



Coordinator:
Prof. Teresa Rodríguez de las Heras Ballell
Collaborators:
Prof. Jorge Feliu Rey
Prof. Juan Pablo Rodríguez Delgado

BLOCK 3

PLANNING THE BUSINESS ACTIVITY

CONTRACTS AND TRANSACTIONS

PRIVATE AUTONOMY: SCOPE AND LIMITS

General principle:

PRIVATE LAW - PRIVATE INTERESTS- PRIVATE AUTONOMY

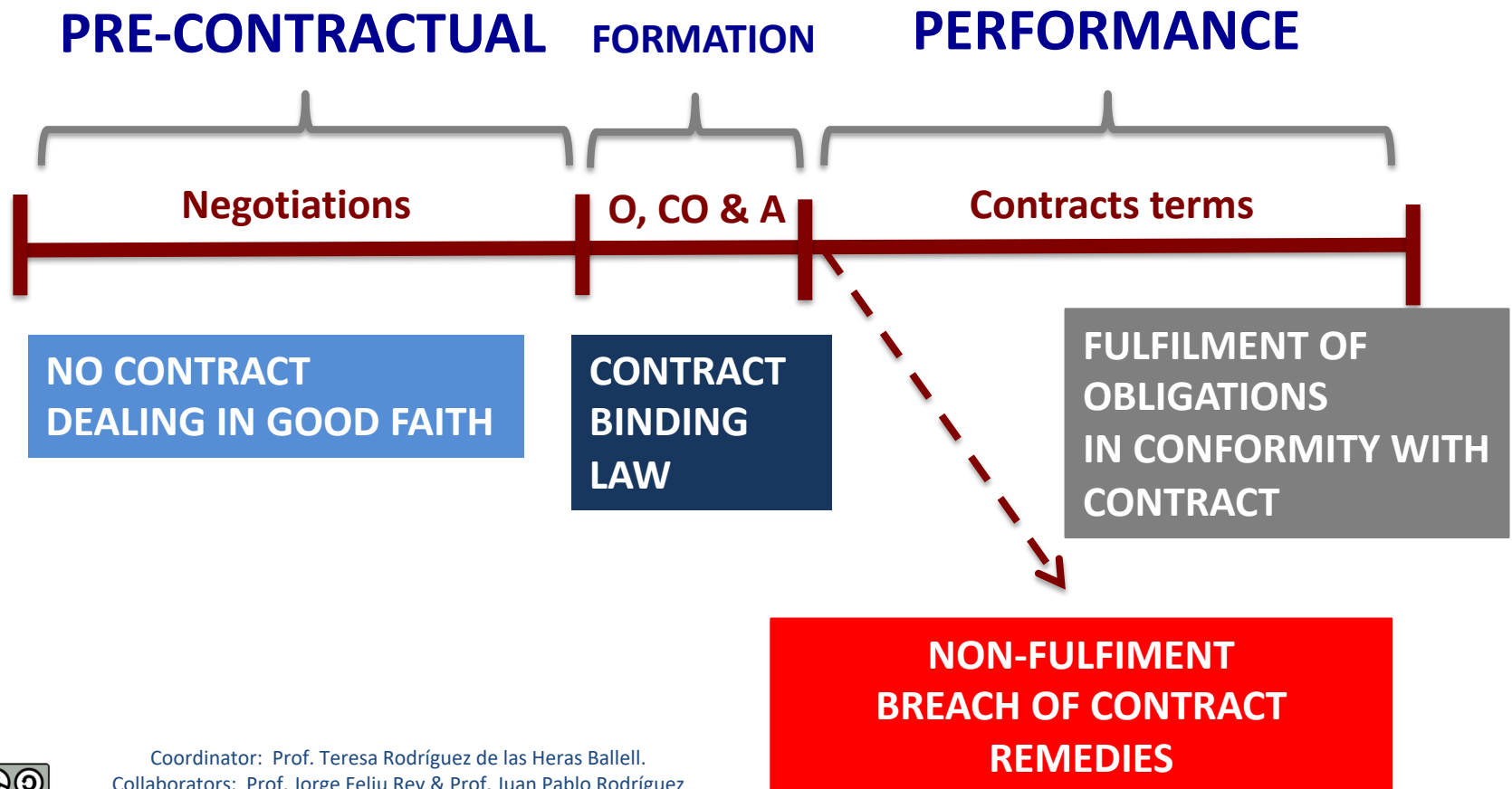
Parties are free to deal and to agree terms and conditions

