



Internal study material

International contract law



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Introduction anecdote

In the bustling markets of 13th-century Venice, a peculiar dispute unfolded between a merchant from the East and a local tradesman. The subject of contention? A shipment of spices delayed due to tempestuous seas. Despite their linguistic and cultural differences, both parties shared an implicit understanding: agreements, once made, must be honored. This seemingly mundane transaction and its resolution would lay the groundwork for the principles underpinning international contract law. From the medieval *Lex Mercatoria* to the intricate frameworks of modern international agreements, the evolution of this field reflects humanity's enduring quest for fairness, certainty, and justice in commerce.

Brief intro with history of International contract law

The history of international contract law is deeply interwoven with the evolution of trade and diplomacy. From the rudimentary barter systems of ancient civilizations to the complex multinational treaties of today, the mechanisms governing cross-border agreements have continuously adapted to meet the needs of an increasingly interconnected world.

The Roman Empire provided the first systematic approach to contract law, introducing concepts such as *pacta sunt servanda*—agreements must be kept—that resonate in contemporary jurisprudence. With the fall of Rome, the rise of medieval trade guilds and the Lex Mercatoria introduced flexible, self-regulated systems for resolving disputes among merchants, transcending local jurisdictions and laying the foundation for modern arbitration.

The 19th and 20th centuries marked the codification of contract principles through national laws and international treaties, reflecting the burgeoning globalization of commerce. Instruments like the United Nations Convention on Contracts for the International Sale of Goods (CISG) exemplify the international community's commitment to harmonizing contract law, ensuring predictability and uniformity across borders.

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1 The law, the constitution and human rights

The intricate tapestry of international contract law is woven from the threads of national legal systems, constitutional frameworks, and the overarching principles of human rights. This chapter delves into the foundational elements that shape contractual relations across borders, examining the interplay between domestic laws, constitutional mandates, and international human rights standards.

1.1 The Nature and Function of Law in Contractual Relations

Law serves as the bedrock upon which contractual relationships are established and enforced. It provides the necessary framework to ensure that agreements are honored, disputes are resolved, and justice is upheld. In the context of international contracts, the law delineates the rights and obligations of parties, offering predictability and security in commercial transactions.

The legal systems governing contracts vary significantly across jurisdictions, influenced by historical developments, cultural norms, and economic structures. Common law systems, such as those in the United Kingdom and the United States, emphasize judicial precedents and the doctrine of *stare decisis*, where past judicial decisions inform future cases. In contrast, civil law systems, prevalent in countries like France and Germany, are based on comprehensive codifications and statutes, with judicial decisions playing a less central role (Zweigert & Kötz, 1998).

1.2 Constitutional Foundations of Contract Law

Constitutions, as the supreme legal instruments of sovereign states, establish the fundamental principles and structures of governance. They enshrine the rights and freedoms of individuals and delineate the powers of governmental institutions. In the realm of contract law, constitutional provisions can significantly influence the formation, interpretation, and enforcement of agreements.

For instance, the United States Constitution, through the Contract Clause (Article I, Section 10), prohibits states from enacting laws that impair the obligation of contracts. This clause has been pivotal in safeguarding contractual agreements from undue governmental interference (McConnell, 1998). Similarly, the German Basic Law (Grundgesetz) guarantees the freedom of contract under Article 2, which protects personal freedoms, including the liberty to enter into contractual relations (Alexy, 2002).

However, constitutional protections are not absolute. They are subject to limitations, especially when contracts conflict with public policy or fundamental rights. Courts often engage in a balancing act, weighing the sanctity of contracts against other constitutional values, such as equality, justice, and public welfare (Sunstein, 1987).

1.3 Human Rights and Their Impact on Contractual Obligations

Human rights, as universal entitlements inherent to all individuals, have a profound impact on contractual relations. International instruments, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR),

set forth principles that transcend national boundaries and influence domestic legal systems.

The right to property, enshrined in Article 17 of the UDHR, underpins the ability of individuals to own and dispose of assets, forming the basis for contractual transactions. The freedom to contract is intrinsically linked to personal autonomy and the right to self-determination. However, this freedom is not unfettered. Contracts that infringe upon human dignity, perpetuate discrimination, or violate other fundamental rights are deemed unenforceable (Beatson, 2002).

In the European context, the European Convention on Human Rights (ECHR) has been instrumental in shaping contract law. The European Court of Human Rights (ECtHR) has adjudicated cases where contractual obligations intersect with human rights, emphasizing that while individuals are free to contract, such agreements must not contravene the rights protected under the Convention (Harris, O'Boyle, & Warbrick, 2014).

1.4 The Interplay Between Domestic Law, Constitutional Principles, and International Human Rights

The relationship between domestic contract law, constitutional mandates, and international human rights is complex and multifaceted. National courts often grapple with aligning domestic legal provisions with international human rights obligations, especially when conflicts arise.

In some jurisdictions, international human rights treaties are directly applicable and can override domestic laws. For example, in the Netherlands, international treaties have supremacy over national legislation, allowing courts to set aside domestic laws that conflict with international human rights standards (Verdoodt, 1964). In contrast, other countries require the incorporation of international treaties into domestic law through legislative processes, limiting their immediate applicability.

The doctrine of margin of appreciation, developed by the ECtHR, allows states a degree of discretion in how they implement and balance human rights within their domestic legal frameworks. This doctrine acknowledges the diversity of legal traditions and cultural contexts, permitting variations in the application of human rights norms, provided the core principles are upheld (Yourow, 1996).

1.5 Case Studies Illustrating the Intersection of Contract Law and Human Rights

To elucidate the practical implications of the interplay between contract law and human rights, it is instructive to examine pertinent case studies:

- *López Ostra v. Spain* (1994): In this case, the ECtHR held that severe environmental pollution, resulting from a waste treatment plant operating under a contract with local authorities, violated the applicant's right to respect for her home and private life under Article 8 of the ECHR. The Court emphasized that economic activities, even when contractually sanctioned, must not infringe upon fundamental human rights (Harris et al., 2014).

- *Aziz v. Caixa d'Estalvis de Catalunya* (2013): The Court of Justice of the European Union (CJEU) addressed the issue of unfair terms in consumer contracts. The Court ruled that national legislation must provide effective remedies to protect consumers from unfair contractual terms, aligning domestic contract law with the EU Charter of Fundamental Rights, which guarantees the right to fair and just contractual relations (Weatherill, 2014).

1.6 Challenges and Future Directions

The globalization of commerce and the proliferation of cross-border contracts present ongoing challenges in harmonizing contract law with constitutional principles and human rights. Issues such as jurisdictional conflicts, varying interpretations of fundamental rights, and the enforcement of international human rights standards in domestic courts necessitate continuous scholarly and judicial engagement.

Advancements in technology and the rise of digital contracts further complicate the landscape, raising questions about data privacy, consent, and the applicability of traditional contract principles in the digital realm. The integration of artificial intelligence in contractual negotiations and enforcement introduces additional complexities, necessitating a re-evaluation of existing legal frameworks to ensure the protection of fundamental rights (Scherer, 2016).

1.7 References and further reading

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2 Sources of law

The legal framework governing contractual relations is underpinned by a complex array of sources that collectively shape the rights and obligations of parties. Understanding these sources is imperative for a comprehensive grasp of contract law, particularly in the international context where multiple legal traditions converge. This chapter delves into the primary and secondary sources of law, elucidating their roles and interrelationships in the formation, interpretation, and enforcement of contracts.

2.1 Primary Sources of Law

Primary sources constitute the foundational legal materials that establish binding rules and principles. These include constitutions, statutes, regulations, and judicial decisions.

2.1.1 Constitutions

Constitutions serve as the supreme legal instruments within jurisdictions, delineating the structure of government and enshrining fundamental rights. They provide the overarching framework within which all other laws, including contract law, operate. For instance, the United States Constitution, through the Contract Clause (Article I, Section 10), prohibits states from enacting laws that impair contractual obligations, thereby safeguarding the sanctity of contracts (McConnell, 1998).

2.1.2 Statutes and Regulations

Legislative enactments, such as statutes and regulations, are pivotal in defining specific legal norms. In the realm of contract law, statutes may codify general principles or address particular aspects, such as consumer protection or electronic transactions. For example, the United Kingdom's Consumer Rights Act 2015 consolidates and clarifies consumer rights, impacting contractual terms and remedies (Beale, 2016).

2.1.3 Judicial Decisions

In common law jurisdictions, judicial decisions, or case law, are paramount. Courts interpret and apply statutes, and their rulings establish precedents that guide future cases. This doctrine of *stare decisis* ensures legal consistency and predictability. Landmark cases, such as *Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256, have profoundly influenced contract law by elucidating principles like offer and acceptance (Poole, 2016).

2.2 Secondary Sources of Law

Secondary sources, while not legally binding, offer interpretative guidance and scholarly analysis. They include legal commentaries, academic writings, and restatements.

2.2.1 Legal Commentaries and Treatises

Esteemed legal scholars produce commentaries and treatises that analyze and critique legal principles. Works such as *Chitty on Contracts* provide comprehensive examinations of contract law, serving as invaluable resources for practitioners and academics alike (Beale, 2015).

2.2.2 Restatements of Law

In certain jurisdictions, restatements synthesize case law and statutory provisions to clarify legal doctrines. The *Restatement (Second) of Contracts* in the United States exemplifies this, offering a systematic exposition of contract principles and influencing both courts and legislatures (Farnsworth, 1981).

2.3 International Sources of Contract Law

In the globalized economy, international instruments play a crucial role in harmonizing contract law across jurisdictions.

2.3.1 International Conventions

Treaties such as the United Nations Convention on Contracts for the International Sale of Goods (CISG) establish uniform rules for international sales contracts, facilitating cross-border trade by reducing legal uncertainties (Schwenzer, 2016).

