



# *LEGAL ENGLISH*

**INGLESE GIURIDICO**

*ONE-CYCLE MA IN LAW*

*FACULTY OF ECONOMIC, LAW AND POLITICAL SCIENCES*

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# MARIA ANTONIETTA MARONGIU

**RICEVIMENTO:** PER APPUNTAMENTO  
GIOVEDÌ 12:00-14:00 SU TEAMS  
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LEGAL  
ENGLISH  
48 hours  
6 cfu

Pagina Web: [https://www.unica.it/unica/page/it/mariaa\\_marongiu](https://www.unica.it/unica/page/it/mariaa_marongiu)

- **Orario lezioni e ricevimento, avvisi**
- **Materiale didattico scaricabile relativo alle lezioni:**
  - Materiale usato a lezione,
  - materiali su contenuti specialistici e sulla struttura della lingua,
  - Assignments, Exercises,
  - Mock-test con soluzioni.

T i m e t a b i l e	MONDAY		TUESDAY		WENSDAY		THURSDAY		FRIDAY		
	<u>Aula 10 bis - Edificio A - via S. Ignazio, 70/72/74</u>										
	-----		27 Feb 10:00-12:00		28 Feb 10:00-12:00		29 Feb 10:00-12:00				
	04 Mar 10:00-12:00		05 Mar 10:00-12:00		06 Mar 10:00-12:00		07 Mar 10:00-12:00		08 Mar 10:00-12:00		
	11 Mar 10:00-12:00		12 Mar 10:00-12:00		13 Mar 10:00-12:00		14 Mar 10:00-12:00				
	18 Mar 10:00-12:00		19 Mar 10:00-12:00		20 Mar 10:00-12:00		21 Mar 10:00-12:00				
	25 May 10:00-12:00		26 May 10:00-12:00		27 Mar 10:00-12:00		-----				
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	08 Apr 10:00-12:00		09 Apr 10:00-12:00		10 Apr <b>09:00-12:00</b>		11 Apr <b>09:00-12:00</b>				
	<b>APPELLI</b>										
31 May - 16:30 Lab Ling – Edificio A Sant'Ignazio			28 June – 9:00 Lab Ling – Edificio A Sant'Ignazio			28 July – 12:00 Lab Ling – Edificio A Sant'Ignazio			6 Set – 09:00 Lab Ling – Edificio A Sant'Ignazio		

# Unit 2

## Contract Law

### IN BRIEF...

The success of an internal domestic market depends on the validity of contracts supporting commercial relationships. Understanding how contracts are formed and operate are key to the success of every business. Professionals advising businesses are asked to negotiate, prepare and advise on different types of contracts.

In the law of contracts, the Latin principle *pacta sunt servanda* is the starting point. This phrase means that agreements must be kept. Parties must perform their obligations and promises when they have binding contracts.

Under English common law, parties are generally allowed the freedom to enter any agreement they wish. However, this freedom is not without restriction.

Valid contracts start with the essential elements, namely, the intention to enter into a contractual agreement, offer, acceptance and consideration. The question of how to protect a party once a valid and enforceable contract is breached is fundamental.

Professionals will need to assist their clients in deciding which remedies are best to protect the interests of their clients.

Domestic contracts are regulated by domestic courts. However, globalization has now added new dimensions to the domestic contract. Clients will need to know which courts have jurisdiction to hear and resolve their disputes even if their contracts are restricted to domestic relationships.



# Lesson 1 - Essential Elements of a Contract

***Enforceable***: able to be imposed so that it must be complied with. "a binding and enforceable contract"

## Introduction

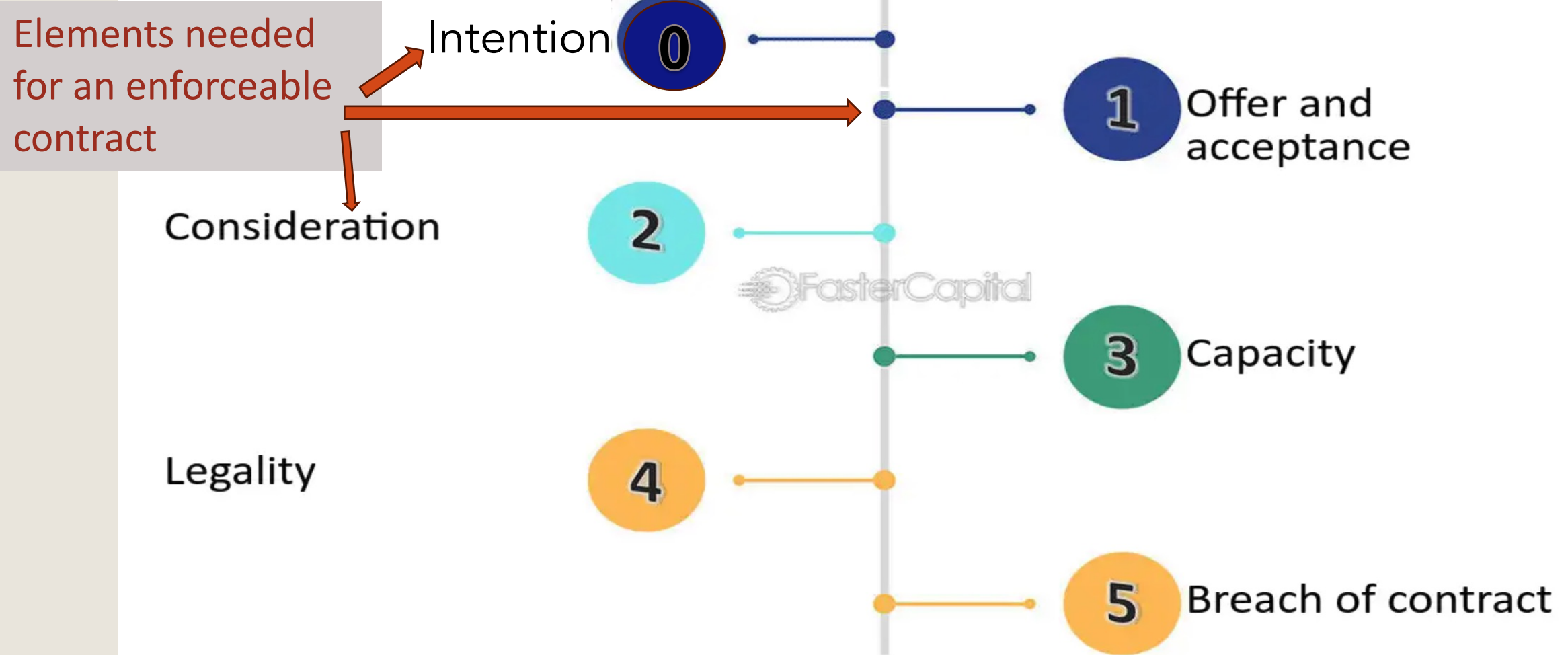
Under common law, to have an agreement there must be an **offer** and **acceptance**. Acceptance must be in the exact terms of an offer. In other words, the offer and acceptance must be a **mirror image**.

Agreements may be either in writing or oral. There are some types of contracts that must be in writing to be enforceable (for example contracts dealing with real property).

Agreements may be unilateral or bilateral. A **unilateral agreement** is one where a party promises to do or not do an act, but the other party does not make a promise in return. A **bilateral agreement** means that one promise by one party is exchanged for another promise by the other party to the agreement.

Having an agreement in writing does not mean the contract is enforceable *per se*. To be enforceable the agreement needs to be formed and contain four essential elements. The elements needed for an enforceable contract are an intention to create a legal relationship, an offer, acceptance, and consideration.

# Understanding Contract Law



Understanding Contract Law - Contract law: Contract Law and Common Law: A Symbiotic Relationship

# Intention to create legal relationships

The intention to create **legal relationships** is judged objectively. Domestic or social agreements are presumed not to be intended to have legal consequences. An invitation to my house for dinner is not intended to create a legal obligation. On the other hand, a business which caters for weddings does. Any breach by the catering company will have legal consequences.

## Offer

An **offer** needs to be expressed as a definite promise. This makes it different from an invitation to treat. An **invitation to treat** can be defined as an invitation for the other party to make you an offer.

A party who makes an offer is called the **offeror**. The party to whom the offer is made is the **offeree**.

If the offeree changes the original offer, this is a **counter-offer**. The offeree now becomes the offeror of a new offer. The counter-offer extinguishes the original offer which cannot be revived.

Knowing how to ask for more information on the original offer without making a counter-offer is an essential skill all negotiators need. Generally, a request for information will not be counter-offer.

## WHAT IF...

... I go to the Chanel shop and pick up a Chanel suit which is incorrectly priced at £500 instead of £5,000, can I insist on paying only £500 for the suit?

**Invitation to treat** An invitation to treat is not an offer but rather an invitation to another party to start negotiations. There are four types of invitations to treat, such as auctions, public tenders, a display of goods on shelves, or in clothes stores and advertisements.

**Revocation or lapse of offers** For **unilateral contracts**, the offeror can revoke the offer any time before the offeree starts to perform. In **bilateral contracts**, the offeror may revoke the offer prior to acceptance. The decision to revoke an offer must be communicated to the offeree.

# Acceptance

A party accepting an offer must communicate their acceptance to the offeror. **Acceptance** is an unequivocal statement saying that a party agrees to all the terms of the latest offer on the table.

Common law has developed special rules about acceptance and when it takes place. Sometimes it operates when a party receives notice of acceptance. Other circumstances, acceptance may occur when a party posts the acceptance. This is known as the **postal acceptance rule.**

The parties may stipulate other methods for acceptance, which override the postal acceptance rule. For example, using telex, electronic messaging and telephone may mean that acceptance takes place on receipt.

Even if the parties agree to the terms of their contract, the contract may be **unenforceable** if the terms are too uncertain. We say the contract is **void for uncertainty.**

## Consideration

**Consideration** is usually expressed in monetary terms, such as price but it can also be an exchange of services and/or goods. It involves a bargain. We do not need consideration if we are making a gift, a gratuitous promise, or a donation. We could also use a **deed** to dispose of the gift or make the promise or give the donation.

Consideration is a difficult concept for civil lawyers. It can be defined as an act or a promise given in exchange for the other promise in the agreement.

# Other important matters

**Capacity** For a contract to be enforceable, both parties must have **capacity** to enter into the contract. Categories of people who cannot enter into a contract include minors, people suffering from mental incapacity and people under the influence (drugs or alcohol) at the time of execution.

**Illegal contracts and against public policy** Under English law, there is a principle of **freedom to contract**. This means that parties are free to stipulate contracts on terms without restrictions agreed between them. However, the Courts do recognise some types of contracts which will be unenforceable because they involve doing something against the law or public policy. For example, any contract which involves the commission of a crime, tort or fraud, bribing public servants, contravening laws, defrauding the tax office, imposing restraints of trade or cartel behaviour and interfering with the administration of justice, will be unenforceable.

