

INTRODUCTION TO CONTRACT LAW (II)

Comparative study between Common and Civil Law

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CONTRACT FORMATION:

- **ELECTRONIC CONTRACT**
- *Electronic Commerce Act*, S.O. 2000, c. 17. **Time of sending of electronic information or document**
- 22 (1) Electronic information or an electronic document is sent when it enters an information system **outside the sender's control** or, if the sender and the addressee use the same information system, **when it becomes capable of being retrieved and processed by the addressee**.
- **Presumption, time of receipt**
- 22(3) Electronic information or an electronic document is presumed to be received by the addressee,
 - (a) if the addressee has designated or uses an information system for the purpose of receiving information or documents of the type sent, **when it enters that information system and becomes capable of being retrieved and processed by the addressee**; or
 - (b) if the addressee has not designated or does not use an information system for the purpose of receiving information or documents of the type sent, **when the addressee becomes aware of the information or document in the addressee's information system and it becomes capable of being retrieved and processed by the addressee**.



CONTRACT FORMATION:

- **Places of sending and receipt**
- 22(4) Electronic information or an electronic document is deemed to be sent **from the sender's place of business and received at the addressee's place of business**.
- **POSSIBLE PROBLEMS:** applicable law and conflict of jurisdiction
- The raise of comparative study – uniformization of private law



CONTRACT FORMATION:**• THE CONCEPT OF CONSIDERATION**

- proof of offer & acceptance **is not always sufficient** to prove the existence of a contract
- in addition to proving the agreement aspect of contract (i.e., accord), **one must also prove consideration** (i.e., satisfaction)
- in other words, **one must prove that something of value was given in satisfaction for a particular promise**
- it is this *quid pro quo* that is said to distinguish contractual promises from merely gratuitous promises
- **Currie v. Misa:** "some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by the other"



CONTRACT FORMATION:

- **adequate consideration:** *quid pro quo* which is equal in value to that for which it is the return
- **sufficient consideration:** *quid pro quo* which the law will recognize as sufficient to bind the parties
- **the rule:** consideration must be sufficient but need not be adequate



CONTRACT FORMATION:**• DOCTRINE OF PRIVITY**

- the privity doctrine states that a person who is not a party to a contract **cannot enjoy the benefits or suffer the burdens of it.**
- doctrine of privity applies to prevent two sets of people from enforcing a contract:
 1. "strangers to the contract"
 2. "strangers to the consideration" - 3rd party beneficiaries
- 3rd party beneficiaries cannot enforce the contract because they did not provide consideration (not privy to the bargain)
- there has been widespread criticism of the doctrine as it often goes against the intentions and reasonable expectations of the parties to the contract



CONTRACT FORMATION:**• MISREPRESENTATION:**

- Generally NOT Misrepresentation
- personal opinion
 - “I think this is a reliable car”
 - but if “expert” may be misrepresentation (Smith)
- non-promissory description of future conduct
 - “I will be manager for the next five years”
- statement of law
 - “this property is zoned for commercial use”


