

IV The Law of Contract TEACHERS

I Formation of Contract

Pre-reading:

1. Brainstorm various collocations with the word **CONTRACT** and create a word map using the teacher as a guide and source of the appropriate expressions.

e.g.
to draw up a contract - sepsat smlouvu
to make/conclude/form a contract - uzavřít smlouvu
to enter into a contract - uzavřít smlouvu
to accept a contract - přijmout smlouvu
to cancel a contract - zrušit smlouvu
to affirm a contract - potvrdit smlouvu
to comply with a contract - dodržet smlouvu
to fulfill a contract - splnit smlouvu
to renew a contract - obnovit smlouvu
to terminate a contract – ukončit/vypovědět smlouvu
to refer to a contract - odvolávat se na smlouvu
according to a contract - podle smlouvy
the contract is in force from - smlouva platí od
to be bound by a contract - být vázán smlouvou
to be authorized to enter into a contract - být způsobilý uzavřít smlouvu
to withdraw from/to back out of a contract - odstoupit od smlouvy
the contract goes into force ...- smlouva vstupuje v platnost ...
to discharge a contract – ukončit smlouvu

force/validity/effect of a contract - platnost smlouvy
The contract is effective as from Smlouva je účinná k

2. In pairs, create a definition of a contract. Then discuss what types of contract you know. Have you ever formed a contract? If yes, give examples.

e.g. A contract may be defined as an agreement between two or more parties that is intended to be legally binding.
- written/oral contract
- unilateral/bilateral/multilateral contract
- executory/executed contract
- valid/void/voidable contract

CONTRACT

3. **READING.** Read the text and make a list of elements of contract and types of contract.

Contract law may be considered one of the cornerstones, along with torts, of the law. Except for criminal law, most legal institutes and concepts seem to be derived from this area of law. It is all about rights or obligations arising from agreements among persons, both natural and artificial legal ones. A contract is a kind of agreement, but mind you, not every agreement is a contract. In order to be such, it must be **legally binding**, i.e. the parties must intend to be legally bound by the contract, which is one of the essential elements of each and every contract. In fact, this was the issue in a well-known precedent in the English legal history, *Carlill vs. Smoke Balls Comp.* The company advertised a

miraculous cure for influenza saying that anyone who would use their smoke balls in the prescribed manner and in spite of that would contract influenza would be rewarded. The cure did not work but Mrs. Carlill's legal action did. It was held that the company's reference to the deposit in the bank having been made for the contingent unsuccessful users of this cure was sufficient for proving the company's **intention** to make a legally binding offer that Mrs. Carlill accepted. By the way, this case is an example of a unilateral contract. This does not mean as one might think that there is only one party to the contract. The difference lies in the number of promises made and not in the number of the parties. It is quite obvious that the opposite must be a bilateral contract where the parties exchange promises; for example, I promise to sell you my car and someone promises to give me a certain amount of money.

Speaking of the elements, the first, and utterly natural one, is **offer and acceptance**. The offer must be communicated in a clear and unequivocal manner. The same applies to the acceptance even if it may have various forms. In fact, it is not necessary to say a word as starting doing something may be considered a legally binding form of acceptance. The offer may be, of course, revoked, i.e. taken back, or a counter-offer may be made.

When something goes wrong in the process of communication this may result in the contract being invalid or, in other words, null and void. If I lie to my would-be employer when applying for a job and after concluding the contract the truth turns out the employer may claim the contract to be invalid and discharge it due to misrepresentation, i.e. stating an untrue fact, thus misleading someone. Other factors that may invalidate a contract are a mistake, or duress, i.e. being forced to enter into a contract.

Another element is **consideration**, the word itself being an example of the legalese, i.e. legal jargon used by legal professionals. In legal English it means what is exchanged between the parties to the contract. For example, if I offer my friend to buy his car the amount of money given by me is consideration from my part and the car is consideration from his part. Consideration may have various forms, such as something given, done or agreed to be refrained from.

