods (exact amount unspecified) from your firm, Export Threads. Under clause 2a of the contract, Drexler were to give you two days notice of the date of shipment so that you could arrange a lorry for the transportation of the goods. You were unable to arrange this because Drexler failed to let you know by the agreed date. You now wish to terminate the contract.

The legal issue here is whether or not Drexler's breach is enough to allow Export Threads to terminate the contract without being liable for damages. If the contract term in question can be shown to be a condition, you will be able to terminate the contract without fear of damages being awarded against you. If the term is simply a warranty, you will be able to claim damages to cover any costs you have incurred as a result of this breach, but may not actually terminate the contract.

Recent case law suggests that if you do choose to terminate the contract, and if Drexler subsequently decide to sue you, the courts would rule in your favor. Your contract involves a chain of sales, and in such cases, the need for certainty is very important. You were unable to arrange the loading of the goods as a direct consequence of Drexler's breach of clause 2a, and this term would be interpreted as a condition.

I will write a letter to Drexler Inc. outlining the above and notifying them of your intention to terminate to renegotiate the contract. I will request confirmation from Drexler that they accept our interpretation both of the events and of the relevant law, and that your termination of the contract will not lead to any unnecessary legal action on their part. I will be in touch again shortly. Please do not hesitate to contact me if you have any questions.

With kind regards closing phrase

Charles Dawe (the name of sender)

a Port for the loading of goods  
 body of the mail  
 fläche arose:

0 The email in Exercise 29 follows a standard pattern for an email of advice from a lawyer to a client. Match each paragraph (1-5) with its correct label (a-e).

addressee of the e-mail (receiver)

- a Opening paragraph 1
- b The lawyer's proposed action 4
- c The lawyer's advice 5
- d Summary of the facts 2
- e The legal issue(s) 3



31 During this course, you will be asked to write several letters and emails of advice. Read through the email in Exercise 29 and highlight any phrases that would be useful in your own legal correspondence.

EXAMPLES: Thank you for coming to see me on 30 May when we discussed ...

## Writing: Email of advice XX . (for correction)

32 Use these notes of an interview with a client to write an email of advice. Use the email in Exercise 29 as a model.

SAMPLE  
ANSWER  
>>P.142

7 November

**Client – Berlingua Language School (Joanna Staines)**

**Other party – Simon Burnett, Burnett TV Supplies**

### *Facts*

Ms Staines (Director of Studies, Berlingua) bought a new satellite system (including built-in hard drive) at 50% of the normal price from Burnett TV Supplies for educational use. She mainly wanted to use it to record foreign-language TV programmes for use during lessons.

When she first set it up and tried to record, she realised that the timer function was broken. This means someone has to physically press 'record' and 'stop' whenever they want to record something.

Ms Staines has asked for a replacement, but was told that she couldn't expect it to work perfectly at such a cheap price. They have refused to replace it, but have offered to repair it at a cost of £130.

### *Legal issues*

Defect not pointed out at time of purchase; if reduction due to imperfections, seller MUST inform client (Sale of Goods Act).

### *Advice/Action*

Ms Staines is entitled to either a full refund or a replacement system (her choice). I outlined the options, Ms Staines is considering which to go for. I'm pretty sure that it will only take one letter from us before Burnett backs down – he'd have no chance in the small claims court!

► Now turn to **Case Study 1: Contract law** on page 118.



# Language Focus

- to give a summary = summarise
- to attest, to agree on =
- to buy =

- to inform officially =
- after that (as a result) =
- to put an end to =
- to inform you =
- Responsible for compensation =
- to ask for sth legally =



- the two =
- be in contact =

## 1 Word formation Complete this table.

Verb	Abstract noun	Personal noun	Adjective
assign	assignment	assigner / assignee	assigned / assigning
breach	breach		(non-)breaching
negotiate	negotiation	negotiator	negotiable / negotiating
offer	offer	offeror/offeree	
rely	reliance		reliable (ability)

## 2 Prepositions Complete the following sentences about contract law using the prepositions in the box.

against for for in into to to under

- 1 An individual or a business may enter into a contract.
- 2 Anyone who is not a party to the contract is considered a third party and cannot be obligated to do anything required under the contract.
- 3 If one of the parties breaches a contractual obligation, the non-breaching party may file a lawsuit against the breaching party.
- 4 Furthermore, a party will not be required to perform its contractual obligations if another party is in breach.
- 5 Damages are awarded to a party for any loss that the party has suffered as a result of a breach of contract.
- 6 However, a party will not always be able to recover all losses when suing for damages.

## 3 Language functions Unscramble the following phrases for asking for clarification.

- 1 that What mean? does What does that mean?
- 2 I you follow don't
- 3 that I understand don't
- 4 I means don't what that know word
- 5 make That sense to doesn't me

## 4 Verb-noun collocations Choose the correct verbs.

- 1 My client has requested me to make / file / award a lawsuit against you for breach of contract.
- 2 You accepted / awarded / admitted the offer my client made to you.
- 3 When you signed the contract, legal rights were called / claimed / created which are enforceable under the law.
- 4 Since you have not carried out your obligations under the contract, you have clearly assigned / rejected / breached the contract.
- 5 My client intends to claim / accept / enforce damages for all of the losses incurred as a result of the breach.