## Setting a contract aside

**Mistake** An agreement may also be set aside by the Court or declared void if one of the parties entered into the agreement by mistake. A contract may be void ab initio, meaning that the contract was never entered into. Alternatively, mistakes about attributes or quality of the goods or services may make the agreement voidable. Where a document has been signed by mistake and is fundamentally different in nature from what the parties believed they were signing they may ask the Court for **a rectification order**. This is called a non est factum plea.

**Misrepresentation** If a party is induced to enter into a contract by a false statement of fact, they may have a remedy for actionable misrepresentation. The party who is induced by false misrepresentation is the **misrepresentee**. A misrepresentation makes the contract voidable. The misrepresentee may set aside or rescind the contract and claim damages. Where the misrepresentee delays, waives or approves the conduct of the **misrepresenter**, they may lose the right to seek damages. Misrepresentation may be fraudulent, negligent or innocent. Different types of misrepresentation may lead to different types of remedies being available to the innocent party.

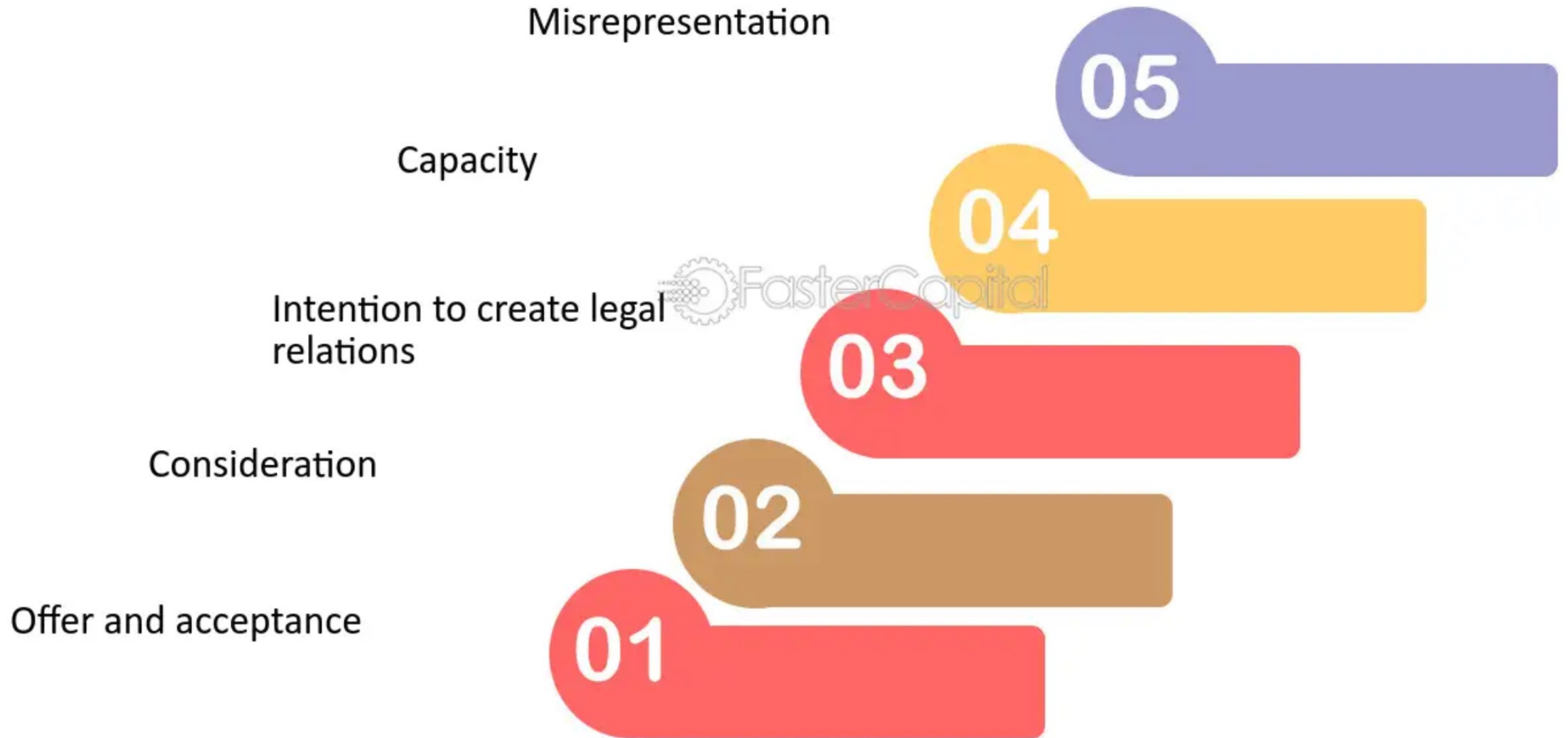
**Undue Influence** A party entering into a contract because of **undue influence** may have the contract set aside. Undue influence results from a relationship between parties where one party is in a position to put pressure or influence the other. A common type of relationship where there may be undue influence may be between husband and wife. Undue influence is an equitable doctrine with links to duress.

**Duress** Duress is a common law concept. Courts will not enforce promises extracted under pressure, threat or coercion. **Coercion** means that the promise was not given freely. Duress can be personal such as threats to a person, threats to property, or economic threats where financial interests are at risk. Promises given under duress are voidable and have no legal efficacy.

**Additional terms** **Additional terms** may be implied into contracts. In the UK, contracts for the sale of goods are governed by the Sale of Goods Act. In the US, contracts for the sale of goods are governed by the Uniform Commercial Code (UCC).

**Duress** /dju' rɛs/ = threats, violence, constraints, or other action used to coerce someone into doing something against their will or better judgement.

# Common Law Principles in Contract Law



## WHAT IF...

... I go to the Chanel shop and pick up a Chanel suit which is incorrectly priced at £500 instead of £5,000, can I insist on paying only £500 for the suit?

YES, YOU CAN!

1. **Mistakes** about attributes or quality of the goods or services may make the agreement voidable.
2. **Misrepresentation** or false statement of fact in entering a contract may make the contract voidable.

## CAN YOU REMEMBER?

What are the four essential elements for a valid contract?

- Intention
- Offer
- Acceptance
- Consideration

What is an invitation to treat?

An invitation to treat is not an offer but rather an invitation to another party to start negotiations. There are four types of invitations to treat, such as *auctions*, *public tenders*, a *display of goods on shelves*, or in *clothes stores* and *advertisements*.

## What are the essential elements of a contract?

- 1 — Offer and counter-offer.
- 2 — Warrantee and limitation of liability.
- 3 ~~X~~ — Intention, offer, acceptance and consideration.
- 4 — It is in writing and signed by both parties.

### DID YOU KNOW?



Under English common law, price is not an essential element in a contract. Where the parties fail to insert a price in their contract, the Courts will imply a reasonable price or a reasonable value for the performance. This is called *quantum meruit*.

***Quantum meruit*** = a reasonable sum of money to be paid for services rendered or work done when the amount due is not stipulated in a legally enforceable contract.

## PRONUNCIATION TIP

Remember that for the word **performance** /pə'fɔ:məns/ and **perform** /pə'fɔ:m/, the stress is on the second syllable.

## UNIT 2

### Lesson 1 Essential Elements of a Contract!

Exercise 1 AUDIO 2.0.1





## UNIT 2

### Lesson 1 Essential Elements of a Contract

Exercise 6 AUDIO 2.0.2


[Read the transcript](#)



## LESSON 1

### Exercise 6 AUDIO 2.0.2

A deed is a contract under seal and it is a valid and enforceable agreement even though it is not supported by consideration. A deed is often used to make gifts, wills and dispose of assets under trust instruments. Before 31 July 1990, all deeds needed to be sealed in order to be considered validly executed. Hence the phrase - signed, sealed and delivered! With the passing of the Law of Property (Miscellaneous Provisions) Act 1989, this requirement has now been abolished. A deed today simply requires the signature of the maker in the presence of a witness. Alternatively, it may be signed at the direction of the maker in the presence of two witnesses.

6.  **2.0.2** Listen to the audio and complete the text with the missing words.

A deed is a contract under seal and it is a **1.....valid.....** and enforceable agreement even though it is not supported by consideration. A deed is often used to make gifts, wills and dispose of assets under trust instruments. Before 31 **2.....July.....** 1990, all deeds needed to be sealed in order to be considered validly executed. Hence the phrase – signed, sealed and delivered! With the **3.....passing.....** of the Law of Property (Miscellaneous Provisions) Act 1989, this requirement has now been abolished. A deed **4.....today.....** simply requires the signature of the maker in the presence of a witness. Alternatively, it may be signed at the **5.....direction.....** of the maker in the presence of two witnesses.



## LESSON 1 Essential Elements of a Contract

**Complete the text by dragging down the missing words.**

Usually a contract is in the form of a formal written document, but the form of communication used to create an  contract is technically irrelevant as long as there are there are the prerequisites of intention, offer, acceptance and consideration. Contracts can be created in phone and Skype calls, face-to-face , emails, text messages and telegrams. Not only do contracts not have to be written, they do not even have to be spoken. Contracts are known to have been  with Morse code and flag semaphore and even with just a nod of the head. However, statute law can make provisions for the type of contact required, which is usually that the  is in written form and that it is signed by one or both of the parties. For example, transfers of land have to be in  and signed by both parties, guarantees must be signed by the guarantor and assignments of exclusive licences and  property must be signed by the owner.

agreement

conversations

writing

created

enforceable

intellectual

Please put an answer in each box.

## Complete the text by dragging down the missing words.

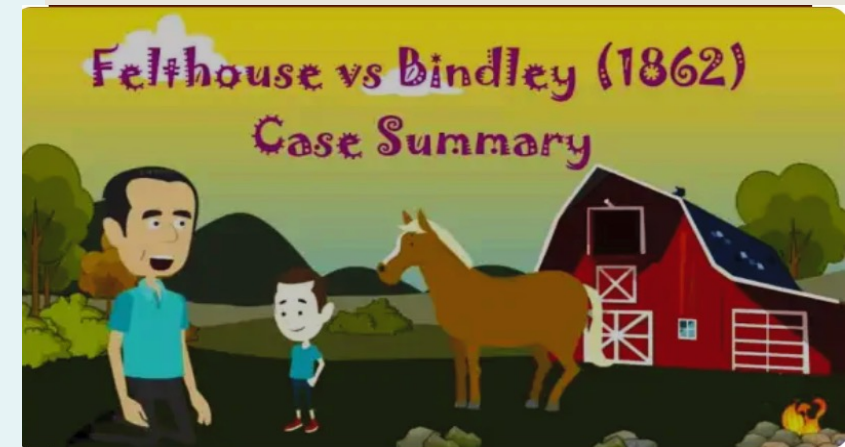
Usually a contract is in the form of a formal written document, but the form of communication used to create an **enforceable** ✓ contract is technically irrelevant as long as there are the prerequisites of intention, offer, acceptance and consideration. Contracts can be created in phone and Skype calls, face-to-face **conversations** ✓, emails, text messages and telegrams. Not only do contracts not have to be written, they do not even have to be spoken. Contracts are known to have been **created** ✓ with Morse code and flag semaphore and even with just a nod of the head. However, statute law can make provisions for the type of contact required, which is usually that the **agreement** ✓ is in written form and that it is signed by one or both of the parties. For example, transfers of land have to be in **writing** ✓ and signed by both parties, guarantees must be signed by the guarantor and assignments of exclusive licences and **intellectual** ✓ property must be signed by the owner.

