Vorlesung / Course
Introduction to Comparative Law
Einführung in die Rechtsvergleichung

Winter term 2019-2020

http://www.eastlaw.uni-kiel.de
23.10.2019: Basic questions and structures of comparative law
30.10.2019  Structures of comparative law (continued)
06.11.2019: Methods of comparative law: postponed
13.11.2019: Methods of comparative law
20.11.2019: Legal families (overview). German (or Germanic) legal family (deutscher Rechtskreis)
27.11.2019: French legal family
04.12.2019: Anglo-American legal family
11.12.2019: The legal systems in Northern and Eastern Europe
18.12.2019: Legal systems in Asia
08.01.2020: Religious laws, in particular Islamic law
15.01.2020: Religious laws (end). Contract law I (Vertragsrecht)
22.01.2020: Contract law II
29.01.2020: Torts law (Deliktsrecht)
05.02.2020: Property law (Sachenrecht)
12.02.2020: Civil procedure
Comparative contract law

- What is a contract? (notion)
- Where are contracts regulated? (sources, system)
- Specific research questions
Law of contract (contracts law) in comparison

• **Issues:**
  • *notion of contract*
  • conclusion
  • content/interpretation
  • performance
  • specific contracts

• See also: conflict of laws as preliminary issue
Notion of contract in comparison

Example:
Three students jointly undertake a journey. They travel together in the car of one of them and share the fuel costs. The driver negligently causes an accident. Is there a contractual basis for liability?
Comparative Research: Synopses

Law country 1
- Topic 1: § …
  BGB - yes
- Topic 2: no
- Topic 3: yes

Law country 2
- Topic 1: sec. … - no
- Topic 2: ?
- Topic 3: differentiated (how?)

Comparison/note
- Topic 1: basically same/fundamentally different …
- Topic 2: unclear
- Topic 3: tendencies/ basic differences, what is better?

Uniform laws (including soft law): compromise? Origin for national laws?
Can also be used for comparison

→ Critique of result? Preferred own solution?
Sources of contract law in comparison

- **National law**
  - Civil Codes (continental tradition):
    - „legal transaction“ – contract *(only obligations?)*
  - General Part of Civil Law – Law of Obligations
  - Contract Law Acts (e.g. China, Sweden, India)
  - Common law and equity. Specific statutes, Model Law, Restatements (US)

- **(International) uniform law**
Unfair Contract Terms Act 1977

1977 c. 50 ▶ Whole Act

Changes to legislation: There are currently no known outstanding effects for the Unfair Contract Terms Act 1977.

Unfair Contract Terms Act 1977

1977 CHAPTER 50

An Act to impose further limits on the extent to which under the law of England and Wales and Northern Ireland civil liability for breach of contract, of for negligence or other breach of duty, can be avoided by means of contract terms and otherwise, and under the law of Scotland civil liability can be avoided by means of contract terms.
Restatements of the Law

From Wikipedia, the free encyclopedia

In American jurisprudence, the Restatements of the Law are a set of treatises on legal subjects that seek to inform judges and lawyers about general principles of common law. There are now four series of Restatements, all published by the American Law Institute, an organization of judges, legal academics, and practitioners founded in 1923.

Overview [edit]

Individual Restatement volumes are essentially compilations of case law, which are common law judge-made doctrines that develop gradually over time because of the principle of stare decisis. Although Restatements of the Law are not binding authority in and of themselves, they are highly persuasive because they are formulated over several years with extensive input from law professors, practicing attorneys, and judges. They are meant to reflect the consensus of the American legal community as to what the law is, and, in some cases, what it should become. As Harvard Law School describes the Restatements of the Law:

The ALI's aim is to distill the "black letter law" from cases, to indicate a trend in common law, and, occasionally, to recommend what a rule of law should be. In essence, they restate existing common law into a series of principles or rules.[1]

Each Restatement section includes a black letter principle, Comments and Illustrations, and, in the form of Reporters' Notes, a detailed discussion of all the cases that went into the principle summarized in that one section. By citing a Restatement section in a legal brief, a lawyer may bring to the attention of a judge a carefully studied summary of court action on almost any common law legal doctrine. The judge can then consider the Restatement section and make an informed decision as to how to apply it in the case at hand. While courts are under no formal obligation to adopt Restatement sections as the law, they often do because such sections accurately restate the already-established law in that jurisdiction, or on issues of first impression, and are persuasive in terms of demonstrating the current trend that other jurisdictions are following.

