

Business and Contract Law



Week 4

PART 3: CONTRACTUAL LAW

E/Contracts

17. Conclusion
18. Defects
19. Breach
20. The Force of Obligations
21. Types of Contracts

17 - Conclusion

17-1/ Agreement

A A contract is concluded when the parties have expressed their willingness in a mutual agreement ([CO art 1](#)).

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

B It is possible to have an agreement to enter into a contract at a later date ([CO art 22](#)).

17 - Conclusion

17-2/ Aspects

A The agreement is express or implied ([CO art 1](#)).

B A contract is deemed concluded when the essential aspects of a contract are agreed upon ([CO art 2](#)).

These are often stated in the definitions of the different types of contracts; e.g. in sales ([CO art 184](#)).

17 - Conclusion

C An offer must be made within a time limit ([CO art 3](#))

... unless the parties are present ([CO art 4](#)).

D Unsolicited goods do not constitute an offer ([CO art 6a](#)):

17 - Conclusion

- E A withdrawal is possible but must be made before the offer reaches the offeree ([CO art 9](#)).

- F Contracts do not require any particular form unless specified by law ([CO art 11](#)).

For instance, articles of incorporation, immovable sales contracts must be notarized.

17 - Conclusion

- G Contracts are freely concluded within the limits set by law ([CO art 19](#)).

- H A contract is void if its terms are impossible, unlawful or immoral ([CO art 20](#))

18 - Defects

A Error – essential error:

<http://www.admin.ch/ch/e/rs/220/a23.html>

B Fraud:

<http://www.admin.ch/ch/e/rs/220/a28.html>

C Duress:

<http://www.admin.ch/ch/e/rs/220/a29.html>

19 - Breach

19-1/ Debtor & Creditor

The non-performance of a contract is tantamount to debt, which must be compensated ([CO art 41](#)).

Parties

- Debtor
- Creditor

Debt

- Pecuniary
- Obligation

19 - Breach

19-2/ Debt

A If the performance of an obligation is not bound by time, it is immediately performed ([CO art 75](#)).

If bound by time, it is performed as stated ([CO art 77](#))

Sundays and public holidays postpone the last day of performance ([CO art 78](#))

19 - Breach

- B Payment of debt is made in the agreed currency – CHF is not an obligation ([CO art 84](#))

- C Unless otherwise agreed, the non-performance of an obligation which is tantamount to debt carries a minimum moratory interest of 5% ([CO art 73](#)) .

- D When damages exceed those related to the debt interest, the debtor is also liable for them as well ([CO art 106](#)).

19 - Breach

19-3/ Formalizing Debt Default

A creditor/obligee is in default (*en demeure*) if he refuses the regular performance of an obligation ([CO art 91](#)).

Note that *here* the law sees the problem from the point of view of the creditor/obligee where usually it is the debtor/obligor who is in default for non-performance ([CO art 97](#)).

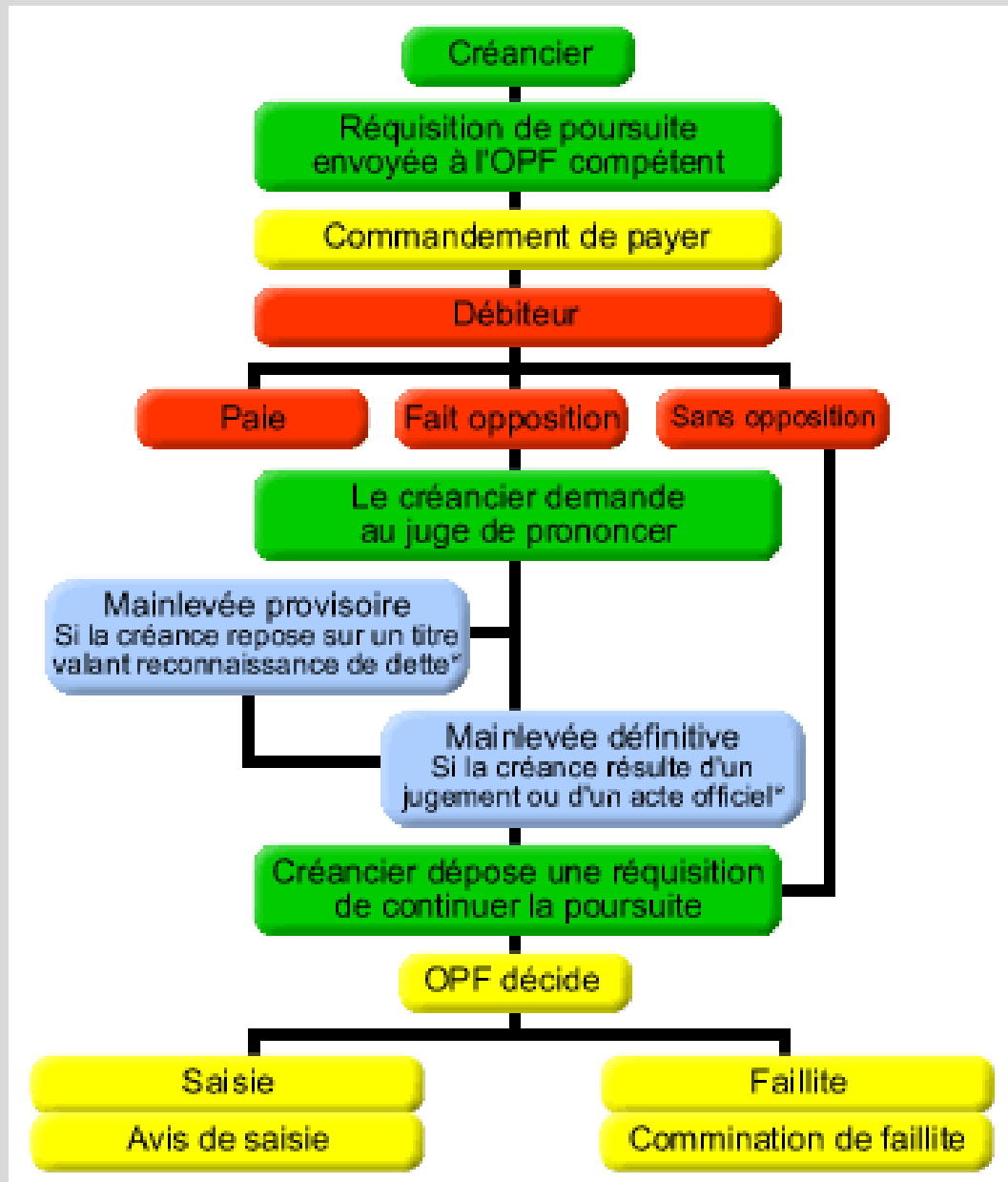
19 - Breach

19-4 /

Debt

Collection

Process



19 - Breach

19-5/ Extinction of the Debt

There is extinction of a debt by

- Agreement (CO art 115)
- General prescription of 10 years (CO art 127)
- Assigning a claim to another party (CO art 164 ff)

20 – Force of Obligations

Contract laws are:

- Imperative – must be followed; cannot be altered by agreement
- Dispositive – can be changed, supplemented, not followed by agreement