

Title:	(Unit 2) Contract Law
Level:	6
Credit Value:	15

LEARNING OUTCOMES		ASSESSMENT CRITERIA	KNOWLEDGE, UNDERSTANDING AND SKILLS
THE LEARNER WILL:		THE LEARNER CAN:	
1. Understand the general nature of the law of contract	1.1	Define a contract	1.1 A contract is an agreement giving rise to obligations which are enforced or recognised by law.
	1.2	Explain key characteristics of the nature of contract	1.2 The social importance of contract; <ul style="list-style-type: none"> 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

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<p>2. Understand the law on the formation of contract</p>	<p>2.1 Explain the law on the fact of agreement</p>	<p>2.1 The law on formation: the requirement of agreement;</p> <ul style="list-style-type: none"> • the factual indicators of agreement – offer and acceptance; • distinguishing unilateral from bilateral agreements; • distinguishing offer from invitation to treat; • distinguishing offers from requests for information); • relevant case law: eg, <u>Pharmaceutical Society of Great Britain v Boots Chemists (1952)</u>, <u>Partridge v Crittenden (1968)</u>, <u>Carlill v Carbolic Smoke Ball Co (1893)</u>; • where offer and acceptance have not been to the task of finding agreement, eg, <u>Clarke v Dunraven, The Satanita (1895)</u> <u>Butler Machine Tools v EX-Cell-O Corporation (1979)</u>, <u>G Percy Trentham v Archital Luxfer Ltd (1993)</u>, <u>RTS Flexible Systems Limited v Molkerei Alois Muller Gmbh (2010)</u> (Supreme Court).
	<p>2.2 Explain the law on how offers are terminated</p>	<p>2.2 An explanation of:</p> <ul style="list-style-type: none"> • acceptance, counteroffer, revocation, passage of time; • relevant case law: eg, <u>Hyde v Wrench (1840)</u>, <u>Ramsgate Victoria Hotel v Montefiore (1866)</u>, <u>Payne v Cave (1789)</u>; • counter offer distinguished from request for information (e.g.) <u>Stevenson v Mclean (1880)</u>.
	<p>2.3 Explain the rules of communication of offer, acceptance, and revocation</p>	<p>2.3 An explanation of the law on communication;</p> <ul style="list-style-type: none"> • relevant case law: eg, <u>Taylor v Laird (1856)</u>, <u>Adams v Lindsell (1818)</u>, <u>Brinkibon v Stahag Stahl und Stahlwarenhandels-gesellschaft (1983)</u>; • cross offers; inaccurate communication.

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	2.4	Analyse the law on the formation of contract	2.4	Analysis of the law of formation: <ul style="list-style-type: none"> • 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: • The nature and quality of the rules on communication of offer, acceptance, and revocation.
	2.5	Apply the law on the formation of contract to a given situation	2.5	Application of the law to a complex scenario.
3. Understand the rules for determining a party's intention to create legal relations	3.1	Explain the law on the intention to create legal relations	3.1	An explanation of: the law on intention: <ul style="list-style-type: none"> • the presumption in social and domestic situations and how that presumption may be rebutted: • relevant case law, eg, <u>Balfour v Balfour</u> (1919), <u>Merritt v Merritt</u> (1970), <u>Simpkins v Pays</u> (1955); • the presumption in commercial situations and how that presumption may be rebutted; • relevant case law, eg, <u>Rose & Frank v Crompton</u> (1925); <u>Blue v Ashley</u> (2017) • the presumption when dealing with public bodies and how the presumption might be rebutted e.g. <u>W v Essex CC</u> (1998).
	3.2	Analyse the law on the intention to create legal relations	3.2	Analysis of the meaning and use of rebuttable presumptions; <ul style="list-style-type: none"> • their application in the context of intention.