Restatements are rare in common law jurisdictions outside of the United States [citation needed] Former Justice of the High Court of Australia William Gummow attributes the requirement for Restatements in the United States to the lack of a nationwide court of final common law adjudication [citation needed].
Uniform Commercial Code

From Wikipedia, the free encyclopedia

The Uniform Commercial Code (UCC), first published in 1952, is one of a number of uniform acts that have been put into law with the goal of harmonizing the law of sales and other commercial transactions across the United States of America (U.S.) through UCC adoption by all 50 states, the District of Columbia, and the U.S. territories.

While largely successful at achieving this ambitious goal, some U.S. jurisdictions (e.g., Louisiana and Puerto Rico) have not adopted all of the articles contained in the UCC, while other U.S. jurisdictions (e.g., American Samoa) have not adopted any articles in the UCC. Also, adoption of the UCC often varies, although to different degrees, from one U.S. jurisdiction to another. Sometimes this variation is due to alternative language found in the official UCC itself. At other times, adoption of different revisions to the official UCC contributes to further variation. Additionally, some jurisdictions deviate from the official UCC by tailoring the language to meet their unique needs and preferences. Lastly, even identical language adopted by any two U.S. jurisdictions may nonetheless be subject to different statutory interpretation by each jurisdiction's courts.

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Goals [edit]

The goal of harmonizing state law is important because of the prevalence of commercial transactions that extend beyond one state. For example, goods may be manufactured in State A, sold in State B, transported through State C, and ultimately purchased in State D. Without uniform laws, the parties involved in these transactions risk having to litigate their dispute in a different forum under different laws, which can significantly complicate the resolution of the dispute and result in inconsistent outcomes. The Uniform Commercial Code (UCC) was created to address this issue by providing a set of uniform laws that can be adopted by multiple states, ensuring that commercial transactions involving multiple jurisdictions are governed by the same rules and standards. This helps to facilitate commerce and trade across state lines by reducing legal uncertainty and promoting predictability.
The Indian Contract Act, 1872

(Act no. 9 of 1872)

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Indian Contract Act 1872

Part 1: deals with the General Principles of Law of Contract (sec. 1 to 75)
Part 2: deals with Special kinds of Contracts, e.g. bailment, pledge, agency

Indian Sale of Goods Act 1930
Swedish substantive laws
The SCC provides unofficial translations of the Swedish substantive laws. These translations were made possible by the financial support of the disputes tribunal and are more accessible for foreign users.

**Swedish Sales of Goods Act (SFS 1990:930)**
- Chinese
- Russian
- Swedish

**Swedish Contracts Act (SFS 1915:218)**
- Chinese
- Russian
- Swedish

**Swedish Interest Act (SFS 1975:635)**
- Chinese
- Russian
- Swedish
Swedish Contracts Act (SFS 1915:218)

Chapter 1. Formation of a Contract (s.1-9)

Section 1: An offer to enter into a contract and the reply to such offer are, in accordance with the provisions of sections 2–9 below, binding on the offeror and offeree respectively. The provisions of the aforementioned sections shall apply unless the contrary may be inferred from the offer or the reply, from commercial practice, or from any other custom. Specific provisions govern agreements the validity of which are, according to law, dependent upon the observance of particular formalities.

Chapter 2. Agency (s.10 – 27)

Chapter 3. The invalidity of certain legal acts (s.28 – 38)

Section 28: A legal act performed under duress, where such duress has been exerted through violence to the person or threats of imminent danger to the person, shall not be binding on the party subjected to such duress.

Section 32: Where any person provides a statement of intent which, as a result of a typographical error or other mistake on his part, imparts a different meaning than the one intended, such person shall not be bound by the statement of intent if the party to whom it was addressed realised, or should have realised, the mistake.

Chapter 4. General Provisions (s.39 – 41)

Section 39: Where, pursuant to this Act, the validity of a contract or other legal act is conditional on the fact that the party in respect of whom the act was performed neither knew nor should have known of certain circumstances, or was otherwise in good faith, account shall be taken of those circumstances of which he was aware or should have been aware at the time the act became known to him. However, where justified by the circumstances, account shall also be taken of the knowledge he acquired, or should have acquired, after such time, but before the legal act was decisively affected by his actions.
Excerpts from Indian Contract Act 1872

CHAPTER I: OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals.
4. Communication when complete.
5. Revocation of proposals and acceptances.
6. Revocation how made.
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration.
9. Promises, express and implied.

