

ILEX Paralegal

Assignment One T1 - Contract Law by Dr Peter Jepson

Prior to this lecture you are expected to undertake some read and précis of Part A of the ILEX Booklet Unit 2 General Legal Principles and/or Chapter 13 of GCSE Law by Jacqueline Martin.

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Lecture rules ...

- Turn off your mobile
- Take the Pdf Print notes to class and annotate them during the lesson.
- Raise your hand if you have a question.

Remember - missing a lesson makes it that much more difficult for you to pass.

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What is a Memorandum?

- What does Task One require and what is a Memo?
- Who should the memo be addressed to?
- Make use of cases in your answer.
- Who will proof read your memo?

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Elements of a Contract ...

Three core elements:

1. Intention to create legal relations
2. Offer and acceptance
3. Consideration

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Intention to create legal relations ...

- Can be 'express' (in writing) or 'implied' from the circumstances - i.e. when an ordinary reasonable person concludes that there is such a relationship - then a contract exists.
- Can you give an example of an implied contract?

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Intention to create legal relations ...

What do the following cases demonstrate (see page 2 of ILEX book)?

- Balfour v Balfour [1919]?
- Why then was Merritt v Merritt [1970] different?
- How were legal relations established in Bowerman v ABTA [1995]?

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Offer and Acceptance

- If Shah puts a knife in his Jewellers shop window with a price of £5 on it - What does that establish (see Fisher v Bell [1960])?
- If I then go into the Jewellers and **offer** £5 - what does that establish?
- Note: the **contract** exists from the moment that my offer is **accepted**. Is such a contract express or implied?

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Offer and Acceptance

- Read the case of Carlill v Carbolic Smokeball Co [1893] and then explain who made the offer and how?

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Termination of an offer (4 elements)

1. **Death before acceptance.**
2. **Lapse of time** - see Ramsgate Victoria Hotel v Montefiore [1866] - in this case M offered to buy shares and 6 months later the company accepted. It was held that the period between offer and acceptance was *unreasonable* and therefore no contract existed.

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Termination of an offer (4 elements)

3. **Revocation** simply means that the offeror can withdraw an offer before acceptance (but notice of revocation must reach the other side). See case of Dickenson v Dodds [1876].
4. **Rejection of an offer** - see the case of Hyde v Wrench [1840].

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Acceptance of an offer (3 main methods) ...

1. Orally
2. In writing
3. By Conduct

However, the acceptance **MUST** be communicated - see Felthouse v Bindley [1862] (horse story).

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Acceptance of an offer

Other rules on acceptance are:

- The offeror insists on a particular method of payment (then that method must be used).
- A "*Subject to contract*" acceptance does not constitute an unqualified acceptance and therefore it means that no contract has been formed.

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Acceptance of an offer

- **Postal rule** - a letter conveying the offer is only effective when received. The same is said for the letter of revocation. However, a 'letter of acceptance' turns the offer into a contract the moment the letter is posted (see Household Fire Assurance v Grant [1879])

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Acceptance of an offer

- With the person next to you - briefly discuss '**modern forms of communication**' and explain the legal rule to the whole class (use cases).

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Consideration

- If I contract to pay Shah £4 for the knife - the money and knife are the relevant consideration.
- Consideration must be of some value (the courts do not get involved in whether it is adequate).
- Consideration must not be past (See Re: McArdle [1951]) and must move from the parties.

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Terms of a contract

Terms of a contract may be classed into three groups.

1. Express and Implied Terms
2. Warranties and Conditions
3. Exclusion Clauses

We will be briefly looking at 1 - you should rely upon your read and précis notes for 2 and 3.

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Express and Implied Terms of a Contract ...

- An express term is a written term of a contract - the case of Jacobs v Batavia and General Plantations [1924] established that "*parol evidence*" cannot be admitted to add, vary, or displace a written term in a contract.
- However, if the contract is oral (or a mixture of written and oral) then *parol evidence* - i.e. evidence to show the statement has been misstated in the document - can be used.

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Implied terms

Terms can be implied in the following ways:

- **Custom and practice.**
- **In Common Law** when it is *necessary* to do so - Liverpool CC v Irwin [1977].
- **By statute:** Note: that statute is ALWAYS supreme over contract law.

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Independent study ...

Read and précis the sections in the textbook on:

- (1) Warranties and Conditions
- (2) Exclusion Clauses.

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Discharge of a contract

A contract comes to an end:

- **By performance** - I.e. when both parties complete. See the cases of Hoening v Isaacs [1952] - decorating flat. Also, see Planche v Colburn [1831].
- **By agreement** - I.e. when both parties agree.

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Discharge of a contract

- **By breach** - any breach of contract entitles the innocent party to claim damages.
- **By frustration** - See Taylor v Caldwell [1863].

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Remedies for Breach

When a contract has been breached the innocent party may seek a remedy in compensation.

There are four issues to consider: **Damages**, **Quantum Merit**, **Liquidated Damages** (agreed before) and **Equitable Remedies** (only at the discretion of the court)

- **Damages** - see Hadley v Baxendale [1854] and Victoria Laundry [1943] - note the term "not been in their contemplation of both parties at the time they entered into the contract".

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Task 1

- Do the Quiz at the back of this section in the ILEX textbook.

Working with the person sat next to you - plan an answer to Task One.

- Use bullet points etc.
- Be ready to feed your answer back to the whole class.

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