

Einführung in die englische Rechtsterminologie

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Veranstaltungsübersicht



1.	Einführung, Rechtsgebiete und Rechtstexte sowie Grundlagen der Rechtsvergleichung	Freitag, 17.01.2014
2.	Case Law und Präjudiziensystem Aufbau und Stil von Urteilen	Samstag, 18.01.2014
3.	Contract Law Sales Law	Montag, 20.01.2014
4.	International Sales Law Tort Law und Property Law	Dienstag, 21.01.2014
5.	Constitutional Law European Law	Mittwoch, 22.01.2014
6.	Fallstudie „Vertragsgestaltung“	Donnerstag, 23.01.2014
7.	Rechtsvereinheitlichung und Rechtspolitik Studium, Ausbildung und juristische Berufsbilder	Freitag, 24.01.2014

Today's lecture



3a.

Moot Court

Franziska Härle

Vorstellung Moot Court

3b.

Contract Law Sales Law

- Contract Law
 - General aspects
 - Offer and acceptance
 - Consideration
 - Promissory Estoppel
 - Passing a benefit to a Third Party
 - Misrepresentation
 - Mistake
- Frustration
- Termination
- Duress
- Damages
- Agreed Sum
- Specific Performance
- Sales Law
 - Standard terms

General aspects of contracts



Requirements

Offer

Acceptance

Consideration

Intention to create
legal relations

General terms

- Contract party/contracting parties
 - Promise
- Agreement
 - to conclude a contract/to make a contract
 - to make a bargain
- Void and voidable
- Creditor and debtor
- In writing/orally

Objectivity

L'Estrange v Graucob Ltd [1934] 2 KB 394: (H) The court upheld a signed document excluding all the seller's liability for a defective slot machine, although the seller knew that the buyer did not read the 'regrettably small print'

Mistake as to terms

- **Hartog v Colin & Shields [1939] 3 All ER 566:** (F) A seller offered to sell 3,000 Argentine hare skins at a fixed price 'per pound' when he really meant 'per peace', since there were three pieces to the pound, he mistakenly offered the hare skins at one-third of his intended asking price

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- (H) The court found no contract since, in the context of the custom of the trade and the negotiations (verbal and written) between the parties, which always discussed the price 'per piece' and never 'per pound', the buyer 'must have realised, and did in fact know, that a mistake had occurred



Mistake as to terms

- **(SINGAPORE) Chwee Kin Keong v Digilandmail.com Pte Ltd [2005] 1 SLR 502:** (F) D's employee mistakenly advertised a commercial laser printer for \$66 on D's website (actual retail price \$3,854), by the time the error was detected. 4,086 orders had been received and confirmation notes automatically dispatched within a few minutes, C claimed order of 1,606 printers

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- (H) Actual knowledge of mistake is required, but very generous view on evidence of such actual knowledge. 'must have known mistake' or 'could not reasonably have supposed' are evidential factor, includes 'Nelsonian knowledge', that is to say, wilful blindness or shutting one's eyes to the obvious, in casu C must have known

Offer & Acceptance



Formation

Offeror

the one who makes the offer

Offeree

the one who receives the offer

Chapelton v Barry Urban DC [1940] 1 KB 532: (F) Display of deckchairs for hire on a beach with a notice of charge payable (H) Offer which was accepted by a customer taking the chair, the ticket issued to the customer thereafter was not part of the contract, even if the customer in casu received the ticket at the same time as taking the deckchair as it could just as well have been later

Formation

“invitation to treat”

- **Harris v Nickerson [1872-73] LR 8 QB 286:** (F) Advertisement in newspaper, information that an auction will take place (H) invitation to treat, no offer
- **PSGB v Boots [1952] 2 QB 795:** (F) Question arising from criminal law on pharmaceuticals about the exact moment when a contract is concluded in self-service store (as it was only allowed to sell those under the supervision of a registered pharmacist): taken from the shelf or at the cashier (H) Display of goods are only invitation to treat, contract concluded at the cashier (therefore no criminal offence in casu)

Communication of acceptance

Household Fire Insurance v Grant (1879) 4 Ex D 216: (H) ‘Postal rule’, withdrawal of offer must be received before acceptance has been given (i.e. before letter with acceptance has been put into postbox)

“Battle of the forms”