In addition, **the terms** the parties have agreed to must be exact or **certain**. It stands to reason that the parties must be clear about what they are agreeing to but it is worth mentioning that the contractual terms may be divided into two kinds, conditions and warranties. The former are vitally important for the validity of the contract and their breach may result in terminating (discharging) the contract whereas if the latter are breached you are only entitled to seeking damages as they are of a minor importance. The English legal jurisprudence illustrates the difference between these two using two precedents from the 19th century. In the first case a singer contracted for performances of an opera fell ill before the first night and never took part in the performances. It was held that this constituted a breach of condition whereas in the other case a singer only missed rehearsals due to his illness, which was seen by the court as a mere breach of warranty.

The terms in contract may also be express or implied. The express terms are those expressed in words, either orally or in writing. The implied ones are more intriguing but if you picture a real life scene they are quite easy to understand. It suffices to recall a situation when you go to a restaurant for a dinner. In the whole process of ordering, being served and consuming the meal it is supposed without saying a word that in the end you will pay for the dinner.

It is also worth mentioning that the **subject-matter** of a contract must be **legal**. A contract between two criminals to murder someone would be unenforceable, of course, precisely because of the illegal subject-matter.

Last but not least, the parties must have **legal capacity**, which means that the parties must be legally qualified to enter into contractual relationships. Quite interesting may be the question if children, in legal terms minors, formerly infants, may make contracts with adults, let alone among themselves. The answer is yes but these are special contracts called voidable ones. A voidable contract may be later ratified (confirmed) or avoided (disaffirmed) by an adult. The idea behind this is that children do not have full legal capacity and adults should have power to rectify possible unfavourable situations such as when a child takes a large amount of money hidden in the parents' drawer and buys an expensive item.

The full list of types of contract also includes oral (verbal) or written ones. You may also come across the terms executory and executed contracts; the former not being performed yet whereas the latter being already fulfilled.

(Created by the team of authors)

3. Read the text and make a list of elements of contract and types of contract.

Elements of contract	Types of contract
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<p>1 offer and acceptance</p> <p>2 consideration</p> <p>3 certain terms</p> <p>4 legal subject matter</p> <p>5 legal capacity of the parties</p> <p>6 intention to be legally bound by the contract</p>	<p>- unilateral + bilateral</p> <p>- valid + invalid (=void), or null and void = an example of doublets that are to be avoided in the current legal English</p> <p>- voidable</p> <p>- oral (=verbal) + written</p> <p>- executory + executed</p>
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4. For each of the following situations, decide whether a contract has been made or if any of the elements are missing. In addition, try to identify the type of contract .

a. At an auction, the auctioneer says, "What am I bid for this antique clock?" One of the bidders in the room says, "100 euro."

ELEMENTS: THE ACCEPTANCE MISSING - IT WOULD BE THE KNOCK OF THE AUCTIONEER'S HAMMER, "100 EURO" BEING THE OFFER.
NO CONTRACT MADE YET.

b. Ann's father makes a promise to pay her 2,000 pounds on the day she turns 18. On her eighteen's birthday she seeks the money promised to her.

ELEMENTS: OK, CONSIDERATION MAY HAVE VARIOUS FORMS INCLUDING GROWING UP
TYPE: A SPECIAL KIND OF CONTRACT CALLED GRATUITOUS PROMISE (=bezúplatný sľib), UNDER ENGLISH LAW IT IS ENFORCEABLE IF MADE BY DEED (i.e. a legal instrument in writing)

c. John says to Paul, "I'm going to sell my bike for 100 pounds." Paul cries out, "All right, here is the money. I'll take it."

ELEMENTS: THE ACCEPTANCE MISSING, PAUL'S CRY BEING THE OFFER. THE PROPER OFFER FROM JOHN'S PART WOULD HAVE TO BE "I WILL SELL MY BIKE TO YOU FOR 100 POUNDS."
NO CONTRACT MADE YET.

d. The citizens of a town collect 2,000 pounds offering it as a reward for catching a suspected criminal. A WPC, member of the local police force, apprehends the suspect and seeks the reward.