2.3.2 Model Laws and Principles

Organizations like UNIDROIT have developed principles, such as the *UNIDROIT Principles of International Commercial Contracts*, which serve as non-binding guidelines to assist in drafting and interpreting contracts, promoting consistency in international commercial practices (Bonell, 2009).

2.4 Customary Law and Usage

Customary practices and trade usages, developed over time within specific industries or regions, can influence contractual obligations. Courts may recognize such customs, provided they are well-established and not contrary to statutory provisions or public policy (Goode, 2004).

2.5 Hierarchy and Interaction of Legal Sources

The interplay between various sources of law is complex, with hierarchies often established to resolve conflicts. Constitutions typically hold primacy, followed by statutes, regulations, and judicial decisions. International instruments may supersede domestic laws when ratified and incorporated into national legal systems. Understanding this hierarchy is essential for navigating contractual disputes and ensuring compliance with applicable legal norms (Zweigert & Kötz, 1998).

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3 Law of EU

The European Union (EU) represents a unique supranational entity, characterized by its intricate legal framework that harmonizes the diverse legal traditions of its member states. This chapter delves into the evolution, principles, and mechanisms of EU law, elucidating its profound impact on the legal systems of member states and its role in shaping international contract law.

3.1 Evolution of the European Union's Legal Framework

The genesis of the EU's legal system can be traced back to the aftermath of World War II, with the establishment of the European Coal and Steel Community (ECSC) in 1951. This initiative aimed to foster economic cooperation and prevent future conflicts in Europe. The subsequent Treaties of Rome in 1957 established the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM), laying the foundation for a more integrated legal and economic structure (Craig & de Búrca, 2020).

The Maastricht Treaty of 1992 marked a significant milestone, transforming the EEC into the European Union and introducing the concept of European citizenship. This treaty expanded the EU's competencies beyond economic matters to include areas such as justice and home affairs, thereby broadening the scope of EU law (Weatherill, 2016).

3.2 Fundamental Principles of EU Law

EU law is underpinned by several core principles that ensure its uniform application and effectiveness across member states:

- **Supremacy of EU Law:** Established through the jurisprudence of the Court of Justice of the European Union (CJEU), notably in *Costa v. ENEL* (Case 6/64), this principle asserts that EU law takes precedence over conflicting national laws, ensuring uniformity and preventing member states from enacting legislation that undermines EU objectives (Craig & de Búrca, 2020).
- **Direct Effect:** This doctrine allows individuals to invoke certain provisions of EU law directly before national courts, even in the absence of implementing national legislation. The seminal case of *Van Gend en Loos* (Case 26/62) established that EU treaties confer rights upon individuals that national courts must protect (Chalmers, Davies, & Monti, 2019).
- **Subsidiarity and Proportionality:** Enshrined in Article 5 of the Treaty on European Union (TEU), these principles dictate that the EU shall act only within the limits of the competences conferred upon it by the treaties and that any action should not exceed what is necessary to achieve the objectives of the treaties (Barnard & Peers, 2020).

3.3 Sources of EU Law

EU law comprises various sources, each contributing to its comprehensive legal framework:

- **Primary Legislation:** The foundational treaties, including the TEU and the Treaty on the Functioning of the European Union (TFEU), constitute the primary sources of EU law, outlining the EU's objectives, institutional structures, and competencies (Craig & de Búrca, 2020).
- **Secondary Legislation:** Enacted by EU institutions, secondary legislation includes regulations, directives, decisions, recommendations, and opinions. Regulations are directly applicable in all member states, while directives require transposition into national law, allowing flexibility in implementation (Chalmers et al., 2019).
- **Case Law:** The CJEU's interpretations and rulings play a pivotal role in shaping EU law, ensuring its consistent application and resolving disputes between member states and EU institutions (Barnard & Peers, 2020).

3.4 The Impact of EU Law on National Legal Systems

The integration of EU law into national legal systems has profound implications:

- **Harmonization of Laws:** Through directives and regulations, the EU harmonizes various areas of law, including consumer protection, competition, and environmental standards, thereby facilitating a cohesive internal market (Weatherill, 2016).
- **Judicial Dialogue:** National courts engage in a dialogue with the CJEU through the preliminary ruling procedure under Article 267 TFEU, seeking interpretations of EU law to ensure uniform application across member states (Chalmers et al., 2019).
- **Constitutional Adaptations:** Member states have amended their constitutions to accommodate the principles of supremacy and direct effect of EU law, reflecting the transformative impact of EU membership on national sovereignty (Craig & de Búrca, 2020).

3.5 EU Law and International Contract Law

EU law significantly influences international contract law, particularly within its jurisdiction:

- **Consumer Contracts:** The EU has enacted directives aimed at protecting consumers in cross-border transactions, such as the Consumer Rights Directive (2011/83/EU), which harmonizes rules on information requirements and withdrawal rights (Weatherill, 2016).
- **Jurisdiction and Applicable Law:** Regulations like Brussels I (Regulation (EU) No 1215/2012) and Rome I (Regulation (EC) No 593/2008) establish uniform rules on jurisdiction and the law applicable to contractual obligations, enhancing legal certainty in international contracts (Chalmers et al., 2019).
- **Digital Contracts:** The EU has addressed the challenges of the digital economy through instruments like the Digital Content Directive (2019/770/EU), setting standards for contracts involving digital content and services (Barnard & Peers, 2020).

3.6 Challenges and Future Directions

The dynamic nature of the EU's legal framework presents ongoing challenges:

- **Brexit:** The United Kingdom's withdrawal from the EU has raised complex legal questions regarding the applicability of EU law in the UK and the future relationship between UK and EU legal systems (Craig & de Búrca, 2020).
- **Digital Transformation:** The rapid advancement of technology necessitates continuous adaptation of EU law to address issues such as data protection, cybersecurity, and artificial intelligence in contractual relations (Barnard & Peers, 2020).
- **Enlargement and Diversity:** The accession of new member states with diverse legal traditions requires careful integration to maintain the coherence and effectiveness of EU law (Chalmers et al., 2019).

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4 Institutions of EU

The European Union (EU) is a unique supranational entity characterized by a complex institutional framework designed to balance the interests of its member states with the overarching objectives of integration and cooperation. This chapter provides an in-depth analysis of the principal EU institutions, their functions, interrelationships, and their collective impact on the formulation and implementation of EU law, particularly in the context of international contract law.

4.1 The European Council

The European Council serves as the EU's strategic body, providing the necessary impetus for its development and defining its general political directions and priorities. Comprising the Heads of State or Government of the member states, its President, and the President of the European Commission, the European Council meets at least twice every six months. Its decisions, often reached by consensus, set the agenda for the EU's policy and legislative initiatives (Craig & de Búrca, 2020).

4.2 The Council of the European Union

Commonly referred to as the Council, this institution represents the governments of the member states. It functions in various configurations depending on the policy area under discussion, with national ministers attending meetings pertinent to their portfolios. The Council shares legislative and budgetary authority with the European Parliament and plays a crucial role in coordinating policies among member states. Its decision-making processes range from unanimity to qualified majority voting, depending on the subject matter (Chalmers, Davies, & Monti, 2019).

4.3 The European Parliament

As the EU's directly elected legislative body, the European Parliament represents the citizens of the Union. It exercises legislative functions in collaboration with the Council, particularly through the ordinary legislative procedure. The Parliament also holds budgetary authority and exercises democratic oversight over other EU institutions, notably the European Commission. Its committees scrutinize legislative proposals, and its plenary sessions serve as forums for debate and decision-making (Hix & Høyland, 2011).

4.4 The European Commission

The European Commission functions as the EU's executive arm, responsible for proposing legislation, implementing decisions, upholding the EU treaties, and managing day-to-day operations. Comprising Commissioners from each member state, it operates under the leadership of a President. The Commission's exclusive right of legislative initiative positions it as a central actor in the EU's policy-making process. It also ensures compliance with EU law, bringing infringement proceedings against member states when necessary (Nugent & Rhinard, 2019).

4.5 The Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) ensures the uniform interpretation and application of EU law across member states. It comprises two main courts: the Court of Justice and the General Court. The CJEU adjudicates cases brought by member states, EU institutions, and individuals, including preliminary rulings requested by national courts on the interpretation of EU law. Its jurisprudence has been instrumental in developing key legal doctrines, such as the principles of direct effect and supremacy of EU law (Arnull, 2018).

4.6 The European Central Bank

The European Central Bank (ECB) manages the euro and formulates and implements the EU's monetary policy. Its primary objective is to maintain price stability within the euro area. The ECB operates independently, free from political influence, and collaborates with the national central banks of the eurozone countries within the framework of the European System of Central Banks (ESCB) (Smits, 1997).

4.7 The European Court of Auditors

The European Court of Auditors functions as the EU's external auditor, examining the legality and regularity of the Union's revenue and expenditure. It ensures that EU funds are used efficiently and for their intended purposes. The Court's reports contribute to improving financial management within the EU and provide the basis for the European Parliament's decision on granting discharge to the Commission for budget implementation (Laffan, 1999).

4.8 Interinstitutional Dynamics and Legislative Processes

The EU's legislative process is characterized by intricate interinstitutional interactions. The ordinary legislative procedure, formerly known as co-decision, involves the European Commission proposing legislation, which is then jointly adopted by the European Parliament and the Council. This procedure embodies the EU's commitment to democratic legitimacy and intergovernmental cooperation. The CJEU plays a pivotal role in interpreting legislation and resolving disputes, ensuring coherence and uniformity in the application of EU law (Craig & de Búrca, 2020).

4.9 Impact on International Contract Law

The EU institutions collectively influence international contract law through the development and enforcement of directives and regulations that harmonize contractual standards across member states. For instance, the Consumer Rights Directive (2011/83/EU) standardizes consumer contract terms, enhancing cross-border trade within the internal market. The CJEU's interpretations of such legislation further refine contractual obligations and rights, contributing to a cohesive legal framework that facilitates international commerce (Weatherill, 2016).

