

Week 1: Contract Law

Introduction to the Law of Contract

The Plan

- Why do we need contract law?
- The origins of contract law
- The “objective approach”
- Our structure...

Why do we need Contract Law?

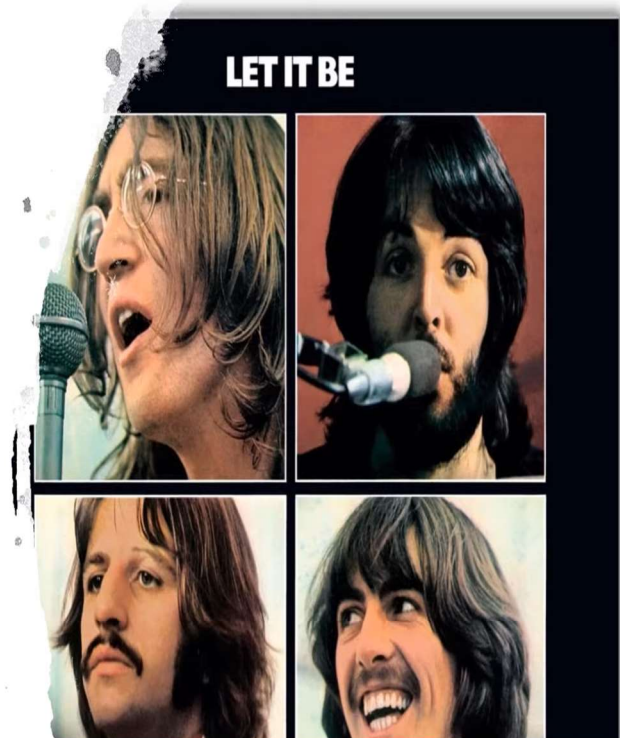
- To make promises binding?
- The nature of our society?

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The Origins of Contract Law

- The majority of rules date from early nineteenth century
- Industrial revolution and *laissez-faire* economics



The “Objective Approach”

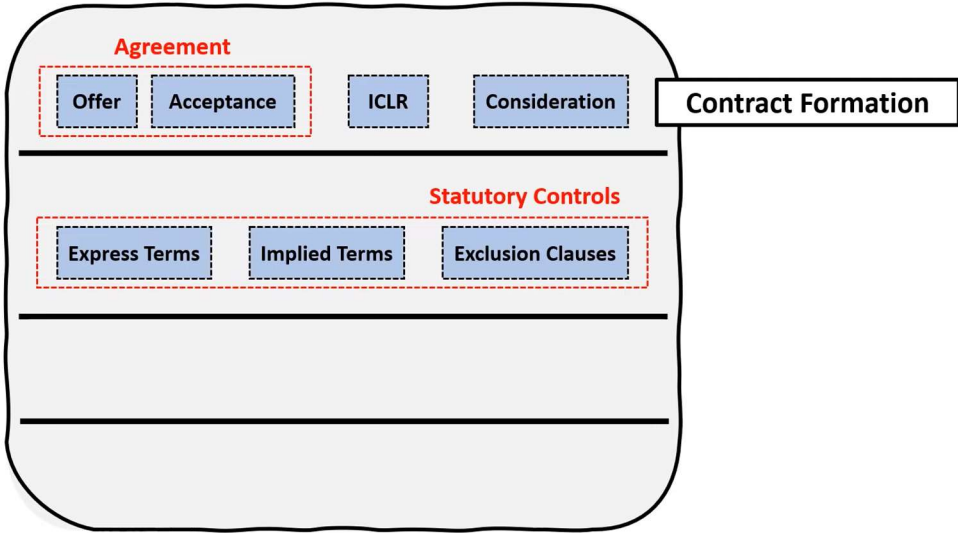
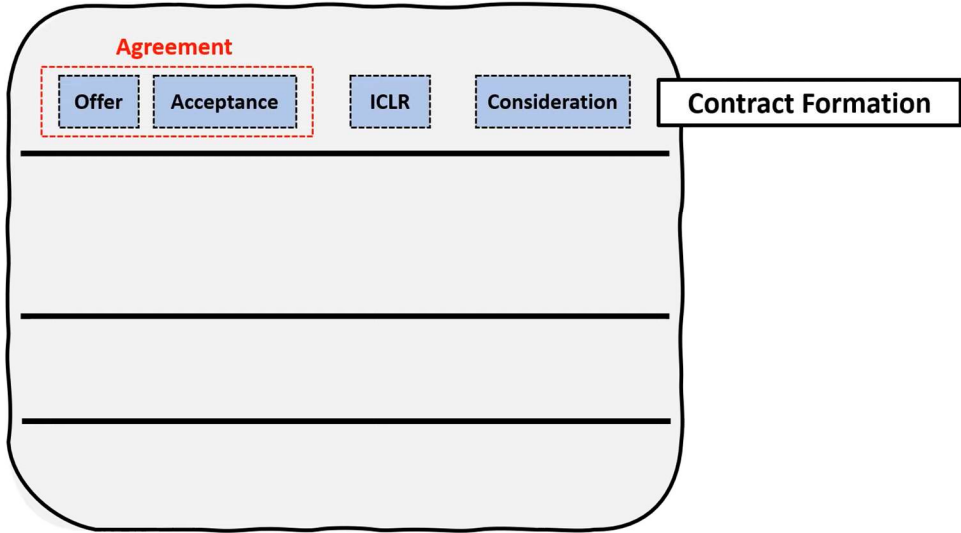
- Contracts do not have to be in writing
- So how do we know what the parties agreed?
- Consider Blackburn J’s comments in ***Smith v Hughes* (1871)**