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	3.3	Apply the law on the intention to create legal relations to a given situation	3.3	Application of the law to a complex scenario.
	3.4	Critically evaluate a given issue or situation to predict probable legal implications	3.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate
4. Understand the doctrine of consideration	4.1	Explain the law of consideration in contract	4.1	<p>An explanation of the law of consideration: definition of consideration: see <u>Dunlop v Selfridge</u> (1915) (HL);</p> <ul style="list-style-type: none"> • 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, re <u>McCardle</u> (1951); performance of an existing duty is not good consideration: relevant case law: eg, <u>Glasbrook Bros v Glamorgan C.C.</u> (1925), <u>Leeds United FC v Chief Constable of West Yorkshire</u> (2012), <u>Stilk v Myrick</u> (1809), <u>Hartley v Ponsonby</u> (1857); • see also <u>Williams v Roffey & Nicholls (Contractors)</u> (1990) and re <u>Selectmove</u> (1995) and <u>MWB Business Exchange Ltd v Rock Advertising Ltd</u> (2017 CA) (2018 SC) • the rule on part payment of a debt: see the rule <u>Pinnel's case</u> (1602) and its exceptions: relevant case law: eg, <u>Pinnel's Case</u> (1602), <u>Hirachand Punamchand v Temple</u> (1911); promissory estoppel: see <u>Central London Properties Trust v High Trees house</u> (1947) and subsequent relevant case law.

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	4.2	Analyse the law of consideration	4.2	The purpose and role of consideration including: the status and implications of <u>Williams v Roffey & Nicholls (Contractors)</u> (1990); <ul style="list-style-type: none"> the doctrine of promissory estoppel; showing awareness of judicial and academic opinion.
	4.3	Apply the law of consideration to a given situation	4.3	Application of the law to a complex scenario.
	4.4	Critically evaluate a given issue or situation to predict probable legal implications	4.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
5.				
Understand the doctrine of privity of contract	5.1	Explain the law of privity of contract	5.1	An explanation of the law of privity of contract, including common law exceptions to the rule; <ul style="list-style-type: none"> the provisions of the contracts (rights of third parties) act 1999; relevant case law: eg, <u>Dunlop Pneumatic Tyre v Selfridge</u> (1915), <u>Tulk v Moxhay</u> (1848), <u>Beswick v Beswick</u> (1966).
	5.2	Analyse the law of privity of contract	5.2	Analysis of the purpose and role of the doctrine of privity of contract; <ul style="list-style-type: none"> judicial attempts to avoid the doctrine; the effectiveness of the contracts (Rights of Third Parties) Act 1999; judicial and academic opinion on the doctrine.
	5.3	Apply the law of privity of contract to a given situation	5.4	Application of the law to a complex scenario.
	5.4	Critically evaluate a given issue or to predict probable legal implications	5.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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<p>6. Understand the law governing terms of contract</p>	<p>6.1 Explain the law governing terms of contract</p>	<p>6.1 An explanation of: the law governing contractual terms: representations distinguished from terms: relevant case law eg, <u>Bannerman v White</u> (1861), <u>Routledge v McKay</u>, <u>Birch v Paramount Estates Ltd</u> (1956);</p> <ul style="list-style-type: none"> • Express terms distinguished from implied terms; • Statutory methods of implying terms: ss 12-15 Sale of Goods Act 1979 and relevant case law; • Ss 2, 9, 10, 11, 13, 14, 16, 17, 34, 35, 36, 40, 41, 49 and 52 Consumer Rights Act 2015 and relevant case law; • Terms implied under ss 13-14 Supply of Goods and Services Act 1982 and relevant case law; • 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: <u>Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Ltd</u> (2015), <u>Attorney general of Belize v. Belize Telecom</u> (2009), and subsequent case law – see also the business efficacy test: see the <u>Moorcock</u> (1889); • the officious bystander test: see <u>Shirlaw v Southern Foundries (1926) Ltd</u> (1939); • relational contracts, see e.g. <u>Candey Ltd v Bosheh</u> [2022] • terms implied by common law (e.g.) <u>Liverpool CC v Irwin</u> (1976), <u>Equitable Life Assurance v Hyman</u> (2002); • the status of terms: distinguish conditions, warranties and innominate terms: see, eg, <u>Poussard v Spiers & Pond</u> (1876), <u>Bettini v Gye</u> (1876), <u>Hong Kong Fir shipping v Kawasaki Kisen Kaisha</u> (1962).
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	6.2	Analyse the law governing terms of contract	6.2	Analysis and assessment of the rules for distinguishing representation from term; <ul style="list-style-type: none"> 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 determining the status of terms as conditions, warranties or innominate terms; judicial and academic opinion.
	6.3	Apply the law governing terms of contract to a given situation	6.3	Application of the law to a complex scenario.
	6.4	Critically evaluate a given issue or situation to predict probable legal implications	6.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
7. Understand the law governing exemption clauses	7.1	Understand the law governing exemption clauses	7.1	An explanation of the common law on exemption clauses: the common law rules of incorporation and interpretation of exclusion and limitation clauses; <ul style="list-style-type: none"> the main provisions of the Unfair Contract Terms Act 1977 ss 2, 3, 6, 7, 11, 13 and Schedule 2; their effect upon the validity of exemption clauses; ss 31, 47, 57, 61-69 and Schedule 2 Part 1 Consumer Rights Act 2015 and their effect on the validity of exemption clauses; relevant case law: eg, <u>L'Estrange v Graucob</u> (1934), <u>Olley v Marlborough Court Hotel</u> (1949), <u>Spurling v Bradshaw</u> (1956), <u>Chapelton v Barry UDC</u> (1940), <u>Andrews v Singer</u> (1934), <u>White v John Warwick</u> (1953).