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5 Sources of EU law

The European Union (EU) has developed a multifaceted legal system that integrates the diverse legal traditions of its member states into a cohesive framework. Understanding the sources of EU law is essential for comprehending its application and influence, particularly in the realm of international contract law. This chapter provides an in-depth analysis of the various sources of EU law, their hierarchical relationships, and their implications for legal practice.

5.1 Primary Sources of EU Law

Primary sources constitute the foundational legal instruments of the EU, establishing its constitutional framework and delineating the distribution of competences between the Union and its member states.

5.1.1 The Treaties

The core treaties serve as the constitutional bedrock of the EU:

- **Treaty on European Union (TEU):** The TEU outlines the EU's objectives, principles, and institutional structure. It establishes the fundamental provisions governing the Union's functioning and sets the framework for its external actions.
- **Treaty on the Functioning of the European Union (TFEU):** The TFEU provides detailed provisions on the EU's competences, policies, and internal actions. It elaborates on the specific areas in which the EU can legislate and the procedures for doing so.
- **Treaty Establishing the European Atomic Energy Community (Euratom):** This treaty focuses on the development of nuclear energy within the EU, promoting research and ensuring the security of nuclear materials.

These treaties collectively define the legal and institutional framework of the EU, serving as the highest source of law within the Union's legal order. [EUR-Lex](#)

5.1.2 General Principles of EU Law

General principles are unwritten norms that have been developed through the jurisprudence of the Court of Justice of the European Union (CJEU). They include fundamental rights, proportionality, legal certainty, and non-discrimination. These principles serve as interpretative tools and fill gaps in the written law, ensuring coherence and justice within the EU legal system. [EUR-Lex](#)

5.2 Secondary Sources of EU Law

Secondary legislation is derived from the principles and objectives set out in the treaties. It includes various legal acts adopted by the EU institutions to implement and enforce EU policies.

5.2.1 Regulations

Regulations are binding legislative acts that apply directly in all member states without the need for national implementation measures. They have general application and are directly enforceable, ensuring uniformity across the EU. [Evropski parlament](#)

5.2.2 Directives

Directives are binding as to the result to be achieved but leave the choice of form and methods to the national authorities. Member states are required to transpose directives into their national legal systems within a specified timeframe, allowing flexibility in implementation while achieving harmonization of laws. [Evropski parlament](#)

5.2.3 Decisions

Decisions are binding in their entirety upon those to whom they are addressed, which can be member states, companies, or individuals. They are used to apply EU law to specific cases and are directly applicable. [Evropski parlament](#)

5.2.4 Recommendations and Opinions

Recommendations and opinions are non-binding instruments that allow the EU institutions to express views and suggest actions without imposing legal obligations. They serve as persuasive guidance and can influence the development of national policies and legislation. [Evropski parlament](#)

5.3 Supplementary Sources of EU Law

Supplementary sources encompass international agreements and conventions to which the EU is a party, as well as the case law of the CJEU.

5.3.1 International Agreements

The EU has the capacity to conclude international agreements with third countries and international organizations. These agreements are binding on the EU institutions and member states and form an integral part of EU law. They can cover a wide range of areas, including trade, cooperation, and human rights. [Evropski parlament](#)

5.3.2 Case Law of the Court of Justice of the European Union

The CJEU plays a crucial role in interpreting EU law and ensuring its uniform application across member states. Its judgments are binding and contribute to the development of EU law by clarifying legal provisions, establishing principles, and resolving disputes. The case law of the CJEU is a vital source of EU law, providing authoritative interpretations that guide national courts and institutions. [Evropski parlament](#)

5.4 Hierarchy of EU Legal Sources

The EU legal system operates under a hierarchy of norms, ensuring coherence and consistency:

1. **Primary Law:** The treaties and general principles of EU law constitute the highest level.
2. **Secondary Law:** Regulations, directives, and decisions adopted by the EU institutions.
3. **Supplementary Law:** International agreements and the case law of the CJEU.

This hierarchical structure ensures that secondary and supplementary sources are consistent with the foundational principles and objectives enshrined in the primary law.

[Evropski parlament](#)

5.5 Implications for International Contract Law

The sources of EU law have significant implications for international contract law:

- **Harmonization:** Directives and regulations harmonize contract law across member states, facilitating cross-border transactions and reducing legal uncertainties.
- **Direct Effect:** Certain provisions of EU law can be directly invoked by individuals in national courts, enhancing the enforceability of rights under international contracts.
- **Precedence:** EU law takes precedence over conflicting national laws, ensuring uniform application and interpretation in matters affecting international contracts.

Understanding the sources of EU law is essential for legal practitioners and scholars engaged in international contract law, as it influences the drafting, interpretation, and enforcement of contractual agreements within the EU.

5.6 Conclusion

The sources of European Union law form a sophisticated legal hierarchy that not only underpins the functioning of the EU but also significantly impacts the national legal systems of its member states. These sources ensure the harmonization of laws across the Union, providing a coherent framework that facilitates international trade and legal certainty in contractual relations. By understanding the nuances of these sources, legal practitioners and scholars can effectively navigate the complexities of EU law, particularly in its application to international contract law.

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6 Basic elements of valid contracts

In the realm of international contract law, the formation of a valid contract necessitates the convergence of several essential elements. These elements ensure that agreements are not only legally enforceable but also equitable and reflective of the parties' genuine intentions. This chapter delves into the fundamental components requisite for the validity of contracts, drawing upon comparative legal perspectives and scholarly analyses.

6.1 Offer and Acceptance

The bedrock of any contract lies in the mutual assent of the parties, typically manifested through the processes of offer and acceptance.

- **Offer:** An offer is a definitive proposal by one party (the offeror) to another (the offeree), indicating a willingness to enter into a contractual relationship under specified terms. The offer must be clear, unequivocal, and communicated to the offeree. As articulated by Treitel (2007), an offer is "an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed" (p. 8).
- **Acceptance:** Acceptance is the unqualified assent to the terms of the offer, thereby creating a binding contract. It must correspond precisely with the offer and be communicated to the offeror. The "mirror image rule" underscores that any deviation from the offer constitutes a counter-offer rather than acceptance (Poole, 2016).

The interplay between offer and acceptance is pivotal in establishing consensus ad idem—the meeting of minds essential for contract formation.

6.2 Intention to Create Legal Relations

Beyond mutual assent, the parties must possess the intention to enter into a legally binding agreement. This intention distinguishes social or domestic arrangements from enforceable contracts. In commercial contexts, there is a presumption of such intent, whereas in social or familial settings, the presumption is typically absent unless explicitly stated otherwise (Collins, 2003).

6.3 Consideration

Consideration refers to the value exchanged between contracting parties, serving as the inducement for entering into the agreement. It is a cornerstone of common law contract theory, encapsulated in the principle that "a promise is not enforceable unless something of value is given in return" (Atiyah, 1990). Consideration must be sufficient but need not be adequate; that is, it must have some value in the eyes of the law, though it need not be equivalent to the value of the promise received.

6.4 Capacity to Contract

The legal capacity of parties to enter into a contract is fundamental to its validity. Certain individuals or entities may lack the capacity to contract, including minors, individuals with mental incapacities, and, in some jurisdictions, corporations acting ultra vires. The doctrine

of capacity ensures that parties possess the requisite understanding and authority to bind themselves legally (Cheshire, Fifoot, & Furmston, 2007).

6.5 Consent

Genuine consent is imperative for contract validity. Consent may be vitiated by factors such as misrepresentation, duress, undue influence, or mistake. For instance, a contract entered into under duress—where one party is coerced into agreement—may be deemed voidable at the option of the aggrieved party (McKendrick, 2014).

6.6 Legality of Object

The purpose or object of the contract must be lawful. Agreements that involve illegal activities or contravene public policy are void and unenforceable. This principle upholds the integrity of the legal system by ensuring that contracts do not facilitate or endorse unlawful conduct (Stone, 2013).

6.7 Certainty and Completeness

A contract must be sufficiently certain and complete to be enforceable. Ambiguities or omissions in essential terms can render a contract void for uncertainty. The courts strive to uphold agreements where possible, often interpreting terms to give effect to the parties' intentions; however, they cannot create a contract where none exists due to vagueness or incompleteness (Beale, 2010).

6.8 Formalities

While many contracts can be formed orally, certain types require adherence to formalities, such as being in writing or executed as deeds. For example, contracts for the sale of land typically necessitate written documentation to be enforceable. These formal requirements serve evidentiary and cautionary functions, ensuring clarity and deliberation in significant transactions (Furmston, 2012).

6.9 Comparative Perspectives

The fundamental elements of contract formation exhibit both convergence and divergence across legal systems. In civil law jurisdictions, the concept of consideration is often absent, with emphasis placed on mutual consent and lawful cause. Conversely, common law systems uphold consideration as a requisite for enforceability. Understanding these nuances is crucial in the context of international contracts, where parties may be subject to differing legal standards (Zweigert & Kötz, 1998).

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7 Mistakes in contracts

In the realm of contract law, the doctrine of mistake addresses situations where parties enter into agreements under erroneous beliefs or assumptions. Such mistakes can significantly impact the validity and enforceability of contracts. This chapter provides an in-depth analysis of the various types of mistakes recognized in contract law, their legal implications, and pertinent case law that elucidates their application.

7.1 Classification of Mistakes

Mistakes in contract law are generally categorized into three primary types: common mistake, mutual mistake, and unilateral mistake.

7.1.1 Common Mistake

A common mistake occurs when both parties to a contract share the same erroneous belief regarding a fundamental fact at the time of contract formation. This shared misconception pertains to a fact that is essential to the agreement's subject matter. The seminal case of *Bell v. Lever Brothers Ltd.* [1932] AC 161 established that for a common mistake to render a contract void, the mistake must be fundamental to the identity of the subject matter, making the performance of the contract impossible. In this case, both parties mistakenly believed that certain employment contracts could be terminated without compensation, leading to a dispute over severance payments. The House of Lords held that the mistake was not sufficiently fundamental to void the contract.