Read the text and answer YES or NO to the following questions.

### Felthouse v Bindley [1862] EWHC CP J35

This is a case about whether silence, or a failure to reject an offer, can be considered acceptance. Paul Felthouse, who was the Complainant, talked with his nephew, John Felthouse about purchasing the nephew's horse. He then wrote him a letter saying that if he didn't hear back from his nephew he would consider it acceptance of the offer. The nephew did not reply to the letter though he did have intention to sell his uncle the horse, and he told the Defendant Mr Bindley not to sell the horse at the auctions he ran. However, the horse was mistakenly sold to someone else. Paul Felthouse sued Mr Bindley in the tort of conversion and needed to show that he had a valid contract with his nephew so that the horse was his property. Bindley's Defence said that there was no valid contract as Felthouse's nephew had not responded to his offer. The Court held that there was no contract between Felthouse and his nephew because though there had been an offer and intention, there had been no acceptance of the offer as silence cannot amount to an acceptance.

1. Was Paul Felthouse John Felthouse's nephew?
2. Did John Felthouse respond to Paul Felthouse's letter?
3. Did John Felthouse intend to sell his horse to Paul Felthouse?
4. Was Mr Bindley the Defendant in the case?
5. Was there a valid contract between Paul and John Felthouse?
6. Can silence be considered a form of acceptance?



1. Was Paul Felthouse John Felthouse's nephew?  ✓
2. Did John Felthouse respond to Paul Felthouse's letter?  ✓
3. Did John Felthouse intend to sell his horse to Paul Felthouse?  ✓
4. Was Mr Bindley the Defendant in the case?  ✓
5. Was there a valid contract between Paul and John Felthouse?  ✓
6. Can silence be considered a form of acceptance?  ✓

Check

# Felthouse v Bindley

TORT OF  
CONVERSION

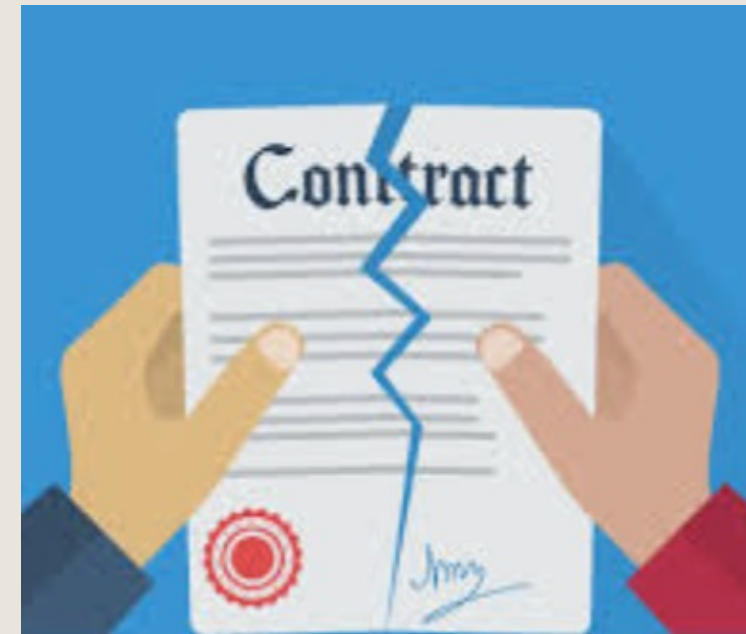
100 CASES



**1. Read the text and complete it with the missing words from the box. There is an extra word.**

*avoided • effect • minors • public • totally*

A contract may be prohibited by the operation of law, by statute or on the grounds of **1**..... policy. An illegal contract will be considered **2**..... void and neither party will be able to recover any money paid or property transferred under it. A void contract has no legal **3**..... A voidable contract is valid but may be set aside by the Court. Contracts arising out of misrepresentation, mistake, duress or non-disclosure are voidable. Contracts entered into by **4**..... are also voidable as they do not have legal capacity.



**1. Read the text and complete it with the missing words from the box. There is an extra word.**

*avoided • effect • minors • public • totally*

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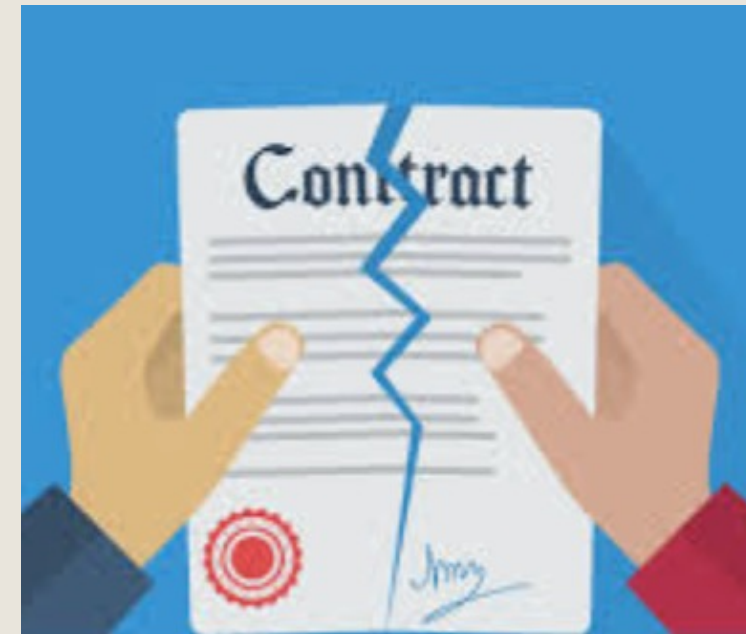
An illegal contract will be considered **2.....totally.....** void and neither party will be able to recover any money

paid or property transferred under it. A void contract has no legal **3.....effect.....** A voidable contract is valid

but may be set aside by the Court. Contracts arising out of misrepresentation, mistake, duress or non-disclosure

are voidable. Contracts entered into by **4.....minors.....**

are also voidable as they do not have legal capacity.



**2. Read the following statements (1-5) and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

1 To have an agreement under common law there must be offer or acceptance.  T  F

.....

2 Contracts dealing with real property must be in writing.  T  F

.....

3 A mortgage is considered to be an example of a contract dealing with real property.  T  F

.....

4 When there is an exchange of promises, it is a unilateral agreement.  T  F

.....

5 If an agreement is in writing, it is enforceable.  T  F

.....



**2. Read the following statements (1-5) and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

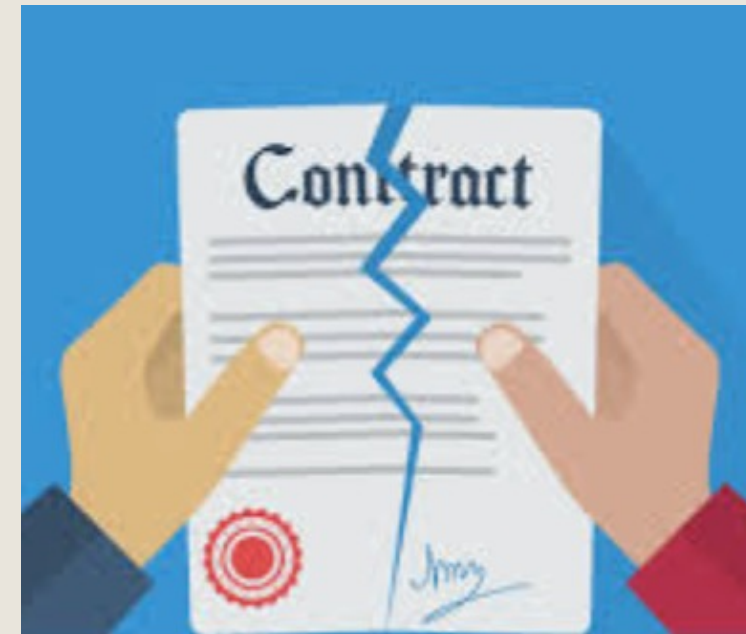
1 To have an agreement under common law there must be offer or acceptance.  X  F

2 Contracts dealing with real property must be in writing.  X  F

3 A mortgage is considered to be an example of a contract dealing with real property.  X  F

4 When there is an exchange of promises, it is a unilateral agreement.  T  X

5 If an agreement is in writing, it is enforceable.  T  X



# Lesson 2 - The structure and parts of a contract

## Introduction



A written or oral contract will contain **terms** and **conditions**. Terms and conditions are promises which both parties agree to be bound by. Terms and conditions may be expressed or implied. **Expressed terms** means that the parties reduce the terms and conditions to writing or expressly state them. Parliamentary statutes and the Courts can also introduce **implied terms** and conditions to agreements to give them validity.

# Parts of a contract

## Preliminary

This section contains clauses containing the title or heading of the contract, names of the parties, commencement date, the recitals, definitions and interpretation of the contract.

## Operative

This section is the main body of the contract. It contains the operative clauses or provisions, such as conditions precedent if any, agreements, representations, warranties, indemnity clauses, exemption of liability and limitation of liability clauses.

## Boilerplate and end parts

The final section of the contract includes a set of standard clauses known as boilerplate clauses, execution clauses, signatures and any schedules or annexures mentioned in the body of the contract.

## Preliminary section

**Recitals** can be found at the beginning or at the end of the contract. Recitals are used to put the contract into context and explain why the parties entered into or stipulated the contract. Recitals also known as the preamble or the 'whereas' clauses. Recitals need to be drafted with care and diligence to avoid ambiguity and contradiction with the operative clauses.

**Definition clauses** are used to give terms used in the contract an agreed meaning as adopted by the parties to the contract. All definitions should be clear and unambiguous. Once defined, that term will appear with a capital letter in the body of the contract. This signals to the reader that the word now carries a designated meaning in accordance with the definition in this section of the contract.