Butler Machines v Ex-Cello Corp [1979] 1 WLR 401: (F) Offers were sent between parties with different forms (standard terms), D signed slip that he acknowledges form (H) ‘Last shot’ effective

Certainty

Walford v Miles [1992] 2 AC 128: (H) An agreement not to negotiate with others without a specific time limit is too uncertain, a contract to negotiate in good faith is too vague and therefore also too uncertain

- “an act or promise by one party to a contract that constitutes the price for which he buys the promise of the other”
- “consideration is essential to the validity of any contract other one made by deed”

General Aspects

- In order to enforce a promise someone has to promise or to give something in return – illusory consideration is not enforced – consideration need not to be adequate (exceptionally yes if nominal value – such as GBP 500 for GBP 1)
- Nexus between promise and consideration – consideration must move from the claimant – consideration need not move to the promisor (it could be a third party) – consideration must be requested by the promisor – consideration must be in response to promise

Something of value

- **Chappell v Nestlé [1960] AC 87:** (H) Consideration was given where a promisee supplied three wrappers from the promisor's chocolate bars, in exchange for a promised gramophone record, even though wrappers were thrown away immediately after arrival
- **Carlill v Carbolic Smoke Ball Co [1893] 1 QB 256:** (F) Newspaper notice that under given circumstances (becoming ill although taking „smoke-ball“-medical treatment) GBP 100 being paid, sum of GBP 1000 as deposit by bank (H) Offer, consideration given by fact that sale of “smoke-ball” was influenced

Pre-existing duty

- **Stilk v Myrick (1809) 2 Camp 317:** (F) Two of the 11 seamen deserted during a voyage and the master agreed to share the deserters' wages with the remainder of the crew if they would work the ship back to London (H) Commonly explained that court found there not to be any consideration as the seamen were already obliged to sail the ship home (an alternative explanation would be that it was a case of duress)
- **Hartley v Ponsonby [1857] 7 E & B 872:** (F) Desertion of 17 out of 36 crew, leaving only four or five able seamen, was held to entitle the remaining crew to refuse to continue with the original contract, thus, in agreeing to continue with the voyage, the remaining crew did more than they were obliged to do and so gave consideration for the promise of more pay

Promissory Estoppel



Requirements

1. A makes a clear promise to B
2. B acts in (detrimental) reliance on it
3. it would be inequitable for A to resile from promise

‘shield, not sword‘

Generally suspensory and not extinctive (ie it only extinguishes A's entitlement up to the end of A's reasonable notice to B of A's intention to resume his rights, but not A's future entitlements unless justice demands)
The application of promissory estoppel is generally restricted to relieving promises. It can only prevent A from fully enforcing his previous rights against B; it cannot confer new or additional rights on B; thus, the doctrine is said to act defensively, not offensively; it is a 'shield but not a sword'

‘shield, not sword‘

Central London Property v High Trees House [\[1947\] KB 130](#): (F) C let a block of flats in London to H on a 99-year lease for GBP 2,500 per year. In 1940, the outbreak of the war and the evacuation of people from London meant that H could not subject enough of the flats to generate the rent. C agreed to halve the rent. When the property market returned to normal and the flats were fully let at the end of the war in 1945, C requested, but H refused to resume paying, the original rent from 1945 (H) C was entitled to demand the entire rent from the date of their notice in 1945, that is, had C sought it, C would have been estopped from claiming back payment of the rent foregone between 1940 and 1945

Passing a Benefit to a Third Party



Common Law

Privity

“the relationship that exists between people as a result of their participation in some transaction (privity of contract) or event”

Jackson v Horizon Holidays [1975] 1 WLR 1468 (CA): (F) J booked a holiday for himself, his wife, and his sons for GBP 1,200; the substandard accommodation, food, amenities, and facilities were in breach of contract and caused distress and inconvenience for the whole family (H) The CA upheld the award of GBP 1,100 in damages to J; James LJ took the view that the sum was awarded solely for J’s loss and that of his family; Lord Denning MR felt this would make the award excessive and explained it in terms of compensation for the loss suffered by the whole family



Contracts (Rights of Third Parties) Act 1999

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

1999 CHAPTER 31

An Act to make provision for the enforcement of contractual terms by third parties.

[11th November 1999]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—



Contracts (Rights of Third Parties) Act 1999

(1) Subject to the provisions of this Act, a person who is not a party to a contract (a “third party”) may in his own right enforce a term of the contract if—

(a) the contract expressly provides that he may, or

(b) subject to subsection (2), the term purports to confer a benefit on him.