7.1.2 Mutual Mistake

Mutual mistake arises when both parties are mistaken, but each party holds a different erroneous belief about the same fact. This results in a situation where there is no true meeting of the minds, as each party misunderstands the other's intention. The case of *Raffles v. Wichelhaus* (1864) 2 Hurl. & C. 906 illustrates this concept. In this case, the parties agreed to the sale of cotton to be shipped on a vessel named "Peerless." Unbeknownst to both, there were two ships with that name sailing at different times. The court held that due to the mutual mistake regarding the ship's identity, there was no binding contract.

7.1.3 Unilateral Mistake

A unilateral mistake occurs when only one party is mistaken about a fundamental aspect of the contract, while the other party is aware of the true facts. Generally, a unilateral mistake does not render a contract voidable unless the non-mistaken party knew or ought to have known of the mistake and sought to take advantage of it. In *Smith v. Hughes* (1871) LR 6 QB 597, a seller sold oats to a buyer who believed they were old oats suitable for racehorses, while the seller knew the buyer was mistaken but did not correct the misunderstanding. The court held that the contract was valid, emphasizing that a party is not obligated to correct the other's mistake unless there is a misrepresentation.

7.2 Legal Implications of Mistakes

The legal consequences of mistakes in contracts vary depending on the type and nature of the mistake.

7.2.1 Void and Voidable Contracts

- **Void Contracts:** A contract rendered void is treated as if it never existed. Common mistakes that are fundamental to the contract's subject matter can render a contract void. For instance, in *Couturier v. Hastie* (1856) 5 HL Cas 673, a contract for the sale of goods that had perished before the contract was made was held void due to the common mistake regarding the existence of the subject matter.
- **Voidable Contracts:** A voidable contract is valid until one party chooses to void it. Unilateral mistakes, particularly when one party is aware of the other's mistake and exploits it, can render a contract voidable at the option of the mistaken party. In *Hartog v. Colin & Shields* [1939] 3 All ER 566, a seller mistakenly offered goods at a price per pound instead of per piece, and the buyer, aware of the mistake, accepted the offer. The court held that the contract was voidable due to the buyer's knowledge of the seller's mistake.

7.2.2 Equitable Remedies

Equity may intervene to provide remedies such as rescission or rectification in cases of mistake. Rescission allows the contract to be set aside, restoring the parties to their pre-contractual positions. Rectification involves correcting the written contract to reflect the true intentions of the parties when a mistake has been made in documenting the agreement. In *Craddock Bros v. Hunt* [1923] 2 Ch 136, the court rectified a conveyance to exclude a yard that was mistakenly included, aligning the document with the parties' original agreement.

7.3 Mistake and Misrepresentation

It is crucial to distinguish between mistake and misrepresentation. While a mistake involves an erroneous belief held by one or both parties, misrepresentation entails a false statement made by one party that induces the other to enter into the contract. Misrepresentation can render a contract voidable and may entitle the misled party to damages. In *Derry v. Peek* (1889) 14 App Cas 337, the House of Lords established that fraudulent misrepresentation requires proof of deceit, whereas innocent misrepresentation does not.

7.4 Mistake in International Contracts

In international contracts, the doctrine of mistake must be considered within the context of differing legal systems. Civil law jurisdictions may not recognize the concept of mistake in the same manner as common law systems. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not explicitly address mistake, leading to reliance on general principles and domestic laws to resolve such issues. Parties to international contracts should be aware of these differences and consider including choice of law clauses to mitigate risks associated with mistakes.

7.5 Conclusion

The doctrine of mistake plays a pivotal role in contract law, safeguarding parties from agreements formed under erroneous assumptions. Understanding the nuances of common, mutual, and unilateral mistakes, along with their legal ramifications, is essential for legal practitioners and parties engaged in contractual relationships. Awareness of the distinctions between mistake and misrepresentation further ensures that parties can navigate contractual disputes effectively.

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8 The sale of goods contract and some other most frequent international contracts

In the realm of international commerce, contracts serve as the bedrock upon which cross-border transactions are structured and executed. Among these, the sale of goods contract stands as a cornerstone, facilitating the exchange of tangible commodities across diverse jurisdictions. This chapter delves into the intricacies of international sale of goods contracts, examining their legal frameworks, key components, and the pivotal role of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Additionally, it explores other prevalent international contracts, including distribution agreements, agency contracts, and franchising agreements, highlighting their significance in global trade.

8.1 International Sale of Goods Contracts

The international sale of goods contract is a legally binding agreement between parties situated in different countries, governing the terms under which goods are sold and purchased. These contracts are instrumental in delineating the rights and obligations of the seller and buyer, thereby mitigating potential disputes and fostering smooth commercial relations.

8.1.1 Legal Frameworks Governing International Sale of Goods

The legal landscape of international sale of goods contracts is predominantly shaped by the CISG, a multilateral treaty that provides a uniform framework for international commerce. The CISG, often referred to as the Vienna Convention, was adopted in 1980 and has been ratified by numerous countries, thereby harmonizing the laws governing international sales transactions. It addresses various aspects of the sale of goods, including contract formation, obligations of the parties, and remedies for breach. The CISG aims to reduce legal barriers in international trade and promote the development of international commerce. [UNCITRAL](#)

8.1.2 Key Components of International Sale of Goods Contracts

An international sale of goods contract typically encompasses several critical components:

- **Description of Goods:** A precise specification of the goods being sold, including quality, quantity, and any pertinent characteristics.
- **Price and Payment Terms:** The agreed-upon price, currency, and payment schedule, including any provisions for advance payments or letters of credit.
- **Delivery Terms:** Details regarding the time, place, and method of delivery, often defined by Incoterms, which standardize international shipping terms.
- **Transfer of Risk and Title:** Clauses specifying when the risk of loss or damage to the goods transfers from the seller to the buyer, and when ownership is legally transferred.
- **Inspection and Acceptance:** Provisions allowing the buyer to inspect the goods upon delivery and stipulating the process for acceptance or rejection.

- **Warranties:** Assurances provided by the seller regarding the quality and conformity of the goods to the contract specifications.
- **Remedies for Breach:** Outlined actions available to either party in the event of a breach, including repair, replacement, price reduction, or contract termination.
- **Dispute Resolution:** Mechanisms for resolving disputes, which may include arbitration clauses, choice of law provisions, and jurisdictional agreements.

8.1.3 The Role of the CISG in International Sale of Goods Contracts

The CISG plays a pivotal role in standardizing international sale of goods contracts by providing a comprehensive legal framework that supersedes national laws in member states. It facilitates predictability and legal certainty, thereby reducing transaction costs and fostering international trade. The CISG governs various aspects of the sale of goods, including contract formation, obligations of the parties, and remedies for breach. It is complemented by the Convention on the Limitation Period in the International Sale of Goods, which deals with the limitation period for claims arising from international sales contracts. [UNCITRAL](#)

8.2 Other Prevalent International Contracts

Beyond the sale of goods, several other contract types are integral to international business operations. These include distribution agreements, agency contracts, and franchising agreements.

8.2.1 Distribution Agreements

A distribution agreement is a contract between a supplier and a distributor, wherein the distributor is authorized to sell the supplier's products within a specified territory. These agreements are crucial for manufacturers seeking to expand their market reach without establishing a direct presence in foreign markets. Key elements of distribution agreements include:

- **Territorial Rights:** Defining the geographic area in which the distributor has the exclusive or non-exclusive right to sell the products.
- **Obligations of the Parties:** Outlining the responsibilities of both the supplier and the distributor, including marketing efforts, sales targets, and after-sales services.
- **Pricing and Payment Terms:** Establishing the pricing structure, payment schedules, and any discounts or commissions applicable.
- **Duration and Termination:** Specifying the contract's duration and the conditions under which it can be terminated by either party.

Distribution agreements are instrumental in facilitating the efficient movement of goods across borders, thereby enhancing global trade. [The IGC](#)

8.2.2 Agency Contracts

An agency contract involves a principal appointing an agent to act on their behalf in business transactions. The agent's role is to facilitate deals, often in foreign markets, without taking ownership of the goods or services. Key aspects of agency contracts include:

- **Authority of the Agent:** Defining the scope of the agent's authority to act on behalf of the principal, including any limitations.
- **Duties and Obligations:** Outlining the responsibilities of both the principal and the agent, including the agent's duty to act in the principal's best interests.
- **Commission and Payment Terms:** Establishing the compensation structure for the agent, typically in the form of commissions based on sales generated.
- **Duration and Termination:** Specifying the contract's duration and the conditions under which it can be terminated by either party.

Agency contracts are vital for businesses seeking to enter new markets with the assistance of local representatives who possess market knowledge and established networks. [The IGC](#)

8.2.3 Franchising Agreements (continued)

Franchising agreements provide a structured framework for business expansion, particularly in sectors such as hospitality, retail, and food services. Key components of franchising agreements include:

- **Licensing of Intellectual Property:** The franchisor licenses the franchisee to use trademarks, logos, and other intellectual property associated with the brand.
- **Operational Guidelines:** Franchising agreements typically include detailed operational manuals to ensure uniformity in the quality and standards of service or products offered by franchisees.
- **Franchise Fees and Royalties:** The franchisee pays initial franchise fees and ongoing royalties, often calculated as a percentage of gross sales.
- **Training and Support:** Franchisors usually provide training, marketing support, and access to established supply chains to ensure the franchisee operates in line with the brand's expectations.
- **Territorial Exclusivity:** The agreement may grant the franchisee exclusive rights to operate within a specified geographic area to prevent competition within the brand.