Limits:

- General: **LAW, GOOD MORALS AND PUBLIC ORDER**
- Specific: *depending on circumstances, parties' conditions, types of contracts, market structure...*
 - .- **CONSUMER LAW**
 - .- **STANDARD TERMS**
 - .- **ANTITRUST LAW**
 - .- **CONSTITUTIONAL RIGHTS**

CONTRACT FORMATION PROCESS

3 PHASES

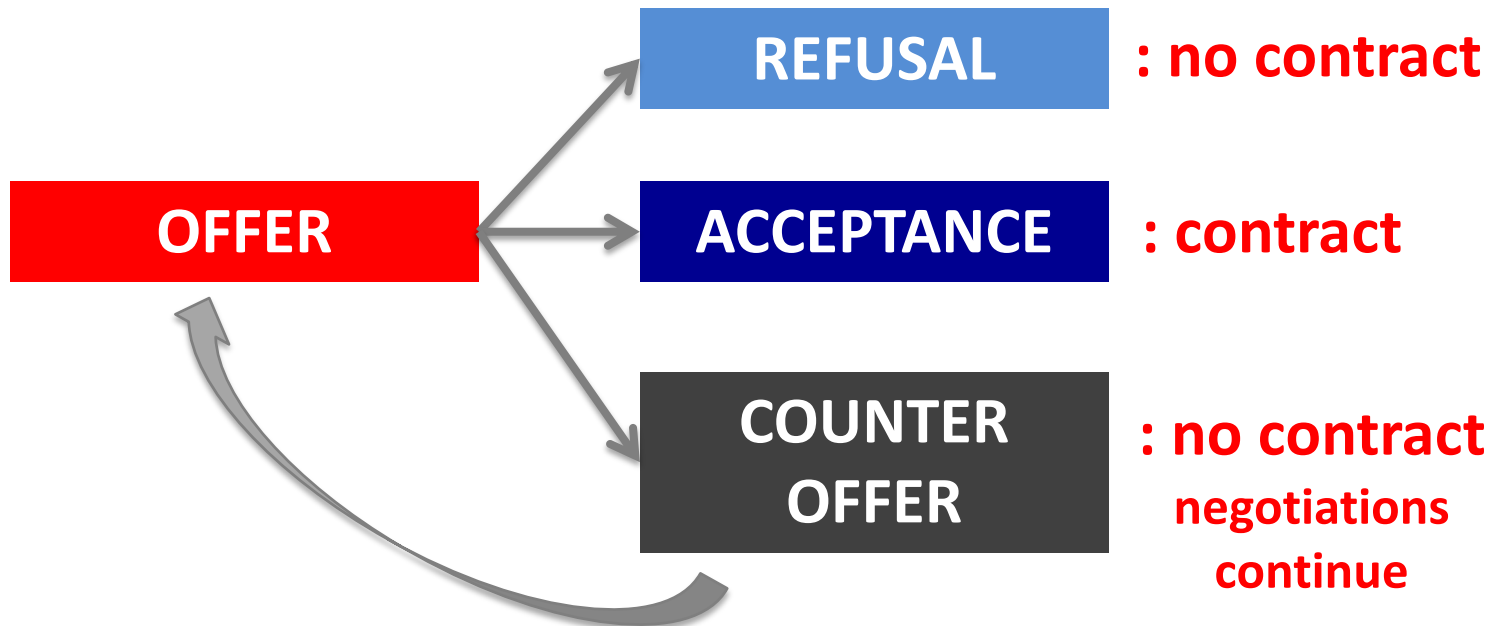


CONTRACT FORMATION

OFFER



ACCEPTANCE



CONTRACT FORMATION

O = **A**

~~**O**~~ \neq **R**

~~**O**~~ \rightarrow **CO**
CO \leftarrow **A**
=

CONTRACT FORMATION ELEMENTS

OFFER

- 1.- INTENTION TO BE BOUND
- 2.- SUFFICIENT PRECISION
- 3.- TO SPECIFIC PERSON OR TO THE PUBLIC?

COUNTER OFFER

- 1.- PURPORTS TO BE AN ACCEPTANCE
- 2.- INCLUDE ADDITIONS, MODIFICATIONS...
- 3.- ENTAILS REJECTION OF THE OFFER

ACCEPTANCE

- 1.- EXPRESS
- 2.- TACIT
- 3.- SILENCE OR INACTIVITY?

ACCEPTING BY HANDWRITTEN SIGNATURE



ACCEPTING BY MEANINGFUL FACTS: *FACTA CONCLUDENTIA*



**No smoking,
eating, or
drinking**

ACCEPTING BY CLICK: CLICK- AGREEMENTS



FROM CLICK-AGREEMENTS...

USER ACKNOWLEDGES AND AGREES THAT BY CLICKING ON THE BUTTON BELOW LABELED "I ACCEPT," USER IS CONFIRMING (A) USER'S ACCEPTANCE OF EACH AND EVERY TERM, CONDITION AND RESTRICTION SET FORTH IN THIS AGREEMENT AND (B) USER'S AGREEMENT TO BE LEGALLY BOUND BY ALL SUCH TERMS AND CONDITIONS.