CHAPTER II: OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. What agreements are contracts.
11. Who are competent to contract.
12. What is a sound mind for the purposes of contracting.
19. Voidability of agreements without free consent.
19A. Power to set aside contract induced by undue influence.

Void agreements
24. Agreement void, if considerations and objects unlawful in part.
25. Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.
26. Agreement in restraint of marriage, void.
27. Agreement in restraint of trade, void.

CHAPTER III: OF CONTINGENT CONTRACTS

CHAPTER IV: OF THE PERFORMANCE

37. Obligation of parties to contracts.

CHAPTER VI: OF THE CONSEQUENCES OF BREACH OF CONTRACT

73. Compensation for loss or damage caused by breach of contract.
74. Compensation for failure to discharge obligation resembling those created by contract.
75. Party rightfully rescinding contract, entitled to compensation.
Unification of contract law (in comparison)

International uniform law

- CISG (1980)
- DCFR (2008)
- Scandinavian Contracts Act (1915), Sale of Goods Act 1905
Welcome

In the years since its establishment, UNCITRAL has been recognized as the leading system in the field of international trade law. A legal body with universal jurisdiction reform worldwide for over 40 years, UNCITRAL’s business is the modernization of international business.

Trade means faster growth, higher living standards, and new opportunities for all. To take these opportunities worldwide, UNCITRAL is formulating modern, fair, and efficient rules. These include:

- Conventions, model laws and rules which are acceptable worldwide
- Legal and legislative guides and recommendations of great practical value
- Updated information on case law and enactments of uniform commercial law
- Technical assistance in law reform projects
- Regional and national seminars on uniform commercial law

What's new at UNCITRAL?

The Commission

The Commission carries out its work at annual sessions, which typically takes place at Headquarters in New York and at the Vienna International Centre at the Hague. The Commission typically holds one or two sessions a year, depending on the subject matter, and they usually alternate between New York and Vienna.
CONVENTION RELATING TO A UNIFORM LAW ON THE INTERNATIONAL SALE OF GOODS (1964, THE HAGUE)

Last Updated: 30 September 2013

Convention relating to a Uniform Law on the International Sale of Goods

(The Hague, July 1, 1964)

The States signatory to the present Convention,

Desiring to establish a uniform law on the international sale of goods,

Have resolved to conclude a convention to this effect and have agreed upon the following provisions:

Article I

1. Each Contracting State undertakes to incorporate into its own legislation, in accordance with its constitutional procedure, not later than the date of the entry into force of the present Convention in respect of that State, the Uniform Law on the International Sale of Goods (hereinafter referred to as "the Uniform Law") forming the Annex to the present Convention.

2. Each Contracting State may incorporate the Uniform Law into its own legislation either in one of the authentic texts or in a translation into its own language or languages.
UNIDROIT
International Institute for the Unification of Private Law

UNIDROIT PRINCIPLES
OF INTERNATIONAL COMMERCIAL CONTRACTS
2010
Notion of contract – a comparison

Existence of official legal definition
- No: Germany, Switzerland, UK
- Yes: France, Russia, USA

Basic structure
- Offer and acceptance generally used
- Applicability only in law of obligations?
- Based on „legal transactions“: Germany, Switzerland, France, China (*Civil Law approach*).
- Based on „promises“: USA (*Common Law approach*)

Legislative definition of limits: no in these legal systems
Notion of contract (1): Germany and Switzerland

German Civil Code (1900)
Book 1 General Part
Division 3 Legal transactions (sec. 104 et seq.)
Title 3 Contract
Section 145 Binding effect of an offer

Swiss Code of Obligations [Obligationenrecht] (1911)
Art. 1 (1) The conclusion of a contract requires a mutual expression of intent by the parties. …

-- both laws do not legally define the term „contract“
Approach of German Legal Doctrine

- Contract seen as specific type of „legal transaction“
- Legal transactions (Rechtsgeschäfte) are defined as human acts leading to legal consequences based on the will of the actors
- In order to give the will of an actor legal relevance, a „declaration of will“ is required (specific term):
  = „will“ to produce legal effects
  = „declaration“ of will
- Legal transactions can be unilateral, bilateral or plurilateral
- Contract is main example of bilateral legal transaction, based on offer and acceptance, and which is intended to be legally „binding“
Notion of contract (2): France

French Code Civil (1804/2016)

Art. 1101 A contract is an agreement of wills between two or more persons designated to create, modify, transfer or extinguish obligations.