Franchising agreements are mutually beneficial, enabling franchisors to expand their brand reach while allowing franchisees to leverage established business models. However, they also necessitate careful drafting to address regulatory compliance, particularly as different jurisdictions impose various legal requirements on franchising operations. (internationalfranchiselaw.com)

8.3 Legal and Practical Challenges in International Contracts

While international contracts offer significant opportunities, they also pose unique legal and practical challenges:

- **Choice of Law and Jurisdiction:** One of the most critical aspects is determining which legal system governs the contract and which courts or arbitral bodies have jurisdiction over disputes. Parties often include choice-of-law and choice-of-forum clauses to manage this uncertainty. The Rome I Regulation in the EU and similar frameworks in other jurisdictions provide guidance on these matters.
- **Cultural and Language Barriers:** Misunderstandings arising from cultural differences or language barriers can complicate negotiations and the execution of contracts. The use of clear, unambiguous language and professional translation services is essential.
- **Compliance with Local Laws:** Businesses must ensure compliance with local laws, including those related to import/export regulations, tax obligations, and employment laws, which may vary significantly between jurisdictions.
- **Force Majeure and Hardship Clauses:** These clauses protect parties from liability when unforeseen events, such as natural disasters or political upheaval, impede contract performance. The inclusion of well-drafted force majeure and hardship clauses is crucial in international agreements.

8.4 The Future of International Contract Law

The evolution of international contract law is shaped by technological advancements, globalization, and regulatory changes. Emerging trends include:

- **Digital Contracts and E-commerce:** With the proliferation of online transactions, electronic contracts and digital signatures are increasingly prevalent. The United Nations Convention on the Use of Electronic Communications in International Contracts (ECC) seeks to enhance legal certainty in this domain.
- **Sustainability and Ethical Standards:** There is a growing emphasis on incorporating sustainability and ethical considerations into international contracts, reflecting broader corporate social responsibility (CSR) initiatives.
- **Dispute Resolution Mechanisms:** Arbitration and alternative dispute resolution (ADR) methods continue to gain traction as preferred mechanisms for resolving cross-border disputes, offering efficiency and neutrality.

8.5 Conclusion

International contracts, particularly those involving the sale of goods, distribution, agency, and franchising, are integral to global commerce. Understanding the legal frameworks, key components, and challenges associated with these agreements is essential for navigating the complexities of international trade. The CISG and other international legal instruments provide a harmonized foundation, fostering predictability and legal certainty. As the landscape of international commerce evolves, so too must the practices and legal frameworks governing international contracts.

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9 Company law

Company law, also known as corporate law, constitutes the legal framework governing the formation, operation, and dissolution of companies. It delineates the rights and obligations of stakeholders, including shareholders, directors, employees, and creditors, thereby ensuring the orderly conduct of business entities. This chapter provides an in-depth analysis of company law, exploring its foundational principles, the various types of business entities, corporate governance mechanisms, and the interplay between company law and international contract law.

9.1 Foundations of Company Law

The genesis of company law can be traced back to the industrial revolution, which necessitated legal structures capable of supporting large-scale business operations. The evolution of company law has been marked by the development of key doctrines such as limited liability, separate legal personality, and corporate governance frameworks.

9.1.1 Separate Legal Personality

A cornerstone of company law is the doctrine of separate legal personality, established in the landmark case of *Salomon v. A. Salomon & Co Ltd* [1897] AC 22. This principle posits that upon incorporation, a company becomes a distinct legal entity, separate from its shareholders and directors. Consequently, the company can own property, enter into contracts, and be subject to legal proceedings in its own name. This separation provides a veil of incorporation, shielding shareholders from personal liability for the company's debts and obligations.

9.1.2 Limited Liability

Limited liability is intrinsically linked to the concept of separate legal personality. It ensures that shareholders' financial responsibility for the company's debts is confined to the amount they have invested. This principle encourages investment by mitigating the risk to personal assets, thereby facilitating capital accumulation and economic growth. However, limited liability is not absolute; courts may "pierce the corporate veil" in instances of fraud or improper conduct, holding shareholders personally liable.

9.2 Types of Business Entities

Company law recognizes various forms of business entities, each with distinct legal characteristics and implications.

9.2.1 Sole Proprietorship

A sole proprietorship is an unincorporated business owned and operated by a single individual. The owner has unlimited personal liability for business debts and obligations, and there is no legal distinction between the owner and the business entity.

9.2.2 Partnership

A partnership involves two or more individuals conducting business together with a view to profit. Partners share profits, losses, and management responsibilities. Depending on the jurisdiction, partnerships may be classified as general partnerships, limited partnerships, or

limited liability partnerships, each with varying degrees of liability and regulatory requirements.

9.2.3 Limited Liability Company (LLC)

An LLC combines elements of partnerships and corporations, offering limited liability protection to its members while allowing flexible management structures. LLCs are particularly prevalent in jurisdictions like the United States, where they provide tax advantages and operational flexibility.

9.2.4 Corporation

A corporation is a fully incorporated entity with a separate legal personality, owned by shareholders and managed by a board of directors. Corporations can be further categorized into public and private companies.

- **Private Company:** A private company is privately held and does not offer its shares to the general public. It often has a limited number of shareholders and is subject to less stringent regulatory requirements compared to public companies.
- **Public Company:** A public company offers its shares to the public through stock exchanges and is subject to comprehensive regulatory oversight to protect investors. Public companies are required to adhere to stringent disclosure and corporate governance standards.

9.3 Corporate Governance

Corporate governance encompasses the systems, principles, and processes by which companies are directed and controlled. Effective corporate governance ensures accountability, fairness, and transparency in a company's relationship with its stakeholders.

9.3.1 Board of Directors

The board of directors holds the primary responsibility for the company's strategic direction and oversight. Directors owe fiduciary duties to the company, including the duty of care and the duty of loyalty. The composition and functioning of the board are critical to effective governance. Best practices advocate for a balance between executive and non-executive directors, diversity, and independence to mitigate conflicts of interest and enhance decision-making.

9.3.2 Shareholder Rights

Shareholders possess certain rights, including the right to vote on significant corporate matters, receive dividends, and access information about the company's performance. Minority shareholders are afforded protections against oppressive conduct by majority shareholders, ensuring equitable treatment.

9.3.3 Regulatory Frameworks

Corporate governance is regulated through a combination of statutory provisions, case law, and self-regulatory codes. For instance, the United Kingdom's Corporate Governance Code provides principles and provisions for good governance practices, emphasizing leadership, effectiveness, accountability, remuneration, and relations with shareholders.

9.4 Company Law and International Contract Law

The intersection of company law and international contract law is particularly pertinent in cross-border transactions. Companies engaging in international contracts must navigate varying legal systems, regulatory requirements, and cultural considerations.

9.4.1 Capacity to Contract

A company's capacity to enter into contracts is determined by its constitutional documents and the laws of its jurisdiction of incorporation. The doctrine of ultra vires, though largely abrogated in many jurisdictions, historically restricted companies from engaging in activities beyond their stated objectives. Modern company law often provides companies with the capacity to engage in any lawful activity, subject to any specific restrictions in their constitutive documents.

9.4.2 Authority of Agents

Companies operate through agents, such as directors and officers, who have the authority to bind the company in contractual matters. The scope of this authority is governed by principles of agency law and the company's internal governance structures. Third parties contracting with companies must ascertain that the agent possesses the requisite authority to avoid disputes over enforceability.

9.4.3 Choice of Law and Jurisdiction

International contracts often include choice of law and jurisdiction clauses to determine the applicable legal framework and forum for dispute resolution. Companies must carefully consider these provisions, as they can significantly impact the rights and obligations under the contract. The Hague Principles on Choice of Law in International Commercial Contracts promote party autonomy, allowing contracting parties to select the legal system governing their agreement. This ensures predictability and minimizes legal risks in cross-border transactions. Similarly, jurisdiction clauses specify the forum where disputes will be adjudicated, which is crucial for managing enforcement and litigation strategies (Hartley, 2017).

9.4.4 Dispute Resolution Mechanisms

Companies engaged in international trade often opt for alternative dispute resolution (ADR) mechanisms, such as arbitration and mediation, to avoid the complexities and uncertainties of litigation in foreign courts. International arbitration, governed by frameworks such as the New York Convention, provides a neutral and enforceable means of resolving disputes (Born, 2021). Mediation, as supported by instruments like the Singapore Convention on Mediation, offers a less adversarial approach to dispute resolution, fostering collaborative solutions (UN, 2019).

9.5 Regulatory Challenges in Cross-Border Operations

Operating in multiple jurisdictions exposes companies to a myriad of regulatory challenges:

- **Compliance with Local Laws:** Companies must navigate diverse legal environments, including tax regulations, employment laws, and environmental standards.
- **Anti-Bribery and Corruption Laws:** International frameworks like the OECD Anti-Bribery Convention and domestic laws such as the U.S. Foreign Corrupt Practices Act impose stringent anti-corruption obligations on companies operating globally (OECD, 2022).
- **Sanctions and Export Controls:** Companies engaged in international trade must adhere to sanctions regimes and export control regulations, which can impact contractual obligations and business operations (Low, 2020).

9.6 Future Directions in Company Law

The evolution of company law continues to reflect changes in global business practices and societal expectations. Key trends include:

- **Sustainability and Corporate Responsibility:** Increasing emphasis on environmental, social, and governance (ESG) factors is reshaping corporate governance and reporting obligations. Regulatory initiatives such as the EU's Corporate Sustainability Reporting Directive highlight the growing integration of sustainability into company law (European Commission, 2023).
- **Technological Advancements:** The rise of blockchain technology and smart contracts poses new challenges and opportunities for company law. These innovations facilitate automated and transparent contract execution but raise questions about legal enforceability and liability (Werbach, 2018).
- **Corporate Accountability and Governance Reform:** In response to corporate scandals and financial crises, there is a global push for stronger governance frameworks and greater accountability of corporate leaders, aiming to enhance investor confidence and market stability (Mallin, 2018).