I Accept

Print

I Decline

...TO BROWSE-WRAP AGREEMENTS

amazon.co.uk®

[Amazon Home](#)

[Conditions of Use & Sale](#)

[Privacy Notice](#)

© 1996-2008, Amazon.com, Inc. and its affiliates

TERMS AND CONDITIONS

Problems faced by Standard Terms

1.- INCORPORATION OF TERMS IN THE CONTRACT: AWARENESS AND OPORTUNITY TO REVIEW

2.- EXPRESS ACCEPTANCE

3.- INTERPRETATION: *contra proferentem*

4.- ABUSIVE CHARACTER OF TERMS



PERFORMANCE: BREACH OF CONTRACT AND REMEDIES

1.- EXPECTED PERFORMANCE: in conformity with terms / satisfaction of parties' interests

2.- BREACH OF CONTRACT: deviation from contract terms / frustration **LIABILITY**

- **total non-fulfilment** (i.e. sold goods are not delivered),
- **partial non-fulfilment** (i.e. half of the agreed goods are delivered),
- **delayed fulfilment** (i.e. goods are delivered in the agreed conditions but later than the expected date),
- defective fulfilment** (i.e. the delivered goods are defective and cannot be used to the expected aims).

BREACH OF CONTRACT AND REMEDIES

A.- FACTS TO CONSIDER:

- **type of contract** (sale, provision of services, licence, leasing),
- **nature of the obligation that has not been fulfilled**
- **who is the contracting party resorting to the remedy** (buyer-seller, provider-user, licensor-licensee, lessor-lessee)

