

Unit 2



<b>Title:</b>	<b>Contract Law</b>
<b>Level:</b>	<b>6</b>
<b>Credit Value:</b>	<b>15</b>

<b>Learning outcomes</b>	<b>Assessment criteria</b>	<b>Knowledge, understanding and skills</b>
<p><b>The learner will:</b></p> <p><b>1 Understand the general nature of the law of contract</b></p>	<p><b>The learner can:</b></p> <p><b>1.1</b> Define a contract</p> <p><b>1.2</b> Explain key characteristics of the nature of contract</p>	<p><b>1.1</b> A contract is an agreement giving rise to obligations which are enforced or recognised by law</p> <p><b>1.2</b> The social importance of contract; the central position of agreement and its influence upon contract: eg, in formation and in the implying of terms; the absence of the requirement of formality in simple contracts; the formalities required in speciality contracts; judicial attitudes to the resolution of contractual disputes: eg, to certainty, to illegality and to performance and breach; concepts which underpin the subject: eg, privity; how contract differs from other forms of liability, eg, liability in tort and breach of trust</p>
<p><b>2 Understand the law on the formation of contract</b></p>	<p><b>2.1</b> Explain the law on the fact of agreement</p>	<p><b>2.1</b> The law on formation: the requirement of agreement; the factual indicators of agreement – offer and acceptance; distinguishing unilateral from bilateral agreements; distinguishing offer from invitation to treat; where offer and acceptance have not been adequate to the</p>

	<p><b>2.2</b> Explain the law on how offers are terminated</p> <p><b>2.3</b> Explain the rules of communication of offer, acceptance, and revocation</p> <p><b>2.4</b> Analyse the law on the formation of contract</p> <p><b>2.5</b> Apply the law on the formation of contract to a given situation</p> <p><b>2.6</b> Critically evaluate a given issue or situation to identify probable legal implications</p>	<p>task of finding agreement, eg, <i>Clarke v Dunraven, The Satanita (1895)</i>; relevant case law: eg, <i>Pharmaceutical Society of Great Britain v Boots Chemists (1952)</i>, <i>Partridge v Crittenden (1968)</i>, <i>Carlill v Carbolic Smoke Ball Co (1893)</i></p> <p><b>2.2</b> An explanation of: acceptance, counter offer, revocation, passage of time; relevant case law: eg, <i>Hyde v Wrench (1840)</i>, <i>Stevenson v McLean (1880)</i>, <i>Ramsgate Victoria Hotel v Montefiore (1866)</i>, <i>Payne v Cave (1789)</i></p> <p><b>2.3</b> An explanation of the law on communication; relevant case law: eg, <i>Taylor v Laird (1856)</i>, <i>Carlill v Carbolic Smoke Ball Co. (1893)</i>, <i>Adams v Lindsell (1818)</i>, <i>Brinkibon v Stahag Stahl und Stahlwarenhandels-gesellschaft (1983)</i></p> <p><b>2.4</b> Analysis of the law of formation: the phenomenon of agreement and its communication: the effectiveness of the use of offer and acceptance as indicators of subjective states of mind; other approaches to finding agreement: eg, <i>Butler Machine Tools v Ex-Cell-O Corporation (1979)</i>; the nature and quality of the rules on communication of offer, acceptance, and revocation</p> <p><b>2.5</b> Application of the law to a complex scenario</p> <p><b>2.6</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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<p><b>3 Understand the rules for determining a party's intention to create legal relations</b></p>	<p><b>3.1</b> Explain the law on the intention to create legal relations</p> <p><b>3.2</b> Analyse the law on the intention to create legal relations</p> <p><b>3.3</b> Apply the law on the intention to create legal relations to a given situation</p> <p><b>3.4</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>3.1</b> An explanation of: the law on intention: the presumption in social and domestic situations and how that presumption may be rebutted: relevant case law, eg, <i>Balfour v Balfour (1919)</i>, <i>Merritt v Merritt (1970)</i>, <i>Simpkins v Pays (1955)</i>; the presumption in commercial situations and how that presumption may be rebutted; relevant case law, eg, <i>Rose &amp; Frank v Compton (1925)</i>; the presumption when dealing with public bodies and how the presumption might be rebutted</p> <p><b>3.2</b> Analysis of the meaning and use of rebuttable presumptions; their application in the context of intention</p> <p><b>3.3</b> Application of the law to a complex scenario</p> <p><b>3.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>4 Understand the doctrine of consideration</b></p>	<p><b>4.1</b> Explain the law of consideration in contract</p>	<p><b>4.1</b> An explanation of the law of consideration: definition of consideration: see <i>Dunlop v Selfridge (1915) (HL)</i>; rules setting out the limits to consideration: consideration must move from the promisee, but not necessarily to the promisor; past consideration is no consideration: relevant case law: eg, <i>Re McArdle (1951)</i>; performance of an existing duty is not good consideration: relevant case law: eg, <i>Stilk v Myrick (1809)</i>, <i>Hartley v Ponsonby (1857)</i>; see also <i>Williams v Roffey &amp; Nicholls (Contractors) (1990)</i> and <i>Re Selectmove (1995)</i>; the rule on part</p>