(2) Subsection (1)(b) does not apply if on a proper construction of the contract it appears that the parties did not intend the term to be enforceable by the third party.

(3) The third party must be expressly identified in the contract by name, as a member of a class or as answering a particular description but need not be in existence when the contract is entered into.

(4) This section does not confer a right on a third party to enforce a term of a contract otherwise than subject to and in accordance with any other relevant terms of the contract.



Contracts (Rights of Third Parties) Act 1999

(5) For the purpose of exercising his right to enforce a term of the contract, there shall be available to the third party any remedy that would have been available to him in an action for breach of contract if he had been a party to the contract (and the rules relating to damages, injunctions, specific performance and other relief shall apply accordingly).

(6) Where a term of a contract excludes or limits liability in relation to any matter references in this Act to the third party enforcing the term shall be construed as references to his availing himself of the exclusion or limitation.

(7) In this Act, in relation to a term of a contract which is enforceable by a third party—

“the promisor” means the party to the contract against whom the term is enforceable by the third party, and

“the promisee” means the party to the contract by whom the term is enforceable against the promisor.

Common Law

“an untrue statement of fact , made by one party to the other in the course of negotiating a contract, that induces the other party to enter into the contract”

Redgrave v Hurd (1881) 20 Ch D 1: (F) the prospective buyer queried the seller’s statement about the turnover of the solicitor’s practice but he declined an invitation to examine further documents (H) The fact that the claimant could have, but did not, verify the accuracy of the misrepresentation will not ordinarily bar his claim

Misrepresentation Act 1967

Mistake at Common Law



Unilateral Mistake

i.e. mistake of one party only, but note that some commentators subdivide according to whether the mistake is known about or not by the other party

Raffles v Wichelhaus [1864] 2 Hurl & C 906: (F) the parties contracted to buy and sell goods 'to arrive ex Pearlless from Bombay', the buyer intending the ship 'Pearless' arriving in October, where the seller delivered on a different ship, also called Pearlless, arriving in December (H) No contract at all, non-coincidence of the parties subjective intentions (Beatson), however, non-coincidence is wide-spread in contract law, that is why, non-concurrence about important matters are relevant, latent ambiguity, objectivity simply 'ran out'

Mistake at Common Law



Identity

A's mistake as to B's identity will only void their contract if A mistook B for another existing and identifiable party, C; if A merely believes that B is C who is non-existent or unidentifiable the contract is only voidable

Ingram v Little [1961] 1 QB 31 (CA): (F) A fraudster calling himself Hutchinson offered to buy the Ingram sisters' car, offering payment by cheque; on their insistence for cash, he gave his initials and address and described himself as a respectable businessman; the sisters did not know of this person, but ascertained his existence and address from the telephone directory; they then accepted the cheque which was dishonoured; meanwhile, the fraudster sold the car to L (H) The CA held that the original sale was void and the sisters could recover their car from L; their checking of the telephone directory rebutted the presumption that they intended to deal with the person in front of them: they only intended to deal with Hutchinson

Mistake at Common Law



Common Mistake

i.e. both parties make the same mistake

Bell v Lever Bros [1932] AC 161 (HL): (F) L paid GBP 50K to terminate the employment of two employees as part of its corporate reorganisation; unknown to L, the employees had breached their contracts by speculating in cocoa on their own account, entitling L to dismiss them without compensation; in discovering this, L sought the return of the GBP 50K for fraud; when this failed, L relied on the alternative ground of mistake (H) a common mistake which makes the subject-matter of a contract essentially different from what the parties supposed renders the contract void – relief for mistake was denied in casu (the jury found that L would never have paid if they had known the truth, and that the employees did not have their breach in mind so that they were also ‘mistaken’ in believing that their employment contracts were only terminable by agreement); the HL recognised the jurisdiction to void the contract for common mistaken assumption, but held by a majority of 3:2 that the mistake here was, on the facts, not sufficiently fundamental to void the contract

Mistake in Equity



Solle v Butcher

[1950] 1 KB 671: (F) The parties agreed a GBP 250 yearly rental when they were, in fact, subject to a GBP 140 limit under the Rent Act unless a 'notice of increase' was served; this was not done due to a common mistake about the status of the property (H) the court granted the landlord rescission of the lease but on the terms that he offered the tenant a new lease for GBP 250 – 'rescission on terms'