9.7 Conclusion

Company law serves as a fundamental pillar of the modern business environment, providing the legal infrastructure for the operation and regulation of business entities. Its principles, from limited liability to corporate governance, not only facilitate economic activity but also protect stakeholders' interests. As companies expand their operations across borders, the interplay between company law and international contract law becomes increasingly significant. Understanding the regulatory frameworks, governance practices, and legal challenges associated with company law is essential for navigating the complexities of global commerce.

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10 CASE studies

10.1 Case Analysis: R (on the application of UNISON) v. Lord Chancellor [2017] UKSC

51

Introduction

The landmark case of *R (on the application of UNISON) v. Lord Chancellor* [2017] UKSC 51 stands as a pivotal moment in UK constitutional law, particularly concerning the protection of fundamental human rights within the legal system. The Supreme Court's decision underscored the essential nature of access to justice as a constitutional right, reinforcing the judiciary's role in upholding the rule of law against administrative measures that impede such access.

Background

In 2013, the UK government introduced the Employment Tribunals and the Employment Appeal Tribunal Fees Order 2013 (SI 2013/1893), which imposed fees on individuals seeking to bring claims before employment tribunals and the Employment Appeal Tribunal. The stated objectives were to transfer some of the financial burden from taxpayers to users of the system, deter unmeritorious claims, and encourage earlier settlements. However, the introduction of these fees led to a significant decline in the number of claims brought before employment tribunals.

UNISON, the public service trade union, challenged the legality of the Fees Order, arguing that it unlawfully restricted access to justice, was discriminatory, and contravened both domestic and EU law.

Legal Issues

The Supreme Court was tasked with determining whether the Fees Order was unlawful on the grounds that it:

1. Impeded access to justice, thereby violating the constitutional right to a fair trial.
2. Contravened EU principles of effectiveness and effective judicial protection.
3. Resulted in indirect discrimination, particularly against women and other protected groups.

Judgment

The Supreme Court unanimously held that the Fees Order was unlawful. Lord Reed, delivering the lead judgment, emphasized that access to justice is a fundamental constitutional right inherent in the rule of law. He stated that the Fees Order effectively prevented access to justice, as evidenced by the dramatic reduction in claims following its implementation. The Court found that the fees were unaffordable for many claimants, particularly those of modest means, and that the remission scheme was inadequate.

Furthermore, the Court held that the Fees Order was indirectly discriminatory under the Equality Act 2010, as it disproportionately affected women, who are more likely to bring certain types of claims, such as those related to pregnancy and maternity discrimination.

Significance

This case is significant for several reasons:

- **Reaffirmation of Access to Justice:** The judgment reinforced that access to justice is a fundamental constitutional right that cannot be impeded by financial barriers imposed by the state.
- **Judicial Oversight of Administrative Actions:** The decision exemplifies the judiciary's role in scrutinizing administrative measures to ensure they comply with constitutional principles and do not infringe upon fundamental rights.
- **Impact on Policy:** Following the judgment, the government abolished the fees and refunded those who had paid them, demonstrating the case's direct influence on public policy.

Conclusion

The Supreme Court's ruling in *R (on the application of UNISON) v. Lord Chancellor* serves as a critical affirmation of the constitutional right to access justice. It underscores the judiciary's vital role in upholding the rule of law and protecting individuals from administrative actions that infringe upon fundamental rights.

Source

The full judgment is available on the UK Supreme Court's website:

[Vrhovno sodišče](#)

10.2 Case Analysis: Van Gend en Loos v. Nederlandse Administratie der Belastingen (Case 26/62)

Introduction

The landmark judgment in *Van Gend en Loos v. Nederlandse Administratie der Belastingen* (Case 26/62) delivered by the European Court of Justice (ECJ) on February 5, 1963, stands as a cornerstone in the development of European Union (EU) law. This case established the doctrine of direct effect, fundamentally altering the relationship between EU law and the legal systems of member states. It underscored the capacity of EU law to confer rights upon individuals, which national courts are obligated to protect.

Background

Van Gend en Loos, a Dutch transport company, imported urea-formaldehyde from West Germany into the Netherlands. Upon importation, Dutch customs authorities imposed a tariff that Van Gend en Loos contended was higher than the rate applicable at the time of the Treaty of Rome's entry into force in 1958. The company argued that this increase contravened Article 12 of the Treaty of Rome, which prohibited member states from introducing new customs duties or increasing existing ones in their mutual trade.

Legal Issues

The central legal question was whether Article 12 of the Treaty of Rome conferred rights upon individuals that national courts must uphold. Specifically, could a private company invoke a provision of EU law directly before a national court to challenge national legislation?

Judgment

The ECJ held that Article 12 produced direct effects and conferred individual rights that national courts are required to protect. The Court articulated that the European Economic Community (EEC) constituted a new legal order of international law, for whose benefit the states had limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only member states but also their nationals. This reasoning established that EU law could create rights and obligations not only for member states but also for individuals, which national courts must enforce.

Significance

The *Van Gend en Loos* decision is seminal for several reasons:

- **Doctrine of Direct Effect:** The case established that certain provisions of EU law are directly effective, meaning they can be invoked by individuals in national courts without the need for further implementation by member states.
- **Supremacy of EU Law:** The judgment reinforced the supremacy of EU law over conflicting national laws, ensuring uniform application and effectiveness across member states.
- **Empowerment of Individuals:** By recognizing that individuals could directly invoke EU law, the Court empowered citizens to enforce their rights under EU law at the national level, enhancing legal integration within the EU.

Conclusion

The *Van Gend en Loos* case fundamentally transformed the landscape of EU law by establishing the doctrine of direct effect. It affirmed that EU law is not merely an agreement between states but a

legal order capable of conferring rights upon individuals, which national courts are bound to uphold. This principle has been instrumental in the development and enforcement of EU law, ensuring its primacy and uniform application across member states.

Source

The full judgment is available on the EUR-Lex website:

[EUR-Lex](#)

10.3 Case Analysis: *Costa v. ENEL* (Case 6/64)

Introduction

The landmark judgment in *Costa v. ENEL* (Case 6/64), delivered by the European Court of Justice (ECJ) on July 15, 1964, is a cornerstone in the development of European Union (EU) law. This case established the doctrine of the supremacy of EU law over national laws, fundamentally shaping the legal landscape of the EU and its member states. It underscored the primacy of EU law, ensuring its uniform application and effectiveness across all member states.

Background

Flaminio Costa, an Italian lawyer and shareholder in the private electricity company Edisonvolta, opposed the nationalization of the electricity sector in Italy. In 1962, the Italian government enacted legislation to nationalize the electricity industry, creating a state-controlled entity, ENEL. Costa refused to pay his electricity bill to ENEL, arguing that the nationalization violated the Treaty of Rome, which established the European Economic Community (EEC). He contended that the nationalization infringed upon the EEC Treaty provisions concerning competition and the free movement of goods.

Legal Issues

The central legal question was whether national legislation that conflicted with EU law could prevail over the obligations assumed by member states under the EEC Treaty. Specifically, could a member state enact legislation that contravened EU law, and if so, would such national law take precedence over EU law?

Judgment

The ECJ held that EU law takes precedence over conflicting national laws. The Court reasoned that by creating a Community of unlimited duration, having its own institutions, personality, legal capacity, and capacity of representation on the international plane and, more particularly, real powers stemming from a limitation of sovereignty or a transfer of powers from the states to the Community, the member states have limited their sovereign rights, albeit within limited fields, and have thus created a body of law which binds both their nationals and themselves. This reasoning established that EU law could not be overridden by domestic legal provisions, however framed, without being deprived of its character as Community law and without the legal basis of the Community itself being called into question.

Significance

The *Costa v. ENEL* decision is seminal for several reasons:

- **Doctrine of Supremacy:** The case established that EU law has supremacy over national laws, ensuring its uniform application and effectiveness across member states.
- **Legal Integration:** The judgment reinforced the integration of EU law into the legal systems of member states, obligating national courts to apply EU law even when it conflicts with national legislation.
- **Protection of Individual Rights:** By affirming the supremacy of EU law, the Court ensured that individuals could rely on EU law provisions before national courts, thereby protecting their rights under the EU legal framework.

Conclusion

The *Costa v. ENEL* case fundamentally transformed the relationship between EU law and national legal systems by establishing the doctrine of supremacy. It affirmed that EU law is an integral part of the legal systems of member states and takes precedence over conflicting national laws. This principle has been instrumental in ensuring the uniform application and effectiveness of EU law across all member states, thereby strengthening the legal integration within the EU.

Source

The full judgment is available on the EUR-Lex website:

[EUR-Lex](#)

10.4 Case Analysis: *Commission v. Poland* (Case C-619/18)

Introduction

The European Court of Justice (ECJ) delivered a landmark judgment in *Commission v. Poland* (Case C-619/18) on June 24, 2019, addressing critical issues related to the independence of the judiciary within the European Union (EU). This case underscores the role of EU institutions, particularly the European Commission and the ECJ, in upholding the rule of law and ensuring that member states adhere to fundamental EU principles.

Background

In 2017, Poland enacted legislation that lowered the retirement age for Supreme Court judges from 70 to 65 years. This change applied to sitting judges, effectively forcing many into early retirement. Additionally, the law granted the President of Poland discretionary power to extend the active service of judges beyond the new retirement age. The European Commission expressed concerns that these measures undermined judicial independence and initiated infringement proceedings against Poland, alleging violations of EU law.

Legal Issues

The central legal questions were:

1. Did the reduction in the retirement age for Supreme Court judges violate the principle of judicial independence as enshrined in EU law?
2. Did granting the President discretionary authority to extend judges' service infringe upon the separation of powers and judicial impartiality?

