American Law of Contracts

1. Doctrine

The law of contracts deals with the enforcement of promissory obligations. Contractual liability derives from consent freely given in the form of a promise whether express or implied from the acts of the parties. Contractual liability derives from consent freely given in the form of a promise whether express or implied from the acts of parties. The courts will sometimes imply a promise ("implied in law" or quasi contract") to prevent unfair profit even in the absence of consent on the part of the party bound by it. Contract law applies to a wide range of agreements concerning employment, insurance, sale of goods, sale of land, services, etc., and to such varied parties as individuals, business organizations and governmental entities.

Contract law is more state than federal law although differences from state to state are generally notional. It is mainly case-law but more and more problems are now governed by statutes. Thus the Uniform Commercial Code provides for the formation of contracts for the sale of goods, and by the **Tucker Act 1887**, as amended, the United States government has waived its sovereign immunity in contract actions by accepting to appear in the federal courts.

A contract may be defined as a promise for the breach of which the law gives a remedy. Indeed the word "contract" applies to the series of acts by which the parties gave their agreement, to any executed document or to the legal relations which have resulted. For a promise to be enforceable (i.e. for the law to give a remedy) at least two criteria must be met: these are respectively the requirement of a writing and the requirement of a consideration.

The former derives from the **English Statute of Frauds of 1677** enacted throughout the United States and providing that certain types of contracts must be evidenced by a writing, such as contracts to sell goods above a minimum value, sales of land, contracts to be liable for the debt of another and contracts to be performed after a one-year period.

However most contracts to furnish services do not come under these provisions and are enforceable without a writing. Although the greatest part of the English Statute of Frauds was repealed in 1954, its abolition is not yet foreseeable in the United States.

The latter (consideration) is first and foremost something for which the promisor has bargained and which he has received in exchange for his own promise; this may be either another promise given in return – the contract is then known as bilateral – or another act given in return - the contract is then unilateral. However, there are a few instances of business promises in which the requirement of consideration is not met: for instance, the promise to pay for goods or services which have already been furnished at the time the promise is made; or the device (called "option") by which the offeree holds the offeror to his promise by paying him a nominal sum as consideration, and thus turns the rule according to which the offeror can revoke his offer at any time before its acceptance by the offeree. In some cases, even though there is no consideration, the offeror may be estopped by the courts from coming back on his promise when the offeree has relied upon it to his detriment. Finally a number of states have enacted laws by which an offer is irrevocable, even without consideration, if it is contained in a signed writing stating that it is irrevocable. Thus, there has been a tendency to remedy the deficiencies of the doctrine of consideration rather than to discard it.

In the United States, contracts, like statutes, are characteristically detailed and prolix. Those prepared by lawyers are often compounded of standard clauses, popularly known as "boilerplate", taken from other agreements kept on file or from form books. Even when a lawyer is not directly involved, the parties may use or incorporate by reference a standard printed form which has been drafted by a lawyer, perhaps for a particular enterprise, perhaps for an association of enterprises, or perhaps for sale to the general public.

This attention to detail may be due to a number of causes, including the standardization of routine transactions, the frequent involvement of lawyers in all stages of exceptional transactions, the inclination to use language which has been tested in previous controversies, and the desire to avoid uncertainty when the law of more than one state may be involved. All of these add to the general disposition of the case-oriented American lawyer to provide expressly for specific disputes which have arisen in the past or which might be foreseen in the future.

A related phenomenon is the widespread use of standard form "contracts of adhesion", such as tickets, leases, and retail sales contract, which are forced upon one party with inferior bargaining power. In recent years, courts and legislatures have become increasingly concerned with the effects which unrestrained freedom of contract may have in such situations. Courts which had always refused to enforce agreements contemplating crimes, torts, or other acts which were clearly contrary to the public interest, began, under the guise of interpreting the contracts, to favour the weaker party and in extreme cases to deny effect to terms dictated by one party even where the subject of the agreement was not in itself unlawful.

Legislatures enacted statutes fixing terms, such as maximum hours and minimum wages for employment, or even prescribing entire contracts, such as insurance policies, and gave administrative bodies the power to determine rates and conditions for such essential services as transportation and electricity; nevertheless, in spite of the erosion of the doctrine of freedom of contracts in many areas, the doctrine is still the rule rather than the exception.

3. Key sentences - Translate

1. The United States government has waived its sovereign immunity in contract actions.
2. It can be sued before the federal courts.
3. Existing statutes tend to weaken the doctrine of consideration.
4. The offeror cannot come back upon (revoke) his offer after its acceptance by the other party.
5. The courts will always protect the weaker party.
6. Nowadays, most transactions involve the participation of a lawyer.
7. American lawyers have a general disposition to include terms which provide for every possible circumstance.
8. The assignment of a contract involves the transfer of the rights to and the duties of performance.
9. The assignor in the case of a bilateral contract assigns the rights to performance and delegates his duties.

10. *Il a essayé de revenir sur sa promesse mais le tribunal l'en a empêché.*
11. *En cas de force majeure, le contrat sera résolu pour impossibilité d'exécution.*
12. *Le juge ordonna que tous ses biens soient confisqués.*
13. *Pour toute promesse, le promettant est in débiteur, avec une obligation à remplir, et celui qui reçoit la promesse est un créancier.*
14. *Si le contrat engendre une injustice, le juge peut décider d'accorder la rescision.*
15. *Le contrat est une promesse pour laquelle la loi offre des recours en cas de manquement.*
16. *La promesse est exécutoire quand sont rassemblés les deux éléments suivants d'un contrat : un document écrit et l'existence d'une contrepartie.*
17. *Le droit des contrats est essentiellement fondé sur la jurisprudence bien que de plus de problèmes soient réglés par le législateur.*
18. *Les accords concernant l'emploi, les assurances, la vente de marchandises, les transactions immobilières et les services sont régis par le droit des contrats.*