

Chapter 1 – Contract Law

partly based on

Chapter I.A “Contract Law in the United States”
by Alexander Quest and Richard Kaye,

Chapter I.B “Contract Law in the United Kingdom”
by Michael H. Whincup,

and Chapter I.E “Contract Law Cut & Paste”
by Franz J. Heidinger and Andrea Hubalek

from “The Practitioners’ Guide to Applied Comparative Law and
Language Vol. 1”

(PG 1 I.A., I.B & I.E)

Annahme (eines Angebots)

consent to enter into a contract upon having been made an offer

In US and UK contract law, a contract is deemed to be concluded by offer and acceptance as long as there is also valuable consideration.

cf. “offer”, “consideration” and “contract” *infra*, PG 1 I.A, p. 1

→ (to) accept (an offer) – (ein Angebot) annehmen

to give consent to enter into a contract upon having received an offer

I hereby accept the terms and conditions of the User Agreement.

cf. “agreement” *infra*

acceptance
(of an offer)

Klage; Gerichtsverfahren

disagreement between parties to a legal dispute that is brought before court by the plaintiff (US) or claimant (UK)

If you do not stop your harmful conduct, we will be forced to seek court action against you.

cf. “plaintiff” in Chapter 9, “lawsuit” *infra*, “class action” in Chapter 15

action, legal action,
court action

Stellvertretung*, Vertretungsmacht*, Vollmacht*

the legal ability of somebody – i.e. the agent – to take actions that are binding on another person or entity – i.e. the principal

Having the power of agency to make decisions on the bank’s behalf, the board of directors ordered new office furniture for 5,000 employees.

cf. “principal” *infra*, “representation” in Chapter 2, “agency” in Chapter 12

→ agent – Stellvertreter:in*

agency, power of
agency

	<p>somebody who holds the power of agency</p> <p><i>E.g. a real estate agent who has the power to rent out or sell houses or apartments on the owner's behalf.</i></p>
agreement	<p>Vereinbarung, Vertrag*, Einigung, Absprache, Übereinkunft, Abkommen</p> <p>a mutual and often binding understanding between two or more parties</p> <p><i>There is agreement between the two companies about the most important provisions of the merger contract.</i></p> <p><i>The employee had to sign a confidentiality agreement concerning all client information.</i></p> <p>cf. “contract” <i>infra</i></p> <p>→ (to) agree – zustimmen</p> <p>to give one's (binding) approval to a proposition</p> <p><i>I am pleased to announce that my client agrees to enter into merger negotiations with your client.</i></p>
amendment	<p>Änderung, Ergänzung, Nachtrag, Zusatz</p> <p>revision of or addition to a text, e.g. to a contract or to a piece of legislation</p> <p><i>There have been so many amendments to this contract that hardly any part of it has been left entirely unchanged.</i></p> <p>cf. “constitution” in Chapter 11</p> <p>→ (to) amend – ändern, abändern, ergänzen, nachtragen</p> <p>to revise or add to a text, e.g. to a contract or to a piece of legislation</p> <p><i>This Contract can only be amended by mutual written assent given by both parties.</i></p> <p>cf. “assent” <i>infra</i></p> <p>→ as amended – in der geltenden Fassung (idGF), wie abgeändert</p> <p>in its currently valid and consolidated form</p> <p><i>This contract is entered into on the basis of the California Labor Code, as amended.</i></p> <p>cf. “statute” <i>infra</i></p>
assent	<p>Zustimmung</p> <p>agreement to be legally bound</p>

For a contract to be validly formed, US law requires that assent must be objectively manifested in the actions of each party.

cf. PG 1 I.A, p. 1

→ mutual assent – gegenseitige/wechselseitige Zustimmung

agreement to be legally bound expressed by each party

In US law, a valid contract requires mutual assent, i.e. assent by all parties that wish to be bound.

cf. PG 1 I.A, p. 1

Geschäft, Handel

(a) an agreement between two parties for the exchange of promises or performances

For a contract to be deemed validly formed, there needs to be a quid pro quo element, i.e. some kind of bargain between the parties.

(b) in everyday language: a business opportunity

That one used car dealer down the street really knows how to make customers believe that they're making a great bargain when buying a car from her (even when they're obviously not).

cf. PG 1 I.B, p. 11

bargain

Vertragsbruch*, Vertragsverletzung

non-performance without excuse

We are asking for compensation for breach of contract because your last delivery came a month late.

cf. “obligation” and “performance” *infra*, “compensation” in Chapter 4

→ (to) breach a contract – einen Vertrag brechen*/verletzen

to fail to fulfill a contractual obligation

The seller clearly breached their contract because they gave time off to too many employees at the same time so that there were not enough workers at the factory to assemble the product in time.

