
Professional Certificate in International Commercial Law

Contract Law in International Trade

Contract Law in International Trade is a complex field that blends the principles of general contract law with the particularities of cross-border commerce. The following glossary provides a detailed explanation of the key terms and vocabulary that students of the Professional Certificate in International Commercial Law must master. Each entry includes a definition, practical examples, typical applications, and common challenges that arise in international transactions. The material is organized alphabetically for easy reference.

Acceptance – The unequivocal assent by the offeree to the terms of an offer. In international trade, acceptance may be communicated by mail, electronic message, or performance. For example, a buyer in Brazil receives an offer from a seller in Germany to supply steel at a specified price. The buyer’s signed purchase order returned by courier constitutes acceptance. A frequent challenge is the “mailbox rule” which, in many jurisdictions, holds that acceptance is effective when dispatched, not when received. However, parties can contractually modify this rule, and the United Nations Convention on Contracts for the International Sale of Goods (CISG) provides its own timing rules that may differ from domestic common-law principles.

Adhesion Contract – A standardized contract drafted by one party with stronger bargaining power, leaving the other party with little opportunity to negotiate terms. Many international shipping contracts are adhesion contracts, where the carrier provides a set of terms and the shipper simply signs. The practical problem is that courts may scrutinize such terms for unfairness, especially if they impose excessive liability on the weaker party.

Agency – A legal relationship whereby one party (the agent) is authorized to act on behalf of another (the principal) in contractual matters. In international trade, agents often facilitate market entry, negotiate sales, or arrange logistics. For instance, a U.S. Exporter may appoint a local distributor in Japan as its agent to negotiate sales with Japanese retailers. Challenges include determining whether the agent has actual or apparent authority, which affects the liability of the principal for the agent’s acts, and ensuring compliance with local registration requirements for foreign agents.

Arbitration Clause – A provision in a contract that requires disputes to be resolved by arbitration rather than by national courts. International commercial contracts frequently contain arbitration clauses that specify the seat of arbitration, the governing rules (e.g., ICC, LCIA), and the language of the proceedings. Example: A contract for the sale of machinery between a Swiss manufacturer and an Indian buyer includes an arbitration clause stating that any dispute shall be resolved under ICC Rules in Paris, in English. A common challenge is the “separability doctrine,” which treats the arbitration clause as an independent contract; if the main contract is declared void, the arbitration clause may survive, but parties sometimes dispute the validity of the clause itself.

Assignment – The transfer of contractual rights from one party (the assignor) to another (the assignee). In

international trade, a seller may assign its right to receive payment to a factoring company. The assignment must be in writing (or otherwise satisfy the formalities of the governing law) and may be subject to notice requirements. A challenge arises when the contract contains a prohibition on assignment; the assignor must obtain consent, or the assignment may be ineffective, potentially jeopardizing financing arrangements.

Choice of Law – The determination of which jurisdiction’s substantive law will govern the contract. Parties often include a “choice-of-law” clause to create certainty. For example, a contract may state that “this agreement shall be governed by the law of England and Wales.” The practical difficulty is that some jurisdictions, such as the United States, apply “public policy” exceptions that may override the parties’ choice. Moreover, the choice of law interacts with the “forum-selection” clause, which designates the court or arbitration venue.

Condition Precedent – An event or act that must occur before a contractual obligation becomes enforceable. In international sales, a buyer’s obligation to pay may be conditioned upon the seller obtaining a required export license. If the condition is not satisfied, the party is not in breach for non-performance. A challenge is determining whether a condition is a “condition” or a “substantial condition,” which affects the remedies available if the condition fails.

Conditions – Fundamental terms of a contract whose breach may entitle the innocent party to terminate the contract and claim damages. Distinguishing conditions from warranties is crucial. For instance, in a contract for the supply of perishable goods, the condition that the goods be delivered “fresh” within a specific timeframe is essential; failure to meet it may justify repudiation. The difficulty lies in classifying ambiguous terms, especially when parties use colloquial language that may not clearly indicate the parties’ intention.

Covenant – A promise to do or refrain from doing something. In international finance, a loan agreement may contain covenants that require the borrower to maintain certain financial ratios. Breach of a covenant can trigger acceleration of the loan. The challenge is that covenants often involve complex financial metrics that must be monitored across different accounting standards, leading to disputes over compliance.