ELEMENTS: OK

TYPE: A UNILATERAL CONTRACT, ONE PARTY IS MAKING A PROMISE AND THE OTHER PARTY IS EXPECTED TO PERFORM WITHOUT PROMISING ANYTHING. TYPICAL FOR ADVERTISEMENTS SUCH AS "ANYONE BRINGING MY LOST DOG WILL BE REWARDED".

e. Standing at one end of a long bridge, Sarah says to Louise, "I'll give you three pounds if you walk across the bridge." Without saying a word Louise starts walking across the bridge.

ELEMENTS: OK, AS THE CONSIDERATION MAY CONSIST IN STARTING DOING SOMETHING WITHOUT SAYING EXPRESSLY "I ACCEPT".

TYPE: ORAL

f. Adam offers Ken 10 dollars to steal four beer mugs from their favourite pub. Ken steals the mugs, brings them to Adam and asks for the money.

ELEMENTS OK BUT THE CONTRACT IS INVALID AND UNENFORCEABLE DUE TO THE ILLEGAL SUBJECT-MATTER

(Based on Lee P. Arbetman, M.Ed., J.D. et al. Street Law, West Publishing Company, 1975)

5. Summary of the Introduction to the law of contract

Here is a summary of the law of contract. Complete the texts using the following words:

agreement	breach	capacity	consideration	damages	fraud	illegal
(1) obligation	oral	performance	property	signed	terms	

What is a contract?

It is an agreement that creates a binding **(1) obligation** upon the parties. The essentials of a contract are as follows: mutual **(2) agreement**, a legal **(3) consideration**, which in most instances need not be financial, parties who have legal **(4) capacity** to make a contract, absence of **(5) fraud** or duress, and a subject matter that is not **(6) illegal** or against public policy.

What form does a contract take?

In general, contracts may be either **(7) oral** or written. Certain types of contracts, however, in order to be enforceable, must be written and **(8) signed**. These include contracts involving the sale and transfer of **(9) property**.

How does a contract end?

In case of a **(10) breach** of contract, the injured party may go to court to sue for financial compensation or **(11) damages**, or for rescission, for injunction, or for specific performance if financial compensation would not compensate for the breach. Specific **(12) performance** of a contract is the right by one contracting party to have the other contracting party perform the contract according to the precise **(13) terms** agreed.

(Source: Nick Brieger: Test Your Professional English. Law. Penguin English Guides. 2002.p.14)

Optional task:

OPTIONAL TASK:

Each student receives a term on a card from a teacher. Find a person with the same term and practise in pairs definitions of individual terms.

contract
express contract
implied contract
unilateral contract
legally binding
certain terms of a contract
offer and acceptance
formation of a contract
counter-offer
genuine offer
unqualified acceptance
valuable consideration

6. True or False? Answer T if you think the statement is true, F if you think the statement is false. Correct any false statements so that they accurately express what is in the introductory text.

- T i. Not every agreement is a contract. (*the agreement must be binding to be a contract*)
T ii. Children have a limited capacity to make contracts. (*minors and adults = voidable contracts*)
T iii. A gratuitous promise is binding if it is made by deed. (*example b - Ann + her father*)
F iv. Being considerate is an essential element of a contract. (*Corrected: **Consideration** is an essential element of a contract.*)
F v. All contracts made by minors are voidable. (*Corrected: Except for the so-called necessities, i.e. food, shelter and clothing.*)
F vi. When a contract is unenforceable, the law will allow one of the parties to withdraw from it. (*Corrected: When a contract is **voidable**, the law will allow ...*)
T vii. Some verbal contracts must be supported by written evidence. (*e.g. contracts on the sale of immovables, specified in the Statute on Frauds, 17th century, because some contracts were often subject to perjury*)
T viii. An acceptance has to be unconditional, unequivocal, and legally communicated to the offeror. (*we may remind the students of a synonym for unequivocal, i.e. unambiguous from Legalese in Law Today, and add that people are always looking for "loopholes"*)
F ix. Mistake is an essential element of a contract. (*Corrected: **Valuable consideration/offer and acceptance/capacity/legal intention** is an essential element of a contract. (other things invalidating the contract may be mentioned such as duress, undue influence and misrepresentation).*)
T x. The law will not enforce a void contract. (*we may briefly mention the old-fashioned use of double expressions such "null and void" and the trend in the current English to replace these doublets with single terms*)
F xi. A bilateral contract is one in which one party makes a promise and the other performs an act to accept the offer. (*Corrected: A **unilateral** contract is one in which ...*)
F xii. Duress and undue influence are examples of genuine consent. (*Corrected: Duress and undue influence are examples of **things which interfere** with genuine consent.*)
T xiii. A counteroffer is something that cancels the original offer of the offeror.

