Session 34

Contract Law 1

Contracts in general

Concluding a contract

A contract is concluded when the parties have expressed their willingness in a mutual agreement (CO, art 1; CCQ, s1378).

In order to conclude a contract, two parties need to reach an agreement on the basis of a negotiation involving an offer and acceptance between the offeror and the offeree.

Concluding a contract (cont.)

The offeror communicates the willingness (i.e. serious intent) to reach an agreement according to the (definite) terms offered within a time limit and awaits acceptance of the offer. If the time limit is not be fixed the offer remains valid until a reply could be reasonably expected.

Acceptance by the offeree can take place as long as the offer is open and the terms agreed upon (CCQ, s 1387 ff).

The agreement is as if a meeting of the minds took place (*consensus ad idem*).

Concluding a contract (cont.)

Further, this agreement may be either express or implied in the following senses (CO, art 1; CCQ, s1376, 1414):

- Express: in the sense that it clearly defines all terms and conditions.
- Example: employment contract.
- Implied: where nothing is precisely stated or written but suggested by a
- person's actions.
- Example: ordering a meal.

This is not to be confuses with the different forms of contract highlighted in the CC of Quebec (s 1378 – 1384)

Concluding a contract (cont.)

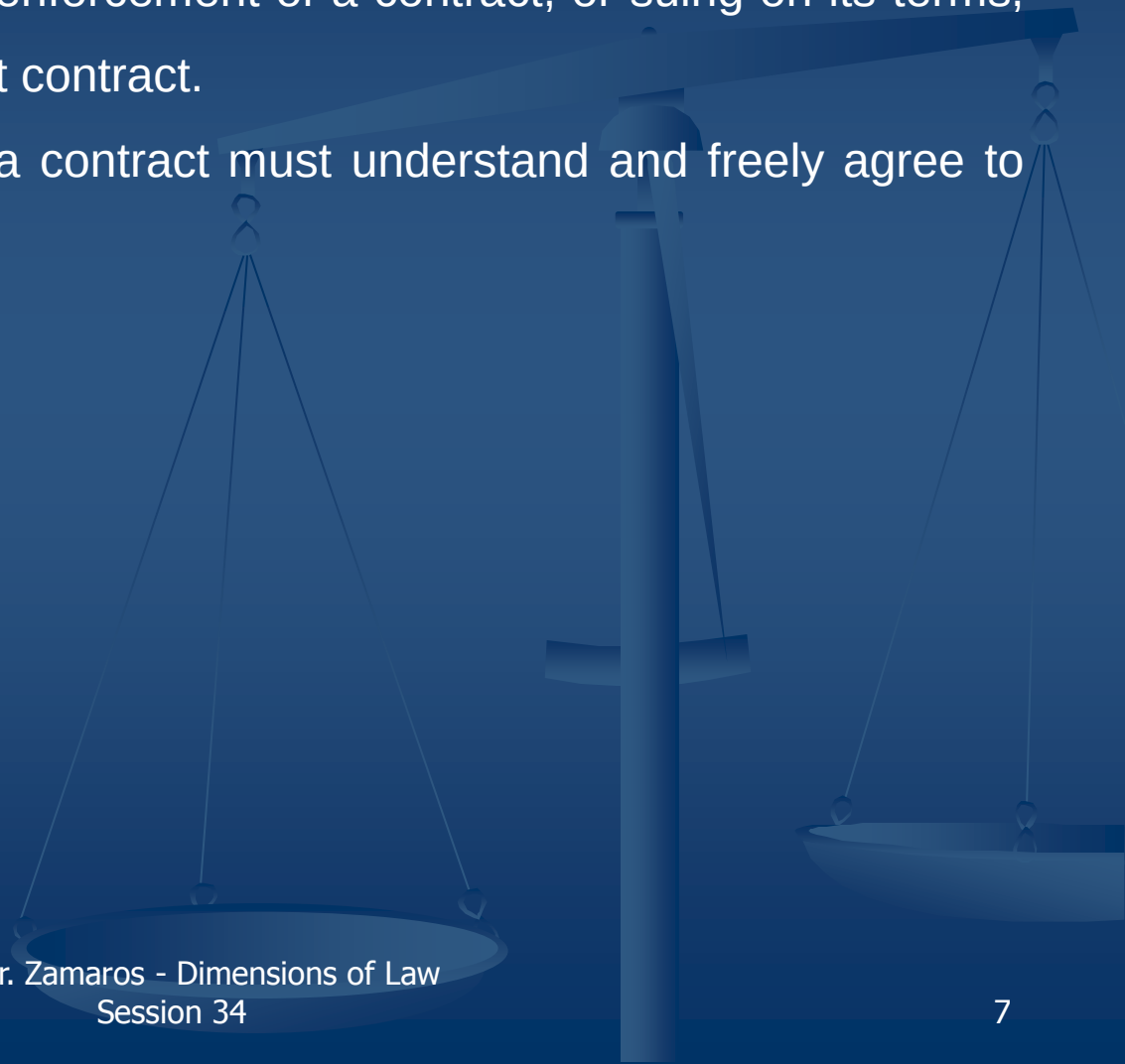
Where the parties have agreed on all the essential terms of a contract, the contract is presumed to be binding even though secondary terms have been left open (see CO, art 2, CCQ, s 1389). In other words, so long as the essential (i.e. main) points of the contract have been agreed upon, the contract is binding (otherwise it is just an agreement).

