



UiO • **Faculty of Law**
University of Oslo

Case study

Governing Law



Case 1. Firm offer (revocation and reliance)

Wording:

“This offer is firm and cannot be revoked by the offeror before 30 days from the date hereof. The goods are...at a price of USD ...”

Scenario:

A construction company intends to participate in a tender relating to the construction of some infrastructure. In order to prepare the bid, the contractor requests irrevocable offers from a series of sub-contractors. On the basis of the sub-contractors offer, the bid of the contractor wins the tender, and is awarded construction contract. After the contract is awarded, but before the term contained in the sub-contractors' offer elapses, one of the sub-contractors revoke it.

Questions:

- What would be the legal consequences if the offeror decided to revoke the offer, before the term indicated in the firm offer has elapsed?
- What would be consequences under civil law and common law (USA, UK)? Please consider the possibility to overcome consideration in common law, if any?

While answering please consider the provisions of the Uniform Commercial Code of the United States:

Para.2-205:

An offer by a merchant to buy or sell goods in a signed writing which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months, but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Case 2. Force majeure (choice between the contracts, partial non-performance)

Scenario:

Producer of car components has entered into two contracts for the delivery of customized car components to two different car producers. When the seller has nearly completed production for both buyers, an earthquake partially destroys the seller's storage facilities. As a consequence thereof, the seller is capable of delivering the total agreed volume on the agreed delivery date only to one buyer, not to both; alternatively, the seller could deliver on the agreed delivery date only part of the agreed volume to both buyers.

Question:

- What would be the legal consequences under Italian, German, Norwegian and UK law? Pro-rata distribution of negative consequences between the affected parties, or the eldest contract to be performed or no effect on the contractual obligation to perform?

Case 3. Entire contract agreement

Contract:

“This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement.”

Scenario 1¹:

Proforce Recruit Ltd., an employment and recruitment agency, entered into an agreement with The Rugby Group Ltd. relating to the provision of cleaning services.

Proforce Recruit Ltd. was expressed to hold '*preferred supplier status*'. However, this term was not defined in the Contract. The Rugby Group Ltd. began to use other employment agencies and Proforce Recruit Ltd. brought a claim for breach of the Contract. Proforce Recruit Ltd. contended that the term '*preferred supplier*' granted it a '*right of first refusal*' to supply labour, whereas the Rugby Group Ltd. maintained that the term merely conferred on Proforce Recruit Ltd. the commercial advantage of being an approved supplier of labour.

The Rugby Group Ltd. applied for summary judgement on the basis that the Contract contained an entire agreement clause, and therefore Force Recruit Ltd. could not rely on pre-contractual representations about the meaning of the term to bring an action for breach of the Contract.

¹ ProForce Recruit Ltd v The Rugby Group Ltd [2006] EWCA Civ 69,
<http://www.unilex.info/case.cfm?pid=2&id=1119&do=case>, last accessed on 15 January 2016.

Questions:

- What is the meaning and the scope of the entire agreement clause?
- Are there any intervening principles or concepts that may affect the autonomy aimed by the entire agreement clause?
- Whether the position of Proforce Recruit Ltd. relate to (a) interpretation, (b) construction, (c) introduction of the provision orally discussed?
- What would be the outcome under French law, Italian law and English law?

Scenario 2¹:

The parties had entered into a contract relating to a flat then under construction, committing themselves to finalizing the sale once the construction was fulfilled. When the construction was completed, the buyer refused to finalize the contract, alleging that the object of the contract had not been sufficiently specified. The developer provided evidence that certain drawings had been provided to the buyer during negotiations, which would make the object of the contract sufficiently determined.

¹ Scotia Homes (South) Ltd. V. Mr James Maurice McLean and Mrs Linda Isabella McLean, <http://www.unilex.info/case.cfm?pid=2&id=1679&do=case>, last accessed on 15 January 2016.

Question:

- Whether extrinsic evidences are allowed in presence of entire agreement clause?
- What would be the outcome under French law, Italian law and English law?

Case 4. Force majeure (Supplier's failure)

Scenario:

Producer of car components enters into a contract for the delivery of certain aluminum components made to the specifications of the buyer, which is a car producer. The seller/producer of components has to procure the aluminum for the production of the components from third parties. After having carried out an extensive process comparing the quality, reliability and conditions offered by the major aluminum suppliers on an international level, the seller enters into a contract for the procurement of aluminum with a recognized supplier, which was offering the best conditions. Due to supervening force majeure events, the selected aluminum supplier fails to deliver the proper quality of aluminum according to the time schedule agreed with the producer of the components. As a consequence of the lack of the delivery of aluminum, the seller/producer has to delay its production, also including the production of the car components for the buyer. In result, the seller/producer cannot comply with its obligations towards buyer.

Question:

- What would be the legal consequences under German, Norwegian and English law?

Case 5. Early termination clause

A borrower decides to take advantage of the extremely low interest rates and borrowed 100 million Euro from a renowned bank (the Lender). The market being low, banks are keen on entering into new business; therefore the Borrower manages to obtain quite favorable conditions for its loan: the repayment time is 10 years, and the interest is fixed for the whole period at the rather low rate of 2.5 %.

The Loan Agreement is standardized and contains the usual clauses among them the so-called covenants, contained in Article 13. The Article 13 consists of list of commitments for the Borrower, among others to keep the Lender informed of the Borrower's financial and commercial situation. In this way, the Lender may at any time verify the Borrower's continued creditworthiness and ability to repay its debt. Among other things, the Borrower shall provide the Lender, not later than 3 days after they have been audited, its audited financial statements. This covenant is contained in Article 13.7 of the Loan Agreement. More important covenants oblige the Borrower not to undertake any activity that may negatively affect its ability to pay its debt, without having obtained the Lender's prior written consent. Such activity may be, for example, entering into new business areas, selling important assets, buying new companies etc.

The termination clause entitles the Lender to terminate the Agreement in case of Event of Default. The following, among others, is defined as an Event of Default: “The Borrower is in breach of any of its obligations under article 13 of this Loan Agreement”.

The audited statement was provided 4 days after the financial statements were audited. The creditworthiness of the Borrower is still exemplary but the Lender is mindful to terminate.

Questions:

- Whether contractual language should prevail over considerations of fairness?
- What would be the consequences of the termination under English law and German law?

Case 6. Remedies. Penalties

Contractual provision:

«The delivery needs to be within the agreed delivery period. In case of delays in deliveries, a penalty shall be applied of 1% of the amount of order for each day of delay. This amount is limited to a maximum of 10% of the amount of order.»

Scenario:

The Bulgarian seller of New year toys entered into the Contract of sale with the UK buyer. The toys were delayed by 3 weeks. The UK buyer intended to sue the Bulgarian buyer and to recover everything possible including loss of profit and penalties. UK lawyers advised the UK buyers that penalty clause is not permitted under UK law.

Question:

- Whether penalty could be recovered along with other damages under (a) UK law, (b) German law, (c) Russian law, (d) Norwegian law?