(Source: Chromá New Introduction to Legal English I, pp. 376 - 277)

7. Listening

Listen 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. **AGREEMENT**
2. **CONSIDERATION**
3. intention to create **LEGAL** relations

Agreement: when 4. *NEGOTIATIONS* become a settled deal
When an offer is made and 5. *ACCEPTED*, there is agreement.
Questions about acceptance: 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. *COMMUNICATED*. Accept by 8. *SILENCE*.
Consideration basically means the 9. *PRICE*. If there is no consideration, the contract is not legally 10. *BINDING*.
Next week's lecture will cover rules of 11. *CONSIDERATION*.

(Listening from Introduction to International Legal English, CUP 2008, p.21, Listening 2.4, Track 8, CD 1)

8. Translate into English:

1 - Občanský zákoník stanoví, že se smlouva jako dvoustranný právní úkon skládá ze dvou jednostranných úkonů, a to z návrhu smlouvy a jeho přijetí.

THE CIVIL CODE PROVIDES THAT THE CONTRACT AS A BILATERAL LEGAL ACT CONSISTS OF TWO UNILATERAL ACTS, I.E. OFFER AND ACCEPTANCE.

2 - Uzavřením smlouvy přijímají smluvní strany povinnosti a závazky, které jsou právně závazné.
BY CONCLUDING (MAKING) A CONTRACT THE PARTIES TO THE CONTRACT ACCEPT DUTIES AND OBLIGATIONS THAT ARE LEGALLY BINDING.

3 - Dokud není smlouva uzavřena, může být návrh odvolán.

UNTIL THE CONTRACT HAS BEEN MADE (CONCLUDED) THE OFFER MAY BE REVOKED.

4 - Předmět platné smlouvy musí být v souladu se zákonem.

THE SUBJECT-MATTER OF A VALID CONTRACT MUST BE IN COMPLIANCE WITH THE LAW.

5 - Smlouva je závazná dohoda mezi stranami, které mají právní způsobilost, za protihodnotu (protiplnění) a ve formě předepsané zákonem.

THE CONTRACT IS A BINDING AGREEMENT BETWEEN THE PARTIES THAT HAVE LEGAL CAPACITY, FOR CONSIDERATION, AND IN THE FORM PRESCRIBED BY THE LAW.

6 - Zrušitelná neboli relativně neplatná smlouva může být zrušena kteroukoliv smluvní stranou.

A VOIDABLE CONTRACT MAY BE DISAFFIRMED BY EITHER PARTY TO THE CONTRACT.

7 - Smluvní stranou může být fyzická či právnická osoba nebo skupina osob.

THE PARTY TO THE CONTRACT MAY BE A NATURAL OR (ARTIFICIAL) LEGAL PERSON OR A GROUP OF PERSONS.

8 - Nezletilé osoby mají omezenou právní způsobilost vstupovat do smluvních vztahů.

MINORS HAVE LIMITED LEGAL CAPACITY TO ENTER INTO CONTRACTUAL RELATIONSHIPS.

9. Forming a contract

Reading and peer review:

Read an example of an agreement and then in groups of three draft your own one. Send it to another group. Decide whether you can sign an agreement supplied to you by another group or not. Make sure, all elements are included.

More examples on <http://www.printablecontracts.com>

Partnership Agreement

THIS AGREEMENT is entered into by and between the University of Houston, ("University") which is a state-supported institution of higher education established pursuant to sections 111.01 et seq. of the Texas Education Code, and is located at 4800 Calhoun, Houston, ("Facility") which is located at _____. University and Facility shall be known collectively as "The Parties" and singularly as "a Party" or "the Party."