Principles

- Consideration: the exchange of something of value between the parties, whether present (i.e. occurring at the time the contract is formed) or future (i.e. when there is promise to do something in the future) – not required in Quebec where “cause” is necessary (CCQ, s 1410).
- Capacity: the ability to enter into a contract; in principle all sane and sober adults can form contracts: minors and mentally disabled cannot. Minors are obligated to fulfill contracts for necessaries, which are goods and services that everyone needs, at a reasonable price (CCQ, s 1409).

Principles (cont.)

- Privity: no one can seek the enforcement of a contract, or suing on its terms, unless they are a party to that contract.
- Consent: that each party in a contract must understand and freely agree to complete it (CCQ, s 1386ff).



Freedom to contract

The last element (i.e. consent) also means that the contents and the type of the contract as well as the contractual parties may be chosen freely. In other words no party may be forced to conclude a contract.

The contents of a contract are at the discretion of the parties, within the limits of the law (CO, art 19) = the parties are free to determine the content of the contract where no legal provisions do not exist

Form of a contract

A contract does not require any special form thus can be concluded verbally – unless otherwise stated or required by law (CO, art 16; CCQ, s 1414).

Only when both parties agree (CO, art 16) and when there is legal provision (CO, art 11) such as collective agreements, a written contract may be concluded.

Any written contract has to be personally signed by all the parties involved; it thus becomes valid from that moment. In some cases, contracts require a seal.

Performance of obligations

The performance of obligations is the common way to discharge a contract (i.e. to carry out the obligations deriving from the contract itself) (CCQ, s 1433).

The place where the contract applies is determined by the agreement of the parties. If neither the contract nor any other legal relationship determines the time of performance, performance of the obligation can take place at any time. In contrast, when the contract defines a specific date, performance must take place on that date.

Non-performance

The non-performance of the contract is tantamount to breaching the contract. If a fundamental part of the contract is breached it is a breach of condition.

When the creditor is unable to obtain the performance of the obligation or obtains it partially, the debtor is liable for the resulting damages, unless he proves that there is no fault on his part (CO, art 97).