Damages – Monetary compensation awarded for breach of contract. In international trade, damages may be measured by “loss of profit,” “cost of replacement,” or “difference between contract price and market price.” Example: A buyer contracts to purchase 1,000 tonnes of copper at \$6,000 per tonne, but the seller fails to deliver; the buyer purchases the copper on the spot market at \$6,500 per tonne. The buyer may claim the \$500 per tonne difference as damages. Calculating damages can be challenging due to the need for reliable evidence, the risk of “speculative” damages, and the possible application of the “mitigation” duty, which requires the injured party to take reasonable steps to reduce loss.

Default – Failure to perform a contractual obligation when it becomes due. A default can be “material” (significant) or “minor.” In international sales, a late delivery may be a material default if time is of the essence. The problem is that parties may disagree on whether a breach is material, affecting the availability of termination remedies.

Dispute Resolution – The mechanisms by which parties resolve disagreements, including negotiation, mediation, arbitration, and litigation. International contracts often include a “multi-tiered”

dispute-resolution clause: First, negotiation; second, mediation; third, arbitration. Practical application requires selecting a dispute-resolution institution with expertise in the relevant industry and ensuring that procedural rules align with the parties' expectations. A common challenge is the "enforcement" of arbitral awards, which may be hindered by differing national approaches to the New York Convention.

Force Majeure – An event beyond the parties' control that renders performance impossible or impracticable. Typical force-majeure events include natural disasters, war, strikes, and governmental actions. A contract may contain a specific force-majeure clause listing the events, notice requirements, and the consequences (e.G., Suspension of obligations). Example: A hurricane destroys a port, preventing a seller from loading cargo; the seller invokes force majeure to excuse delayed delivery. The challenge lies in the "interpretation" of force majeure clauses: Courts may require proof that the event was unforeseeable, external, and made performance impossible, not merely more costly.

Hardship – A doctrine allowing renegotiation or termination when an unforeseen event fundamentally alters the equilibrium of the contract, making performance excessively burdensome but not impossible. Unlike force majeure, hardship does not excuse performance but may justify a price adjustment. For instance, a sudden, drastic increase in raw-material costs due to an embargo may trigger a hardship claim. The difficulty is that the doctrine is not universally recognized; its application depends on the governing law (e.G., French law recognizes "imprévision," while English law traditionally does not).

Implied Terms – Provisions that are not expressly written but are incorporated into the contract by law, custom, or the parties' conduct. In international sales, the CISG automatically implies certain terms, such as the seller's obligation to deliver goods that conform to the contract. Example: A contract for the sale of computer equipment does not specify that the goods must be free from manufacturing defects; under the CISG, that term is implied. The challenge is identifying which implied terms apply, especially when parties attempt to exclude them through express clauses, which may be prohibited by mandatory law.

Incoterms – A set of standardized trade terms published by the International Chamber of Commerce (ICC) that define the responsibilities of buyers and sellers for the delivery of goods. Common Incoterms include EXW (Ex Works), FOB (Free On Board), CIF (Cost, Insurance, and Freight), and DAP (Delivered at Place). For example, under FOB, the seller's obligation ends when the goods pass the ship's rail at the port of shipment; the buyer assumes risk thereafter. Challenges arise when parties misinterpret the allocation of risk, especially concerning insurance and freight costs, leading to disputes over who bears loss or damage.

Intention to Create Legal Relations – The requirement that parties must intend their agreement to be legally binding. In commercial contexts, this intention is usually presumed. However, in cross-border transactions, cultural differences may affect the perception of "binding" agreements. For instance, a handshake deal in a jurisdiction where oral contracts are customary may be considered enforceable, while a counterpart in a civil-law country may view it as non-binding unless reduced to writing. The challenge is ensuring that the parties' subjective intentions align with the objective legal standards of the chosen governing law.

Jurisdiction – The authority of a court to hear a case. A "forum-selection clause" designates the jurisdiction where disputes will be adjudicated. Example: A contract states that "any dispute shall be submitted to the courts of Singapore." The practical benefit is certainty; the difficulty lies in the enforcement of foreign

judgments, especially when the chosen jurisdiction lacks reciprocal enforcement treaties.