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	<p><b>4.2</b> Analyse the law of consideration</p> <p><b>4.3</b> Apply the law of consideration to a given situation</p> <p><b>4.4</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>payment of a debt: see the rule <i>Pinnel's Case (1602)</i> and its exceptions: relevant case law: eg, <i>Pinnel's Case (1602)</i>, <i>Hirachand Punamchand v Temple (1911)</i>; promissory estoppel: see <i>Central London Properties Trust v High Trees House (1947)</i> and subsequent relevant case law</p> <p><b>4.2</b> The purpose and role of consideration including: the status and implications of <i>Williams v Roffey &amp; Nicholls (Contractors) (1990)</i>; the doctrine of promissory estoppel; showing awareness of judicial and academic opinion</p> <p><b>4.3</b> Application of the law to a complex scenario</p> <p><b>4.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>5 Understand the doctrine of privity of contract</b></p>	<p><b>5.1</b> Explain the law of privity of contract</p> <p><b>5.2</b> Analyse the law of privity of contract</p> <p><b>5.3</b> Apply the law of privity of contract to a given situation</p>	<p><b>5.1</b> An explanation of the law of privity of contract, including common law exceptions to the rule; the provisions of the Contracts (Rights of Third Parties) Act 1999; relevant case law: eg, <i>Dunlop Pneumatic Tyre v Selfridge (1915)</i>, <i>Tulk v Moxhay (1848)</i>, <i>Beswick v Beswick (1966)</i></p> <p><b>5.2</b> Analysis of the purpose and role of the doctrine of privity of contract; judicial attempts to avoid the doctrine; the effectiveness of the Contracts (Rights of Third Parties) Act 1999; judicial and academic opinion on the doctrine</p> <p><b>5.3</b> Application of the law to a complex scenario</p>

	<b>5.4</b> Critically evaluate a given issue or situation to predict probable legal implications	<b>5.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
<b>6 Understand the law governing terms of contract</b>	<p><b>6.1</b> Explain the law governing terms of contract</p> <p><b>6.2</b> Analyse the law governing terms of contract</p>	<p><b>6.1</b> An explanation of: the law governing contractual terms: representations distinguished from terms: relevant case law eg, <i>Bannerman v White (1861)</i>, <i>Routledge v McKay</i>, <i>Birch v Paramount Estates Ltd (1956)</i>; express terms distinguished from implied terms; statutory methods of implying terms: ss 12-15 Sale of Goods Act 1979; terms implied under ss 13-14 Supply of Goods and Services Act 1982; terms implied by custom of location or trade practice; criteria for implying a term by custom: common law devices for implying terms – terms implied by fact: the business efficacy test: see <i>The Moorcock (1889)</i>; the officious bystander test: see <i>Shirlaw v Southern Foundries (1926) Ltd (1939)</i>; terms implied by common law (e.g.) (<i>e.g.</i>) <i>Liverpool CC v Irwin (1976)</i>, <i>Scally v Southern Health &amp; Social Services Board (1992)</i>, <i>Equitable Life Assurance v Hyman (2002)</i>; the status of terms: distinguish conditions, warranties and innominate terms: see, eg, <i>Poussard v Spiers &amp; Pond (1876)</i>, <i>Bettini v Gye (1876)</i>, <i>Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1962)</i></p> <p><b>6.2</b> Analysis and assessment of the rules for distinguishing representation from term; the effect of classification as mere representation or as a term; devices for implying terms; the relationship between express and implied terms; the tests for</p>



