

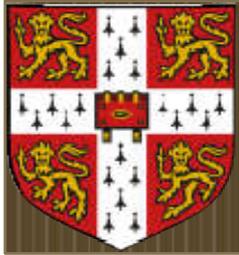
Lecture 1.

International Contracts: definition, meaning and theoretical characteristics



§1

Contract: general notions



Cambridge
Dictionary

Contract -

a legal document that states and explains a formal agreement between two different people or groups, or the agreement itself.

Characteristics

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graph TD; A[Characteristics] --> B[voluntary]; A --> C[deliberate]; A --> D[Creating mutual obligations]; B --> E[Legally binding]; C --> F[enforceable];
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voluntary

deliberate

Legally binding

enforceable

Creating mutual obligations

Parts of contracts

Legal person



Companies,
Foundations,
Partnerships,
Publicly owned
entities etc.

Natural person



Individuals,
Solo traders

Forms of the contract

Written

Verbal

Implied

Legal capacity to enter the contract

Parts must be:

of legal age

of sound mind

not under
influence of

drugs

alcohol

§ 2

Definition and meaning of
international contract

International contract -

- is the legal instrument (document);
- by which two or more private parties enter and govern a business relationship between them;
- which has certain links with more than one State;
- contact with one or more foreign legal systems.

What does contract's "internationality" mean?

- parties are based in a different countries;
- contract has to be executed abroad.

§ 3

The main types of
international contracts and its
general characteristic.

The main types of international contracts

- International distribution agreements
- Intellectual property licenses
- International sales contracts
- Supply agreements
- Letters of credit
- Franchise agreements
- Joint venture agreements
- Development agreements

International distribution agreements -

The purpose of this **contract** is to establish one or more sales points within a geographical area in a foreign country from which goods and services can be offered to specific clients.

Intellectual property licenses

Under this agreement (also known as an intellectual property license or an intellectual property license agreement), you retain ownership of your patent, copyright, or trademark, but you give another party permission to use some or all of your intellectual property rights for a specific amount of time for a fee or royalty. These intellectual property contracts typically specify termination dates and procedures.

Types of intellectual property licenses

- **Exclusive License.** You agree not to grant any other licenses of the invention and rights concerned, as well as not to use the technology yourself.
- **Sole License.** You agree not to grant any other licenses of the invention and rights concerned, but you can use such rights yourself.
- **Non-Exclusive License.** You agree to give the licensee certain rights, but you also reserve the right to grant licenses of the invention and rights concerned to third parties or to use them yourself.

International sales contract -

an agreement between a seller and a buyer for the sale of goods.

The contract should, at a minimum, identify the seller and buyer, the quantity and type of product, delivery time, price and conditions of payment.

A well-constructed international sales contract will reference the governing body of law, the forum where any disputes are to be resolved and the method of dispute resolution, such as arbitration as opposed to litigation.

Supply agreements -

in this type of agreement, typically, the seller agrees to meet the buyer's needs in a particular area, the buyer agrees to deal exclusively or mostly with the seller.

Letters of credit -

- A letter of credit, or "credit letter" is a letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount. In the event that the buyer is unable to make a payment on the purchase, the bank will be required to cover the full or remaining amount of the purchase. It may be offered as a facility.

Types

- Commercial Letter of Credit: This is a direct payment method in which the issuing bank makes the payments to the beneficiary.
- Revolving Letter of Credit: This kind of letter allows a customer to make any number of draws within a certain limit during a specific time period.
- Traveler's Letter of Credit: For those going abroad, this letter will guarantee that issuing banks will honor drafts made at certain foreign banks.
- Confirmed Letter of Credit: A confirmed letter of credit involves a bank other than the issuing bank guaranteeing the letter of credit.

Franchise agreements

- is a legally binding document that outlines a franchisor's terms and conditions for a franchisee. Every franchise is governed by these terms, which are generally a written agreement between both parties.

§ 4

Private international law
and international civil
procedural law

Private international law (conflict of laws) -

governs the choice of law to apply when there are conflicts in the domestic law of different countries related to private transactions.

This means that there is a dispute or transaction that involves one of the following:

- what jurisdiction applies - choice of court, forum selection, renvoi (transfer of proceedings);
- choice of applicable law;
- recognition or enforcement of a foreign judgment.

International civil procedural law

address the following questions:

- what court has jurisdiction in such a matter? and
- under what conditions may a court's decision be recognized and enforced in another country?

- Both private international law and international civil procedural law rely on **connecting factors** to identify the applicable law or the court or arbitral tribunal with jurisdiction.
- **Connecting factors** are elements that link a transaction or occurrence with a particular national law or jurisdiction.

The most significant connecting factors in international contracts are:

- a) the citizenship or nationality of the parties,
- b) the parties' domicile or habitual residence (in cases involving individuals),
- c) the parties' place of incorporation or establishment (in cases involving legal persons),
- d) the place where the contract was made,
- e) the place where the contract is to be executed,
- f) the place where the object of the contract is located,
- g) the currency of payment,
- h) the place of payment.

Proximity rule (Savigny's doctrine):

An international contract should preferably be governed by the legal system with which it has the **closest connection**.

The identification of the country with which a contract is most closely connected is left to the appreciation of the judge, who will have to consider all of its factual elements on the basis of an ad hoc analysis.

Principles of identification of the governed law

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graph TD; A[Principles of identification of the governed law] --> B["law of the forum (lex fori)"]; A --> C["lex causae"]; B --> D["the law of the country where the judge sits"]; C --> E["the law of the country which will substantially govern the contractual relationship"];
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law of
the *forum*
(*lex fori*)



the law of the country
where the judge sits

lex causae



the law of the country
which will substantially
govern the contractual
relationship

Thank you for attention