
Professional Certificate in International Commercial Law

Comparative Contract Law

Contract – the cornerstone of commercial law, a contract is a legally binding agreement between two or more parties that creates enforceable rights and obligations. In comparative contract law, the definition may vary: Common-law jurisdictions emphasize the “meeting of the minds” while civil-law systems focus on the “consensus ad idem.” Understanding these nuances is essential for drafting cross-border agreements that will survive scrutiny in both traditions.

Offer – an expression of willingness to contract on certain terms, made with the intention that it become binding as soon as it is accepted. An offer must be sufficiently certain; vague promises such as “we will discuss price later” generally fail to qualify. In the United States, the Restatement (Second) of Contracts treats an offer as “a manifestation of willingness to enter into a bargain.” In contrast, the French Civil Code requires an “engagement ferme” that is “certain and determinate.”

Acceptance – the unequivocal assent to the terms of an offer. Acceptance must be communicated unless the offer provides otherwise. The “mailbox rule” in common law holds that acceptance is effective when dispatched, whereas many civil-law jurisdictions deem acceptance effective only upon receipt. For example, a German contract formed by email is not complete until the counter-party reads the message, while an English contract may be perfected the moment the email is sent.

Consideration – the value exchanged between parties that distinguishes a contract from a gratuitous promise. This doctrine is a hallmark of common-law systems; the United Kingdom requires “something of value” on each side. Civil-law countries, such as France and Spain, do not use the term “consideration” but instead focus on the “cause” (causa) of the obligation, which must be lawful and sufficiently serious.

Intention to create legal relations – the presumption that parties intend their agreement to be legally binding. In commercial contexts, the presumption is strong; in domestic or social agreements, the presumption may be rebutted. The English case of *Balfour v Balfour* illustrates the lack of intention in a husband-wife arrangement, whereas *Matsushita Electric Industrial Co. V. H. C. Brown* confirms that commercial negotiations usually carry the requisite intention.

Capacity – the legal ability of a party to enter into a contract. Minors, persons under guardianship, and certain corporate entities may lack full capacity. In the United States, the Uniform Commercial Code (UCC) permits minors to ratify contracts upon reaching majority, while the German Civil Code allows minors to “disaffirm” contracts unless they are for necessities.

Legality – contracts must not contravene public policy or statutory prohibitions. An agreement to sell prohibited goods, such as endangered wildlife, is void in both common-law and civil-law jurisdictions. The concept of “illegality” can differ: Some countries void the entire contract, while others may enforce the lawful portion and excise the illegal clause (the doctrine of severability).

Form – certain contracts must be in writing or meet specific formalities. The Statute of Frauds in England requires contracts for the sale of land, guarantees, and contracts not performable within one year to be written. In contrast, the French Civil Code (Article 1105) mandates a written form only for contracts that parties expressly agree must be written.

Express terms – provisions explicitly stated by the parties, either orally or in writing. These terms are the primary source of rights and duties. For instance, a clause specifying “delivery within 30 days” is an express term that, if breached, may give rise to a claim for damages.

Implied terms – provisions that the law inserts into a contract to fill gaps. In English law, terms may be implied “by fact” (reflecting the parties’ presumed intention), “by custom” (reflecting industry practice), or “by law” (such as the obligation to act in good faith). Civil-law codes often embed implied duties directly in the contract model, such as the duty of “good performance” (*bonne exécution*).

Condition – a term that makes the performance of a contract dependent on the occurrence of a future event. Conditions can be “precedent” (must occur before obligations arise) or “subsequent” (terminate obligations when the event occurs). In the United States, the doctrine of “condition precedent” is pivotal in construction contracts, where payment is contingent upon satisfactory completion of work.

Warranty – a promise that a particular fact or quality is true, which, if false, gives rise to a claim for breach but does not affect the contract’s core purpose. Warranties are distinguished from “conditions” because their breach typically results in damages rather than termination. In the CISG (United Nations Convention on Contracts for the International Sale of Goods), a breach of a warranty may be remedied by repair, replacement, or price reduction.

Representation – a statement of fact made to induce another party to enter into a contract. If a representation is false, it may give rise to a claim for misrepresentation or fraud, separate from breach of contract. The distinction between representation and warranty is crucial in cross-border transactions, where the same statement may be treated differently under English law (as a warranty) and under the CISG (as part of the contract’s obligations).

