

CILEX

CPOQ

F3 – Contract Law

Foundation Stage

2021

F3: Contract Law

The aim of this module is to give you the essential knowledge and understanding of the law of contract, the contexts in which it operates and how it may underpin commercial, professional, and individual relationships. This will enable you to understand how and when contractual obligations arise in the broad business environment including your own professional business environment; how to advise clients on the formation of a valid contract in non-contentious matters, and advise in potentially contentious matters, whether a contract exists and what, if any, obligations have been created.

The module covers:

1. Contract law in outline
2. The formation of a valid contract: offer and acceptance
3. The formation of a valid contract: consideration
4. The formation of a valid contract: intention to create legal relations and capacity
5. The content of a contract
6. Vitiating factors
7. Performance, termination and breach of contract
8. Causation and remedies for breach of contract

Throughout this module you must recognise the limit of your authority and experience and must know when to seek assistance.

Learning Outcomes

By the end of this module you will be able to:

1. Identify the professional context in which you are advising, and applicable law based on the facts and the evidence
2. Understand the client's position with reference to the law, facts and evidence
3. Advise a client with regard to non-contentious and contentious contractual matters
4. Make appropriate recommendations to the client which is in their best interests.

Linked online assessment: F3

TQT: 100 hours

1. Contract law in outline

Contract law underpins many relationships including those in an employment, commercial, professional and consumer context. You need to understand how rights and interests are created, protected and enforceable by law and why some contracts are not permitted where they are contrary to public policy. Therefore, you will need to know the following:

- a) Privity of contract and third-party rights
 - Enforceability of a contract by a third party
 - Contracts (Rights of Third Parties) Act 1999
 - Assignment of contractual rights and liabilities
- b) Professional relationships
 - Examples for context
 - Professional services contracts
 - Commercial contracts
 - Contracts of employment
 - Contracts of good faith
 - Insurance contracts
 - The Consumer Insurance (Disclosure and Representations) Act 2012
 - Standard form contracts
 - Battle of the forms
 - Boilerplate clauses
 - Purpose
 - Examples: entire agreement; no representation or reliance; exclusion of third-party rights
- c) Business and consumer contracts
 - Sale of Goods Act 1979
 - Supply of Goods and Services Act 1982
 - Consumer Protection Act 1987
 - Consumer Rights Act 2015
- d) Illegality and public policy
 - Factors which make contracts illegal
 - Contracts to commit a crime; tort or fraud
 - Consequences
 - Ousting the jurisdiction of the courts
 - Terms which prevent a person seeking the assistance of the courts
 - Consequences
 - Restraint of trade e.g. employees; businesses

2. The formation of a valid contract: offer and acceptance

You need to understand how a contract is formed and the necessary components to establish agreement between the parties; how and why each of these components is a vital ingredient in the formation of a valid contract. Therefore, you need to know about:

a) Offer:

- Definition
- How an offer is made
- Orally
- In writing
- By conduct
- Invitations to treat
- Factors distinguishing an offer from an invitation to treat e.g.: displays, advertisements, auctions, passengers, self-service and automated machines; mere puff; auctions; tenders and online transactions
 - Statements of price
- Communication of the offer
 - Requirement for communication
- Communication may be to a definite person or to a wider group
- Withdrawal of offer
 - Requirement of withdrawal or revocation before acceptance
 - When does revocation of the offer take place?
- Counter-offers and rejection of offers
 - Communication of rejection or counter-offer
 - Effect of counter-offer
- Termination by lapse of time
 - Acceptance to be within a time prescribed in the offer
 - Acceptance to be within a reasonable period of time

b) Acceptance

- Definition and effect of acceptance to bring about agreement
- Methods of communication of acceptance and relevant timing as to when acceptance is made
 - Acceptance complying with the terms of the offer
- Instantaneous acceptance
 - Oral acceptance face to face
 - By telephone
- Acceptance in writing
- By post and email
- Standard form contracts and the battle of the forms

c) New methods of contract formation

- Overview of smart contracting
- Using video communications
- Text messages

3. The formation of a valid contract: consideration

You need to understand the central importance of consideration to the creation of a contract and what is capable of amounting to consideration. Therefore, you will need to know the following:

- a) Consideration
 - Definition
 - Requirement for simple contracts
 - Bare promises
 - Distinction between executory, executed and past consideration
 - Requirements that consideration must:
 - Move from the promisee
 - Be legal
 - Be possible
 - Not be past
 - Performance of existing duties as consideration
 - Sufficiency and adequacy of consideration
 - Bad bargains and caveat emptor
 - Satisfaction of debts
 - Promissory estoppel

4. The formation of a valid contract: intention to create legal relations and capacity

For a contract to be valid, there must be intention to create legal relations and the contracting parties must have capacity. Therefore, you will need to know the following:

- a) Intention to create legal relations
 - Presumptions and rebuttals
 - Business
 - Presumption of intention to create legal relations
 - Acceptance subject to contract
 - Social and domestic
 - Family agreements and clear intention to be bound
 - Mutuality between the parties
- b) Capacity
 - Minors and others under an incapacity
 - Minors' Contracts Act 1987
 - Contracts for necessities
 - Debts
 - Beneficial contracts of service
 - Voidable contracts
 - Partnerships
 - Limited liability partnerships
 - Companies
 - The importance of identifying the contracting parties

