

What are the Contract Law Essentials in a Changing Global Business Environment?

It is by no means an exaggeration to say that contracts are the lifeblood of global business. Every link in the chain running from raw materials and human resources to producers of goods and services and, eventually, to consumers, is underpinned by some type of contractual relationship wrapped in legal rules. The vital importance of contract law to any business translates into the myriad qualities that, ideally, legal advice in this field should display. Two such qualities are, I believe, fundamental, including from the perspective of Romanian law.

First, cross-jurisdiction legal training and a good grasp of comparative contract law are a necessary response to the globalized nature of today's business. Notwithstanding short-term glitches in international trade, the globalization of markets and business is here to stay in the long run. Regional or national particularities shape our way of thinking about the law, yet the needs of global business mean that there is no room for a narrow, single-jurisdiction understanding of contract rules. Training in the contract regimes of multiple jurisdictions – including those of international legal instruments, such as the Vienna Convention on Contracts for the International Sale of Goods – and in comparative law addresses these needs in two ways. At the most basic level, it provides a common conceptual framework facilitating client-attorney communication and therefore the accommodation of international clients' needs. From a substantive standpoint, it provides, simply put, depth to legal advice or representation. Legal analysis is multidimensional when one can consider the source of contract rules, their equivalents in other jurisdictions, with their advantages and disadvantages, and thus better understand the rationale behind the rules. Romanian law neatly illustrates this point. The Romanian Civil Code of 2011, which provides the general legal framework for all contracts to which Romanian substantive law applies, was strongly inspired by the Civil Code of Quebec, itself a fascinating mix of rules inherited from both Anglo-American common law and the French civil law tradition. Many rules newly introduced by the Romanian Civil Code, ranging from the negotiation and formation of contracts (e.g. precontractual liability for negotiations carried out in bad faith) to their performance (e.g., lawful excuses for the failure to perform, the promisee's duty to mitigate loss etc.) simply cannot be properly understood and efficiently applied for clients' needs without this multidimensional approach.

Second, against the background of increasingly complex cross-border business, understanding the economics behind each contractual relationship is a must. Simple, straightforward exchanges of goods and services are becoming a rare occurrence in the age of globalized business and digitalization. Fundamental questions of contract law, such as, for example, the very type of contract entered into or being negotiated, depend on the correct identification of the business needs and mechanisms that the contract is meant to accommodate. Business seeks efficiency, and framing efficient legal solution requires economic insight. What negotiation strategy should be adopted? How should the terms of the contract be drafted to place the client in a strategically ideal position should the contractual relationship break down? What contractual means should be used to secure the client's rights under the contract? These and many other questions should be answered not only on the basis of black letter law, but also, importantly, from an economics-oriented perspective. This is especially important in the Romanian legal system, whose modern, primarily gap-filling contract rules afford parties a wide margin for the use of terms tailored for their particular contractual relationship.

To be sure, solid knowledge of national law remains a cornerstone for contracts-related legal advice. However, with the irreversible globalization and growing complexity of today's business

relationships, the ability to grasp legal solutions across jurisdictions and the ever-present economic foundations of contracts are key to sound legal advice, and the Romanian legal system is no exception.

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