Letter of Credit (L/C) – A banking instrument that provides a guarantee of payment to the seller upon presentation of specified documents. In international trade, a buyer may secure an L/C from its bank to assure the seller that payment will be made once the shipping documents conform to the terms. Example: A seller ships goods and presents the bill of lading, commercial invoice, and insurance certificate to the confirming bank; the bank pays upon verification. Challenges include documentary compliance (the “strict compliance” principle), discrepancies that can lead to non-payment, and the risk of fraud.

Litigation – The process of resolving disputes through national courts. While arbitration is favored in international trade, litigation may still occur, especially when parties seek injunctive relief or when one party refuses to arbitrate. For instance, a buyer may seek a court injunction to prevent the export of infringing goods. The challenge is the potential for parallel proceedings, jurisdictional conflicts, and the difficulty of enforcing foreign judgments.

Limitation Period – The time limit within which a party must bring a claim. International contracts often specify a “statute of limitations” clause, such as “any claim must be brought within two years of the date of breach.” The challenge is that limitation periods vary by jurisdiction, and the applicable period may be determined by the chosen governing law, which can lead to unexpected bar of claims if parties overlook local limitations.

Material Breach – A breach that goes to the heart of the contract, allowing the innocent party to terminate and claim damages. For example, delivering the wrong type of goods (e.g., Non-compliant hazardous material) may constitute a material breach. Distinguishing material from minor breaches is often contentious and may require analysis of the contract’s purpose, the parties’ expectations, and the proportionality of the breach.

Mitigation – The duty of an injured party to take reasonable steps to reduce its loss. In international trade, a buyer who receives defective goods must seek replacement or resale rather than simply sit idle. Failure to mitigate can reduce the damages recoverable. The practical difficulty is proving that the injured party acted reasonably, especially when market conditions or logistical constraints limit mitigation options.

Negotiable Instruments – Documents such as bills of exchange and promissory notes that can be transferred by endorsement. They are commonly used in trade finance. Example: A seller draws a bill of exchange on the buyer; the buyer accepts and later transfers it to a bank for discounting. Challenges include the “holder in due course” doctrine, which may shield a holder from certain defenses, and the risk of forgery or fraudulent endorsement.

Novation – The substitution of a new contract for an old one, with the consent of all parties, thereby extinguishing the original obligations. A common scenario is when a buyer assigns its purchase obligations to a third party, and the seller agrees to the substitution. The challenge is ensuring that all parties expressly consent; otherwise, the original contract may remain enforceable, leading to duplicate liabilities.

Obligation – A legal duty to perform a specific act, refrain from acting, or pay a sum of money. Obligations

can be primary (performance) or secondary (guarantees). In international trade, a seller's primary obligation is to deliver goods; a secondary obligation might be to provide after-sales service. Complex contracts may contain layered obligations, creating difficulty in determining priority when performance becomes impossible.

Parol Evidence Rule – A principle that excludes oral statements that contradict or add to a written contract, assuming the writing is intended to be a complete integration. Many jurisdictions apply a version of the rule, but the CISG takes a more flexible approach, allowing external evidence to interpret ambiguous terms. Example: A contract states "delivery shall be FOB Shanghai," but the parties later claim there was an oral agreement to extend the delivery date. The challenge is that parties may rely on pre-contractual negotiations, and courts differ on the extent to which such evidence is admissible.

Performance – The fulfillment of contractual duties. In international sales, performance may be "partial" (e.g., Delivering a portion of the goods) or "complete." The practical issue is that partial performance may be deemed sufficient under certain Incoterms, but insufficient under others, leading to disputes over acceptance and payment.

Privity of Contract – The doctrine that only parties to a contract can enforce its rights or be bound by its obligations. Third-party beneficiaries, however, may have rights if the contract expressly confers them. For example, a manufacturer contracts with a distributor to sell products to a retailer; the retailer may be a third-party beneficiary if the contract indicates that the retailer will receive the goods directly. The challenge is that many international contracts attempt to "assign" benefits to third parties, and the enforceability of those assignments depends on the governing law's approach to privity.

Promise – An undertaking to do or refrain from doing something. In contract law, a promise forms the basis of an enforceable obligation when supported by consideration (or an equivalent). In civil-law jurisdictions, a promise may be enforceable without consideration if the contract is in writing. The challenge is determining whether a communication constitutes a binding promise or merely a "puff" (non-binding statement of intent).

Quantum Meruit – A claim for the reasonable value of services rendered when no contract exists or when a contract is unenforceable. In international trade, a consultant who provides market-entry advice may claim quantum meruit if the client refuses to pay under an alleged oral agreement. The difficulty lies in proving the value of the services and establishing that the services were accepted and benefited the other party.