If, whatever a man’s real intention may be, he so conducts himself that a reasonable man would believe he was assenting to the terms proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party’s terms”



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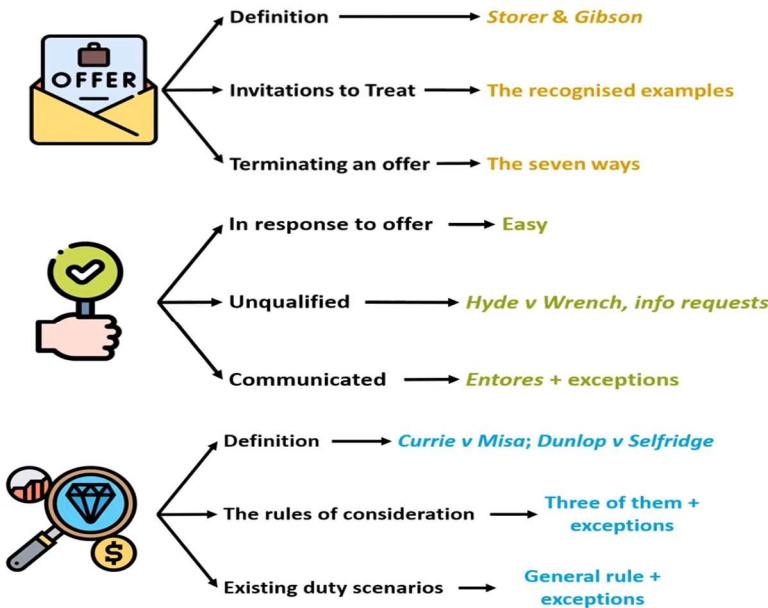
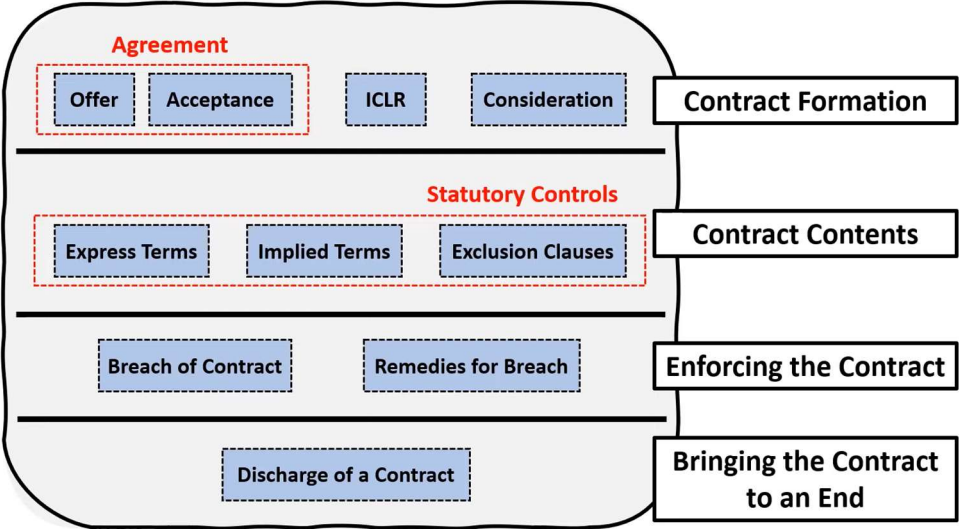
Introduction to the Law of Contract