WHEREAS, the Parties seek to provide social work and human services educational experiences for an agreed number of students enrolled in programs of the Graduate School of Social Work at the University, ("Students"), and

WHEREAS, it is agreed by the Parties hereto to be of mutual interest and advantage that Students be given the opportunity to utilize the facility for educational purposes.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I RESPONSIBILITIES OF UNIVERSITY

University shall fulfill the following terms, obligations, and covenants:

- (1) Provide information and assistance to Facility to implement a program of educational experiences, ("Program ") suitable to each students, including Students with disabilities,
- (2) Inform Facility of the name, address, and telephone number of the Program Director (and any University designated liaisons) who will be available to assist the Facility personnel and Students of the Program and who will be responsible to maintain on-going contact with Facility's designated representative,
- (3)

ARTICLE II RESPONSIBILITIES OF FACILITY

Facility shall fulfill the following terms, obligations, and covenants:

- (1) Provide supervised learning experiences for Students in accordance with agreed upon learning objectives, skill development areas, learning experiences, and intended learning outcomes,
- (2)

ARTICLE III RESPONSIBILITIES OF THE PARTIES

.....

ARTICLE IV TERM AND TERMINATION

- (1) This Agreement shall remain in effect until the end of the University's academic year, including summer, and shall automatically renew for additional terms consisting of the University's academic year, including summer, unless sooner terminated in accordance with applicable provisions of this Agreement.

(2) Any breach of the covenants stated in Article I of this Agreement by University shall be considered a material breach of this agreement. In the event of a material breach, Facility shall have the right to terminate this Agreement immediately.

(3)

ARTICLE V GENERAL PROVISIONS

(1) The Parties agree that this Agreement will be contrued by the laws of the State of Texas, (exclusive of its conflict of laws) provision and venue for purposes of claims, or litigation shall be Houston, harris County, Texas.

(2) The terms and conditions of this Agreement may be modified upon mutual written consent of the Parties at any time.

(3)

IN WITNESS THEREOF, the Parties have exeuted this Agreement in multiple counterparts. The effective date of tis agreement will be the date of the last signature below.

FACILITY: _____	UNIVERSITY OF HOUSTON: _____
BY: _____	BY: _____
	/Name of Appropriate Signature Authority/ /Title/
TITLE: _____	
DATE: _____	DATE: _____
BY: _____	BY: _____
	/Name of Appropriate Signature Authority/ /Title/
TITLE: _____	
DATE: _____	DATE: _____

II Remedies and Discharge of contract

1. Brainstorming

What are remedies? What is their purpose? Can you name any remedies?

2. Listening

Introduction to remedies for breach of contract

Remedies for breach of contract and their enforcement differ from jurisdiction to jurisdiction. You will hear a law student talking about a type of remedy in Denmark as part of a university seminar on contract remedies in Europe.

a) Listen to the first part of the student's talk. Decide whether these statements are true or false.

1 Specific performance means that the breaching party is ordered to fulfil the original obligations of the contract. **TRUE**

2 Specific performance can be applied in all breach of contract cases. **FALSE (There are only a limited number of cases where specific performance will be ordered.)**

3 There are four types of cases where specific performance can be applied. **FALSE (There are five of them)**

b) Listen to the rest of the talk and complete the notes about the five situations where specific performance can be applied, put no more than three words in each space.

- 1 Goods already **PRODUCED**.....
- 2 Goods procured from **(A) THIRD PARTY**.....
- 3 Only a **SIGNATURE** is needed
- 4 Involves **(THE) TRANSFER**..... of pledged security
- 5 When breaching party needs to be stopped from performing **HARMFUL**..... acts on non-breaching party.

(International Legal English, CUP 2006, p. 82, Listening 1, Track 21, 22, CD1)

3. Reading:

Form groups of 5 and prepare a minipresentation of the paragraph allocated to you by your teacher. Each group will have three people who are going to give a minipresentation and two people will prepare a summary of their part in writing in a style suitable for teenagers.