**Interpretation clauses** provide guidance on the interpretation and construction of the contract. Examples are headings used throughout the contract that are mere aids and do not form part of the contract and *"words denoting the singular include the plural meaning and viceversa"*.

**Conditions precedent** are conditions that need to be satisfied before the agreement comes into effect and can include the payment of a deposit, obtaining an import licence or arranging for a letter of credit.

**Agreement** defines the rights and obligations of each party to the agreement. In an agreement to sell, this is as simple as saying: *"The seller agrees to sell and the buyer agrees to buy the product or service offered for sale"*.

**Representations** are statements covering facts and legal matters which one party asks the other party to make. These are legally binding and therefore legal consequences will follow if the representations are later found to be untrue or inaccurate. For example, the representation that using a certain face cream will eliminate wrinkles.

**Warranties** are promises made by the parties that certain statements or facts contained in the agreement are true. The importance of a warranty depends on the type of agreement executed by the parties. For example, a warranty about turnover and the profitability of a business contained in an agreement to sell that business would be of great importance to the buyer. Generally, where warranties are breached, the innocent party is entitled to remedies such as damages, replacement or repair in the case of goods and services. A breach of warranty does not normally allow the innocent party to terminate the contract.

**Indemnities** are not warranties. Indemnities are used to indemnify (compensate) a party if they incur a loss when a particular situation or event arises. Common types of indemnity clauses often deal with the infringement of intellectual property rights.

**Exclusion or Exemption of Liability Clauses** Exclusion of liability clauses, also known as exemption of liability clauses, are common in commercial agreements. An **exclusion** or **exemption clause** aims to exclude liability and/or remedies that otherwise would be available to the non-breaching party. For example, a manufacturer excluding liability for injury in the case of incorrect use of their product.

**Limitation of liability clauses** As an alternative to excluding liability, the parties may agree to limit the liability in the event of a breach. These clauses will also be scrutinized by the Courts to ensure that they are not contrary to any minimum liability standards set out in any legislation. Usually, a clause limiting liability to the value of the goods or service is acceptable.

## Boilerplate and end parts

**Prevail clauses** operate when a dispute between the parties breaks out and specifies which party's terms are to prevail (within the operative terms).

**Entire or whole agreement clauses** are aimed at keeping the agreement between the parties within the four corners of the contractual document.

**No authority clauses** control any amendments made to the original agreement by restricting those authorized to make amendments. Authorized persons (e.g. directors) may be nominated to make amendments by using the specified methods mentioned in the contract. This normally requires all amendments to be in writing.

**Non-Waiver clauses** are used to prevent a waiver. When a party breaches a clause in the contract, the innocent party may decide to waive its rights, either to seek damages or termination of the agreement, in that one case. To avoid the breaching party from using this as an excuse in subsequent cases, the parties insert a non-waiver clause that allows the non-breaching party to take action if a subsequent breach occurs.

**Insolvency clauses** are activated when a party becomes insolvent or bankrupt and are often linked to a retention of title clause. Insolvency is also one of the grounds for terminating a contract.

## Boilerplate and end parts

**Choice of Law and jurisdiction clauses** specify which law will be applied to the contract if there is a dispute and which Court is vested with jurisdiction. In contracts involving an English party, the law of England and Wales will apply and the jurisdiction of the English Courts will be the appropriate forum for the dispute.

**Service of Notice** specifies where notice is to be served, what method is to be used and the time frame for serving notices. Traditional methods of delivering and posting notices have now become obsolete and have been replaced with facsimile transmissions and emails.

**Impossibility, Force Majeure, Frustration, Acts of God** Parties may find it impossible to perform their contractual obligations because the subject matter no longer exists or circumstances beyond their control make performance impossible. When there is a force majeure, the parties are mutually released from their obligations and are not required to perform the contract.

## CAN YOU REMEMBER?

What are the three main sections of a contract?

What does *force majeure* mean?

What critical factors should be considered before signing a contract?

## WHAT IF...

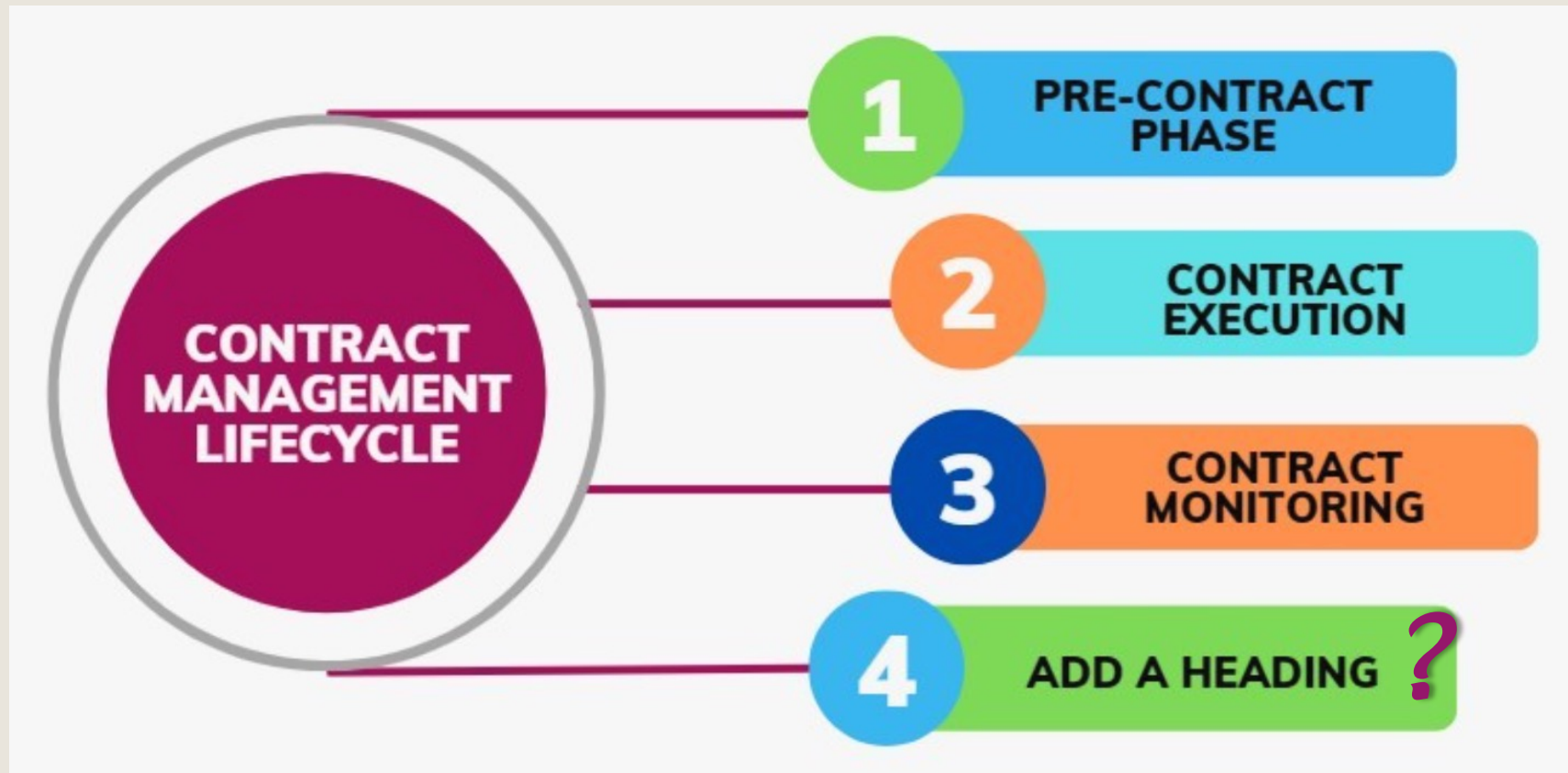
... We have a new outbreak of COVID-19 in the world and the World Health Organization declares a second pandemic. Could this be a *force majeure*? Why or why not?

# Critical Factors To Consider Before **SIGNING A CONTRACT**

- The Details of the Trading Company
- The Law of the Land
- The Terms during a Disaster
- The Terms on Settling a Conflict
- Penalty for Non-Compliance
- Risk Mitigation



# Contract Management



1. The text below is a typical termination clause from a contract. Read the text and complete it with the prepositions from the box.

by • from • in • of • of • to • to • within

## 7. Termination Clause

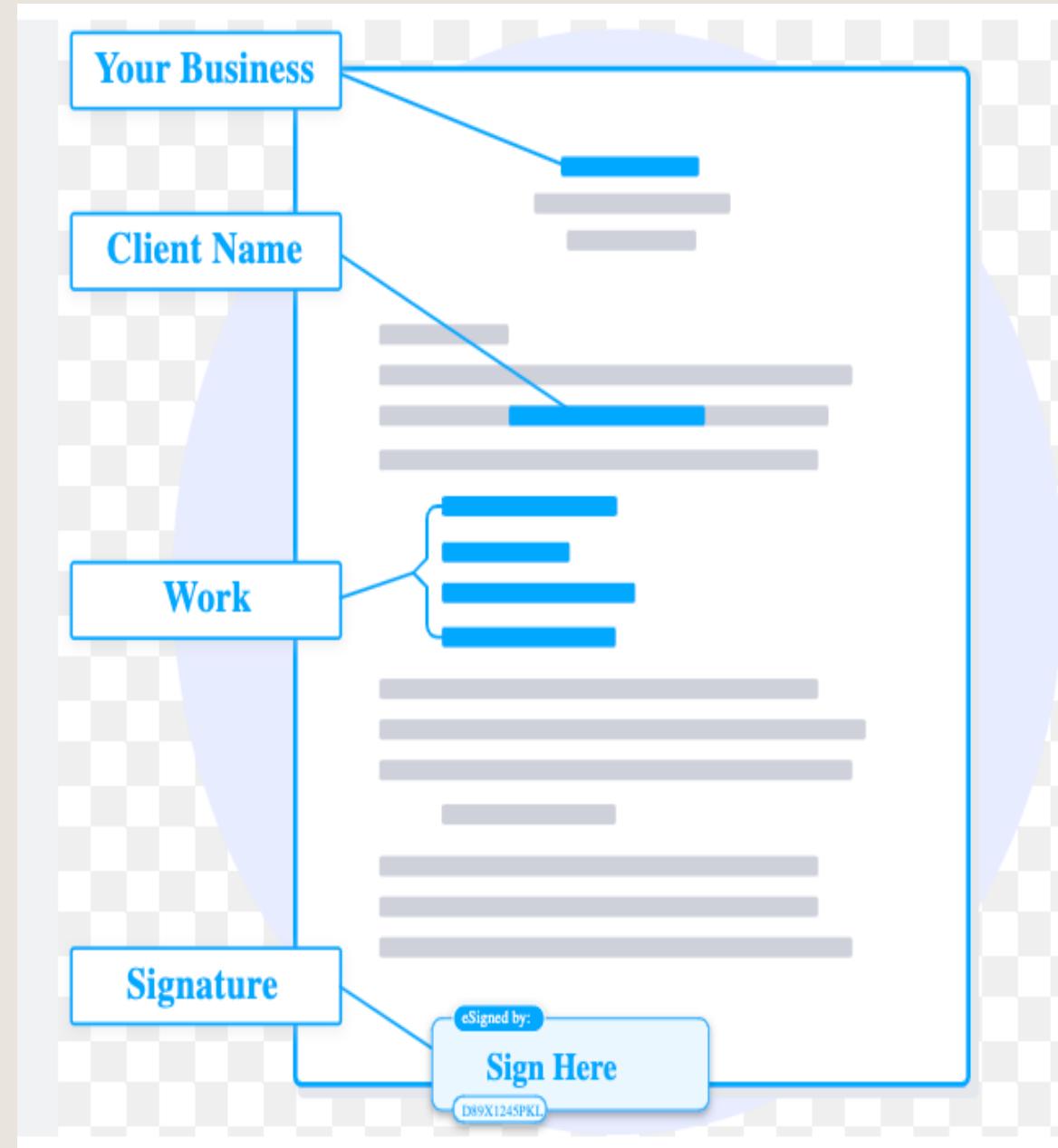
7.1 Either party may terminate this Agreement prior