Judgment

The ECJ ruled that Poland's measures violated EU law, specifically the second subparagraph of Article 19(1) of the Treaty on European Union (TEU), which obligates member states to provide effective legal protection in fields covered by EU law. The Court held that lowering the retirement age and applying it to sitting judges breached the principle of irremovability, a core component of judicial independence. Furthermore, granting the President discretionary power to extend judges' service compromised the judiciary's independence by subjecting judges to potential political influence.

Significance

This judgment is significant for several reasons:

- **Reaffirmation of Judicial Independence:** The ECJ emphasized that judicial independence is a fundamental EU principle, essential for maintaining the rule of law and ensuring effective legal protection for individuals.
- **Role of EU Institutions:** The case highlights the European Commission's role as the "guardian of the Treaties" and the ECJ's authority in interpreting and enforcing EU law, ensuring member states' compliance.
- **Implications for National Reforms:** The ruling serves as a precedent, indicating that national judicial reforms must align with EU principles, particularly concerning the independence and impartiality of the judiciary.

Conclusion

The *Commission v. Poland* case underscores the critical role of EU institutions in safeguarding fundamental principles such as judicial independence. It illustrates the mechanisms through which the EU ensures that member states adhere to shared values, reinforcing the integrity of the Union's legal order.

Source

The full judgment is available on the EUR-Lex website:

[EUR-Lex](#)

10.5 Case Analysis: European Commission v. Kingdom of Spain (Case C-274/11)

Introduction

The case of *European Commission v. Kingdom of Spain* (Case C-274/11) is a pivotal example of the European Union's (EU) enforcement mechanisms concerning member states' compliance with EU law. This case underscores the binding nature of EU secondary legislation, particularly directives, and the consequences of non-implementation by member states.

Background

In 2008, the European Commission initiated infringement proceedings against Spain, alleging that Spain had failed to fulfill its obligations under EU law by not implementing Directive 2006/12/EC on waste management within the prescribed timeframe. The directive aimed to establish a comprehensive framework for waste management across the EU, promoting environmental protection and sustainable development.

Legal Issues

The central legal issue was whether Spain had failed to transpose Directive 2006/12/EC into national law within the deadline set by the directive. The Commission argued that Spain's failure to implement the directive constituted a breach of its obligations under the Treaty on the Functioning of the European Union (TFEU).

Judgment

The Court of Justice of the European Union (CJEU) held that Spain had indeed failed to fulfill its obligations under EU law by not implementing the directive within the prescribed period. The Court emphasized that directives are binding upon member states as to the result to be achieved, and failure to transpose them into national law constitutes a breach of EU obligations.

Significance

This case is significant for several reasons:

- **Enforcement of EU Law:** The judgment highlights the mechanisms available to the EU to ensure compliance with its laws, reinforcing the authority of EU institutions in maintaining legal order within the Union.
- **Binding Nature of Directives:** The case underscores that directives, as a source of EU law, impose binding obligations on member states to achieve the intended results within specified deadlines.
- **Consequences of Non-Compliance:** The ruling illustrates the legal consequences for member states that fail to fulfill their obligations under EU law, including potential financial penalties and the obligation to rectify the breach.

Conclusion

The *European Commission v. Kingdom of Spain* case serves as a critical reminder of the binding nature of EU directives and the importance of timely implementation by member states. It underscores the role of EU institutions in enforcing compliance and maintaining the integrity of the Union's legal framework.

Source

The full judgment is available on the EUR-Lex website: [EUR-Lex](#)

10.6 Case Analysis: *Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256

Introduction

The case of *Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256 is a seminal decision in English contract law, renowned for its elucidation of the principles governing unilateral contracts, offer and acceptance, and the doctrine of consideration. This judgment has profoundly influenced the development of contract law, particularly in delineating the boundaries between mere advertising "puffery" and legally binding offers.

Background

In the late 19th century, the Carbolic Smoke Ball Company marketed a product known as the "Carbolic Smoke Ball," which was claimed to prevent influenza and other ailments. The company published an advertisement in the *Pall Mall Gazette* on November 13, 1891, stating:

"£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza, colds, or any disease caused by taking cold, after having used the ball three times daily for two weeks according to the printed directions supplied with each ball. £1000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter."

Mrs. Louisa Carlill, relying on this advertisement, purchased the smoke ball and used it as directed from November 20, 1891, to January 17, 1892. Despite her adherence to the instructions, she contracted influenza and subsequently sought to claim the £100 reward. The company refused payment, leading Mrs. Carlill to initiate legal proceedings for breach of contract.

Legal Issues

The case presented several pivotal legal questions:

1. **Offer and Acceptance:** Did the advertisement constitute a legally binding offer, or was it merely an invitation to treat?
2. **Unilateral Contract:** If the advertisement was an offer, could it be accepted by anyone who performed the stipulated conditions, thereby forming a unilateral contract?
3. **Consideration:** Was there valid consideration provided by Mrs. Carlill to support the formation of a contract?
4. **Intention to Create Legal Relations:** Did the company demonstrate a genuine intention to be legally bound by the terms of the advertisement?

Judgment

The Court of Appeal, comprising Lord Justices Lindley, Bowen, and A.L. Smith, delivered a unanimous judgment in favor of Mrs. Carlill. The court held that the advertisement constituted a unilateral offer to the world at large, which could be accepted by anyone who performed the conditions specified. The deposit of £1000 in the bank was deemed a clear indication of the company's intention to be bound by the offer, thereby negating any argument that the advertisement was mere puffery.

Regarding consideration, the court determined that Mrs. Carlill's use of the smoke ball as directed constituted sufficient consideration, as it involved a detriment to her and a corresponding benefit to the company through increased sales and product exposure.

Significance

The *Carlill* case is of paramount importance in contract law for several reasons:

- **Unilateral Contracts:** It established that advertisements can constitute unilateral offers, which are accepted through performance of the specified conditions, thereby forming a binding contract.
- **Offer and Acceptance:** The judgment clarified that acceptance of a unilateral offer does not require communication; performance of the stipulated act suffices.
- **Consideration:** The case reinforced the principle that consideration must involve a detriment to the promisee or a benefit to the promisor, both of which were present in this scenario.
- **Intention to Create Legal Relations:** The court emphasized that clear language and actions indicating a serious commitment, such as depositing money in a bank, demonstrate an intention to create legal relations.

Conclusion

Carlill v. Carbolic Smoke Ball Co. remains a foundational case in contract law, elucidating key principles that continue to influence legal interpretations of offers, acceptance, consideration, and the intention to create legal relations. Its enduring relevance underscores the necessity for clarity and sincerity in commercial representations and the legal obligations they may engender.

Source

The full judgment is available on the BAILII website:

[Law Teacher](#)

10.7 Case Analysis: *Bell v. Lever Brothers Ltd.* [1932] AC 161

Introduction

The House of Lords' decision in *Bell v. Lever Brothers Ltd.* [1932] AC 161 is a seminal case in English contract law, particularly concerning the doctrine of common mistake. This judgment delineated the boundaries within which a contract may be deemed void due to a shared fundamental error between the contracting parties. The case has profoundly influenced the legal understanding of mistake in contract formation and continues to be a cornerstone in legal education and practice.

Background

Lever Brothers Ltd., a prominent company, appointed Mr. Bell and Mr. Snelling as Chairman and Vice-Chairman, respectively, of its subsidiary, the Niger Company. Their employment contracts were set for a duration of five years. Subsequently, Lever Brothers decided to merge the Niger Company with another subsidiary, rendering the positions of Mr. Bell and Mr. Snelling redundant. To facilitate their departure, Lever Brothers entered into severance agreements with both individuals, providing substantial compensation for the premature termination of their contracts.

Unbeknownst to Lever Brothers at the time of these agreements, both Mr. Bell and Mr. Snelling had previously engaged in personal trading activities that constituted serious breaches of their fiduciary duties. These breaches would have entitled Lever Brothers to terminate their employment without any compensation. Upon discovering these breaches, Lever Brothers sought to rescind the severance agreements, arguing that they were entered into under a common mistake regarding the true circumstances of the employees' conduct.

Legal Issues

The central legal question was whether the severance agreements could be rescinded on the grounds of common mistake. Specifically, did the mutual ignorance of the breaches of duty by Mr. Bell and Mr. Snelling constitute a fundamental mistake that rendered the contracts void?

Judgment

The House of Lords held that the contracts were not void for common mistake. The Court reasoned that for a contract to be void due to common mistake, the mistake must be fundamental to the identity of the contract's subject matter. In this case, the mistake pertained to the quality of the service contracts—specifically, the employees' prior conduct—rather than the existence or identity of the subject matter itself. Therefore, the mistake was not sufficiently fundamental to void the contracts.

Significance

This case is significant for several reasons:

- **Clarification of Common Mistake Doctrine:** The judgment established that a common mistake must relate to a fundamental aspect of the contract's subject matter to render it void. Mistakes concerning the quality or attributes of the subject matter are insufficient.
- **Contractual Certainty:** The decision reinforced the principle that contracts should not be easily set aside due to mistakes, thereby promoting stability and predictability in commercial transactions.

- **Limitations on Rescission:** The case delineated the boundaries within which rescission is available as a remedy for mistake, emphasizing that not all mutual errors justify nullifying a contract.

Conclusion

Bell v. Lever Brothers Ltd. remains a cornerstone in the study of contract law, particularly concerning the doctrine of common mistake. The House of Lords' decision provides critical guidance on the circumstances under which a contract may be voided due to mutual error, underscoring the necessity for the mistake to pertain to the very essence of the contract's subject matter. This case continues to inform legal interpretations and applications of mistake in contract law.