“the unforeseen termination of a contract as a result of an event that either renders its performance impossible or illegal or prevents its main purpose from being achieved”

Paradine v Jane (1647) Aley 26, 82 ER 897: (F) J’s plea for relief from paying rent when an enemy invasion drove him out of the premises (H) rejected, ‘the contractor must perform it or pay damages for not doing it, although in consequence of unforeseen accidents, the performance of his contract has become unexpectedly burdensome or even impossible’ – authority for the rule of absolute contractual liability

- **Taylor v Caldwell (1863) 3 B & S 826:** (F) C hired to T a music hall and gardens for concerts on four nights and was sued for breach when the music hall burnt down before the first night (H) Blackburn J held that C was not liable because ‘in contracts in which the performance depends upon the continued existence of a given person or thing, a condition is implied that the impossibility of performance arising from the perishing of the person or the thing shall excuse the performance’ – sometimes seen as an overturn of **Paradine v Jane (1647) Aley 26, 82 ER 897**, however as one sees the contractual solution (conclusion) one could argue that it is in line with the aforementioned decision
- **Krell v Henry [1903] 2 KB 740:** (F) A flat overlooking Pall Mall was rented out for the purpose of watching the coronation procession pass by (H) the contract was frustrated when the King fell ill and the coronation was cancelled; the was ‘for the purpose of seeing the Royal procession’ and not simply ‘an agreement to let and take the rooms – this was interfered from the position of the flat, the flat’s owner’s advertisement for windows to view Royal coronation, and the unusual hire terms (an enhanced price charged for two days excluding nights)

“pressure, especially actual or threatened physical force, put on a person to act in particular way”

R v Attorney-General of England and Wales [2003] UKPC 22 (PC): (F) a soldier of the celebrated Bravo Zero Two patrol breached a confidentiality agreement by attempting to publish an account of his experiences; he argued that the agreement was voidable for duress since the Crown threatened to return him from the élite regiment to his regular unit unless he signed it (H) the PC rejected his claim because the Crown’s threat was not only lawful, being within its discretion to transfer soldiers, it was also reasonable, being legitimately concerned to prevent unauthorised disclosures which may threaten the security of its operations and personnel; the threat was lawful and the demand reasonable – a party’s exercise of its rights for legitimate purposes does not amount to duress

Cehave v Bremer, The Hansa Nord [1976] QB 44: (F) the parties contracted for the sale of citrus pulp pellets for GBP 100K to arrive ‘in good condition’; meanwhile, the market price for pellets dropped to about GBP 86K; the buyer’s rejected the goods on the grounds that some of the pellets were damaged; the seller then sold the pellets to a third party who resold them to the original buyer to GBP 30K; the buyer used them to manufacture cattle feed, as originally intended (H) The buyer’s termination was held to be unlawful since the term breached was innominate and the consequences were not sufficiently serious to allow the contract to be avoided ‘according to the whims of market fluctuations and where there is a free choice between two possible constructions the court should tend to prefer that construction which will ensure performance and not encourage avoidance of contractual obligations

Damages



“a sum of money awarded by a court as compensation for a tort or a breach of contract” (e.g. non-performance)

‘to breach’

is often used for contract law

‘to infringe’

is often used for copyright and patent law

‘to violate’

is often used for tort law, criminal law, and constitutional law

The General Principle

Robinson v Harman (1848) 1 Exch 850, 855: (H) The general rule is that where a party sustains loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respects to damages, as if the contract had been performed – the relevant loss is the claimant's expectation from the contract which is lost by the breach

Chaplin v Hicks [1911] 2 KB 786: (F) the defendant's breach of contract prevented the claimant from taking part in the final stage of a beauty contest where 12 of the 50 finalists (from 6,000 original entrants) would win places in a chorus line (H) Courts are not prevented from awarding damages just because there is an element of guesswork in the assessment; the claimant was awarded damages for her loss of chance, assessed at 25% of winning the competition

Restrictions on the General Principle

Remoteness

The remoteness test nowadays is that loss is recoverable in contract of the defendant contemplated that type of loss as a serious possibility at the time of contracting, or ought reasonably to have done so; it has to be determined anyway if the type of loss is ordinarily foreseeable to a high degree or only foreseeable with special knowledge or disclosure to a high degree.

