

Unit 2



Title:	Contract Law
Level:	3
Credit Value:	7

Learning outcomes	Assessment criteria	Knowledge, understanding and skills
The learner will:	The learner can:	
1 Understand the concept of contract	<p>1.1 Define a contract</p> <p>1.2 Explain the legal requirements for the formation of an enforceable contract</p> <p>1.3 Explain the factual indicators of the existence of agreement</p> <p>1.4 Explain who can enforce a contract</p>	<p>1.1 A contract is an agreement giving rise to obligations which are enforced or recognised by law</p> <p>1.2 Agreement, intention, consideration</p> <p>1.3 Offer and acceptance</p> <p>1.4 Doctrine of privity and the Contracts (Rights of Third Parties) Act 1999</p>
2 Understand the rules for establishing whether a valid offer and acceptance have taken place	<p>2.1 Describe what constitutes a valid offer</p> <p>2.2 Distinguish an offer from an invitation to treat</p> <p>2.3 Explain the requirements of communication of offer</p>	<p>2.1 An offer is a promise by the offeror to do or abstain from doing something, provided the offeree will accept the offer and pay or promise to pay the 'price' of the offer</p> <p>2.2 Definition of 'invitation to treat': an attempt to solicit offers; the differences between offers and invitations to treat: eg, <i>Partridge v Crittenden (1968)</i></p> <p>2.3 The offer must be communicated to the offeree: eg, <i>Taylor v Laird (1856)</i></p>

	<p>2.4 Describe how an offer is terminated</p> <p>2.5 Explain the nature and effect of counter offer</p> <p>2.6 Explain how, and in what circumstance, the passage of time may terminate an offer</p> <p>2.7 Explain the nature of, and requirements for, revocation of offer</p> <p>2.8 Describe a valid acceptance of an offer</p> <p>2.9 Explain the rules governing communication of acceptance and the exceptions to that rule</p> <p>2.10 Describe other means of determining agreement</p> <p>2.11 Apply an understanding of the rules for establishing a valid offer and acceptance</p>	<p>2.4 Counter offer, revocation, passage of time; acceptance</p> <p>2.5 Counter offer destroys original offer; only the original offeror can reinstate the original offer: eg, <i>Hyde v Wrench (1840)</i></p> <p>2.6 See, for example, <i>Ramsgate Victoria Hotel v Montefiore (1866)</i></p> <p>2.7 Withdrawal of offer by offeror, must be done before acceptance by the offeree (eg, <i>Payne v Cave (1789)</i>); must be communicated (but see <i>Dickenson v Dodds (1876)</i> for eg); revocation is not valid in unilateral contracts, once acceptance has begun: eg, <i>Errington v Errington & Woods (1952)</i></p> <p>2.8 Final and unqualified assent to an offer</p> <p>2.9 Acceptance must be communicated to offeror; acceptance must be communicated; silence is not valid acceptance: see <i>Felthouse v Bindley (1862)</i>; offeror may waive need for communication; in instantaneous forms of communication, acceptance incomplete until received by offeror, eg, <i>Entores Ltd v Miles Far East Corporation (1955)</i>, <i>Brinkibon v Stahag Stahl und Stahlwarenhandels-gesellschaft (1983)</i>; the postal rules</p> <p>2.10 See <i>Butler Machine Tools v Ex-Cell-O Corporation (1979)</i></p> <p>2.11 Application to a scenario</p>
--	---	--