Exclusion clause – a provision that limits or excludes liability for certain breaches. English law subjects exclusion clauses to the “reasonableness” test under the Unfair Contract Terms Act 1977, while the CISG permits parties to limit liability unless the limitation is “unreasonable” under the principle of good faith. In civil-law jurisdictions, exclusion clauses may be void if they contravene mandatory rules protecting consumers.

Force majeure – an event beyond the parties’ control that renders performance impossible or impracticable. The concept is codified in the French Civil Code (Article 1218) and the German Civil Code (Section 313), and it appears in the CISG as “impediment.” A force-majeure clause usually requires the affected party to notify the other party promptly and may allow suspension or termination of the contract.

Frustration – the doctrine that discharges parties from performance when an unforeseen event fundamentally changes the contract’s nature. In English law, the classic case **Taylor v Caldwell** established

frustration, while the French Civil Code treats similar situations under “*imprévision*,” allowing for renegotiation rather than automatic discharge.

Repudiation – an unequivocal indication that a party will not perform its contractual obligations. Repudiation gives the innocent party the right to accept the breach and claim damages, or to await performance. In the United Nations Convention on Contracts for the International Sale of Goods, repudiation is defined as “any indication by the seller or the buyer that they will not perform any of their obligations under the contract.”

Breach – any failure to perform a contractual duty as agreed. Breach can be “material” (significant, justifying termination) or “minor” (allowing the injured party to claim damages while the contract remains in force). The test for materiality varies: English courts use the “significance” test, whereas German courts apply the “essential performance” standard (*wesentliche Leistung*).

Remedies – the legal means for enforcing rights after a breach. The primary remedies include:

- Damages – monetary compensation for loss. In common law, damages aim to put the injured party in the position they would have been in had the contract been performed (the “expectation” measure). In civil law, the “*restitutio in integrum*” principle seeks to restore the pre-contractual position.
- Specific performance – an order compelling performance of the contract. English courts grant specific performance sparingly, typically for unique goods (e.g., Works of art). Civil-law jurisdictions treat specific performance as a default remedy unless the performance is impossible or would cause undue hardship.
- Injunction – a court order preventing a party from doing something that would breach the contract (e.g., Disclosing confidential information).
- Rescission – the cancellation of the contract, returning the parties to their pre-contractual position.

Anticipatory breach – when one party indicates, before the performance date, that they will not fulfill their obligations. The non-breaching party may treat the contract as immediately terminated and sue for damages. In the United States, the Restatement (Second) of Contracts allows the injured party to either await performance or sue immediately.

Mitigation – the duty of the injured party to take reasonable steps to reduce the loss caused by the breach. Failure to mitigate may result in a reduction of damages. Both common-law and civil-law systems impose a mitigation requirement, though the standard of “reasonable” may differ based on local jurisprudence.

Third-party rights – the ability of persons who are not parties to a contract to enforce its terms. The English doctrine of “privity” traditionally barred third-party enforcement, but the Contracts (Rights of Third Parties) Act 1999 created an exception. In contrast, the Civil Code of Quebec expressly allows third-party beneficiaries to enforce contracts if the parties intended to confer a benefit.

Assignment – the transfer of contractual rights from one party (the assignor) to another (the assignee). Assignment does not transfer obligations unless the contract permits. In the United States, the UCC allows assignment of receivables, while in Germany, the assignment (*Abtretung*) must be in writing to be effective against third parties.

Novation – the substitution of a new contract for an old one, with the consent of all original parties. Novation extinguishes the original obligations and creates fresh obligations, often used in corporate restructuring.

Delegation – the transfer of contractual duties to a third party, without relieving the original obligor of liability. Delegation is permissible unless the contract expressly forbids it. In English law, the delegating party remains liable for performance, while in some civil-law jurisdictions, the delegatee may assume primary liability if the original obligor consents.

Privity – the principle that only parties to a contract may enforce or be bound by it. This principle is central to common-law analysis but is less rigid in civil-law regimes where “contractual solidarity” (solidarität) may extend obligations to related parties.