B.- REMEDIES:

to claim damages

to require specific performance according to the contract

to require the delivery of substitutive goods in case of lack of conformity

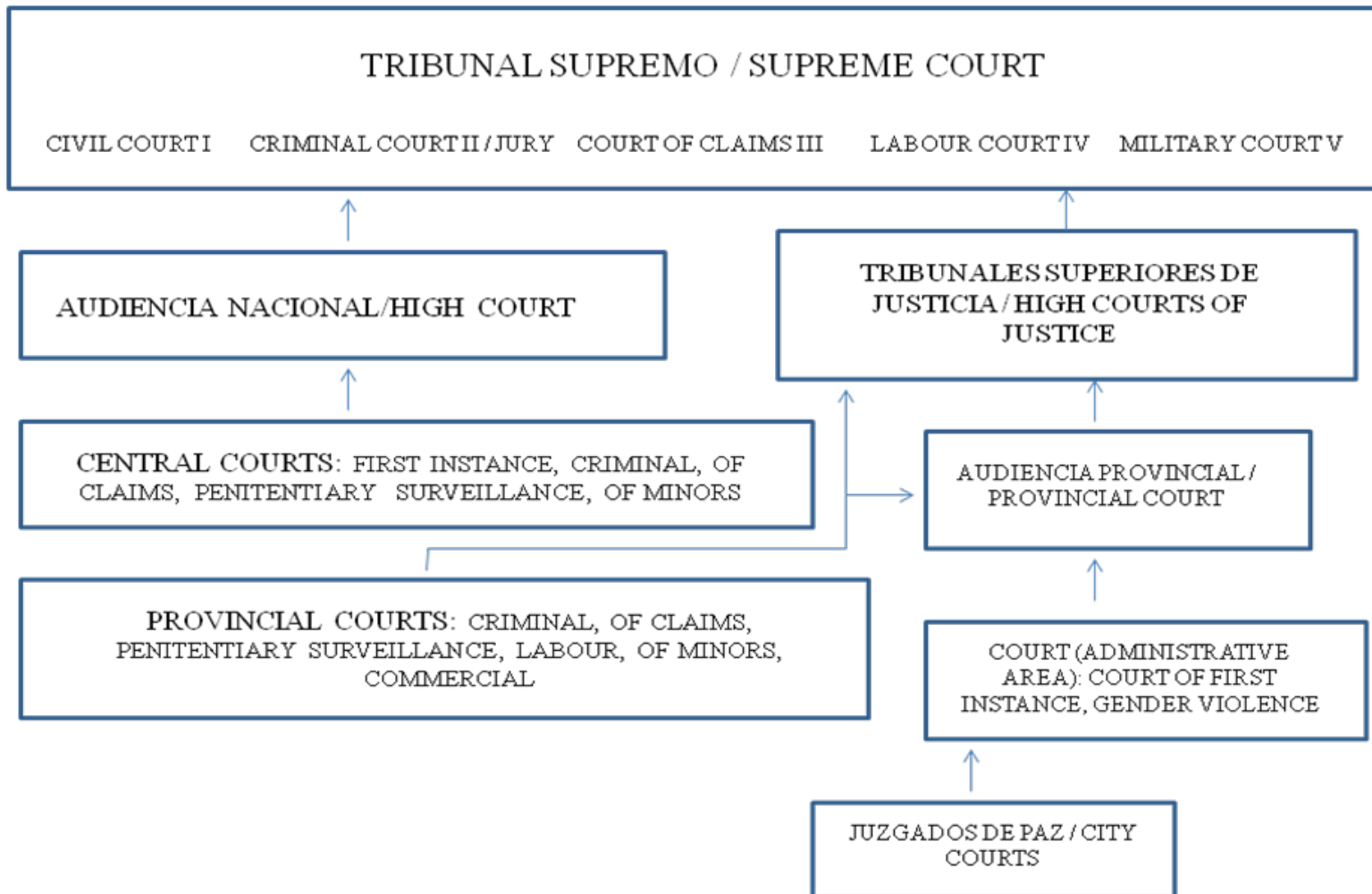
to require the repair of the defective goods

to fix an additional period of time for performance in case of delay

to reduce the price and accept the partial/defective fulfilment

to avoid the contract that entails the termination of the contract in its entirety or partially.

DISPUTE RESOLUTION: COURTS



DISPUTE RESOLUTION: ADR / ODR