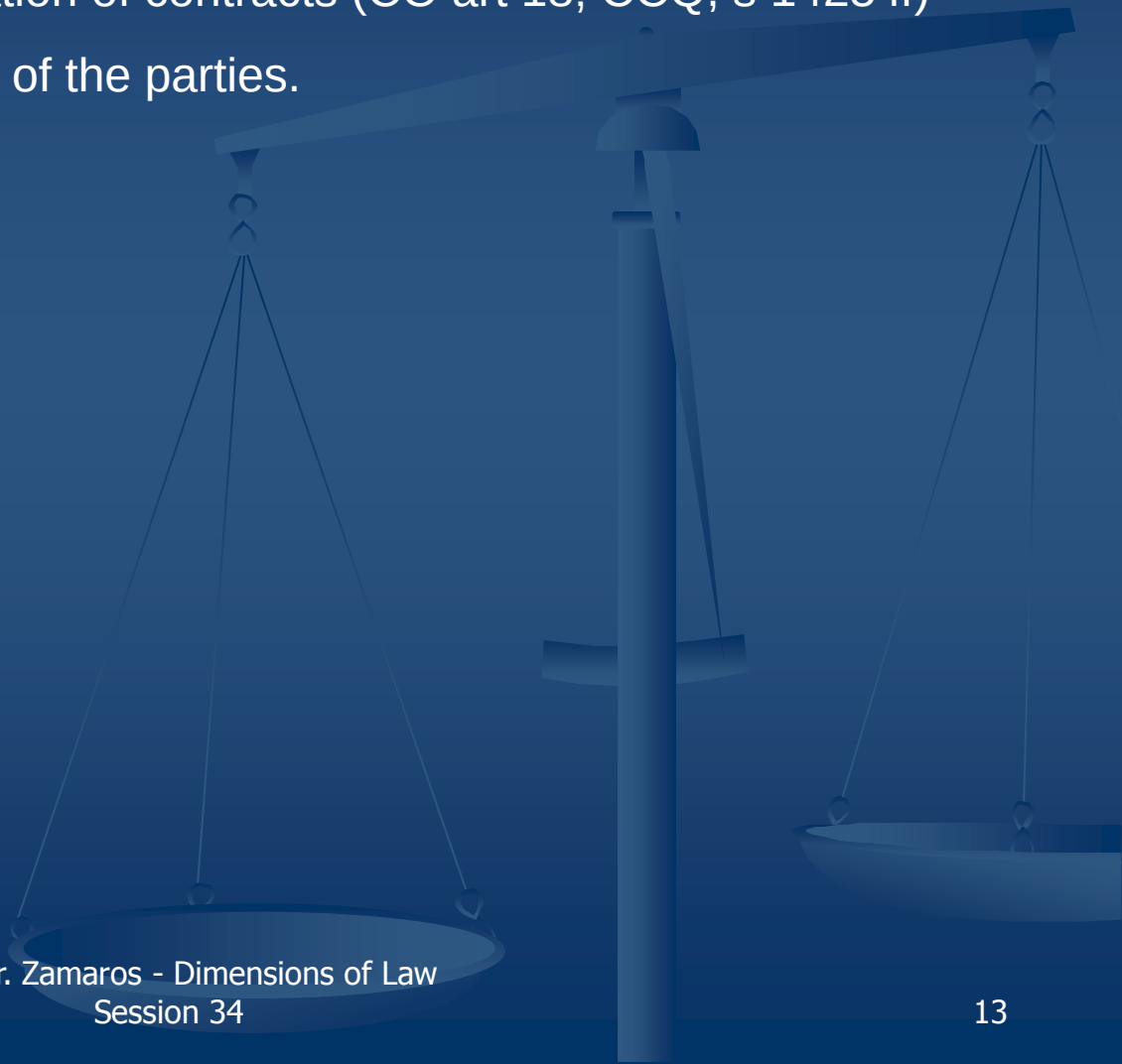
Non-performance (cont.)

The debtor is in general liable for any wrongdoing and the degree of liability depends on the terms of the contract (CO art 97 ff ; CCQ, s 1590 ff).

The creditor must have taken all reasonable steps to mitigate the loss, in addition to proving privity of contract (i.e. that a contractual relationship exists between the two parties). If the law protects the creditor, the rule of substantial performance protects the debtor when most but not all the obligations of the contract have been fulfilled.

Non-performance (cont.)

In cases of breach the interpretation of contracts (CO art 18; CCQ, s 1425 ff) seeks to establish the real intent of the parties.



Void contracts

A contract is void if its contents are impossible, illegal or contra bonos mores (CO, art 20).

Thus, a contract loses its meaning when there is willful deception from the other party, or because the conclusion of the contract took place under undue influence and duress (CO, art 23 ff; CCQ, s 1398).

The same applies with the exploitation of the inexperience or improvidence of the other.