1..... completion of the Work, 2.....  
serving written notice 3..... the termination if:

- a. the other Party commits a material breach  
of its obligations and
- b. the breach is not remedied 4..... 30 days  
of receipt 5..... written notice of the breach  
requesting its remedy.

1.1 The failure of a Party to enforce any provision  
of the Contract shall not constitute a waiver nor affect  
their right to enforce such and every other provision.

8. Each party shall keep the other Party informed  
6..... a reasonable and timely manner in matters  
and required mutual decisions regarding the Work.  
Each Party shall respond 7..... communications  
8..... the other Party regarding the Work.



1. The text below is a typical termination clause from a contract. Read the text and complete it with the prepositions from the box.

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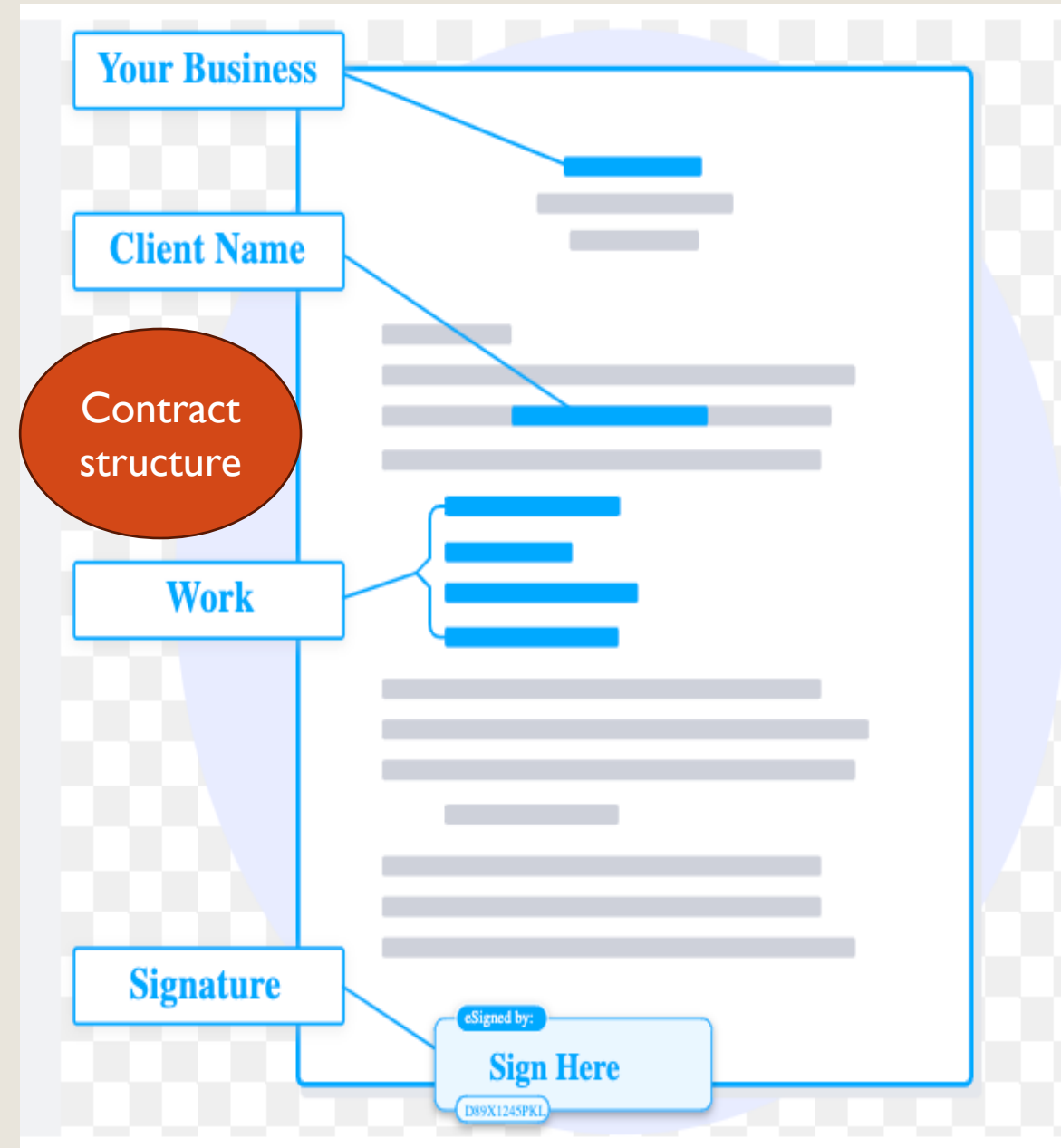
## 7. Termination Clause

7.1 Either party may terminate this Agreement prior 1..... **to** ..... completion of the Work, 2..... **by** ..... serving written notice 3..... **of** ..... the termination if:

- a. the other Party commits a material breach of its obligations and
- b. the breach is not remedied 4..... **within** ..... 30 days of receipt 5..... **of** ..... written notice of the breach requesting its remedy.

1.1 The failure of a Party to enforce any provision of the Contract shall not constitute a waiver nor affect their right to enforce such and every other provision.

8. Each party shall keep the other Party informed 6..... **in** ..... a reasonable and timely manner in matters and required mutual decisions regarding the Work. Each Party shall respond 7..... **to** ..... communications 8..... **from** ..... the other Party regarding the Work.



## UNIT 2

### Lesson 2 The structure and parts of a contract


Exercise 6 AUDIO 2.0.3

## LESSON 2

Exercise 6 AUDIO 2.0.3

In some contracts, the parties stipulate the applicable law that will govern the transaction or agreement. Many countries are signatories of the international Rome Convention 1980, which came into force from 1 April 1991. This Convention provides that the parties' choice of law will be respected. If the agreement is silent and the parties have not chosen a law, the Court will apply the law of the country which has the closest connection with the contract. The parties may also decide to select the court which will exercise exclusive jurisdiction over any dispute arising out of the contract. This is called a Court of Competent Jurisdiction clause in some agreements. Whether this clause is valid to exclude the Court's jurisdiction will need to be resolved if the parties disagree.



**6.**  **2.0.3 Listen to the audio and complete the text with the missing words.**

In some contracts, the parties stipulate the applicable **1**..... that will govern the transaction or agreement. Many countries are signatories of the international Rome Convention 1980, which came in **2**..... from 1 April, 1991. This Convention provides that the parties' choice of law will be respected. If the agreement is silent and the parties have not **3**..... a law, the Court will apply the law of the country which has the closest connection with the contract. The parties may also decide to select the **4**....., which will exercise exclusive jurisdiction over any dispute arising out of the contract. This is called a Court of Competent Jurisdiction **5**..... in some agreements. Whether this clause is valid to exclude the Court's jurisdiction will need to be **6**..... if the parties disagree.



**UNIT 2**  
**Lesson 2 The structure and parts of a contract**  
Exercise 6 AUDIO 2.0.3

**2. Match the two parts of the sentences (1-6) and (A-F) to make true sentences.**

- 1 Terms and conditions are
  - 2 Expressed terms of a contract are
  - 3 Implied terms of a contract have
  - 4 The preliminary section of a contract contains
  - 5 The operative section of a contract is
  - 6 The boilerplate and end part contain
- A not been expressed but are understood.
  - B boilerplate clauses, schedules and annexures.
  - C promises which both parties agree to be bound by.
  - D the title, names of parties, term, recitals, and definitions.
  - E in writing or expressly stated.
  - F the main clauses and provisions.

1  2  3  4  5  6

**2. Match the two parts of the sentences (1-6) and (A-F) to make true sentences.**

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  - D the title, names of parties, term, recitals, and definitions.
  - E in writing or expressly stated.
  - F the main clauses and provisions.

1  2  3  4  5  6

**3. Read the following statements and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

1 The recital gives a general explanation of what the contract is about.  T  F

.....

2 Once a term is defined, it no longer appears in the contract.  T  F

.....

3 The interpretation clause forms a part of the contract.  T  F

.....

**3. Read the following statements and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

1 The recital gives a general explanation of what the contract is about.  T  F

.....

2 Once a term is defined, it no longer appears in the contract.  T  F

.....

3 The interpretation clause forms a part of the contract.  T  F

.....

**4. Circle the correct word(s) in each of the following sentences.**

- 1 A breach of warranty means a party is entitled to terminate the contract / damages.
- 2 Indemnities are compensation / punishment for a party who incurs a loss in a particular situation.
- 3 An exclusion of liability clause limits / removes the liability for a normally actionable breach.
- 4 The clauses which aim to exclude agreements outside the contract are prevail / entire agreement.
- 5 No authority clauses restrict / prohibit amendments being made to a contract.
- 6 Non-waiver clauses mean that if a party waives its rights to seek damages once, they retain / lose them if the breach occurs again.

**4. Circle the correct word(s) in each of the following sentences.**

- 1 A breach of warranty means a party is entitled to terminate the contract / damages.
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- 5 No authority clauses restrict / prohibit amendments being made to a contract.
- 6 Non-waiver clauses mean that if a party waives its rights to seek damages once, they retain / lose them if the breach occurs again.

**5. Answer the following questions (1-6) using the space provided.**

1 When do insolvency clauses become operative?

.....

2 Which clauses decide the nationality of the court for resolving disputes?

.....

3 What communication format is a service of notice required to be in?

.....

4 What is the remedy for *force majeure*?

.....