Le contrat est un accord de volontés entre deux ou plusieurs personnes destiné à créer, modifier, transmettre ou éteindre des obligations.

Earlier (1804): “Le contrat est une convention par laquelle une ou plusieurs personnes s'obligent, envers une ou plusieurs autres, à donner, à faire ou à ne pas faire quelque chose.”

Article 420. The Concept of the Contract

1. The contract shall be recognized as an agreement, concluded by two or by several persons on the institution, modification or termination of civil rights and duties.

Which similarities can be found e.g. with French law?
Notion of contract (5): China

Chinese General Principles of Civil Law (1986)
CHAPTER IV Civil Juristic Acts and Agency
Section I Civil Juristic Acts
Article 54 A civil juristic act shall be the lawful act of a citizen or legal person to establish, change or terminate civil rights and obligations.

Chinese Contract Law (1999)
Article 2 A contract in this Law refers to an agreement establishing, modifying and terminating the civil rights and obligations between subjects of equal footing, that is, between natural persons, legal persons or other organizations.
Agreements involving personal status relationship such as on matrimony, adoption, guardianship, etc. shall be governed by the provisions of other Laws.

Which similarities with German and French law? Which peculiar elements? How can these be explained?
Chinese Contract Law 1999

GENERAL PRINCIPLES
Chapter One General Provisions (Art. 1-8)
Article 5 Fairness
The parties shall abide by the principle of fairness in prescribing their respective rights and obligations.
Article 6 Good Faith
The parties shall abide by the principle of good faith in exercising their rights and performing their obligations.

Chapter Two Formation of Contracts (Art. 9-43)
Chapter Three Validity of Contracts (Art. 44-59)
Chapter Four Performance of Contracts (Art. 60-90)
Chapter Six Discharge of Contractual Rights and Obligations (Art. 91-106)
Chapter Seven Liabilities for Breach of Contracts (Art. 107-122)
Chapter Eight Other Provisions Article (Art. 123-129)

SPECIFIC PROVISIONS (Art. 130-428)
Chapter Nine Sales Contracts
Article 130 Definition of Sales Contract
A sales contract is a contract whereby the seller transfers title to the subject matter to the buyer, who pays the price.
§1. CONTRACT DEFINED
A contract is a promise or a set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.

§2. PROMISE; PROMISOR; PROMISEE...
(1) A promise is a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.
(2) The person manifesting the intention is the promisor.
(3) The person to whom the manifestation is addressed is the promisee....

Comments
b. Manifestation of intention.... The phrase "manifestation of intention" adopts an external or objective standard for interpreting conduct; it means the external expression of intention as distinguished from undisclosed intention. A promisor manifests an intention if he believes or has reason to believe that the promisee will infer that intention from his words or conduct.
Indian Contract Act 1872

CHAPTER II: OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS

10. What agreements are contracts. All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
Some examples of contract law – comparative approach

Buyer B in Kiel wants to buy a box of wine … from seller S, who is domiciled in Switzerland [or France, UK, USA, China, Russia]. On 1.10. he sends S a letter containing an order. S receives the letter on 5.10.

1) Can B still withdraw his order?

2) S accepts the offer by letter of 6.10. The letter gets lost by the post. Is there a valid contract?

3) S accepts the offer by sending an email. Is the contract formally valid?

4) What kind of contract have the parties concluded?
Conclusion of contracts in comparison

- Offer and acceptance as the basic rule
- **Binding effect of offer?**
  - „consideration“ English/U.S. law
  - Withdrawal/revocation (revocal) of the offer
- **Conclusion of contract by acceptance.**
  - Mailbox rule of English and U.S. law
- **Own evaluation?**
Example 1: Is an offer binding?

Buyer B, who is domiciled in Kiel, wants to buy some boxes of wine from seller S, who is domiciled in Switzerland [or Austria, France, UK, USA, China, Russia]. On 1.10. he sends S a letter containing an order. S receives the letter on 5.10.

Can B still withdraw his order?
Art. 9

6. Withdrawal of offer and acceptance

1 An offer is deemed not to have been made if its withdrawal reaches the offeree before or at the same time as the offer itself or, where it arrives subsequently, if it is communicated to the offeree before he becomes aware of the offer.