	<b>7.4</b> Critically evaluate a given issue or situation to predict probable legal implications	<b>7.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
<b>8 Understand the law of misrepresentation</b>	<p><b>8.1</b> Explain the law of misrepresentation</p> <p><b>8.2</b> Analyse the law of misrepresentation</p>	<p><b>8.1</b> An explanation of the law of misrepresentation: untrue statement of fact made by one party to the other, inducing the other to enter the contract; requirement of actual and reasonable reliance on the misrepresentation; distinguishing types of misrepresentation: fraudulent, negligent (under the Misrepresentation Act 1967) and innocent misrepresentation: see ss 2(1) and (2) Misrepresentation Act 1967; relevant case law: eg, <i>Howard Marine &amp; Dredging Co Ltd v Ogden &amp; Sons (Excavations) Ltd (1978)</i>; remedies available in respect of innocent, negligent, and fraudulent misrepresentation; tortious nature of damages in misrepresentation; rules of remoteness of damage in misrepresentation; relevant case law: eg, <i>Royscot Trust v Rogerson (1991)</i>, <i>Naughton v O'Callaghan (1990)</i>, <i>Smith New Court Securities v Scrimgeour Vickers (1996)</i></p> <p><b>8.2</b> Analysis of tortious nature of misrepresentation, the influence of this upon remedies; the rules of remoteness of damage in misrepresentation, and the comparison and contrast of them with the rules of remoteness of damage in contract; comparison and contrast of damages in misrepresentation and in contract; identification of the tactical advantages in an action in negligent misrepresentation and comparison and contrast of them with an action in contract</p>

	<p><b>8.3</b> Apply the law of misrepresentation to a given situation</p> <p><b>8.4</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>8.3</b> Application to a complex scenario</p> <p><b>8.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<b>9 Understand duress and undue influence</b>	<p><b>9.1</b> Explain the law of duress</p> <p><b>9.2</b> Explain the law of undue influence</p> <p><b>9.3</b> Analyse the law of duress</p> <p><b>9.4</b> Analyse the law of undue influence</p> <p><b>9.5</b> Apply the law of duress to a given situation</p> <p><b>9.6</b> Apply the law of undue influence to a given situation</p> <p><b>9.7</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p><b>9.1</b> An explanation of the law of duress: the common law rules on duress to the person and economic duress and possible remedies; relevant case law: eg, <i>Barton v Armstrong (1975)</i>, <i>R v A.G. for England and Wales (2003)</i>, <i>The Sibeton v the Sibotre (1976)</i>, <i>Atlas Express v Kafco (1989)</i>, <i>The Atlantic Baron (1979)</i></p> <p><b>9.2</b> An explanation of the equitable rules relating to undue influence; the classifications of undue influence, and their practical implications; remedies; relevant case law: eg, <i>Williams v Bailey (1866)</i>, <i>Allcard v Skinner (1887)</i>, <i>National Westminster v Morgan (1985)</i>, <i>BCCI v Aboody (1990)</i>, <i>Barclays Bank v O'Brien (1993)</i>, <i>RBS v Etridge (No 2) (2001)</i></p> <p><b>9.3 and 9.4</b> Comparison and contrast of actions in undue influence and duress; analysis of the development of both actions; analysis of the nature of fiduciary relationships required in undue influence</p> <p><b>9.5 and 9.6</b> Application to a complex scenario</p> <p><b>9.7</b> A reasoned opinion of likely legal implications, including remedies and</p>