5 Who has the right to sever or delete clauses in a contract that are illegal or invalid?

.....

6 Why are schedules and annexures used for contracts?

.....

**5. Answer the following questions (1-6) using the space provided.**

- 1 When do insolvency clauses become operative?  
When a party becomes insolvent or bankrupt.  
.....
- 2 Which clauses decide the nationality of the court for resolving disputes?  
Choice of law and jurisdiction clauses.  
.....
- 3 What communication format is a service of notice required to be in?  
It must be in writing.  
.....
- 4 What is the remedy for *force majeure*?  
Both parties are released from their obligations.  
.....
- 5 Who has the right to sever or delete clauses in a contract that are illegal or invalid?  
The Courts.  
.....
- 6 Why are schedules and annexures used for contracts?  
To reduce the length of the contract and for ease in reading.  
.....

# Lesson 4 - Breach of Contract

**Onus** /'əʊnəs/ = something that is one's duty or responsibility

**Prima facie** = upon initial examination

## Introduction

**Force majeure clause** = provision in a contract that frees both parties from obligation in the case of extraordinary events

A **term** or **clause** is a statement which contains a promise. **Contractual terms** give benefits or impose duties on the parties to the contract. Once the contract is signed, parties are expected to perform their obligations in accordance with the contractual terms and conditions.

If a term is broken or, as lawyers say, breached, the non-breaching party may claim remedies to compensate for damages or losses suffered as a consequence of the breach. However, a party may also be in breach of contract if their performance is "defective". **Defective performance** means that the party has failed to meet the required standard of performance or that performance is not up to the standard expected.

A party who fails to perform or refuses to perform an obligation under a contract without a lawful excuse will be prima facie in breach of the contract. The **onus** would be on the breaching party to see if they can find a lawful excuse in the *force majeure* clause. Events found in the *force majeure* clause are fires, failure of suppliers or subcontractors, strikes or other labour disputes that interfere with production, floods, earthquakes, tornadoes, political unrest, riots, and currency devaluation. Covid-19 has become an additional event of *force majeure*. Existing contracts will need to be amended to include it as one of the lawful excuses **releasing** a party from the contract.

This is an example of a current *force majeure* clause found in most contracts:

*"Neither party shall be liable for any failure to perform their obligations pursuant to this contract in the event that such failure is due to or results from flooding, earthquake, riot, civil unrest, war or other Acts of God, or any other cause beyond a party's reasonable control. This shall include any electronic or communications failure but excludes any failure due to any breach of duty of care or a party's financial position."*

A **repudiatory breach** happens when a party says that it will not perform its obligations under the contract. We also call a repudiatory breach an **anticipatory breach**. Where a party repudiates a contract, the non-breaching party has different options available to them. They may either terminate or affirm the contract. If they choose to terminate the contract, both parties will be released from any future obligations or further performance. The Contract has now ended. The non-breaching party still has the right to sue the breaching party for damages. If a party affirms the contract, this means that the non-breaching party chooses to continue with the contract and the contract remains **in force**.

**Fundamental breach** To be classified as a fundamental breach the injured party needs to show that they have been deprived of a substantial part of the benefit they hoped to obtain under the contract.

## Remedies

When there is a breach of contract, the non-breaching party may be entitled to either damages under common law and/or equitable remedies.

### Common Law Damages

Under common law, a non-breaching party will be entitled to damages. The right to have an award of damages as compensation is a right which the law recognizes automatically. Note that although damages are available **as of right**, the quantum or the amount of damages, will be determined by a judge. The non-breaching party will need to prove its damages.

Full compensatory damages are known as *restitutio in integrum*. By compensating the non-breaching party, the judges try to protect the expectation or perceived advantage the parties hoped to obtain by entering into the contract in the first place.

If a party cannot prove their damages, the court may award nominal damages. This is a token amount and can be as low as £10. Courts wish to discourage parties from bringing legal action to simply vindicate their rights and may order the **claimant** to pay the **defendant's costs** of the legal proceedings. This can turn out to be a very expensive outcome.

## Options available to the non-breaching party for a minor breach

Where there is a breach of a non-essential term or a minor breach, the non-breaching party may waive their rights and continue with the contract. Remember, a carefully drafted non-waiver clause will allow the non-breaching party to *retain* the right to seek remedies for any future breaches. When exercising the non-waiver clause, a party needs to avoid any operation of the principle of **promissory estoppel**. **Estoppel** prevents a party from denying the truth of a statement made or denying the existence of facts. An example might be if someone offers free accommodation in exchange for babysitting children. If this promise is then denied, the remedy for the innocent party is promissory estoppel. There are many varieties of estoppel but promissory estoppel is an equitable estoppel. It applies when one party to a contract promises the other that they will not enforce their rights under the contract.

## Statutory Rights

Consumers have statutory rights under the **UK Consumer Rights Act 2015**. The statutory rights enjoyed by consumers may, in certain circumstances, give a wider range of remedies than under common law principles. These rights may include the right to reject, have repaired, have replaced, have a price reduction, or have a repeat performance if the goods or services are found to be defective.

**Damage** We need to be careful when we talk about damage not to confuse it with the word “damages”. Damage is the loss or harm suffered whereas damages is the amount awarded to compensate a party which has suffered damage. For example, if someone is the victim of **defamation**, they will have suffered damage to their reputation, and they will receive damages from the Court.

**Liquidated damages** are a specified amount of damages parties may decide to insert in their contracts. This sum will be payable to the non-breaching party if a breach occurs. Liquidated damages are inserted into the contract when the parties are negotiating and should reflect an agreed estimate of losses. They are recoverable provided they are a *fair and reasonable* estimate of probable losses. If they are disproportionate, the Courts may consider them to be **penalty clauses** and declare the clause **unenforceable** or **void**. We often find liquidated damages clauses in many construction and engineering contracts.

### **Equitable remedies**

Other types of remedies may be available to the non-breaching party which come from the equitable jurisdiction of the Court. **Equitable remedies** are awarded where damages are inadequate or inappropriate.

Equitable remedies include **specific performance** and **injunctions**. For example, if someone agrees to sell you a painting such as a Picasso, if they change their mind and refuse to sell it, the Courts can force the sale with an order for specific performance. When asking for an equitable remedy, claimants must remember that judges will exercise their **discretion** and will take several factors into account. This will also include the conduct of the parties. So unlike common law remedies, equity looks to create equality between the breaching and non-breaching party.

### Other important concepts in the law of contracts

**Mitigation** Parties to a contract have a duty to reduce their loss or injury if there is a breach. This is called mitigating the loss. An award of damages may be reduced if there has been a failure to mitigate by the non-breaching party.

**Remoteness** Remoteness describes a situation where the damages or losses could not have been in the reasonable contemplation of the parties when they were negotiating the terms and conditions of the contract. A non-breaching party will not be able to recover losses if they are considered to be too remote.

**Contributory Negligence** A Court may apportion or reduce the damages awarded to take into account any negligence on the part of the claimant. This is called **contributory negligence**. A claimant is somebody who starts legal action in the Court.

What to do when things go wrong?

How to deal with a **breach of contract**?

- 1) Privat negotiation
- 2) Legalistic approach

## 1<sup>st</sup> step

Does the contract have clauses to deal with this particular breach?

## Questions:

1. Is the breach material or immaterial?
2. What remedies are available?
  - claim damages?
  - terminate the contract without penalty

Material breaches are called **conditions** (substantial failure under the contract)

Immaterial breaches are called **warranties** (failure to comply, minor/technical provisions of a contract)

## WHAT IF...

... a party acts too quickly and terminates a contract for a minor breach? What may the Court decide to do?

## CAN YOU REMEMBER?

What is the difference between damage and damages?

What are liquidated damages clauses?



## CASE STUDY: COULD THE FLU SEE YOU IN COURT?

## A COMMON LAW PRECEDENT-MAKING

### CASE IN THE LAW OF CONTRACTS

**Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1** is an important case in English contracts law. Carbolic Smoke Ball Company (Carbolic) – the manufacturer of a flu remedy – placed an advertisement in a newspaper claiming that its smoke ball would protect against influenza (flu). The smoke ball was a rubber sphere filled with carbolic acid (phenol). Vapour would be puffed into the nose through a connecting tube when the ball was squeezed. Carbolic's advertisement offered a reward of £100 to customers who caught the flu after using their smoke ball.

*"£100 reward will be paid by the Carbolic Smoke Ball Company to any person who contracts the increasing epidemic influenza [...] after having used the ball three times daily for two weeks. £1,000 is deposited with the Alliance Bank, Regent Street, showing our sincerity in the matter. During the last epidemic of influenza many thousand carbolic smoke balls were sold as preventives against the disease, and in no ascertained case was the disease contracted by those using the carbolic smoke ball."*

1

**CASE STUDY: COULD THE FLU SEE YOU IN COURT?** A COMMON LAW PRECEDENT-MAKING  
CASE IN THE LAW OF CONTRACTS



After seeing the advertisement, Mrs Carlill purchased one of the balls and used it three times daily for nearly two months. However, on 17 January 1892, she contracted the flu. She demanded the reward of £100 from Carbolic. Carbolic ignored her first letters sent by her husband, a solicitor. Following her third letter of demand, Carbolic wrote back denying that their product was defective and refused to pay.

Mrs Carlill brought a claim in Court. Her barrister argued that the advertisement constituted an offer and her reliance on it was a contract. Therefore, there was a breach of contract and Carbolic was liable for that breach. Carbolic, on the other hand, claimed that this was not a serious contract and was merely a sales gimmick (strategy).

## PIT STOP

**Answer the following questions related to the text you've just read.**

**1**

What disease was the carbolic smoke ball said to protect against?

**2**

Who was promised a reward of £100?

**3**

Why did Carbolic place £1,000 in a bank account?

**4**

What happened to Mrs Carlill after she bought and used the smoke ball?

**5**

How did Carbolic respond to Mrs Carlill's demands for the £100 reward?

**6**

What did Carbolic claim in Court?

## PIT STOP

Answer the following questions related to the text you've just read.

1

What disease was the carbolic smoke ball said to protect against?      Influenza/flu

2

Who was promised a reward of £100?      Customers who caught the flu after using the smoke ball.

3

Why did Carbolic place £1,000 in a bank account?      To show they were sincere about the promise.

4

What happened to Mrs Carlill after she bought and used the smoke ball?      She caught the flu.

5

How did Carbolic respond to Mrs Carlill's demands for the £100 reward?      They refused to pay.

6

What did Carbolic claim in Court?      Carbolic said the advertisement was not a serious contract, but a sales gimmick.