→ breaching party – den Vertrag brechende*/verletzende Partei

the party that fails to fulfill a contractual obligation

The delivery left the seller's factory late because of their mismanagement, which makes them the breaching party.

→ material breach, total breach – wesentliche/r Vertragsbruch*/Vertragsverletzung

breach (of contract)

a breach of contract so devastating to the contract's purpose that the non-breaching party can simply "walk away" from the contract and go straight to claiming damages

Our contract states that you will deliver the goods within a month, and now you're telling us that your earliest realistic delivery date is three years from now. That's a material breach!

cancellation

Rücktritt, Anfechtung, Aufhebung

ending a contract as a result of a defect or breach attributable to the other party

→ (to) cancel a contract – von einem Vertrag zurücktreten, einen Vertrag anfechten/aufheben

to end a contract as a result of a defect or because the other party has breached the contract

Our contract states that if there is good cause, either party may cancel this contract without notice.

capacity (to contract)

Geschäftsfähigkeit; Eigenberechtigung (Ö)

the power to enter into a legally binding agreement

I don't think buying a house from an obviously and severely demented person was a good idea. I doubt that they had the necessary capacity to contract.

→ lack of capacity (to contract) – mangelnde Geschäftsfähigkeit; mangelnde Eigenberechtigung (Ö)

inability to enter into a legally binding contract

Persons who are unable to understand the consequences of their actions as well as young children generally lack the capacity to contract.

→ incapacitated (to contract) – geschäftsunfähig

lacking the capacity to contract

By the time he bought his tenth beer at the bar, he was actually incapacitated to conclude such a contract. Still, the bartender could not have cared less and poured him another.

claim, legal claim

Anspruch*, Rechtsanspruch*, Forderung*; Klage(begehren)*

(a right to) a formal demand for the enforcement of one's right

As I was run over by a drunk driver, I now have a claim for damages against him.

cf. "right" in Chapter 4, "claim" in Chapter 9

→ (to) claim – beanspruchen, fordern

to demand the enforcement of a right

I am going to petition the court and claim half a million dollars in damages from the drunk driver.

Klausel, Bestimmung

a particular part of a legal document, e.g. a contract or a statute

The Interstate Commerce Clause in the US Constitution gives Congress the power to regulate commercial activity among the country's various states.

cf. "provision" *infra*, "Commerce Clause" in Chapter 11

→ contractual clause – Vertragsklausel

a particular part of a contract

Section 7, paragraph 3 of the draft contract contains a weirdly phrased clause that we certainly need to discuss. I have no clue what it means.

→ hardship clause – Härteklausel

a particular part of a contract that provides options for amendment or termination of a contract when circumstances make performance unreasonable

Luckily the airline's general terms and conditions contain a hardship clause stating that we can cancel our flight if there's a serious natural disaster such as an earthquake at our destination.

→ stable-value clause – Wertsicherungsklausel

a clause providing for adjustment for inflation

The stable-value clause in the contract states that the payments will be adjusted to include inflation according to the latest rate of the national consumer price index.

Bedingung

a future event the (non-)occurrence of which affects an obligation or liability

Under the conditions of the agreement, the buyer has to pay the purchase price on or before August 27. If she fails to do that, she will have to pay 20% interest p.a.

→ condition precedent – aufschiebende Bedingung*

a future event the occurrence of which causes an obligation or liability to come into force

clause

condition

The conclusion of my new tenancy contract is under the condition precedent that I pay \$ 10,000 as deposit. So, can you lend me a few grand?

→ condition subsequent – auflösende Bedingung*

a future event the occurrence of which causes an obligation or liability to be terminated

Under this agreement, the death of one contractual partner is a condition subsequent causing the termination of the contract. That is because neither of the contractual partners wants to do business with the other one's heirs.