Choice of law – the clause that determines which jurisdiction’s substantive law will govern the contract. The “most significant relationship” test in the United States and the “characteristic performance” test in the EU are common approaches. The CISG automatically applies to the sale of goods between parties in different signatory states unless the parties opt out.

Jurisdiction – the authority of a court to hear a case. A “forum-selection clause” designates the specific court or arbitration center where disputes will be resolved. International contracts often include both a choice-of-law and a jurisdiction clause to avoid uncertainty.

Arbitration – a private dispute-resolution mechanism where an arbitrator’s award is final and enforceable. The New York Convention (1958) facilitates the recognition and enforcement of foreign arbitral awards. Arbitration clauses are favored in international commercial contracts because they provide neutrality and speed.

CISG – the United Nations Convention on Contracts for the International Sale of Goods, a uniform law that governs the formation, performance, and remedies of cross-border sales of goods. It supersedes domestic law unless the parties expressly exclude it. Key concepts include the “fundamental breach” standard and the “right to cure” provision.

UNIDROIT Principles – a set of non-binding but widely respected principles that fill gaps in international contracts. They address issues such as “good faith” (a concept more prominent in civil-law systems) and “fair and equitable treatment.” Parties may incorporate the Principles by reference, thereby creating a hybrid legal framework.

Good faith – a general duty to act honestly and fairly. In civil-law jurisdictions, good faith is a pervasive principle influencing contract interpretation, performance, and termination. Common-law jurisdictions traditionally lack a broad good faith doctrine, but recent case law (e.g., **Yam Seng Pte Ltd v International Container Terminal Services** in Singapore) shows an emerging trend toward recognizing good-faith obligations in commercial contracts.

Imprévision – the doctrine allowing renegotiation of contracts when unforeseen events make performance excessively onerous. It is recognized in French, Swiss, and Italian law, but not in English law, where the

doctrine of “frustration” applies more narrowly. The disparity can affect the drafting of “hard-ship” clauses in multinational agreements.

Hard-ship clause – a contractual provision that permits a party to request renegotiation or suspension of performance when extraordinary circumstances arise. Such clauses are essential in long-term supply contracts, especially in volatile markets. They help bridge the gap between the common-law reluctance to apply *imprévision* and the civil-law willingness to adjust contracts.

Standard form contract – a pre-printed contract with non-negotiable terms, commonly used in consumer transactions and online platforms. The enforceability of standard form contracts is subject to consumer-protection statutes (e.g., The UK Consumer Rights Act 2015) and to the principle of “unfair terms” in the EU.

Adhesion contract – similar to a standard form contract, an adhesion contract is drafted by a party with superior bargaining power. Courts scrutinize adhesion contracts for unconscionability, particularly when they contain oppressive exclusion clauses.

Quantum meruit – a claim for the value of services rendered when no contract exists or when a contract is unenforceable. The doctrine, rooted in equity, allows a party to recover the reasonable value of work performed, preventing unjust enrichment.

Estoppel – a principle preventing a party from asserting a claim that contradicts its previous statements or conduct if the other party has relied on those statements. Promissory estoppel, recognized in English law, can enforce a promise even without consideration, provided reliance is proven.

Parol evidence rule – the rule that excludes oral evidence that contradicts a written contract’s terms. This rule is a staple of common-law jurisdictions, but civil-law countries often admit extrinsic evidence to interpret ambiguous terms, especially under the doctrine of “good faith.”

Interpretation – the process of construing contract language. English courts apply the “plain meaning” rule, followed by “*contra proferentem*” (interpretation against the drafter) if ambiguity remains. Civil-law courts may consider the parties’ intentions, the contract’s purpose, and the principle of good faith.

Ambiguity – a lack of clarity that can lead to divergent interpretations. Ambiguities are resolved differently: Common-law courts may look to prior negotiations, while civil-law courts may rely on the “principle of interpretation” that seeks a harmonious reading of the contract.

Severability – a clause stating that if part of the contract is invalid, the remainder remains enforceable. Severability clauses are crucial in international agreements where a particular provision may contravene local law. Courts in both traditions generally uphold the contract’s intent by preserving the viable portions.