Apart from the formation of a contract we should, of course, discuss the end of life of a contract or its **termination**. This is also called **discharge**, which means that the parties are released from their respective obligations. There are various ways of terminating a contract, the most obvious one, anticipated by the parties, being the performance (fulfillment) of the contract. In many countries there is such a strong tradition of keeping one's word that is unimaginable not to do what one has promised, e.g. in Japan, where people tend to rely on unwritten agreements and informal ways of solving disagreements. On the other hand, the U.S.A. is a highly contractual society and precise written contracts are a part of everyday life. There, as in other parts of the world, probably, a breach of contract is often the second most frequently expected manner of termination of a contract. Of course, when someone does not fulfill his/her duty there must exist for the other party a recourse for that, in legal terms a **remedy**. In England, there are a number of common law and equitable remedies at their disposal. Most frequently, the aggrieved party is awarded **damages**, i.e. monetary compensation the amount of which is decided by the judge, or in some cases also by the jury. Damages are a common law remedy which is complemented by several equitable ones. These include two court orders, one to carry out the contract, and the other not to do anything that would be in breach of the contract. The former, called **specific performance**, may be used in situations when the subject of the contract is so precious and desirable for the party that he/she prefers getting it at all costs instead of being compensated in the form of damages. The latter is called **injunction** and is used generally in all sorts of situations, not only in contract law, when a party rightfully seeks protection against conduct of others.

If both parties wish so they may agree on termination of contract, i.e. they voluntarily waive mutual rights and obligations, which is called **waiver**. If only one of the parties wishes to discharge the contract they may agree on **accord and satisfaction**. The word accord refers to the agreement to discharge and the word satisfaction means the consideration needed. This rule also applies to the situation when one of the parties wishes to change the terms of the contract, e.g. instead of giving a sum of money he/she offers the other party something of the same value.

Sometimes it happens that the contract cannot be performed because something unexpected occurs, such as a natural catastrophe such as earthquake or flood. Such events are usually covered in contracts in clauses called **Force Majeure** (or Vis Major or Act of God) which state that if something that could not have been foreseen happens the contract is considered invalid.

It may also happen that one of the parties changes his/her mind about the contract and the parties may then agree on the change of the party, i.e. another party substitutes the original one and assumes the outstanding liabilities. This is known as **novation**.

The last way to discharge a contract is the situation when a specified period of time has elapsed. In such a situation the claim of the party that has not sought it for a certain period of time is said to be **statute-barred**, i.e. the law stands in its way, and the contract is said to be terminated because of **limitation of action**.

The parties may also stipulate in their contract that a certain amount of money will be paid in case of default, i.e. when a party has been delayed in fulfilling his/her respective obligations and not performing his/her part. This is referred to as **liquidated damages**.

(Created by the team of authors)

4. Take notes during the minipresentations and make a list of types of discharge.

Discharge by:
1 performance
2 breach (remedies are: damages, specific performance and injunction)
3 agreement (kinds: waiver or accord and satisfaction)
4 frustration (= nemožnost plnění, Force Majeure)
5 novation
6 limitation of action (=promlčení, ale závazek je promlčen= an obligation is statute-barred)

5. Match the English terms to their Czech counterparts:

waiver	nevyřízené závazky
	dohoda o změně závazku a uspokojení věřitele
accord and satisfaction	
Force Majeure	neplnění/prodleva
outstanding liabilities	prominutí povinnosti/vzdání se práva
novation	vyšší moc
the obligation is statute-barred	předem určená/vyčíslená náhrada škody
default	změna v osobě věřitele nebo dlužníka
liquidated damages	závazek je promlčen

6. Fill in the gaps in the following summary.

A. Discharge by _____ - both parties have fulfilled their respective obligations

B. Discharge by breach of contract

An injured (or _____) party is entitled to _____



(The parties may stipulate in their contract that a certain amount shall be paid in case of breach. This is known as _____ damages.)

C. Other discharge

- Discharge by agreement or a _____ - both parties agree to terminate the contract, the parties _____ their rights.
- _____ and _____ - a party that cannot perform its obligation according to the terms of contract offers some other substitute.
- _____ - a replacement of one of the parties, the new party assumes _____ liabilities.
- Discharge by frustration – contract cannot be performed because of events that could not have been foreseen. The clause covering these events in a contract is called _____.
- _____ of action – setting out the time at which the party loses its right of action. The obligations are said to be _____ .