Victoria Laundry v Newman Industries [1949] 2 KB 528: (F) V contracted to buy a boiler from N who knew that V needed it for immediate use in its laundry business; the boiler was delivered five months later (H) N was liable for V's loss of profits that it would ordinarily have made in this period, in view of the business relationship between the parties and N's expertise as qualified engineers

Restrictions on the General Principle

Mitigation

British Westinghouse Electric v Underground Electric Railways [1912] AC 673: (H) The mitigation rule reduces the claimant's recovery to the extent that he has failed to act reasonably to limit or reduce his loss caused by the defendant's breach

Contributory Negligence

At common law, a claimant whose negligence contributes to his own loss but does not break the chain of causation cannot have his damages reduced

Mental Distress

- **Jarvis v Swan's Tours [1973] QB 233 (CA):** (F) J (solicitor) paid GBP 65.45 for a package holiday with S as his annual holiday; S's brochures promised a 'house party' with a variety of activities and entertainment (including a yodeller event); in fact, there were only 13 people at the hotel in the first week, and only J in the second week (H) The court took account of the value of what he received (effectively nothing) and awarded J the sum he paid for the holiday; he was also compensated for 'disappointment, distress, upset and frustration'
- **Farley v Skinner [2001] 3 WLR 899 (HL):** (F) F employed S to survey a property he intended to buy for quiet and peaceful weekends, expressly asking S to report on the likelihood of disturbance of aircraft noise; S reported that it was unlikely that the property will suffer greatly from such noise; F bought the house and spent more than GBP 100K improving it; in fact, the house was near a navigation beacon where planes circled until they were cleared to land at Gatwick airport and this caused substantial disturbance during busy periods such as the weekends; the breach caused no diminution of value, since F did not pay more than the property was actually worth (H) The HL upheld the trial judge's award of GBP 10K for the loss of enjoyment caused by the noise

Reliance Damages

Anglia TV v Reed [1972] 1 QB 60: (F) R contracted to star in A's film but repudiated the contract at the last moment; A, unable to find a replacement, abandoned the project; it was impossible to assess what profits A would have made if the contract had been performed (H) A was awarded expenses although these were incurred before the contract was made, since it was foreseeable that they could be wasted in the event of breach

Restitutionary Damages

Attorney-General v Blake [2001] 1 AC 268 (HL): (F) A double secret agent made profits from publishing his autobiography in breach of his contract of secrecy with the Crown and in breach of criminal law (H) the HL awarded the crown an account of profits (against the general rule that damages cannot be measured by the defendant's gains or savings) for breach of contract to meet the demands of 'practical justice' in the 'exceptional circumstances' of the case

Action for the Agreed Sum

White & Carter v McGregor [1962] AC 413 (HL): (F) M agreed to pay W&C to advertise his garage business on rubbish bins they supplied to the local council for three years; on the same day, M tried to cancel the contract but W&C refused; the latter continued with the advertisement and sued M for the agreed price (H) The claim of W&C was upheld; according to Lord Reid two circumstances are given to bar an affirmation of the contract: need for co-operation and no legitimate interest in performance rather than claiming damages

Specific Performance



“a court order to a person to fulfil his obligations under a contract”

Sky Petroleum v VIP Petroleum [1974] 1 WLR 576: (H) An interim injunction amounting to specific performance was granted to compel V to continue supplying petrol to S garage during the petrol shortage of 1973 when V was, in effect, S’s ‘sole means of keeping the business going’ and S would otherwise be ‘forced out of business’

Sale and Purchase

- Seller
 - to sell
- Purchaser
 - to purchase
 - to buy
- Sales contract/sale
- Consumer contract
- Purchase price
- Standard terms/general terms and conditions

The Product's Journey

Manufacturer



Wholesaler



Retailer



Customer

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If your order is dispatched in more than one package, you may receive a separate Dispatch Confirmation E-mail for each package, and each Dispatch Confirmation E-mail and corresponding dispatch will conclude a separate contract of sale between us for the product(s) specified in that Dispatch Confirmation E-mail. Your contract is with Amazon EU SARL.

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http://www.amazon.co.uk/gp/help/customer/display.html/ref=footer_cou/278-4881550-4307804?ie=UTF8&nodeId=1040616

Practical example – Amazon CoS



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We will not be held responsible for any delay or failure to comply with our obligations under these conditions if the delay or failure arises from any cause which is beyond our reasonable control. (...)

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