The case made its way to the Court of Appeal. The three judges of the Court held that there was a fully binding contract because:

- (1) the advertisement placed by Carbolic was not a *unilateral* offer to the world. Rather it was an **offer** restricted to those customers who bought the smoke ball because of the advertisement;
- (2) the customer **accepted** the offer when they followed the user instructions given by Carbolic;
- (3) the customers provided good **consideration** by purchasing or even merely using the smoke ball in that this benefited Carbolic through more sales;
- (4) Carbolic's claim that it had deposited £1,000 with Alliance Bank was a representation that it had an **intention** to be legally bound to the terms of its offer.

**Conclusion:** Mrs Carlill was entitled to receive her £100 reward. Carbolic had a contract with whoever accepted their offer even if Carbolic did not know them personally.

## PIT STOP

Match the elements of a contract (1-4) with features of *Carlill v Carbolic Smoke Ball Company* (A-D).

1 Intention      3 Acceptance

2 Offer          4 Consideration

**A**

The advertisement for the smoke ball placed by Carbolic

**B**

Mrs Carlill purchasing and using the product

**C**

The sum of £1,000 deposited with the bank by Carbolic

**D**

Mrs Carlill following the instructions for use

1 ..... 2 ..... 3 ..... 4 .....

## PIT STOP

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Mrs Carlill purchasing and using the product

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The sum of £1,000 deposited with the bank by Carbolic

**D**

Mrs Carlill following the instructions for use

1 **C**... 2 **A**... 3 **D**... 4 **B**...

**CASE STUDY: COULD THE FLU SEE YOU IN COURT?****A COMMON LAW PRECEDENT-MAKING****CASE IN THE LAW OF CONTRACTS****Why does this case matter?**

*Carlill v Carbolic Smoke Ball Company* made unilateral offers binding where the recipient of the offer follows the instructions of the offeror. Up until this case, offers were only usually made directly to one party in order to bind the offeror and offeree. Offers had to be made from one party to another not to the world at large. Previously, offers made without a target had been held to be too vague to constitute an offer. Now, when advertising a product or a service, a party needs to be careful about the promises they make. Even where they do not know the identity of the party that accepts their offer, they will be bound to honour promises made.

**Hoover Company**

Another case which had disastrous results was the Hoover Free Flights promotion in the 1990s. The British division of Hoover Company (Hoover) offered two complimentary free return flights to America to customers who purchased any Hoover product valued at more than £100. The promotion was aimed at trying to boost Hoover's declining sales. Hoover did not expect the promotion to be such a huge hit. They were flooded with new customers who bought Hoover products specifically to take advantage of their free flight offer. Hoover realised that this promotion was going to cost them millions and so cancelled the promotion and refused to give customers, who had already filled out their ticket request coupons, their tickets. The customers started protesting and legal action against Hoover followed.



**CASE STUDY: COULD THE FLU SEE YOU IN COURT?**  
**CASE IN THE LAW OF CONTRACTS**

**A COMMON LAW PRECEDENT-MAKING**

The Court held that Hoover was contractually bound to honour their advertisement. It cost Hoover many millions of dollars and Hoover had to sell the European branch of the business to its competitor, Candy. Hoover never recovered from this advertising disaster.

To avoid the Hoover outcome and overcome the precedent set by Carlill, advertising is now carefully worded. Offers are made conditional using the words *While stocks last* or Subject to Terms and Conditions or See in Store for Terms of This Offer. Conditional offers allow companies to control the financial consequences of their promotional discounts or complimentary gifts. Conditional offers are not unequivocal. The offeror of a conditional offer can legally impose limits such as "Until Stocks Last", "Offer expires on" or "One per customer" without breaching the contract.

**OVER TO YOU!**

What do you think of the outcomes of Carlill and Hoover? Did the Courts come to a fair and just conclusion? Why or why not?



## UNIT 2

### Lesson 4 Breach of Contract

Exercise 5 AUDIO 2.0.6

## LESSON 4

Exercise 5 AUDIO 2.0.6




The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a multinational treaty applicable to the sale of goods in international commerce. Many countries have ratified and implemented the CISG, but the United Kingdom has not. Unless expressly excluded by the contract, the CISG is incorporated by default into the domestic laws of ratifying countries with respect to a transaction in goods. There are several prerequisites that need to be satisfied before the CISG applies to the contract. For instance, there needs to be a sale of goods in commerce, across two different contracting states and the applicable law and the court of competent jurisdiction be in the country of one of the contracting parties.

## UNIT 2

### Lesson 4 Breach of Contract

#### Exercise 5 AUDIO 2.0.6



5.  **2.0.6** Listen to the audio and complete the text with the missing words.

before • contract • country • commerce •  
respect • states

The United Nations Convention on Contracts for the International Sale of Goods (CISG) is a multinational treaty applicable to the sale of goods in international **1**..... Many countries have ratified and implemented the CISG, but the United Kingdom has not. Unless expressly excluded by the **2**....., the CISG is incorporated by default into the domestic laws of ratifying countries with **3**..... to a transaction in goods. There are several prerequisites that need to be satisfied **4**..... the CISG applies to the contract. For instance, there needs to be a sale of goods in commerce, across two different contracting **5**..... and the applicable law and the court of competent jurisdiction be in the **6**..... of one of the contracting parties.



**1. Read the text and complete it with the missing words from the box. There is an extra word.**

clause • contract • damages • knew • party •  
profit • time

The United Nations Convention on Contracts for the International Sale of Goods covers damages.

**Article 74**

Damages for breach of contract by one **1**..... consist of a sum equal to the loss, including loss of **2**....., suffered by the other party as a consequence of the breach. Such **3**..... may not exceed the loss which the party in breach foresaw or ought to have foreseen at the **4**..... of the conclusion of the contract, in the light of the facts and matters of which he then **5**..... or ought to have known, as a possible consequence of the breach of **6**.....

1. Read the text and complete it with the missing words from the box. There is an extra word.

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Damages for breach of contract by one **1..... party.....** consist of a sum equal to the loss, including loss of **2..... profit.....**, suffered by the other party as a consequence of the breach. Such **3... damages...** may not exceed the loss which the party in breach foresaw or ought to have foreseen at the **4... time.....** of the conclusion of the contract, in the light of the facts and matters of which he then **5..... knew.....** or ought to have known, as a possible consequence of the breach of **6..... contract.....**

**2. Match the two parts of the sentences (1-7) and (A-G) to make true sentences.**

- 1 If a contract is breached the non-breaching party can
  - 2 If the required standard of performance has not been met
  - 3 Covid-19 has been added to
  - 4 If the contract is terminated due to a repudiatory breach,
  - 5 For fundamental breach to be found, the injured party
  - 6 A non-breaching party can waive their rights
  - 7 If a contractual promise is denied,
- A it is called defective performance.
  - B to terminate the contract for a minor breach.
  - C the innocent party can rely on estoppel and ask for damages
  - D claim compensation for damages or losses.
  - E the injured party can still sue for damages.
  - F must be deprived of a substantial part of the benefit of the contract.
  - G the list of *force majeure* events.

1  2  3  4  5  6  7

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- A it is called defective performance.  
B to terminate the contract for a minor breach.  
C the innocent party can rely on estoppel and ask for damages  
D claim compensation for damages or losses.  
E the injured party can still sue for damages.  
F must be deprived of a substantial part of the benefit of the contract.  
G the list of *force majeure* events.

1  D    2  A    3  G    4  E    5  F    6  B    7  C

**3. Read the following statements and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

- 1 The UK Consumer Rights Act offers more types of remedies than the common law..  T  F  
.....
- 2 The only remedy for breach of contract is damages.  T  F  
.....
- 3 *Restitutio in integrum* is a token amount called nominal damages awarded by a judge.  T  F  
.....
- 4 Damage is the amount awarded to compensate a party.  T  F  
.....

**3. Read the following statements and decide whether they are *True* (T) or *False* (F). Correct the false ones using the space provided.**

1 The UK Consumer Rights Act offers more types of remedies than the common law..  T  F

2 The only remedy for breach of contract is damages.  T  F

Also equitable remedies

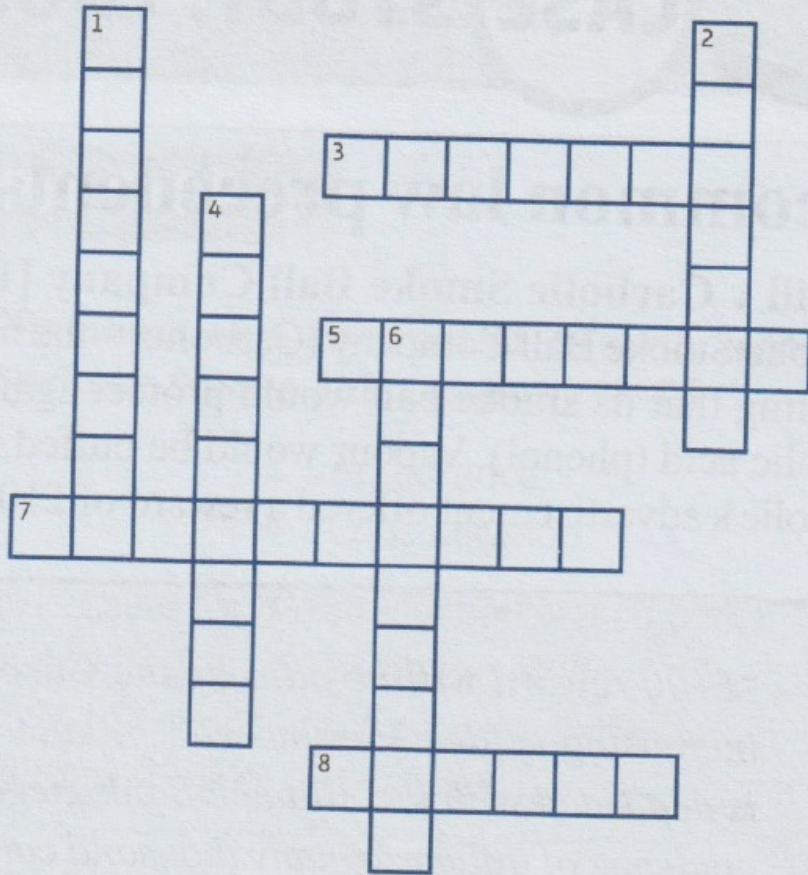
3 *Restitutio in integrum* is a token amount called nominal damages awarded by a judge.  T  F

It means full compensatory damages awarded by a judge.

4 Damage is the amount awarded to compensate a party.  T  F

Damages is the amount awarded, damage is the harm or loss suffered by a plaintiff.