Please find the video from the following link: <https://youtu.be/ONqYWpPVoVA>

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Chapter 1**INTRODUCTION TO THE LAW OF CONTRACT****1.1 DEFINITION**

A contract may be defined simply as "... an agreement giving rise to obligations which are enforced or recognised by law..."¹

1.2 OVERVIEW

Contract law governs the manner in which legally binding agreements are made. It applies to all types of contracts and parties. It is essentially a creature of the **common law**. The older case law reflects the principles of freedom of contract and the *laissez faire* doctrine which were prevalent during the major developments in English contract law during the 19th Century. The harshness of much of the case law, however, has been tempered by the doctrine of **equity**, fashioned by the courts to keep pace with social and economic developments and to promote fairer outcomes. As well as case law, the main sources of contract law are: **legislation**, particularly in regard to the statutory protection of consumers; and **European Union law**, such as directives dealing with unfair terms and distance selling regulations.

1.3 THE CORE ELEMENTS REQUIRED TO FORM A VALID CONTRACT

The core elements required in the formation of a valid and enforceable contract are:

- (i) Agreement;
- (ii) Intention to create legal relations; and
- (iii) Valuable consideration.

1.3.1 AGREEMENT (OFFER AND ACCEPTANCE)

An offer is a promise by a party ("the offeror") to do or refrain from doing something, provided the party to whom the offer is addressed ("the offeree") accepts its terms. An acceptance is an unconditional agreement by the offeree of all the terms of the offer. The outcome of this exchange is in effect the agreement which was generally referred to as a 'meeting of the minds'. In recent years, however, the courts have moved away from trying to discover the subjective intention of the parties, preferring instead to make an objective determination. This process is more commonly referred to as the 'objective interpretation'. In other words, what a reasonable person in the other party's shoes would have understood the other party to have meant by his words or conduct.

1.3.2 INTENTION TO CREATE LEGAL RELATIONS

The parties must have made the agreement with the intention of creating legally enforceable relations rather than a domestic or social agreement. To establish intention is a question of fact for the court that is objectively assessed.

¹ Guenter H. Treitel: *The Law of Contract* (Sweet & Maxwell, 11th ed. 2003).

1.3.3 CONSIDERATION

The parties must promise to *give* or *do* something in exchange for the promise, such as offering to pay for goods and services received. In other words, it is the element of exchange for the promise in an agreement.

1.4 OTHER ESSENTIAL ELEMENTS OF A VALID CONTRACT

In addition to the core elements required to form the contract, other essential elements required to create a valid and enforceable contract are listed briefly below:

1.4.1 CAPACITY TO CONTRACT

The parties must be capable of entering into a legally enforceable contract. While the general rule is that anyone can enter into a contract, capacity can be limited where, for example, a party is mentally incapacitated.

1.4.2 CONSENT

The agreement must have been freely entered into by the parties. Consent may be vitiated by duress, or by undue influence.

1.4.3 LEGALITY

The purpose of the agreement must not be illegal, or contrary to public policy.