Entire agreement clause – a provision stating that the written contract constitutes the whole agreement between the parties, superseding all prior negotiations. This clause reinforces the parol evidence rule and is especially important when parties exchange numerous drafts and emails.

Confidentiality – an obligation to keep certain information private. Confidentiality clauses are often accompanied by “non-disclosure” provisions and may include “survival” periods extending beyond contract termination. In the United States, the Uniform Trade Secrets Act provides statutory protection for confidential information.

Non-compete clause – a restriction that prevents a party from engaging in competing activities for a specified time and geographic area. Enforceability varies: The United Kingdom permits reasonable non-compete clauses, while California generally voids them as contrary to public policy.

Liquidated damages – a pre-determined sum payable upon breach, intended to estimate actual loss. Liquidated damages are enforceable if they are a genuine pre-estimate and not a penalty. The “penalty rule” in English law, articulated in **Cavendish Square Holding BV v Makdessi**, scrutinizes whether the sum is proportionate to the legitimate interest protected.

Penalty – a clause that imposes a punitive sum rather than compensating for loss. Penalties are unenforceable in many common-law jurisdictions, but civil-law systems may enforce them if they serve a legitimate purpose, such as deterrence.

Warranty of title – a guarantee that the seller has good title to the goods and the right to transfer ownership. Under the CISG, a breach of the warranty of title allows the buyer to avoid the contract or claim damages.

Risk of loss – the allocation of responsibility for loss or damage to goods during transit. Incoterms (International Commercial Terms) provide standardized rules, such as FOB (Free on Board) and CIF (Cost, Insurance, Freight), which determine when risk passes from seller to buyer.

Incoterms – a set of trade-related terms published by the International Chamber of Commerce that define the responsibilities of buyers and sellers. Incorporating Incoterms into contracts reduces uncertainty about delivery, customs clearance, and insurance.

Performance – the fulfillment of contractual obligations. Performance can be “partial” (only part of the obligations is completed) or “complete.” The doctrine of “substantial performance” permits a party who has substantially complied to claim payment, subject to deductions for the unperformed portion.

Delay – failure to perform on time. Delay may constitute a breach, giving rise to damages or the right to terminate. In construction contracts, “liquidated damages for delay” are common, providing a daily rate for overdue milestones.

Force majeure clause – a contractual provision that outlines the events qualifying as force majeure, the required notice, and the consequences (e.g., Suspension or termination). Parties often tailor force-majeure clauses to include pandemics, cyber-attacks, and political upheaval, reflecting recent global experiences.

Termination clause – a provision that sets out the circumstances under which a contract may be ended, such as material breach, insolvency, or mutual agreement. Proper drafting of termination clauses is vital to avoid disputes over whether a termination was lawful.

Escrow – a mechanism whereby a neutral third party holds assets (often money or documents) until contractual conditions are satisfied. Escrow arrangements are common in technology licensing and M&A transactions, providing security for both parties.

Guarantee – a commitment by a third party (the guarantor) to fulfill the obligations of the principal debtor if they default. Guarantees can be “limited” (capped at a specific amount) or “unlimited.” The enforceability of guarantees may be subject to statutory requirements, such as written form under the UCC.

Surety – similar to a guarantee, but the surety’s liability is co-extensive with that of the principal debtor. The distinction between surety and guarantee affects the remedies available to the creditor.

Set-off – the right of a debtor to balance mutual debts against each other, reducing the amount owed. Set-off may be contractual or statutory, and its availability can differ across jurisdictions.

Bankruptcy – the legal status of a debtor who cannot meet obligations, leading to the distribution of assets among creditors. Bankruptcy law can stay contractual performance, and certain contracts (e.G., “Automatic stay” provisions) are protected from enforcement during the process.

Assignment of benefits – the transfer of the right to receive payment. In the United States, the assignment of receivables is governed by the UCC, which requires notice to the debtor to be effective against third parties.

Contractual estoppel – the principle that a party is bound by its own contractual statements, even if they later prove inaccurate. This principle reinforces the certainty of contracts and limits parties from renegotiating terms after they have been agreed upon.

Doctrine of frustration – a principle that discharges parties when an unforeseen event makes performance impossible. English law applies a narrow test, requiring the event to be “radical” and not due to the fault of either party. Civil-law jurisdictions may apply a broader “hard-ship” analysis.