Reciprocal Obligations – Mutual duties that each party owes to the other. In a sale, the buyer's obligation to pay is reciprocal to the seller's obligation to deliver. Reciprocal obligations create a "exchange" that can be used to justify termination if one party's performance is not substantially performed. The challenge is that parties may attempt to "uncouple" obligations through clauses that allow unilateral termination, potentially upsetting the balance of the contract.

Remedy – The legal means of enforcing a right or compensating for a breach. Remedies in international trade include damages, specific performance, injunctions, and restitution. For example, a buyer may seek specific performance to compel the seller to deliver a unique piece of machinery that cannot be sourced

elsewhere. The difficulty is that specific performance is rarely granted in common-law jurisdictions, especially when monetary damages are considered adequate.

Representation – A statement of fact made by one party to induce another to enter into a contract. Misrepresentations can be “fraudulent,” “negligent,” or “innocent.” In international trade, a seller may represent that goods meet certain standards; if the goods fail to meet those standards, the buyer may claim misrepresentation. The challenge is proving the causation link between the representation and the decision to contract, especially across language barriers.

Rescission – The cancellation of a contract, returning the parties to their pre-contractual positions. Rescission may be granted in cases of fraud, mistake, or undue influence. Example: A buyer discovers that the seller concealed a material defect in the goods; the buyer may seek rescission. The practical difficulty is that rescission may be impossible if the goods have been consumed or transformed, rendering restitution unfeasible.

Risk of Loss – The allocation of responsibility for loss or damage to goods before title passes. Incoterms define when risk transfers. Under CIF, risk passes when the goods are loaded onto the ship; under DAP, risk passes upon delivery at the named place. Challenges arise when parties misinterpret the risk point, leading to disputes over insurance coverage and indemnity.

Sale of Goods – A contract whereby the seller transfers ownership of goods to the buyer for a price. The CISG governs many international sales, providing uniform rules on formation, obligations, and remedies. For instance, Article 35 of the CISG requires goods to be of the quantity, quality, and description required by the contract. The challenge is that parties may opt out of the CISG, reverting to local law, which may introduce divergent concepts such as “good faith” requirements or “implied warranties.”

Security Interest – A legal claim on collateral to secure the performance of an obligation. In international finance, exporters may obtain a security interest over the buyer’s inventory to protect against non-payment. The creation of a security interest often requires registration in the jurisdiction where the collateral is located, creating complexity in cross-border enforcement.

Surety – A person who promises to answer for the debt or default of another. A parent company may act as a surety for a subsidiary’s obligations under a purchase contract. The challenge is that surety obligations are secondary; the surety is only liable after the principal defaults, and many jurisdictions impose strict procedural requirements for enforcing a surety claim.

Terms of Delivery – The conditions governing how, when, and where goods are delivered. This includes Incoterms, delivery schedules, and logistical responsibilities. For example, a contract may stipulate “delivery by sea to the port of Rotterdam on or before 30 June.” Failure to meet the delivery term may constitute a breach. The practical difficulty lies in synchronizing shipping schedules with customs clearance procedures, especially when changes in regulations cause unexpected delays.

Terms of Payment – The conditions governing the timing, method, and currency of payment. A contract may require payment “by irrevocable documentary letter of credit in US dollars, payable at sight.” The challenge

is managing foreign-exchange risk and ensuring that the payment method aligns with the parties' banking capabilities.

Third-Party Beneficiary – A person who, despite not being a party to the contract, has the right to enforce its terms because the contract was intended to benefit that person. Under the CISG, third-party rights are limited, but many civil-law jurisdictions recognize such rights. Example: A contract between a shipowner and a charterer may expressly grant the charterer the right to enforce warranties against the shipowner. The difficulty is proving the intent to confer a benefit, especially when the contract is silent on third-party enforcement.

Trade-Related Intellectual Property Rights (TRIPS) – International standards governing the protection of patents, trademarks, and copyrights. While not a contract term per se, TRIPS provisions often appear in licensing agreements and technology transfer contracts. For example, a licensing agreement may stipulate compliance with TRIPS standards for the protection of patented technology. The challenge is reconciling TRIPS obligations with local law variations, especially in jurisdictions with less developed IP regimes.