1.4.4 CERTAINTY OF TERMS

To create a binding contract the terms of the agreement must be certain; if not there will be no contract. Terms may be express and implied. A term may be inserted into the contract to exclude or limit one party's liability (the so-called "small print"). A term may also be regarded as unfair. Terms that are vague or uncertain can be severed by the courts.

1.4.5 FORM

A contract can be created in various forms, such as by verbal agreement. A contract does not have to be in writing unless the contract falls into one of three categories: (1) contracts by deed – these are formal contracts 'under seal', such as those involved in the conveyance of land; (2) contracts in writing – such as those concerning transfer of shares, cheques, or consumer credit contracts; and (3) contracts evidenced in writing – these are only enforceable if there is written evidence, e.g. contracts of guarantee.

1.5 CLASSIFICATION OF CONTRACTS

Contracts can be divided into the following discrete categories.

1.5.1 BILATERAL CONTRACTS

A "bilateral agreement" exists when a promise by one party is exchanged for a promise by the other. It is enforceable on the basis of the exchanged promises.

In a contract for the sale of goods, for example, the buyer promises to pay the price and the seller promises to deliver the goods.

1.5.2 UNILATERAL CONTRACTS

Unilateral contracts are those in which only one party makes a promise to do something in return for an act by the other party. Acceptance of an offer by an offeree need not be communicated to the offeror in a unilateral contract; performance of the condition to fulfil the promise is taken as acceptance. An example of a unilateral offer is where a reward is promised for the return of a missing item. Only the party making the promise is bound to do anything. There is no obligation to search for the missing item. A party who sees the offer, recovers the item and returns it to the offeror is in so doing entitled to the reward. If, however, one party promises to find the missing item, a bilateral contract is created. A condition precedent may be attached to the promise. This means that the agreement is subject to a specified action being carried out. For example, an offer that states that the information provided must 'lead to the return of the missing item' should ensure that only a party who provides the requested information is entitled to the reward.

1.5.3 ENFORCEABILITY

The effects of a failure to satisfy the essential elements of a contract are as follows:

1.5.3.1 Void Contracts

A "void contract" is one where the whole transaction is regarded as a nullity. It means that, at no time, has there been a contract between the parties. Any goods or money obtained under the agreement must be returned. Where items have been resold to a third party, they may be recovered by the original owner.

1.5.3.2 Voidable Contracts

A contract which is voidable operates in every respect as a valid contract, unless and until one of the parties takes steps to void it. Anything obtained under the contract must be returned, insofar as this is possible. If goods have been resold before the contract was voided, the original owner will not be able to reclaim them.

1.5.3.3 Unenforceable Contracts

An unenforceable contract is a valid contract, but it cannot be enforced in the courts if one of the parties refuses to carry out its terms. Items received under the contract cannot, generally, be reclaimed.

1.6 CONTRACT AND PROPERTY COMPARED

The main difference between the law of property and the law of contract is that the former is said to create rights "*in rem*" (rights in respect of a piece of land are enforceable against any person who acquires an estate or interest in that land), while the latter creates rights "*in personam*" (rights enforceable only against certain categories of person). Thus, contracts and conveyances have always been kept separate.

However, a contract can act as a conveyance of property (save for land), and this can lead to problems where a contract turns out to be defective, e.g. on grounds of mistake or illegality. Problems with property can, thus, arise in the guise of a contract.

1.7 THE OVERLAP BETWEEN CONTRACT AND EQUITY

Equity has contributed a wider view of the reasons for enforcing contracts than the narrow, consideration-based approach articulated at common law. In particular, courts of equity have shown greater concern to enforce promises than to uphold bargains, i.e. the need for the promisor to show good faith. Another major difference between law and equity relates to its remedies: equity will enforce the promise directly, through specific performance or injunction. Where these remedies are not appropriate, damages may be awarded; however, these will not be calculated at the date of the breach of contract (as per common law), but at the date when the court decides to act against the defendant for breaking his promise or undertaking.