Doctrine of imprévision – a civil-law concept allowing renegotiation when performance becomes excessively burdensome due to extraordinary circumstances. This doctrine underlies many “hard-ship” clauses and is essential for drafting contracts that will be enforceable in jurisdictions such as France, Switzerland, and Italy.

Contractual capacity – the legal ability to enter into a contract. Capacity issues arise with minors, mentally incapacitated persons, and certain corporate entities. For example, a corporation may lack capacity to contract if its articles of incorporation restrict certain activities.

Corporate veil – the legal distinction between a corporation and its shareholders. In contract law, the veil is generally respected, meaning the corporation is liable for its own debts, not those of its shareholders, unless a “piercing” doctrine applies.

Piercing the corporate veil – a judicial act that holds shareholders personally liable for corporate obligations, typically when the corporation is used to perpetrate fraud or evade legal duties. This doctrine is more common in common-law jurisdictions, but civil-law courts may also apply it under abuse of law principles.

Statute of limitations – the time limit within which a claim must be brought. The limitation period varies: In England, the limitation for contract claims is six years from the date of breach; in the United States, it ranges from three to ten years depending on the state and the nature of the claim.

Electronic contracts – agreements formed through digital means, such as email, e-commerce platforms, or blockchain smart contracts. The legal validity of electronic contracts is supported by the UNCITRAL Model Law on Electronic Commerce and domestic statutes like the U.S. Electronic Signatures in Global and National Commerce Act (ESIGN).

Smart contract – a self-executing contract with terms encoded in computer code, automatically enforcing obligations when predefined conditions are met. Smart contracts raise novel issues about jurisdiction, error correction, and the interplay between code and traditional contract doctrines.

Contractual interpretation – the methodology used by courts to ascertain parties' intentions. In common law, courts apply a hierarchy: Literal meaning, contextual meaning, and finally, purposive interpretation. Civil-law jurisdictions may give greater weight to the "good faith" principle and the "spirit" of the contract.

Good faith negotiation – the duty to negotiate honestly and fairly. While not universally codified, many jurisdictions impose a good-faith obligation during pre-contractual negotiations, especially when one party has relied on the other's promises.

Pre-contractual liability – the potential for liability arising from negotiations before a contract is finalized. In English law, "relief against misrepresentation" may be available, while in French law, the "culpabilité" of the parties during negotiations can give rise to compensation.

Assignment clause – a contractual provision that regulates the ability to assign rights. Parties often limit assignment to protect against undesirable third parties, especially in financing agreements.

Change-of-law clause – a provision that addresses the effect of legislative amendments on the contract. Such clauses are common in long-term supply agreements, ensuring that parties can adapt to new regulatory requirements without breaching the contract.

Force majeure vs. Hardship – while both address unforeseen events, force majeure typically excuses performance, whereas hardship permits renegotiation. Understanding the distinction helps drafters choose the appropriate clause based on the governing legal system.

Choice-of-forum clause – a clause specifying the court or arbitration center where disputes will be litigated. The clause enhances predictability and can reduce litigation costs. However, it must be reasonable; otherwise, a court may deem it unenforceable for being "unfair."

Doctrine of illegality – the principle that contracts formed for illegal purposes are void. The extent of the doctrine varies: In the United States, illegal contracts are generally void ab initio, while some civil-law jurisdictions apply the "partial illegality" approach, severing the illegal portion and enforcing the remainder.

Contractual penalties – a punitive provision that imposes a higher sum than actual loss. In common law,

penalties are generally unenforceable, but civil-law jurisdictions may enforce them if they serve a legitimate public policy purpose, such as ensuring compliance with safety standards.

Set-off rights – the ability of a debtor to deduct a mutual debt from the amount owed. Set-off may be contractual or arise by operation of law, and its enforceability can be limited by insolvency rules.

Confidentiality agreement – a contract that obliges parties to protect proprietary information.

Confidentiality clauses often include “non-disparagement” and “non-solicitation” elements, extending the protection beyond the term of the agreement.