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	7.2	Analyse the law on exemption clauses	7.2	The use of exemption and limitation clauses in business; <ul style="list-style-type: none"> • 19th and 20th century contexts; • impact upon those in weaker bargaining positions; • effectiveness of judicial intervention and of statutory intervention; awareness of judicial and academic opinion.
	7.3	Apply the law on exemption clauses to a given situation	7.3	Application of the law to a complex scenario.
	7.4	Critically evaluate a given issue or situation to predict probable legal implications	7.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
8.				
Understand the law of misrepresentation	8.1	Explain the law of misrepresentation	8.1	An explanation of the law of misrepresentation: untrue statement of fact (as opposed to statements of law, opinion or intention) made by one party to the other, inducing the other to enter the contract; <ul style="list-style-type: none"> • requirement of actual and reasonable reliance on the misrepresentation relevant case law on distinguishing fact from opinion, on inducement, and on reasonable reliance; effect of repetition of third party statements e.g. <u>Webster v Liddington</u> (2014); • 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, <u>Howard Marine & Dredging Co Ltd v Ogden & Sons (Excavations) Ltd</u> (1978); • remedies available in respect of innocent, negligent, and fraudulent misrepresentation; tortious nature of damages in misrepresentation. • rules of remoteness of damage in mis-representation; • relevant case law: eg, <u>Royscot Trust v Rogerson</u> (1991), <u>Smith New Court Securities v Scrimgeour Vickers</u> (1996).

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	8.2	Analyse the law of misrepresentation	8.2	Analysis of tortious nature of misrepresentation, the influence of this upon remedies; <ul style="list-style-type: none"> 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.
	8.3	Apply the law of misrepresentation to a given situation	8.3	Application to a complex scenario.
	8.4	Critically evaluate a given issue or situation to predict probable legal implications	8.4	A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
9.		Understand duress and undue influence	9.1	Explain the law of duress <ul style="list-style-type: none"> An explanation of the law of duress: the common law rules on duress to the person and economic duress (including distinction between unlawful acts and lawful acts) and possible remedies; relevant case law: eg, <u>Barton v Armstrong</u> (1975), <u>R v A.G. for England and Wales</u> (2003), <u>Atlas Express v Kafco</u> (1989), <u>The Atlantic Baron</u> (1979), <u>Pakistani International Airline Corporation v Times Travel (UK) Ltd</u> (2021)
	9.2	Explain the law of undue influence	9.2	An explanation of the equitable rules relating to undue influence; <ul style="list-style-type: none"> the classifications of undue influence, and their practical implications; remedies;