→ conditions concurrent – gleichzeitige Bedingungen/Zug-um-Zug-Leistung*

two or more conditions intended to be fulfilled simultaneously

In a purchase agreement, payment of the purchase price and transfer of possession are typically conditions concurrent, meaning that they are intended to take place at essentially the same time.

consideration

Gegenleistung, Entgelt

the promise or performance one receives in exchange for one's own promise or performance, i.e. the *quid pro quo* or *do ut des* element of a contract

If I give you an apple, I want money as consideration.

cf. “bargain” *supra*, “promise” and “performance” *infra*

→ valuable consideration – werthaltige Gegenleistung

consideration that has some kind of economic value

In US and UK law, a contract needs to involve valuable consideration to be deemed validly formed. This means there needs to be a mutual exchange of promises or performances of economic value. Consequently, a gift would not be considered a contract due to its one-sided nature.

cf. PG 1 I.B, p. 11

contract

Vertrag

a binding agreement between two or more parties which the law will recognize (and enforce)

If you sell me your car in a written contract and then refuse to hand it over to me by the agreed-upon time, I can go to court and they will eventually force you to hand it over to me or have the court bailiff do it.

→ (to) contract, (to) conclude a contract, (to) enter into a contract – einen Vertrag (ab)schließen

to accept one's contractual duties and obligations in a legally binding way

I'm going to save a lot of money now that I have concluded a contract with a new up-and-coming electricity provider.

→ contractual duty, contractual obligation – Vertragspflicht

a certain responsibility borne by a party as a consequence of the contractual relationship

The General Terms and Conditions provide that the online shop has the contractual duty to bear the costs of delivery.

cf. “general terms and conditions” in Chapter 3

vertragliche Verpflichtung; Vertrag, Vereinbarung, Vertragsbestimmung

covenant

a formal agreement or promise, either on its own or contained in a contract

The parties signed a covenant ending their legal dispute which had gone on for years.

cf. “promise” and “provision” *infra*

Schadensersatz* (D)/Schadenersatz* (Ö) in Geld, monetärer Schaden(s)ersatz (D/Ö)

damages

payment of money to a person or entity to whom one has (culpably) caused an undesirable effect or for which one has become liable in another way

If you run over a cyclist while driving under the influence of illegal substances, you might have to pay damages until the day you die.

cf. “liability” *infra*, “damages” in Chapter 4, and “damage” in Chapter 19

→ (to) claim damages – Schadensersatz* (D)/Schadenersatz* (Ö) fordern/geltend machen

to formally demand reimbursement for an undesirable effect that one has suffered and which has been caused by somebody else

My neighbor is claiming damages because my tree fell on her house.

Formalurkunde*; Tat, Handlung

deed

(a) an official record of an agreement or (b) an act

cf. “act” and “deed” in Chapter 4

→ notarial deed (civil law concept) – notariell beglaubigte Urkunde; Notariatsakt* (Ö)

	<p>a legal document the authenticity of which is vouched for by a notary public</p> <p><i>I'm confident that the court will recognize the authenticity of our contract because it was concluded in the form of a notarial deed.</i></p>
duress	<p>Zwang*, Nötigung*, sittenwidrige Druckausübung</p> <p>use of a threat or violence to pressure someone into doing something or refraining from doing something</p> <p><i>Duress usually renders a contract voidable. This means that if you signed a contract with a gun pointed to your head, you can petition the court to declare it invalid.</i></p> <p>cf. “voidable” and “rescission” <i>infra</i></p>
enforcement	<p>Vollstreckung*, Rechtsdurchsetzung</p> <p>use of legally available measures to force another other party to obey their duties when they fail to do so</p> <p><i>Without the possibility of enforcement, this agreement is basically worthless.</i></p> <p>→ (to) enforce a contract – einen Vertrag (bzw. eine Vertragspflicht) durchsetzen/vollstrecken</p> <p>forcing the other party to obey their contractual duties, typically by bringing them to court</p> <p><i>If you fail to pay me back the loan in time, I will sue you and the court will decide that you owe me the loan. If you still refuse to pay, the court bailiff will collect the money from you.</i></p> <p>→ enforceable contract – durchsetzbarer/vollstreckbarer Vertrag</p> <p>a contract the duties of which can be forced upon a party, if need be</p> <p><i>When drawing up a contract, it is very important to check if the contractual obligations are actually enforceable, because if they are not, you and your client could be in a lot of trouble.</i></p>
equity law, law of equity	<p>Billigkeitsrecht*</p> <p>a source of law (as opposed to common law and statutory law) that allows for a fair judgment when the existing legal framework is unsatisfactory</p> <p><i>Not to be confused with “private equity”, which is an entirely different matter.</i></p>
execution (of a contract)	<p>Errichtung (D, Ö)/Ausfertigung (D)/Unterfertigung (Ö) eines Vertrages; Vertragserfüllung</p> <p>(a) the signing of an agreed-upon contract</p>