Non-disclosure agreement (NDA) – a specific type of confidentiality agreement commonly used in mergers and acquisitions, joint ventures, and technology licensing. NDAs must be narrowly tailored to avoid being deemed overly restrictive, especially under competition law.

Contractual indemnity – a promise to compensate the other party for specified losses. Indemnity clauses are heavily negotiated in commercial contracts, particularly in service agreements where one party may be exposed to third-party claims.

Limitation of liability – a clause that caps the amount of damages a party can be required to pay. Courts scrutinize such clauses for fairness, especially when they attempt to limit liability for gross negligence or intentional misconduct.

Standard of care – the level of diligence expected of a party performing contractual duties. In professional services contracts, the standard of care may be defined by industry norms or statutory regulations, such as the “reasonable professional” standard for architects.

Material adverse change (MAC) – a clause often used in merger agreements, stating that a significant negative change in the target’s business may allow the buyer to walk away. MAC clauses are heavily litigated, with courts evaluating whether the change is “material” and “adverse.”

Force majeure event – a specific occurrence listed in a contract that triggers the force-majeure clause. Typical events include natural disasters, war, terrorism, labor strikes, and governmental actions. The definition and scope of “force majeure” can be a source of dispute, especially when parties argue over whether a pandemic qualifies.

Hard-ship clause – a contractual provision that allows a party to request renegotiation when performance becomes excessively burdensome due to unforeseen circumstances. Hard-ship clauses often require the affected party to prove that the event is beyond its control and that the performance has become “impracticable.”

Suspension of performance – a temporary halt in obligations, usually triggered by a force-majeure event. Suspension may preserve the contract’s existence while allowing parties to resume obligations once the impediment ceases.

Termination for convenience – a clause that permits one party to end the contract at will, typically with

notice and possibly a termination fee. This clause is common in government contracts and long-term service agreements, offering flexibility but also creating potential for disputes over compensation.

Contractual breach – the failure to perform a contractual obligation. Breaches can be “material” (significant) or “minor” (trivial). Material breaches often allow the innocent party to terminate the contract, whereas minor breaches generally give rise only to damages.

Remedy of specific performance – an equitable remedy compelling a party to fulfill its contractual duties. Specific performance is favored in civil-law systems and limited in common-law jurisdictions to situations where monetary damages are inadequate, such as unique goods or real property.

Injunction – a court order preventing a party from doing something that would breach the contract. Injunctions can be “interim” (temporary) or “permanent,” and are often used to enforce non-compete or confidentiality provisions.

Damages – monetary compensation for loss. The calculation of damages varies: Expectation damages aim to put the injured party in the position it would have been in had the contract been performed; reliance damages compensate for expenses incurred in reliance on the contract; restitution damages restore the status quo ante.

Mitigation of damages – the duty of the injured party to take reasonable steps to reduce loss. Failure to mitigate can reduce the damages award. For example, a buyer who receives defective goods must attempt to resell them at a reasonable price before claiming the full loss.

Quantum meruit – a claim for the reasonable value of services performed when no contract exists or the contract is unenforceable. This principle prevents unjust enrichment and is recognized in both common-law and civil-law jurisdictions.

Unconscionability – a doctrine that renders a contract void or unenforceable if its terms are so one-sided as to shock the conscience. Courts examine factors such as bargaining power, clarity of terms, and the presence of undue influence.

Trade-off clause – a provision that balances competing interests, such as speed of performance versus quality standards. Trade-off clauses are often negotiated in supply chain contracts, where parties must manage conflicting priorities.

Warranty of merchantability – an implied term that goods are fit for ordinary purposes. Under the UCC, this warranty applies automatically unless expressly disclaimed. In the CISG, the seller must deliver goods that conform to the contract, which includes an implicit guarantee of merchantability.

Warranty of fitness for a particular purpose – an implied term that goods are suitable for a specific purpose known to the seller. The buyer must rely on the seller’s expertise, and the warranty applies when the seller is aware of the buyer’s intended use.

Doctrine of laches – an equitable defense that bars a claim when the plaintiff has unreasonably delayed

asserting a right, resulting in prejudice to the defendant. Laches is more prevalent in civil-law jurisdictions but can be invoked in common-law courts under equitable principles.