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		<ul style="list-style-type: none"> relevant case law: eg, <u>Williams v Bayley</u> (1866), <u>BCCI v Aboudy</u> (1990), <u>Barclays Bank v O'Brien</u> (1993), <u>RBS v Etridge (No 2)</u> 2001).
	9.3 Analyse the law of duress 9.4 Analyse the law of undue influence	9.3 and 9.4 Comparison and contrast of actions in undue influence and duress; <ul style="list-style-type: none"> analysis of the development of both actions; analysis of the nature of fiduciary relationships required in undue influence.
	9.5 Apply the law of duress to a given situation 9.6 Apply the law of undue influence to a given situation	9.5 and 9.6 Application to a complex scenario.
	9.7 Critically evaluate a given issue or situation to predict probable legal implications	9.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.
10. Understand the law on illegal contracts	10.1 Explain the principles governing illegality	10.1 In outline only: contracts void by statute; contracts illegal by statute; <ul style="list-style-type: none"> contracts void at common law; contracts illegal at common law; consequences of a finding that the contract is illegal or void.

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	<p>10.2 Explain the common law on contracts in restraint of trade</p>	<p>10.2 An explanation of the law on restraint of trade: contract <i>prima facie</i> void at common law as contrary to public policy;</p> <ul style="list-style-type: none"> • 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, <u>Nordenfelt v Maxim Nordenfelt Co Ltd</u> (1894), <u>Vancouver Malt & Sake Brewing v Vancouver Breweries</u> (1934), <u>M & S Drapers v Reynolds</u> (1956).
	<p>10.3 Analyse the law on illegal contracts</p>	<p>10.3 Reasons for policy on restraint of trade;</p> <ul style="list-style-type: none"> • historical development; • distinguish position in employee contracts from sale of business contracts; • analysis of position with regard to ‘contracts in gross’.
	<p>10.4 Apply the law on illegal contracts to a given situation</p>	<p>10.4 Application to a complex scenario.</p>
	<p>10.5 Critically evaluate a given issue or situation to predict probable legal implications</p>	<p>10.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p>

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11. Understand the law on discharge of contract	11.1 Explain the law on discharge of contract	11.1 An explanation of the law on discharge of contract: identify ways discharge may come about: <ul style="list-style-type: none"> • by performance, by agreement, by breach, and by frustration; • breach may also be anticipatory or repudiatory; • waiver and 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, <u>Cutter v Powell</u> (1795), <u>Hoening v Isaacs</u> (1952), <u>Taylor v Caldwell</u> (1863), <u>Chandler v Webster</u> (1904), <u>Appleby v Myers</u> (1867), <u>Fibrosa Spolka Akcyjna v Fairborn Lawson Combe Barbour Ltd</u> (1943).
	11.2 Analyse the law on discharge of contract	11.2 To include analysis of: reasons for ‘strict performance’ requirement in contract; <ul style="list-style-type: none"> • consideration of the meaning of strict performance; • evolution of discharge by frustration; • the payee rule, the payer rule, and the valuable benefit rule.
	11.3 Apply the law on discharge of contract to a given situation	11.3 Application to a complex scenario.
	11.4 Critically evaluate a given issue or situation to predict probable legal implications	11.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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12. Understand remedies for breach of contract	12.1 Identify remedies available when a contract has been breached	12.1 Damages, repudiation, rescission, specific performance, injunction
	12.2 Explain the meaning of 'damages'	12.2 Monetary compensation
	12.3 Explain the purpose of unliquidated damages in contract	12.3 To place the innocent party in position s/he would have been had the contract not been breached: see <u>Robinson v Harman</u> (1848)
	12.4 Explain the place of 'nominal damages' in contract	12.4 Claim small (nominal) amount as of right in respect of breach
	12.5 Distinguish 'substantial damages' from 'nominal damages'	12.5 Claim reflects the claimants actual losses
	12.6 Explain the law on claiming substantial damages	12.6 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; <ul style="list-style-type: none"> Any relevant case law: eg, <u>Hadley v Baxendale</u> (1854), <u>The Heron II</u> (1969), <u>Transfield shipping inc v Mercator Shipping Inc, The Achilleas</u> (2008) (JCPC), <u>C&P Haulage v Middleton</u> (1993), <u>Payzu v Saunders</u> (1919), <u>Pilkington v Wood</u> (1953)