	to a given situation	
3 Understand the concept of consideration in contract	<p>3.1 Explain what constitutes valid consideration</p> <p>3.2 Apply an understanding of consideration to a given situation</p>	<p>3.1 Definition of consideration: see <i>Dunlop v Selfridge (1915) (HL)</i>; rules setting out the limits to consideration: consideration must be from the promisee, but not necessarily to the promissory; past consideration is no consideration: see, for eg, <i>Re McArdle (1951)</i>; performance of an existing duty is not good consideration: see <i>Stilk v Myrick (1809)</i>, but see, for eg, <i>Hartley v Ponsonby (1857)</i> and <i>Williams v Roffey & Nicholls (Contractors) (1990)</i>; part payment of a debt is not valid consideration: <i>Pinnel's Case (1602)</i>, but see exceptions in <i>Pinnel's Case</i> and in <i>Hirach and Punamchand v Temple (1911)</i></p> <p>3.2 Application to a scenario</p>
4 Understand the rules for determining a party's intention to enter into a contract	<p>4.1 Explain how an intention to enter into an agreement might be determined</p> <p>4.2 Explain the presumption in social and domestic situation and how it may be rebutted</p> <p>4.3 Explain how the presumption in social and domestic situations may be rebutted</p> <p>4.4 Explain the presumption in commercial situations</p> <p>4.5 Explain how the presumption may be rebutted in commercial situations</p> <p>4.6 Apply an understanding of the rules for determining intention to a given situation</p>	<p>4.1 The meaning and use of rebuttable presumptions</p> <p>4.2 The presumption is that there is no intention to contract in social and domestic situations: see, for eg, <i>Balfour v Balfour (1919)</i></p> <p>4.3 See, for eg, <i>Merritt v Merritt (1970)</i>, <i>Simpkins v Pays (1955)</i></p> <p>4.4 The presumption is that there is an intention to create legal relations</p> <p>4.5 For rebutting the presumption in commercial situations: see, for eg, <i>Rose & Frank v Compton (1925)</i></p> <p>4.6 Application to a scenario</p>

<p>5 Understand how terms are incorporated into a contract</p>	<p>5.1 Explain the meaning of ‘representation’</p> <p>5.2 Distinguish a mere representation from a term of the contract</p> <p>5.3 Identify express terms of a contract</p> <p>5.4 Explain how express terms may be incorporated into the contract</p> <p>5.5 Explain how terms may be implied by statute</p> <p>5.6 Explain how terms are implied by custom</p> <p>5.7 Explain how terms are implied by the courts</p> <p>5.8 Apply an understanding of contractual terms to a given situation</p>	<p>5.1 Statements normally made outside the contract which may induce a party to enter into the contract but which do not constitute a term of the contract</p> <p>5.2 Importance attached to representation, reduction into writing, passage of time between statement and entering into the contract: see, for eg, <i>Bannerman v White (1861)</i>, <i>Routledge v McKay</i>, <i>Birch v Paramount Estates Ltd (1956)</i>, <i>Oscar Chess v Williams (1957)</i></p> <p>5.3 Terms that are distinctly or overtly stated rather than implied</p> <p>5.4 Requirement, on an objective test that reasonable notice be given</p> <p>5.5 Examples of terms implied under ss 12-15 Sale of Goods Act 1979; terms implied under ss 13-14 Supply of Goods and Services Act 1982</p> <p>5.6 Implied by the custom of location or trade practice; criteria for implying a term by custom: long duration, reasonable and not inconsistent with an express term; for implying by trade use: existence of usage and it is acceptable to the court</p> <p>5.7 The business efficacy test: see <i>The Moorcock (1889)</i>; the officious bystander test: see <i>Shirlaw v Southern Foundries (1926) Ltd (1939)</i></p> <p>5.8 Application to a scenario</p>
---	---	---

<p>6 Understand the classification of different provisions of a contract, and the implication of categorisation</p>	<p>6.1 Define a condition</p> <p>6.2 Define warranty</p> <p>6.3 Define an innominate term</p> <p>6.4 Apply an understanding of the classification of innominate terms, warranties and conditions to a given situation</p>	<p>6.1 Term going to the root of the contract, the breach of which entitles the innocent party to repudiate the contract: for eg, <i>Poussard v Spiers & Pond (1876)</i></p> <p>6.2 Less important term, breach of which sounds in damages only: for eg, <i>Bettini v Gye (1876)</i></p> <p>6.3 Cannot be classified at time of formation of contract; remedy depends on effect of breach: see, for eg, <i>Hong Kong Fir Shipping v Kawasaki Kisen Kaisha (1962)</i></p> <p>6.4 Application to a given scenario</p>
<p>7 Understand misrepresentation and its consequences</p>	<p>7.1 Identify what constitutes misrepresentation</p> <p>7.2 Explain the different types of misrepresentation</p> <p>7.3 Explain the effects of the Misrepresentation Act 1967 on actions for negligent and innocent Misrepresentation</p> <p>7.4 Explain the remedies available in respect of misrepresentation</p>	<p>7.1 Untrue statement of fact made by one party to the other, inducing the other to enter the contract; must be actual and reasonable reliance on the misrepresentation</p> <p>7.2 Fraudulent, Negligent (under the Misrepresentation Act 1967) and Innocent</p> <p>7.3 Ss 2(1) and (2) Misrepresentation Act 1967: see <i>Howard Marine & Dredging Co Ltd v Ogden & Sons (Excavations) Ltd (1978)</i></p> <p>7.4 Fraudulent misrepresentation: rescission and damages based on deceit; negligent misrepresentation: rescission (subject to court's discretion) and damages based on deceit; innocent misrepresentation: rescission or damages in lieu of</p>

