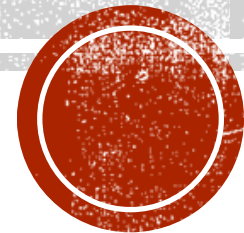


CONTRACT LAW (DIFFERENCES BETWEEN SWISS & US CONTRACT LAW

Presentation No. 3: Mirjam Bopp, Lucia Morley Becerra



WHAT IS A CONTRACT?

- A promise or a set of promises that the law will enforce
- One- or two-sided legal transaction



ELEMENTS OF A CONTRACT

US Law

- Offer: definite promise to be bound if accepted
- Acceptance: expression of assent to the terms proposed by the offeror
 - Mirror Image Rule: acceptance must match the offer (exact same terms and conditions)
 - If one responds with changes to the offer: counter-offer

Swiss Law

- Offer and acceptance similar like in US Law
- Importance of mutual consent
- Implied acceptance possible (OR 6)



FORMATION OF A CONTRACT

US Law (mailbox rule)

- Acceptance is effective when sent (even if the letter never arrives)
- Revocation must reach offeree before acceptance is sent
- Protects the offeree

Swiss Law (receipt rule)

- Once declarations of intent reach other party
- Mutual consent
- Protection of integrity of agreement / transparency
- Awareness
- No meeting of the minds = no contract



CONSIDERATION AND CAUSE

- A benefit or detriment that a party receives which reasonably and fairly induces them to make the promise/contract
- Only enforceable if supported by consideration (something of value exchanged)
- Has no quality requirement – does not need to be reasonable, fair or proportionate
- Gratuitous promises are not enforceable

Swiss Law:

- No consideration required
- Only requirements: mutual consent and lawful cause
 - Lawful cause: legal and permissible purpose of contract
- Gratuitous contracts (donation) valid without exchange



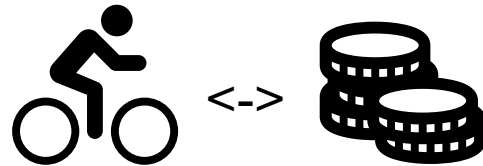
EXAMPLE

OFFEROR

“I will sell you my bike for CHF 200.”

OFFER

CONSIDERATION



ACCEPTANCE

OFFEREE

“I agree. I’ll buy it for CHF 200.”



MUTUAL ASSENT (= INTENTION TO BE LEGALLY BOUND)

US Law (objective theory)

- Meeting of the minds
- Intention to be legally bound
- Agreement judged from standpoint of a reasonable person

Swiss Law (subjective/common intent)

- True and common intention of the parties
- Good faith
 - According to a reasonable person
 - Legitimate expectations
- Seriousness of declaration



INTERPRETATION OF A CONTRACT

Common Law

- Objective meaning, what a reasonable person in that context would understand
- Guided by context, trade usage, conduct
- Private autonomy
- “Chicken” example: whoever asserts the narrower meaning must prove it

Swiss Law

- Subjective: true common intent of the parties (OR 18)
- If intent unclear interpret by good faith (Vertrauensprinzip)
- Different evidence used to identify intention
- Cooperative reasoning



CAPACITY & ENFORCEABILITY

US Law

- Capacity to understand the agreement
- Minors, mentally impaired, extremely intoxicated persons may void a contract

Swiss Law

- Capacity
 - Majority
 - Capability of judgement

--> contract void when persons lack capacity to contract



CONCLUSION

US Law

- Offer/acceptance sequence
- Consideration as a core principle of common law
- Values private autonomy over good faith

--> adversarial

Swiss Law

- Good faith foundational principle
- Freedom of form
- Individualisation emphasized
- Shared understanding
- Protection of legitimate expectations

--> cooperative