		defences, where appropriate
<b>10 Understand the law on illegal contracts</b>	<b>10.1</b> Explain the principles governing illegality	<b>10.1</b> In outline only: contracts void by statute; contracts illegal by statute; contracts void at common law; contracts illegal at common law; consequences of a finding that the contract is illegal or void
	<b>10.2</b> Explain the common law on contracts in restraint of trade	<b>10.2</b> An explanation of the law on restraint of trade: contract prima facie void at common law as contrary to public policy; exceptions to general rule; criteria used by the courts to assess 'reasonableness': activity, time, area; the requirement of an interest that is worthy of protection; relevant case law: eg, <i>Nordenfelt v Maxim Nordenfelt Co Ltd (1894)</i> , <i>Vancouver Malt &amp; Sake Brewing v Vancouver Breweries (1934)</i> , <i>Mason v Provident Clothing &amp; Supply (1913)</i> , <i>M &amp; S Drapers v Reynolds (1956)</i> , <i>Fitch v Dewes (1921)</i>
	<b>10.3</b> Analyse the law on illegal contracts	<b>10.3</b> Reasons for policy on restraint of trade; historical development; distinguish position in employee contracts from sale of business contracts; analysis of position with regard to 'contracts in gross'
	<b>10.4</b> Apply the law on illegal contracts to a given situation	<b>10.4</b> Application to a complex scenario
	<b>10.5</b> Critically evaluate a given issue or situation to predict probable legal implications	<b>10.5</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
<b>11 Understand the law on discharge of contract</b>	<b>11.1</b> Explain the law on discharge of contract	<b>11.1</b> An explanation of the law on discharge of contract: identify ways discharge may come about: by performance, by agreement, by breach, and by frustration; breach may also be anticipatory or repudiatory; waiver and

	<p><b>11.2</b> Analyse the law on discharge of contract</p> <p><b>11.3</b> Apply the law on discharge of contract to a given situation</p> <p><b>11.4</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>accord, subject to existence of agreement and consideration; common law position on frustration; effect of frustration at common law; Law Reform (Frustrated Contracts) Act 1943: the payee rule, the payer rule, and the valuable benefit rule; the use of <i>force majeure</i> clauses; relevant case law: eg, <i>Cutter v Powell (1795)</i>, <i>re Moore &amp; Co v Landauer (1921)</i>, <i>Hoening v Isaacs (1952)</i>, <i>Taylor v Caldwell (1863)</i>, <i>Metropolitan Water Board v Dick Kerr (1918)</i>, <i>Chandler v Webster (1904)</i>, <i>Appleby v Myers (1867)</i>, <i>Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd (1943)</i></p> <p><b>11.2</b> To include analysis of: reasons for 'strict performance' requirement in contract; consideration of the meaning of strict performance; evolution of discharge by frustration; the payee rule, the payer rule, and the valuable benefit rule</p> <p><b>11.3</b> Application to a complex scenario</p> <p><b>11.4</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
<p><b>12 Understand remedies for breach of contract</b></p>	<p><b>12.1</b> Identify remedies available when a contract has been breached</p> <p><b>12.2</b> Explain the meaning of 'damages'</p> <p><b>12.3</b> Explain the purpose of unliquidated damages in contract</p> <p><b>12.4</b> Explain the place of 'nominal damages' in</p>	<p><b>12.1</b> Damages, repudiation, rescission, specific performance, injunction</p> <p><b>12.2</b> Monetary compensation</p> <p><b>12.3</b> To place the innocent party in position s/he would have been had the contract not been breached: see <i>Robinson v Harman (1848)</i></p> <p><b>12.4</b> Claim small (nominal) amount as of right in</p>