(Created by the team of authors)

7. True or false?

1 - When a party breaches a remedy the non-breaching party is entitled to damages.

F - WHEN A PARTY BREACHES A CONTRACT

2 - Breach is the form of discharge anticipated when the parties make a contract.

F - IT IS PERFORMANCE NOT BREACH.

3 - A bilateral contract is discharged when one party performs his/her part and the other waives his/her obligations.

F - ...AND THE OTHER FULFILLS HIS/HER OBLIGATIONS.

4 - Accord and satisfaction means that one of the parties is replaced by another who assumes the original obligations

F - IT IS NOVATION NOT ACCORD AND SATISFACTION

5 - Frustration is a mutual agreement not to proceed with the performance of a contract.

F - IT IS WAIVER NOT FRUSTRATION

6 - When a debt or contractual obligation is statute-barred, the creditor cannot sue the debtor to recover.

T

7 - Liquidated damages are the amount of money specified in a provision of a contract should one of the parties default on his/her obligations.

T

(Chromá M., New Introduction to Legal English I, Karolinum Press, 2011, p. 304)

8. Discuss the following examples and decide which terms they describe: performance of the contract, remedy of specific performance, accord and satisfaction, Force Majeure clause, limitation of action, novation, liquidated damages clause.

a) A party shall not be liable in the event of non-fulfilment of any obligation arising under this contract by the reason of acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism,

accident, restraint of government, governmental acts, injunctions, labour strikes, other than those of Seller or its suppliers. **Force Majeure Clause**

b) Alan offers to buy Molly's house and Molly accepts. Alan gives Molly the agreed amount of money, but Molly decides to keep the property and returns the money. Alan doesn't want the money, he wants the house. Since there is no other piece of property or house exactly like Molly's, Molly would be compelled to go through with the sale. **Remedy of specific performance**

c) Company A concludes a contract with Company Z. Company A is bought by Company AB and all its outstanding liabilities are assumed by Company AB. **Novation**

d) Harry borrows £100 from Pat. Then he gets into financial problems and suggests to pay back £75 plus to give Pat his tablet. Pat agrees. **Accord and satisfaction**

e) If the Hotel over-books, then, within 14 calendar days of the occurrence of the over-booking, the Hotel shall pay to the Customer an amount equal to 30% of the average Room Rate for each Guestroom Reservation that the Hotel is unable to accept prior to the Reservation Cut-off Date. **Liquidated damages clauses**

f) Jim agrees to sell his bike to Jane. Jane gives Jim the money and Jim gives Jane the bike. **Performance of the contract**

g) John is very absent-minded. He lent his friend 10,000 CZK (they made a written agreement) and found out 12 years later that his friend had never given him the money back. **Limitation of action**

Chromá M., New Introduction to Legal English I, Karolinum Press, 2011, p. 304)

9. Translate into English.

1 - Pokud jedna strana poruší smlouvu, druhá strana má nárok na náhradu.

IF ONE OF THE PARTIES BREACHES THE CONTRACT THE OTHER ONE IS ENTITLED TO DAMAGES.

2 - Při uzavírání smlouvy se předpokládá, že smlouva zanikne splněním.

WHEN A CONTRACT IS BEING MADE (=CONCLUDED) IT IS ASSUMED THAT IT WILL TERMINATE (=BE DISCHARGED) BY PERFORMANCE.

3 - Dluh nebo jiný závazek může být promlčen, jestliže věřitel dlouho nehlásí o jeho splnění.

A DEBT OR ANOTHER OBLIGATION MAY BE STATUTE-BARRED IF THE CREDITOR HAS NOT CLAIMED ITS FULFILLMENT FOR A LONG TIME.

4 - Určená náhrada škody je částka vyhrazená ve smlouvě, která musí být zaplacená, jestliže není závazek splněn.

LIQUIDATED DAMAGES ARE AN AMOUNT OF MONEY SPECIFIED IN THE CONTRACT THAT

MUST BE PAID IF AN OBLIGATION HAS NOT BEEN FULFILLED.