5. The content of a contract

Understanding of the content of written and oral contracts is vital to the formation of a valid contract. This will enable you to interpret: - what the words mean; how the words used impact on the obligations arising; and why some terms are not permitted. You will also understand why it is sometimes necessary to imply terms into the contract so that it makes business sense. Therefore, you will need to know the following:

- a) Oral and written contracts
 - Contracts may be oral or in writing
 - Contracts which must be in writing

- b) Interpretation of contracts
 - Principles of interpretation
 - Intention of the parties
 - Documentary, factual and commercial context

- c) Express terms
 - Express terms definition
 - Conditions: definition
 - Time made of the essence by express agreement or implied by the facts
 - Warranties: definition
 - Innominate/intermediate terms: definition
 - Incorporation of written terms into oral contracts -
 - Oral statements as terms
 - Oral statements adding terms to a written contract

- d) Implied terms at common law and under statute
 - Business efficacy
 - Reasonableness and the officious bystander test
 - Implied terms must not be contradictory to an express term
 - Custom and trade practice and course of dealing
 - Terms implied by statute
 - Sale of Goods Act 1979
 - Supply of Goods and Services Act 1982
 - Consumer Protection Act 1987
 - Consumer Rights Act 2015

- e) Control of exemption clauses, and unfair terms
 - Reasonableness and interpretation
 - The 'contra proferentem' rule
 - Use of the incorporation rules
 - Unfair Contract Terms Act 1977
 - Consumer Rights Act 2015

6. Vitiating factors

You must understand the importance of clear and unambiguous agreement between the parties about the contract and its terms and why mistake, misrepresentation, duress or undue influence can vitiate or “spoil” the contract. Therefore, you will need to know the following:

a) Mistake

- Common mistake
 - The grounds for common mistake
- The effect of a unilateral mistake as to:
 - Terms of the contract
 - Identity of the subject matter
 - Ownership of the subject matter
 - Existence of the subject matter
 - Quality of the subject matter
 - Identity of the contracting party
- Effect of mistakenly signed documents

b) Misrepresentation

- Requirements:
 - Statement of fact rather than opinion or puff
 - A statement which is false and unambiguous:
 - Subsequent falsity
 - Reasonable reliance and inducements
- Innocent and negligent misrepresentation and misstatement
 - Negligent misstatement
 - Negligent & innocent misrepresentations - s2(1) Misrepresentation Act 1967
- Fraudulent misrepresentation
 - s.2 Fraud Act 2006

c) Remedies

- Rescission and the bars to rescission
- Damages in lieu under s.2(2) of the Misrepresentation Act 1967
- Damages at common law
- Damages under s.2(1) of the Misrepresentation Act 1967.

d) Duress and Undue Influence

- Meaning of duress
 - Nature and effect
 - Threat of harm to a person or goods
 - The requirements
- Economic duress
 - As distinct from ordinary commercial pressure
 - The requirements
- Meaning of undue influence
 - Presumed undue influence: scope, requirements and effect

	<ul style="list-style-type: none"> ○ Actual undue influence: scope, requirements and effect ○ Consequences (rescission)
<p>7. Performance, termination and breach of contract</p>	<p>You need to be able to explain how and why a contract may be discharged through performance, part-performance and agreement and so release the parties from their obligations. You should understand how and why: - time may be an important factor in the performance of a contract; some contracts may be breached; some contracts may be frustrated and made incapable of performance. Therefore, you will need to know the following:</p> <ul style="list-style-type: none"> a) Performance of the contract <ul style="list-style-type: none"> • Substantial performance • Divisible and severable contracts b) Discharge by agreement <ul style="list-style-type: none"> • Accord and satisfaction c) Breach of contract: <ul style="list-style-type: none"> • Effect of a breach of warranty • Repudiatory breach and anticipatory breach • Events giving rise to repudiation by innocent party: <ul style="list-style-type: none"> ○ Breach of condition or a sufficiently serious breach of an innominate/intermediate term ○ A refusal to perform the contract d) Discharge by frustration <ul style="list-style-type: none"> • Definition • Grounds for frustration: <ul style="list-style-type: none"> ○ Physical impossibility ○ Destruction of subject matter ○ Illness or death ○ Unavailability ○ Failure of a source ○ Supervening illegality: <ul style="list-style-type: none"> ○ Impossibility of a common purpose ○ The function of force majeure clauses ○ Limits to the application of the frustration principle ○ Effect of a frustrated contract: Common law and s1 Law reform (Frustrated Contracts) Act 1943

8. Causation and remedies for breach of contract

Where a breach of contract arises, there is a need to show a link between the contractual breach and the contracting parties with the damage caused and the obligations for mitigation to limit the loss. You should consider what remedy is most suitable dependent on the facts. Therefore, you will need to know the following:

- a) Causation
 - Cause of loss
 - Remoteness of loss
- b) Common law remedies
 - Damages and heads of damages
 - Financial and non-financial loss
 - Measure and assessment of damages
- c) Equitable remedies
 - Specific performance
 - Injunction
- d) Statutory remedies:
 - Ss20,22;23;24,55,56 Consumer Rights Act 2015
- e) Mitigation of loss
- f) Indemnities and guarantees