	<p>contract</p> <p><b>12.5</b> Distinguish 'substantial damages' from 'nominal damages'</p> <p><b>12.6</b> Explain the law on claiming substantial damages</p> <p><b>12.7</b> Explain heads of damages in contract</p> <p><b>12.8</b> Explain the remedy of repudiation</p> <p><b>12.9</b> Explain the remedy of rescission</p>	<p>respect of breach</p> <p><b>12.5</b> Claim reflects the claimants actual losses</p> <p><b>12.6</b> The Claimant needs to show (a) the breach caused the loss, (b) the loss was not too remote, (c) that the innocent party has attempted to mitigate the losses claimed; relevant case law: eg, <i>Hadley v Baxendale (1854)</i>, <i>The Heron II (1969)</i>, <i>C&amp;P Haulage v Middleton (1993)</i>, <i>Payzu v Saunders (1919)</i>, <i>Smith, Hogg &amp; Co v Black Sea Insurance (1939)</i>, <i>Pilkington v Wood (1953)</i></p> <p><b>12.7</b> An explanation of: damages for non-pecuniary loss: loss of enjoyment, inconvenience, distress: relevant case law: eg, <i>Jarvis v Swans Tours Ltd (1973)</i>, <i>Farley v Skinner (2001)</i>; damages for pecuniary loss: reliance loss, expectation loss, loss of bargain; consequential loss; liquidated damages clauses; penalty clauses; relevant case law: eg, <i>Chaplin v Hicks (1911)</i>, <i>Anglia Television v Reed (1972)</i>, <i>Watts v Morrow (1969)</i>, <i>Ruxley Electronics v Forsyth (1996)</i>, <i>Farley v Skinner (No 2) (2002)</i></p> <p><b>12.8</b> An explanation of repudiation: right of the innocent party to refuse to perform obligations under the contract; when the right arises; when the right may be lost; the implications of wrongful repudiation</p> <p><b>12.9</b> An explanation of rescission: order returning parties to their original position; may be lost if <i>restitutio in integrum</i> not possible, the contract has been affirmed, delay, third party rights are prejudiced, or</p>
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	<p><b>12.10</b> Explain the remedy of specific performance</p> <p><b>12.11</b> Explain the law on specific performance</p> <p><b>12.12</b> Explain the remedy of injunction</p> <p><b>12.13</b> Explain the law on the granting of injunctions</p> <p><b>12.14</b> Analyse remedies</p> <p><b>12.15</b> Apply the law on remedies to a given situation</p> <p><b>12.16</b> Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>damages judged a better remedy</p> <p><b>12.10</b> Specific performance: order by court to defaulting party to carry out obligations under the contract</p> <p><b>12.11</b> Equitable nature of remedy; what the claimant must establish in order to obtain an order; reasons applications may be refused; relevant case law: eg, <i>De Francesco v Barnham (1890)</i>, <i>Flight v Bolland (1828)</i>, <i>Posner v Scott-Lewis (1987)</i></p> <p><b>12.12</b> Order from the court to carry out a course of action (mandatory) or refrain from doing so (prohibitory)</p> <p><b>12.13</b> Equitable nature of the remedy; what the claimant must establish in order to obtain an injunction; bars to granting injunction: giving particular emphasis to contracts in restraint of trade</p> <p><b>12.14</b> Comparison and contrast of remedies; assessment of their practical effectiveness in contractual situations; demonstration of understanding of their limitations in commercial and consumer situations</p> <p><b>12.15</b> Application to a complex scenario</p> <p><b>12.16</b> A reasoned opinion of likely legal implications, including remedies and defences, where appropriate</p>
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<b>Additional information about the unit</b>	
Unit aim(s)	To accredit a broad and detailed understanding of Contract Law
Unit expiry date	31 March 2015
Details of the relationship between the unit and relevant national occupational standards (if appropriate)	This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards; specifically, Unit 47 First Line Consumer Legal Advice and Unit 48 Consumer Legal Advice and Casework
Details of the relationship between the unit and other standards or curricula (if appropriate)	Na
Assessment requirements specified by a sector or regulatory body (if appropriate)	Na
Endorsement of the unit by a sector or other appropriate body (if required)	Na
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	ILEX (Institute of Legal Executives)
Availability for use	Available to all Awarding Bodies to award credit (shared)
Availability for delivery	1 September 2009

This specification is for 2012 examinations