	<p>7.5 Explain the rules of remoteness of damage in misrepresentation</p> <p>7.6 Apply an understanding of misrepresentation to a given situation</p>	<p>rescission; measure of damages are on a tortious basis: see, for eg, <i>Royscot Trust v Rogerson (1991)</i></p> <p>7.5 All losses resulting from misrepresentation: for eg, <i>Naughton v O'Callaghan (1990)</i>, <i>Royscot Trust v Rogerson (1991)</i>, <i>Smith New Court Securities v Scrimgeour Vickers (1996)</i></p> <p>7.6 Application to a scenario</p>
<p>8 Understand the ways in which a contract might be discharged</p>	<p>8.1 Explain how a contract may be discharged by performance</p> <p>8.2 Explain how a breach of a condition entitles the innocent party to repudiate the contract</p> <p>8.3 Explain how parties might agree to the discharge of a contract</p> <p>8.4 Explain how a contract may be discharged by frustration</p> <p>8.5 Explain statutory interventions relating to frustrated contracts</p> <p>8.6 Apply an understanding of the ways in which a contract may be discharged to a</p>	<p>8.1 Contracts must be performed strictly; failure to do so amounts to breach of contract</p> <p>8.2 See, for eg, <i>Poussard v Spiers & Pond (1876)</i></p> <p>8.3 Waiver and accord, subject to existence of agreement and consideration</p> <p>8.4 Definition/explanation of common law position on frustration; effect of frustration at common law; see, for eg, <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 Fairborn Lawson Combe Barbour Ltd (1943)</i></p> <p>8.5 Statutory intervention: Law Reform (Frustrated Contracts) Act 1943: the payee rule, the payer rule, and the valuable benefit rule</p> <p>8.6 Application to a scenario</p>

	given situation	
9 Understand the remedies available where a contract has been breached	<p>9.1 Identify the remedies available when a contract has been breached</p> <p>9.2 Explain the purpose and meaning of damages in contract</p> <p>9.3 Explain the rules relating to claiming damages</p> <p>9.4 Explain the requirements for claiming substantial damages</p> <p>9.5 Explain, in outline, heads of damages</p> <p>9.6 Explain the remedies of specific performance and injunction</p> <p>9.7 Apply an understanding of remedies available to a given situation</p>	<p>9.1 Repudiation, damages, specific performance, injunction</p> <p>9.2 Monetary compensation aimed at putting the innocent party in position he would have been had the contract not been breached: see <i>Robinson v Harman (1848)</i></p> <p>9.3 Claim to nominal damages as of right in respect of breach</p> <p>9.4 The Claimant needs to show (a) the breach caused the loss, (b) the loss was not too remote: see, for eg, <i>Hadley v Baxendale (1854)</i>, <i>The Heron II (1969)</i>, and (c) that the innocent party has attempted to mitigate the losses claimed</p> <p>9.5 Explanation of: damages for non-pecuniary loss: loss of enjoyment, inconvenience, distress, for eg, <i>Jarvis v Swans Tours Ltd (1973)</i>, <i>Farley v Skinner (2001)</i>; damages for pecuniary loss: reliance loss, expectation loss (cost of cure, cost of replacement etc), loss of bargain; consequential loss</p> <p>9.6 Definitions of the remedies; equitable nature of the remedies; outline of criteria used when granting these remedies</p> <p>9.7 Application to a scenario</p>

Additional information about the unit	
Unit aim(s)	The learner will understand key concepts, terms and processes in the area of Contract Law
Unit expiry date	31 December 2010
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)	Courses of study leading towards the achievement of the unit may offer the learner the opportunity to satisfy requirements across a number of Level 3 Key Skill areas; most specifically, Communication, Improving own learning and performance, Problem solving and Working with others
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	Only available to owning awarding body
Availability for delivery	1 September 2008