Uniform Commercial Code (UCC) – A set of model statutes governing commercial transactions in the United States. Although primarily domestic, the UCC influences international contracts when parties choose U.S. Law. Article 2 of the UCC deals with the sale of goods and provides concepts such as "perfect tender" and "warranty of title." The challenge is that the UCC's "perfect tender" rule may conflict with the CISG's "conformity" standard, leading to divergent remedies for non-conforming goods.

Unfair Contract Terms – Provisions that create a significant imbalance to the detriment of the consumer or weaker party. Many jurisdictions have statutes limiting unfair terms, such as the EU's Unfair Terms Directive. In international trade, a clause that imposes unlimited liability on the buyer may be deemed unfair under the buyer's local law, potentially rendering it unenforceable. The practical difficulty is anticipating which jurisdiction's unfair-terms legislation will apply, especially when the contract contains a choice-of-law clause that selects a jurisdiction with a permissive approach.

Undeclared – A term occasionally used to describe a contract that remains valid despite attempts to challenge its enforceability. The more common term is "unavoidable," referring to contracts that cannot be avoided due to statutory protection (e.g., Contracts involving minors in certain jurisdictions). The challenge is distinguishing between void, voidable, and unenforceable contracts, as each category carries different legal consequences.

Usury – The charging of excessively high interest rates, often prohibited by law. In international finance, loan agreements must comply with local usury laws, which may cap interest rates. For example, a loan from a European bank to a developing-country borrower must respect the borrower's maximum permissible rate. Failure to do so can render the loan agreement void or lead to penalties.

Warranty – A promise that certain facts about the goods or services are true; a breach of warranty gives rise to a claim for damages but not termination. Under the CISG, warranties are implied concerning conformity with the contract. For instance, a seller warrants that the goods are free from defects. The challenge is differentiating warranties from conditions, especially when the contract language is ambiguous.

Willful Breach – A breach committed intentionally or with reckless disregard for contractual obligations. A willful breach may attract higher damages, such as “punitive damages” in jurisdictions that allow them. Example: A seller deliberately ships substandard goods, knowing they will not meet specifications. The difficulty lies in proving the mental state of the breaching party, which often requires circumstantial evidence.

World Trade Organization (WTO) Agreements – International treaties that establish rules for global trade, including the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the Agreement on Subsidies and Countervailing Measures. While not contract law per se, WTO obligations influence commercial contracts, especially clauses concerning “most-favoured-nation” (MFN) treatment. For example, a supply agreement may include a clause stating that the seller will offer the buyer MFN pricing in line with WTO commitments. The challenge is ensuring contract terms do not conflict with WTO rules, which could lead to dispute-settlement proceedings before the WTO.

Yield – In finance, the return on an investment, often expressed as a percentage. Yield considerations affect the pricing of letters of credit and other trade-finance instruments. For example, a factoring company may purchase receivables at a discount reflecting its expected yield. The challenge is that yield calculations must account for currency fluctuations, credit risk, and the time value of money, requiring sophisticated financial modeling.

Zoning Restrictions – Local regulations that limit the use of land or the type of activities permitted. In international construction contracts, zoning restrictions can affect the feasibility of a project. A contractor may be obliged to obtain permits that comply with local zoning laws. The practical difficulty is that zoning laws vary widely, and non-compliance can result in project delays, penalties, or even contract termination.

Accord and Satisfaction – A method of discharging a contractual obligation by agreeing to a new performance (accord) and completing that performance (satisfaction). In international trade, parties may settle a dispute over late delivery by agreeing that the buyer will accept a reduced quantity at a lower price, thereby satisfying the original obligation. The challenge is ensuring that the accord is documented and that the satisfaction is fully performed, otherwise the original claim may remain viable.

Adverse Possession – A doctrine allowing a person to acquire legal title to land by possessing it openly and continuously for a statutory period. While primarily a property concept, adverse possession can intersect with international contracts involving real-estate development. For instance, a foreign investor may acquire land, but if the local owner fails to assert rights for an extended period, the investor may claim title under adverse possession. The difficulty lies in reconciling differing statutory periods and procedural requirements across jurisdictions.

Agency in International Trade – The use of agents to act on behalf of principals in foreign markets. Agency agreements often contain clauses on exclusivity, commission, and termination. For example, a European wine producer appoints an Asian distributor as its exclusive agent for the region. The challenge is ensuring that the agent’s authority is clearly defined to avoid “apparent authority” claims that could bind the principal to unauthorized actions.