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	<p>12.7 Explain heads of damages in contract</p>	<p>12.7 An explanation of:</p> <ul style="list-style-type: none"> • damages for non-pecuniary loss: • Loss of enjoyment, inconvenience, distress: relevant case law: eg, <u>Jarvis v Swans Tours Ltd</u> (1973), <u>Farley v Skinner</u> (2001); • Damages for pecuniary loss: • reliance loss, expectation loss, loss of bargain; • Consequential loss; liquidated damages clauses; • penalty clauses; relevant case law: eg, <u>Chaplin v Hicks</u> (1911), <u>Anglia television v Reed</u> (1972), <u>Watts v Morrow</u> (1991), <u>Ruxley Electronics v Forsyth</u> (1996), <u>Farley v Skinner</u> (no 2) (2002), <u>Cavendish Square Holding BV v Talal El Makdessi</u>; • <u>Parkingeye Ltd v Beavis</u> (2015).
	<p>12.8 Explain the remedy of repudiation</p>	<p>12.8 An explanation of repudiation:</p> <ul style="list-style-type: none"> • right of the innocent party to accept repudiatory breach and refuse to perform obligations under the contract; • when the right arises; • when the right may be lost; • the implications of wrongful repudiation; • relevant case law
	<p>12.9 Explain the remedy of rescission</p>	<p>12.9 An explanation of rescission:</p> <ul style="list-style-type: none"> • 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 damages judged a better remedy; • relevant case law.

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	12.10 Explain the remedy of specific performance	12.10 An explanation of specific performance: <ul style="list-style-type: none"> • order by court to defaulting party to carry out obligations under the contract; • factors which may lead the court to refuse specific performance; • relevant case law.
	12.11 Explain the law on specific performance	12.11 Equitable nature of remedy; <ul style="list-style-type: none"> • what the claimant must establish in order to obtain an order; • reasons applications may be refused; relevant case law: eg, <u>De Francesco v Barnum</u> (1890), <u>Flight v Bolland</u> (1828), <u>Posner v Scott Lewis</u> (1987).
	12.12 Explain the remedy of injunction	12.12 Order from the court to carry out a course of action (mandatory) or refrain from doing so (prohibitory).
	12.13 Explain the law on the granting of injunctions	12.13 Equitable nature of the remedy; <ul style="list-style-type: none"> • what the claimant must establish in order to obtain an injunction; • bars to granting injunction: • giving particular emphasis to contracts in restraint of trade.
	12.14 Analyse remedies	12.14 Comparison and contrast of remedies; <ul style="list-style-type: none"> • assessment of their practical effectiveness in contractual situations; • demonstration of understanding of their limitations in commercial and consumer situations.
	12.15 Apply the law on remedies to a given situation	12.15 Application to a complex scenario.
	12.16 Critically evaluate a given issue or situation to predict probable legal implications	12.16 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.

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Additional information about the unit	
Unit aim(s)	To accredit a broad and detailed understanding of Contract Law
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)	N/a
Assessment requirements specified by a sector or regulatory body (if appropriate)	N/a
Endorsement of the unit by a sector or other appropriate body (if required)	N/a
Location of the unit within the subject/sector classification	15.5 Law and Legal Services
Name of the organisation submitting the unit	CILEx (The Chartered Institute of Legal Executives)
Availability for delivery	1 September 2009

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