## 4. Complete the crossword.

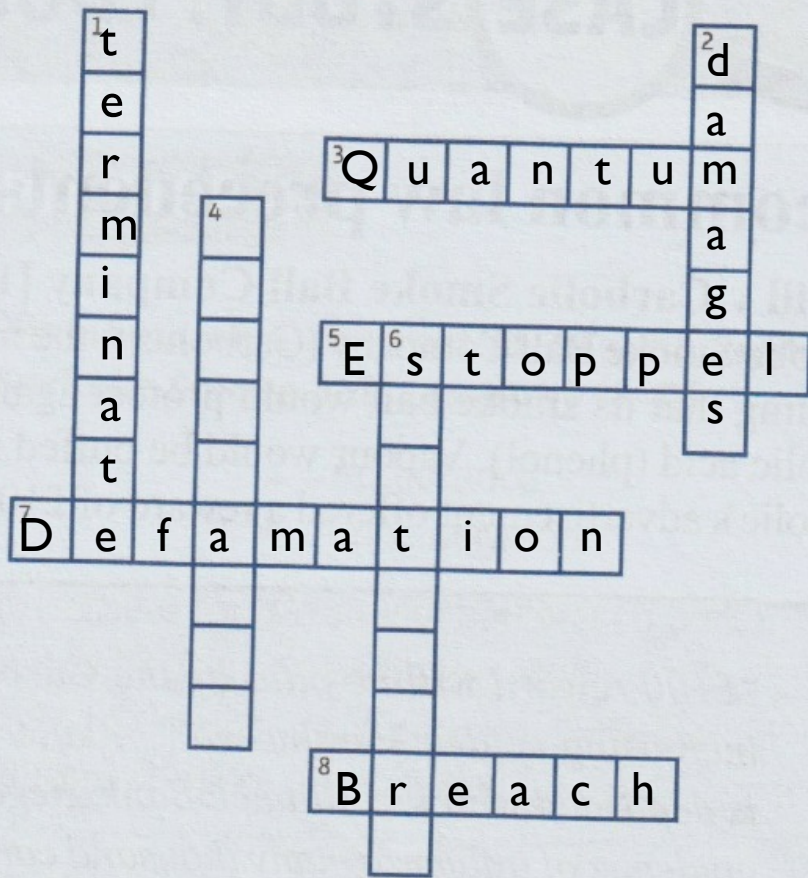
**ACROSS**

- 3 The monetary amount of damages.
- 5 A principal with prevents a party from denying the existence of facts.
- 7 When damage is caused to a person's reputation.
- 8 A term of a contract is broken.

**DOWN**

- 1 To end a contract before its term is complete.
- 2 Compensation for loss due to breach of contract.
- 4 A person who starts a legal action in Court.
- 6 A category of rights created by law or Act.

4. Complete the crossword.



**ACROSS**

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- 6 A category of rights created by law or Act.

## UNIT 2 – Lesson 4. Breach of Contract

Select the correct word(s) in each of the following sentences.

- 1 . Equitable remedies are injunctions and *damages* / *specific performance*.
- 2 . The judge will exercise their *rights* / *discretion* when determining equitable remedies.
- 3 . Under *common law* / *equitable* remedies, there is an attempt to create parity between the parties.
- 4 . Non-breaching parties are under some obligation to *underestimate* / *mitigate* their losses.
- 5 . Remoteness is when the damages are *found* / *not found* to be beyond the reasonable contemplation of the parties when writing the contract.
- 6 . Contributory negligence can be attributed to the *claimant* / *defendant*.

## UNIT 2 – Lesson 4. Breach of Contract

Select the correct word(s) in each of the following sentences.

- 1 . Equitable remedies are injunctions and *damages* / **specific** **performance** ✓ .
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- 4 . Non-breaching parties are under some obligation to *underestimate* / **mitigate** ✓ their losses.
- 5 . Remoteness is when the damages are **found** ✓ / *not found* to be beyond the reasonable contemplation of the parties when writing the contract.
- 6 . Contributory negligence can be attributed to the **claimant** ✓ / *defendant*.

## What steps should a party take if they are responsible for breaching a contract?

Firstly the breaching party should re-read the section in the contract that relates to what the parties can do in the  of a breach.

There may be a clause in the contract which states that the agreement is terminated and that the parties cannot  it at this stage.

Or it may specify a certain time frame in which the issue can be fixed before the non-breaching party can file a lawsuit.

If the party is no longer able to fix the breach, they should discuss the  with the non-breaching party to show good faith. A court may look favourably upon this action if the issue turns into a lawsuit.

However, is it  that the parties find a way to resolve the breach without the intervention of a Court. The breaching party should then attempt to find an alternative method of fulfilling the

of the contract. It is beneficial to show the Court that the breaching party attempted to work cooperatively before legal action was resorted to. Following these steps can mean that legal action is  or

it may help the Court resolve the case faster.

event  resolve  matter  preferable

requirements  avoided

Complete the text by dragging down the missing words.

**What steps should a party take if they are responsible for breaching a contract?**

Firstly the breaching party should re-read the section in the contract that relates to what the parties can do in the  ✓ of a breach.

There may be a clause in the contract which states that the agreement is terminated and that the parties cannot  ✓ it at this stage. Or it may specify a certain time frame in which the issue can be fixed before the non-breaching party can file a lawsuit.

If the party is no longer able to fix the breach, they should discuss the  ✓ with the non-breaching party to show good faith. A court may look favourably upon this action if the issue turns into a lawsuit.

However, is it  ✓ that the parties find a way to resolve the breach without the intervention of a Court. The breaching party should then attempt to find an alternative method of fulfilling the  ✓ of the contract. It is beneficial to show the Court that the breaching party attempted to work cooperatively before legal action was resorted to.

Following these steps can mean that legal action is  ✓ or it may help the Court resolve the case faster.

# A letter to a client

**1. Read about Madame Chocolatier's situation, then answer the related questions (a-b) using the space provided.**

Madame Chocolatier produces hand-made luxury chocolates in her up-market shop in London. She is leasing premises near Temple. Her regular customers are very prominent barristers who enjoy the finer things in life, and her chocolates are no exception.

The year 2020 started very well. In January, Madame Chocolatier decided to expand her business, doubling production and employing a new shop assistant. She also leased premises next door from her landlord and agreed with a builder to refurbish the entire shop. Madame Chocolatier gave the builder her specifications and paid a deposit. She wanted to be ready for the increased demand in her chocolates and so ordered a large amount of ingredients from her supplier. She agreed to pay for these within 30 days of delivery.

**a. Which four people did Madame Chocolatier have contracts with?**

- |        |        |
|--------|--------|
| 1..... | 3..... |
| 2..... | 4..... |

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**a. Which four people did Madame Chocolatier have contracts with?**

- |                          |                                    |
|--------------------------|------------------------------------|
| 1..... Her landlord..... | 3..... Her new shop assistant..... |
| 2..... Her builder.....  | 4..... Her supplier.....           |

On 23 March 2020, the United Kingdom went into lockdown due to the Covid-19 pandemic. Madame Chocolatier was unable to open her business, produce or sell anything. People she had contracts with were threatening her with court proceedings if she did not pay, and worse still, with bankruptcy. They kept talking about acceptance, agreements, breach and other words.

Madame Chocolatier does not speak English very well. She is French and she remembers one of her customers, a Queen’s Counsel (a high ranking barrister), telling her that English law uses a French term *force majeure*. She meets with the barrister and asks him to clarify her situation.

**b. What do you think the barrister might say about *force majeure*?**

.....

.....

.....

**2. After their meeting, the barrister prepared a letter for Madame Chocolatier. Read the letter and answer the related question (a) using the space provided.**

Dear Madame Chocolatier,

Thank you for coming to see me yesterday.

The words acceptance, agreement and breach are all typical terms found in Contracts Law. Acceptance occurs when you give unequivocal consent to all the terms and conditions of an offer made by another party. Unequivocal consent means you did not change the terms of the offer. Therefore, by accepting the offer to lease the new premises and for refurbishment, you have binding contracts with the landlord and the builder. The same principles apply to your agreements with your new employees and supplier. You have binding agreements with them too.

Binding agreements are enforceable against you. If you fail to pay your landlord, builder, new employees, and suppliers you will be in breach of contract. A breach occurs when someone has broken a promise in a contract without lawful excuse.

There are different remedies available to the innocent party. The most common is compensatory damages. If you do not pay these damages when ordered by the Court, you may be forced into bankruptcy.

However, as I mentioned, a breach occurs when there is no lawful excuse for your non-performance. The French concept of force majeure is applied to contracts, to cover unusual or unforeseen events outside the control of the parties. We also call this type of unforeseeable event an Act of God.

In my view, the COVID-19 situation can be classed as a force majeure. This means that you have a lawful excuse for not performing your obligations and the Court is likely to say that you are not liable for breaching the contract.

Please contact me if you require further assistance

Kind regards

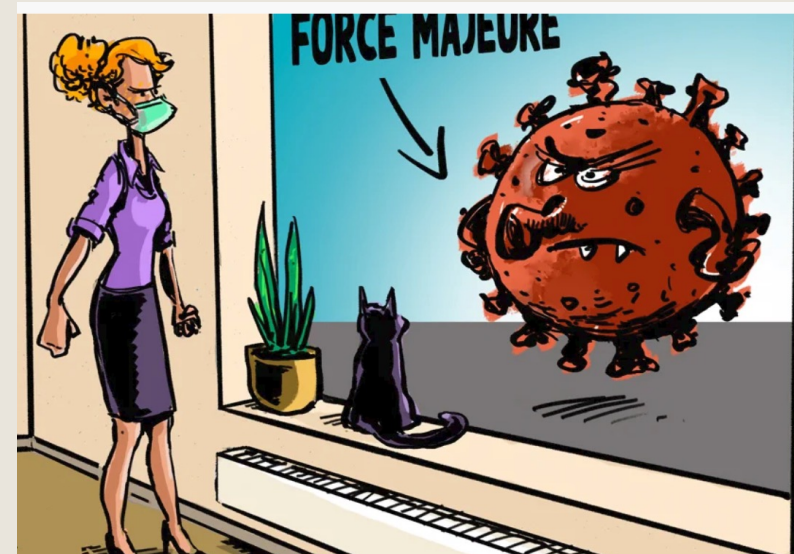
Ernest Bartholemew QC

a. What is the alternative term for **force majeure** given by the barrister?

3. Read the barrister's conclusion and complete it with the missing words from the box.

force majeure • lawful • liable • obligations • situation

In the view of the barrister, the Covid-19 1..... can be classed as a 2....., so Madame Chocolatier has a 3..... excuse for not performing her 4..... and is probably not 5..... for breaching the contracts.



a. What is the alternative term for **force majeure** given by the barrister?

..... An act of God .....

3. Read the barrister's conclusion and complete it with the missing words from the box.

force majeure • lawful • liable • obligations • situation

In the view of the barrister, the Covid-19  
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for not performing her 4..... obligation ..... and is probably  
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