Allegation of Fraud – A claim that a party deliberately misrepresented material facts to induce contract formation. In international trade, fraud can involve falsified certificates of origin, counterfeit goods, or deceptive marketing. The remedy may include rescission, damages, and criminal prosecution. The challenge is the evidentiary burden of proving intent, especially when the alleged fraud occurred across multiple jurisdictions with differing standards of proof.

Anticipatory Repudiation – A declaration by one party that it will not perform its contractual obligations before performance is due. The innocent party may treat the contract as terminated and sue for damages. For instance, a buyer informs the seller that it will not accept delivery due to a change in market conditions. The challenge is determining whether the repudiation is “firm” enough to justify termination, as parties may later retract the repudiation before performance is due.

Assignment of Benefits – The transfer of the right to receive payment or other benefits under a contract. In international trade finance, a seller may assign its right to receive payment under a sales contract to a factoring company. The assignment must be in writing and may require notice to the obligor. The difficulty is that some contracts contain anti-assignment clauses, and the assignee must ensure that the assignment does not violate any regulatory restrictions, such as foreign-exchange controls.

Bank Guarantees – A commitment by a bank to pay a beneficiary if the applicant fails to fulfill contractual obligations. Bank guarantees are often used in construction contracts to assure performance. For example, a contractor provides a performance guarantee to the project owner, ensuring payment if the contractor defaults. The challenge is that bank guarantees are subject to the “independence principle,” meaning the guarantor must pay regardless of underlying disputes, which can create tension between banks and their clients.

Best Efforts – An obligation to act with a high degree of diligence and endeavor to achieve a result, though not guaranteeing success. In international distribution agreements, a supplier may agree to use “best efforts” to secure timely delivery. The practical difficulty is measuring whether best efforts were exercised, as courts often apply an objective standard based on industry practices.

Business Judgment Rule – A principle protecting directors’ decisions made in good faith and with reasonable care. While primarily a corporate governance concept, the rule can affect contract negotiations where corporate officers act on behalf of the company. For instance, a board’s decision to accept a contract with higher risk may be shielded by the business judgment rule, limiting liability for breach of fiduciary duty.

Carrier – An entity that transports goods for a fee. Carriers can be common carriers (available to the public) or contract carriers (servicing specific clients). International contracts often specify the carrier’s obligations, such as the duty to deliver goods in a seaworthy condition. The challenge is allocating liability for loss or delay, especially when the carrier’s liability is limited by conventions such as the Hague-Visby Rules.

Choice of Forum – The selection of a particular court or arbitration institution to resolve disputes. A “forum-selection clause” may designate the International Court of Arbitration of the ICC in Paris. The practical benefit is reduced uncertainty; however, challenges arise when the chosen forum is perceived as biased, or when enforcement of awards is problematic in the jurisdiction where the losing party’s assets are

located.

Compromise Clause – A contractual provision that obliges parties to settle disputes through compromise before resorting to litigation or arbitration. While less common than arbitration clauses, compromise clauses encourage amicable resolution. The difficulty is that parties may exploit such clauses to delay resolution, leading to “forum shopping” or “forum shopping” accusations.

Confidentiality Agreement – A contract that obliges parties to keep certain information secret. In international joint ventures, confidentiality agreements protect proprietary technology and business plans. Breach of confidentiality can result in injunctive relief and damages. The challenge lies in enforcing confidentiality across borders, especially where the law of the chosen jurisdiction does not recognize trade-secret protection.

Consideration – The value exchanged between parties that renders a promise enforceable. In civil-law jurisdictions, consideration may be replaced by the concept of “cause.” In international contracts, parties often rely on the exchange of money for goods as consideration. The difficulty is that in some civil-law systems, a promise without consideration may still be binding if the contract is in writing and meets statutory requirements.

Contractual Capacity – The legal ability of a party to enter into a contract. Capacity may be limited for minors, insolvent entities, or entities lacking proper corporate authority. In cross-border transactions, verifying capacity can be complicated by differing corporate law regimes. For example, a foreign subsidiary may lack the authority to sign a contract without a board resolution, and failure to obtain such authority can render the contract voidable.