2 The same applies to a withdrawal of an acceptance.

Compare with sec. 130 German Civil Code (BGB)
English law

1) Offer usually not binding (no "consideration")

2) But binding

= when made by "deed" (formal legal document signed, witnessed, and delivered to effect a conveyance or transfer of property or to create a legal obligation or contract). Often relating to land.

= or after acceptance
Deed (under Common Law)

From Wikipedia:
At common law, to be valid and enforceable, a deed must fulfill several requirements:
- It must state on its face that it is a deed, using wording like "This Deed..." or "executed as a deed".
- It must indicate that the instrument itself conveys some privilege or thing to someone.
- The grantor must have the legal ability to grant the thing or privilege, and the grantee must have the legal capacity to receive it.
- It must be executed by the grantor in presence of the prescribed number of witnesses, known as instrumentary witnesses (this is known as being in solemn form).
- In some jurisdictions, a seal must be affixed to it. Originally, affixing seals made persons parties to the deed and signatures optional, but seals are now outdated in most jurisdictions, so the signatures of the grantor and witnesses are primary.
- It must be delivered to (delivery) and accepted by the grantee (acceptance).
Art. 1101 A contract is an agreement of wills between two or more persons designated to create, modify, transfer or extinguish obligations.

Art. 1113 The contract is concluded by the meeting of an offer and an acceptance, in which the parties manifest their will to bind themselves.

Art. 1115: [The offer] can be freely withdrawn as long as it has not reached its addressee.
Titre III: **Des sources d'obligations**

**Article 1100** Les obligations naissent d'**actes juridiques**, de **faits juridiques** ou de l'autorité seule de la loi. …

**Article 1100-1** Les **actes juridiques** sont des manifestations de volonté destinées à produire des effets de droit. Ils peuvent être **conventionnels ou unilatéraux**. Ils obéissent, en tant que de raison, pour leur validité et leurs effets, aux règles qui gouvernent les contrats.

**Article 1113** Le **contrat** est formé par la rencontre d'une offre et d'une acceptation par lesquelles les parties manifestent leur volonté de s'engager.

**Article 1114** L'offre, faite à personne déterminée ou indéterminée, comprend les éléments essentiels du contrat envisagé et exprime la volonté de son auteur d'être lié en cas d'acceptation. A défaut, il y a seulement invitation à entrer en négociation.

**Article 1115** Elle peut être librement rétractée tant qu'elle n'est pas parvenue à son destinataire.

**Article 1116** Elle ne peut être rétractée avant l'expiration du délai fixé par son auteur ou, à défaut, l'issue d'un délai raisonnable.

La rétractation de l'offre en violation de cette interdiction empêche la conclusion du contrat.

Elle engage la responsabilité extracontractuelle de son auteur dans les conditions du droit commun sans l'obliger à compenser la perte des avantages attendus du contrat.
UCC § 2-204. Formation in General.

(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract.

(2) An agreement sufficient to constitute a contract for sale may be found even though the moment of its making is undetermined.

§ 2-205. Firm Offers

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.
Art.13 The parties shall, in making a contract, take the form of offer and acceptance.

Art.14 An “offer” is an intent indication showing the desire to enter into a contract with others, and the intent indication shall conform to the following provisions: (1) the content indicated shall be concrete and definite; (2) the offeror shall, as is indicated, be bound by the intent indication upon its acceptance by an offeree.

Art.16 An offer becomes effective when it reaches the offeree. If a contract is made in the form of text in electronic data and the receiver has designated a special receiving system to receive such data text, the time at which the text in electronic data enters the designated special system shall be the time of arrival; if no special receiving system is designated, the time at which the text in electronic data first enters any of the receiver’s systems shall be the time of arrival.

Art.17 An offer may be withdrawn. The withdrawal notice of an offer shall reach the offeree before or at the same time as the arrival of the offer at the offeree.

Art.18 An offer may be revoked. The revocation notice of an offer shall reach the offeree before the dispatch of an acceptance notice by the offeree.