Source

The full judgment is available on the BAILII website:

[CaseMine](#)

10.8 Case Analysis: Lithuanian Commerce Corp. Ltd. v. Sara Lee Hosiery (1998)

Introduction

The case of *Lithuanian Commerce Corp. Ltd. v. Sara Lee Hosiery* (1998) is a significant example in the realm of international sales contracts, particularly concerning the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG). This case illustrates the complexities that can arise in cross-border transactions and the role of international legal frameworks in resolving such disputes.

Background

Lithuanian Commerce Corporation Ltd. (LCC), a company based in Lithuania, entered into a distribution agreement with Sara Lee Hosiery, a U.S.-based manufacturer, to distribute L'Eggs brand pantyhose in Lithuania. During the term of this agreement, Sara Lee made a substantial donation of L'Eggs pantyhose to charitable organizations in neighboring countries. LCC alleged that these donated products infiltrated the Lithuanian market, adversely affecting their sales. To address LCC's concerns, Sara Lee agreed to provide LCC with a significant quantity of Mexican-manufactured L'Eggs pantyhose at no cost, in exchange for a release of any claims LCC might have had against Sara Lee.

Subsequently, LCC claimed that the Mexican-made pantyhose were of inferior quality compared to the U.S.-manufactured products, leading to consumer complaints and a decline in sales. LCC initiated legal action against Sara Lee, alleging breach of contract, misrepresentation, and violations of various New Jersey statutes.

Legal Issues

The central legal issues in this case included:

1. **Breach of Contract:** Whether Sara Lee breached the distribution agreement by providing products of inferior quality.
2. **Misrepresentation:** Whether Sara Lee misrepresented the quality of the Mexican-made pantyhose.
3. **Application of CISG:** Whether the CISG applied to the contract and how its provisions influenced the resolution of the dispute.

Judgment

The United States District Court for the District of New Jersey held that LCC failed to provide sufficient evidence to support its claims of breach of contract and misrepresentation. The court noted that LCC had received samples of the Mexican-made pantyhose prior to accepting the shipment and had not raised objections at that time. Furthermore, the court found that LCC did not demonstrate that the alleged defects in the products caused the claimed damages.

Regarding the application of the CISG, the court determined that the convention was applicable, as both the United States and Lithuania are contracting states. However, the court concluded that LCC did not meet the burden of proof required under the CISG to establish that the goods were non-conforming.

Significance

This case is significant for several reasons:

- **Application of CISG:** The judgment highlights the applicability of the CISG in international sales contracts and underscores the importance of understanding its provisions in cross-border transactions.
- **Quality Assurance in International Trade:** The case emphasizes the necessity for buyers to thoroughly inspect goods and promptly communicate any objections to the seller, as stipulated under the CISG.
- **Evidence in Breach of Contract Claims:** The decision illustrates the critical role of evidence in substantiating claims of breach of contract and misrepresentation, particularly in international disputes.

Conclusion

Lithuanian Commerce Corp. Ltd. v. Sara Lee Hosiery serves as an instructive example of the complexities inherent in international sales contracts and the application of the CISG. The case underscores the importance of clear communication, thorough inspection of goods, and a comprehensive understanding of international legal frameworks in mitigating risks associated with cross-border transactions.

Source

The full judgment is available on the Justia website:

[Justia Law](#)

10.9 Case Analysis: *Salomon v. A. Salomon & Co. Ltd.* [1897] AC 22

Introduction

The landmark case of *Salomon v. A. Salomon & Co. Ltd.* [1897] AC 22 is a cornerstone in company law, establishing the principle of corporate personality and affirming the doctrine of limited liability. This decision by the House of Lords has profoundly influenced the legal understanding of corporate structures, delineating the separation between a company and its shareholders.

Background

Aron Salomon was a prosperous boot and shoe manufacturer operating as a sole trader in London. In 1892, he decided to incorporate his business, forming A. Salomon & Co. Ltd. The company was structured with Salomon, his wife, and five of his children as shareholders, each holding one share, while Salomon himself held the remaining majority of shares. He sold his business to the company for £39,000, receiving £10,000 in debentures (secured by a floating charge on the company's assets) and £20,000 in shares.

Subsequently, the company faced financial difficulties and went into liquidation. At the time of liquidation, the company's assets were insufficient to satisfy its secured creditors, leaving nothing for the unsecured creditors. The liquidator contended that the company was merely an agent of Salomon and that he should be personally liable for its debts.

Legal Issues

The central legal question was whether A. Salomon & Co. Ltd. was a separate legal entity distinct from its shareholders, particularly Aron Salomon, and whether Salomon could be held personally liable for the company's debts.

Judgment

The House of Lords unanimously held that upon incorporation, a company becomes a separate legal entity distinct from its shareholders. Lord Macnaghten stated, "The company is at law a different person altogether from the subscribers to the memorandum; and, though it may be that after incorporation the business is precisely the same as it was before, and the same persons are managers, and the same hands receive the profits, the company is not in law the agent of the subscribers or trustee for them." Consequently, Salomon was not personally liable for the company's debts beyond his investment in shares.

Significance

This case is significant for several reasons:

- **Corporate Personality:** It established that a duly incorporated company possesses its own legal personality, separate from its shareholders.
- **Limited Liability:** The decision affirmed that shareholders are not personally liable for the company's debts beyond their investment, promoting entrepreneurial risk-taking.
- **Legal Precedent:** The ruling has served as a foundational precedent in company law, influencing subsequent cases and legislation concerning corporate structures.

Conclusion

Salomon v. A. Salomon & Co. Ltd. remains a fundamental case in company law, elucidating the principles of corporate personality and limited liability. The House of Lords' decision underscores the legal distinction between a company and its shareholders, a concept that continues to underpin modern corporate law.

Source

The full judgment is available on the BAILII website:

[CaseMine](#)

11 Progress tests

Chapter 1: The Law, the Constitution, and Human Rights

1. Which of the following best describes the principle of *pacta sunt servanda*?
 - a) Contracts must be written to be enforceable
 - b) Agreements must be kept
 - c) Contracts require judicial approval to be valid
 - d) Agreements can be renegotiated at any time
2. What constitutional principle ensures access to justice?
 - a) Supremacy of Parliament
 - b) Separation of Powers
 - c) Rule of Law
 - d) Judicial Review

Chapter 2: Sources of Law

3. Which of the following is a primary source of law?
 - a) Legal textbooks
 - b) Judicial precedents
 - c) Regulations
 - d) Treaties
4. The doctrine of stare decisis applies primarily in which legal system?
 - a) Civil law
 - b) Common law
 - c) Islamic law
 - d) Socialist law

Chapter 3: Law of the European Union

5. Which principle establishes that EU law takes precedence over national law?
 - a) Direct Effect
 - b) Subsidiarity
 - c) Supremacy
 - d) Proportionality
6. What case established the doctrine of direct effect in EU law?
 - a) Costa v. ENEL
 - b) Van Gend en Loos
 - c) Francovich v. Italy
 - d) Factortame

Chapter 4: Institutions of the European Union

7. Which institution of the EU is responsible for proposing legislation?
 - a) European Council
 - b) European Parliament
 - c) European Commission
 - d) Court of Justice of the European Union
8. The European Court of Justice primarily ensures:
 - a) Enforcement of international treaties
 - b) Uniform interpretation and application of EU law
 - c) Implementation of foreign policy
 - d) Management of the EU budget

Chapter 5: Sources of EU Law

9. Which type of EU legislation is directly applicable in all member states without requiring national implementation?
 - a) Directives
 - b) Regulations
 - c) Decisions
 - d) Recommendations
10. A directive requires:
 - a) Immediate application as law in all member states
 - b) Transposition into national law by member states
 - c) Only voluntary compliance
 - d) Approval by the European Council to become effective

Chapter 6: Basic Elements of Valid Contracts

11. Which of the following is not a required element of a valid contract?
 - a) Offer and acceptance
 - b) Consideration
 - c) Capacity
 - d) Formal written agreement
12. In *Carlill v. Carbolic Smoke Ball Co.*, the advertisement was considered:
 - a) An invitation to treat
 - b) A unilateral offer
 - c) A bilateral offer
 - d) A binding contract upon communication

Chapter 7: Mistakes in Contracts

13. Which type of mistake occurs when both parties share the same erroneous belief about a fundamental fact?
- a) Unilateral mistake
 - b) Common mistake
 - c) Mutual mistake
 - d) Constructive mistake
14. In *Bell v. Lever Brothers Ltd.*, the court ruled that:
- a) The mistake was sufficiently fundamental to void the contract
 - b) The contract was voidable due to misrepresentation
 - c) The mistake did not render the contract void
 - d) The contract was void due to frustration

Chapter 8: The Sale of Goods Contract and Other Prevalent International Contracts

15. The United Nations Convention on Contracts for the International Sale of Goods (CISG) applies to:
- a) All domestic contracts within a member state
 - b) International sales contracts between private individuals
 - c) International sales contracts between parties in member states
 - d) Service contracts between international corporations
16. Under the CISG, which party bears the risk of loss after the goods are handed over to the first carrier?
- a) Seller
 - b) Buyer
 - c) Carrier
 - d) Insurance provider

Chapter 9: Company Law

17. What principle was established in *Salomon v. A. Salomon & Co. Ltd.*?
- a) Piercing the corporate veil
 - b) Separate legal personality
 - c) Shareholder primacy
 - d) Ultra vires doctrine
18. Which of the following is a key feature of limited liability?
- a) Shareholders are personally liable for corporate debts
 - b) Directors cannot be sued for company actions
 - c) Shareholders' liability is limited to their investment in the company
 - d) Companies are exempt from legal obligations

Answer Key

1. **b**

2. **c**

3. **d**

4. **b**

5. **c**

6. **b**

7. **c**

8. **b**

9. **b**

10. **b**

11. **d**

12. **b**

13. **b**

14. **c**

15. **c**

16. **b**

17. **b**

18. **c**

12 OTHER MATERIALS

12.1 Slides and handouts

PowerPoint slides and handouts