Contractual Interpretation – The process by which courts or arbitrators determine the meaning of contract terms. International courts may apply the “plain meaning” rule, the “contextual” approach, or the “principles of good faith.” The CISG encourages a “uniform interpretation” based on the parties’ intent. A common challenge is reconciling differing interpretive approaches, particularly when a contract is governed by a civil-law jurisdiction that emphasizes “good faith” and a common-law jurisdiction that emphasizes “plain meaning.”

Counter-Guarantee – A guarantee provided by a secondary guarantor to secure the obligations of a primary guarantor. In structured finance, a parent company may issue a counter-guarantee to back a subsidiary’s bank guarantee. The challenge is that counter-guarantees may be subject to additional regulatory approval, especially in jurisdictions with strict capital-adequacy rules.

Covenant Not to Compete – A clause restricting a party from engaging in competing activities for a specified period and geographic area. In international franchise agreements, franchisors often include non-compete covenants to protect brand integrity. Enforcement varies widely; some jurisdictions, like the United States, enforce reasonable non-compete covenants, while others, such as many European countries, may deem them invalid if they unduly restrict trade.

Damages for Loss of Bargain – Compensation measured by the profit the injured party would have earned

had the contract been performed. In international sales, a buyer may claim loss of bargain if the seller's breach forces the buyer to purchase substitute goods at a higher price. The challenge is proving the profit margin and establishing causation, especially when market prices fluctuate rapidly.

Declaratory Relief – A judicial determination of the parties' rights without awarding damages. In international trade, a party may seek a declaratory judgment confirming that a particular clause is valid under the chosen law. The difficulty is that some jurisdictions limit the availability of declaratory relief, preferring to resolve disputes through concrete remedies.

Defeasance – The extinction of a contractual right or obligation, often by mutual agreement or by the occurrence of a specified event. In loan agreements, a defeasance clause may release the borrower from security obligations once the loan is repaid. The practical challenge is ensuring that all procedural steps (e.G., Registration of release) are completed to avoid lingering claims.

Delivery Terms – The specifications concerning the manner, timing, and place of delivery. Delivery terms may be expressed in Incoterms or tailored clauses. For example, "delivery FCA (Free Carrier) Hamburg" obliges the seller to deliver the goods to a carrier at Hamburg. The difficulty is aligning delivery terms with customs procedures, as failure to comply with export licensing requirements can cause delays and breach.

Demurrage – A charge imposed for the late return of a vessel or container. In shipping contracts, demurrage provisions compensate the carrier for the additional time the cargo occupies space beyond the agreed lay-time. A challenge is calculating demurrage when the lay-time is ambiguous or when force-majeure events affect the loading schedule.

Discharge – The termination of contractual obligations, either by performance, agreement, frustration, or operation of law. Discharge can be mutual, where parties agree to end the contract, or unilateral, where one party invokes a clause (e.G., Termination for convenience). The challenge is ensuring that discharge does not expose parties to unintended liabilities, such as residual warranty claims.

Doctrine of Frustration – A principle that discharges parties from contractual obligations when an unforeseen event makes performance impossible, and the risk was not allocated by the contract. In international trade, the outbreak of war may frustrate a contract for the delivery of goods to a conflict zone. The doctrine is applied narrowly; courts require that the event fundamentally changes the nature of the obligation, not merely makes it more burdensome.

Due Diligence – The investigative process undertaken before entering into a contract to assess risks, such as financial stability, regulatory compliance, and legal title. In cross-border M&A, due diligence may involve reviewing corporate records, tax filings, and environmental permits. The challenge is the "knowledge gap" when parties operate under different legal systems and languages, potentially leading to undiscovered liabilities.

Economic Duress – A situation where a party is forced to agree to a contract under illegitimate economic pressure. In international trade, a supplier may be compelled to accept unfavorable terms because the buyer threatens to withhold payment. The remedy may include rescission of the contract. Proving economic

duress requires demonstrating that the pressure was unlawful and left the victim with no reasonable alternative.

Enforceability – The ability of a court or arbitral tribunal to compel compliance with a contractual provision. Enforceability can be affected by public policy, mandatory statutes, or procedural defects. For instance, a clause that attempts to limit liability for intentional wrongdoing may be deemed unenforceable. The challenge is ensuring that the contract's provisions are consistent with the laws of all jurisdictions where enforcement may be sought.

Equitable Remedies – Non-monetary remedies such as specific performance, injunctions, or rescission, based on principles of fairness.