Art.19 An offer may not be revoked under any of the following conditions: the offeror has specified a time limit for the acceptance, or has explicitly indicated in any other manner the irrevocability of the offer; there are grounds for the offeree to maintain the irrevocability of the offer and the offeree has made preparations for the fulfilment of the contract.
Mailbox Rule

The mailbox rule (also called the posting rule), which is the default rule under contract law for determining the time at which an offer is accepted, states that an offer is considered accepted at the time that the acceptance is communicated (whether by mail e-mail, etc). Parties can alter their contract to not use the mailbox rule to and determine between themselves at what time an offer will be considered accepted. The rule originated in the British case of *Adams v. Lindsell* (1818) B & Ald 681, when the Court adopted the doctrine and applied it to bilateral contracts. As with most of contract law, the mailbox rule varies from state to state [in US].
Comparison of the approaches?

- Interests of offeror
- Interests of offeree
- Balance of interests
- Predictability and stability of legal exchange?
- Necessary or superfluous differentiation?
Form of contracts
Form of legal transactions, in particular contracts – comparative aspects

• Distinguish: necessity of form – types of form, form requirements in detail, legal consequences of form defects

  - **English/U.S. law:** consideration or deed, Statute of Frauds 1677, recent statutes, in particular UCC

  - **French law:** art.1359 C.civ. (2016) Writing required for all transactions over a value set by Government Decree (with exception of commercial transactions). If form is not observed, in principle only testimony by witness excluded.
Please compare the provisions of German law on the form of a contract with U.S. law.

**Germany:** §§ 125 – 129 BGB, § 311 b BGB …, § 350 HGB

**USA:** UCC § 2-201. Formal Requirements; Statute of Frauds.

(1) Except as otherwise provided in this section a contract for the sale of goods for the price of $500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

(2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within 10 days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) …

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).
**Article 10 Forms of Contract; Writing Requirement**
A contract may be made in a writing, in an oral conversation, as well as in any other form. A contract shall be in writing if a relevant law or administrative regulation so requires. A contract shall be in writing if the parties have so agreed.

**Article 11 Definition of Writing**
A writing means a memorandum of contract, letter or electronic message (including telegram, telex, facsimile, electronic data exchange and electronic mail), etc. which is capable of expressing its contents in a tangible form.
Interpretation of contracts

• „Common intent“ of the parties as guiding principle: German law, sec.133, 157 German BGB

• „Wording of contract“ as primary principle: Russian law, Art.431 Russian Civil Code

• Intermediate position: French law, art.1188 – 1192 (formerly 1156 – 1164) Code civil

• English law

  • From Wikipedia:

  • Objectivity: For some time it had been orthodox to take an objective view of interpretation, best demonstrated by *Smith v Hughes* (1871). Where Mr Smith thought, after testing a sample, he was buying old oats but in fact was buying green oats, he was not able to assert that he was unbound by his agreement. *Blackburn J* said …

  • **Purpose and context:** The move to a contextual, or purposive approach to construing contracts is a recent feature of English contract law. For instance in 1911, in *Lovell & Christmas Ltd v Wall* Lord Cozens-Hardy MR stated, …
Interpretation of contracts under French law

TITLE III. CONTRACTS OR CONVENTIONAL OBLIGATIONS
IN GENERAL

CHAPTER III. THE EFFECT OF OBLIGATIONS

Section 5. Interpretation of agreements

Article 1188 (formerly 1156)
One must in agreements seek the common intention of the contracting parties, rather than stop at the literal meaning of the words.

Article 1191 (formerly 1157)
When a clause is susceptible of two meanings, it shall be understood to mean that which may produce some effect, rather than according to the meaning which would produce none.
Specific (nominate) contracts

Is this a „sale“?
Specific contracts

Germany
• sales contracts
• exchange contracts
• loan contracts
• contracts of donation
• lease contracts
• contracts for services
• work contracts (in principle also applicable to labour contracts
• …

France
• contracts of donation (art. 931 et seq.
• marriage contracts (art. 1497 et seq.)
• sales contracts (art. 1582 et seq.)
• exchange contracts (1702 et seq.)
• contracts of lease (louage), art. 1708 et seq, including lease of things and lease of works
• loan contracts (art. 1874 et seq.
• …
Summary

- **Sources of contract law**: partly Civil Codes, partly specific legislation, partly Common Law and equity
- **Sphere of application** of contract law: primarily law of obligations, other areas of the law may be unclear
- **Conclusion of contract**: offer and acceptance, different approaches as to binding character of offer („consideration“ under Common Law), revocability and acceptance (eg „mailbox rule“ of Common Law)
- Deeply different approaches as to the **form** and to **interpretation of contracts**: wording of contract v. common intent of parties