Equitable estoppel – a principle preventing a party from asserting a claim that contradicts its prior conduct if another party has relied on that conduct to their detriment. Equitable estoppel is frequently invoked in contract disputes involving promises that lack consideration.

Collateral contract – a secondary agreement that supports the main contract, often used to induce a party to enter the primary contract. Collateral contracts must satisfy the same elements as any contract: Offer, acceptance, consideration, and intention.

Doctrine of part performance – a principle that allows enforcement of an oral contract if one party has partially performed, thereby demonstrating the existence of an agreement. This doctrine mitigates the strictness of the statute of frauds in certain circumstances.

Contractual interpretation – contextual approach – an approach that looks beyond the literal wording to the surrounding circumstances, including the parties' commercial context, industry practices, and prior dealings. The "contextual approach" is favored in civil-law jurisdictions and increasingly in common-law courts, as evidenced by the United Kingdom Supreme Court decision in **Investors Compensation Scheme Ltd v West Bromwich Building Society**.

Doctrine of frustration – limited application – in English law, the doctrine of frustration applies only when an event makes performance impossible, not merely more difficult or expensive. The test is strict, and courts often prefer to enforce the contract with damages for breach rather than discharge it.

Doctrine of imprévision – broader application – civil-law systems allow for contract renegotiation when performance becomes excessively onerous, reflecting a more flexible approach to unforeseen events. The French Civil Code's "hard-ship" provision (Article 1195) permits the injured party to request renegotiation, and failure to reach agreement may lead to judicial adaptation or termination.

Choice-of-law clause – "closest connection" test – the method used to determine which jurisdiction's law governs a contract in the absence of an explicit choice-of-law clause. The "closest connection" test examines factors such as the place of performance, the location of the subject matter, and the parties' expectations.

Forum-selection clause – enforceability standards – courts assess whether a forum-selection clause is reasonable and not contrary to public policy. In the United States, the **M/S Bremen v. Zapata Off-Shore Co.** Standard requires that the clause be "reasonable" and not "unfairly disadvantage" either party.

Arbitration agreement – seat of arbitration – the location designated as the legal home of the arbitration, which determines the procedural law governing the arbitration. The seat is distinct from the "place of arbitration," which may be different. The choice of seat influences the enforceability of the award and the availability of judicial review.

International commercial arbitration – UNCITRAL Model Law – a framework that harmonizes arbitration procedures across jurisdictions. The Model Law addresses issues such as the appointment of arbitrators,

interim measures, and the recognition and enforcement of awards.

Enforcement of foreign judgments – New York Convention – the treaty that facilitates the recognition and enforcement of foreign arbitral awards. While the Convention applies to arbitration, many jurisdictions also adopt similar principles for the enforcement of foreign court judgments, enhancing the predictability of cross-border commerce.

Contractual risk allocation – insurance clauses – provisions that require one party to obtain insurance coverage for certain risks, such as liability, property damage, or business interruption. Insurance clauses can mitigate exposure and provide a source of funds for damages.

Contractual indemnity – “hold-harmless” clause – a provision whereby one party agrees to assume the legal responsibility for certain claims, protecting the other party from liability. Hold-harmless clauses are common in construction contracts, where the contractor indemnifies the owner against third-party claims arising from the work.

Contractual limitation of liability – “cap” clause – a clause that sets an upper limit on the amount of damages recoverable. Caps are often expressed as a multiple of the contract price or a fixed monetary amount. Courts may strike down caps that are deemed unreasonable, especially when they attempt to limit liability for intentional wrongdoing.

Contractual confidentiality – “survival” clause – a provision stating that the confidentiality obligations continue after the contract ends, typically for a defined period. Survival clauses protect trade secrets and proprietary information beyond the contractual relationship.

Contractual non-compete – “duration” and “geographic scope” – the enforceability of non-compete clauses hinges on the reasonableness of the time frame and the geographic area covered. Overly broad restrictions may be deemed void as an unlawful restraint of trade.

Assignment of intellectual property rights – a transfer of ownership or license to use IP. Assignment clauses must be clear about the scope, duration, and any retained rights. In many jurisdictions, IP assignments require written form to be enforceable.

Licensing agreement – “grant-back” clause – a provision where the licensee agrees to grant the licensor a license to improvements made under the original license.