

AN INTRODUCTION TO CONTRACT LAW

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WEEK	Date:	Contract Law
1	29 January 2025	Portfolio
2	5 February 2025	Introduction (Ch 1)
3	12 February 2025	Offer and acceptance (Ch 2)
4	19 February 2025	Consideration and intent (Ch 3)
5	26 February 2025	Express and implied terms (Ch 4)
6	5 March 2025	Exclusion clauses: Incorporation (Ch 5)
	12 March 2025	Break Week (Reading Week)
7	19 March 2025	Exclusion clauses: Unfair terms (Ch 5)
8	26 March 2025	Vitiating factors (1) (Ch 6)
9	2 April 2025	Vitiating factors (2) (Ch 6)
	7/4/25 – 25/4/25	EASTER PERIOD
10	30 April 2025	Discharge (Ch 7)
11	7 May 2025	Remedies (Ch 7)

What will we be looking at?



WHAT IS A CONTRACT?

- English law has no formal definition of a contract
- 'The branch of the law which determines the circumstances in which a promise shall be legally binding on the person making it'
- 'A contract is an agreement giving rise to obligations which are enforced or recognised by law'.
- Agreement is key
- Consideration – the law recognises that something of value has been given in return for the promise
- Intention to create legal relations
- **MacInnes v Gross [2017]** - "A contract can be made anywhere, in any circumstances".

Can be entered into in numerous ways i.e telephone, face to face, written, mere conduct



The existence of a contract gives the parties legal rights

WHAT IS A CONTRACT?

A contract is an agreement that gives rise to obligations and which is enforceable and recognised by the law.



‘Laissez faire’



TASK: WHY ARE CONTRACTS IMPORTANT?

TERMINOLOGY ALERT

Offeror – the person who makes the offer

Offeree – the person to whom the offer is made



Categories of contract



SIMPLE CONTRACTS

- Do not need to be in writing and can be made in writing, orally or implied by conduct.
- These are the contracts which we are most concerned with

SPECIALITY CONTRACTS

- Required in writing
- Examples: contracts involving the sale of land and other credit transactions.



(1) Consider the following example and try to identify as many contracts as you can.

Emma is a 27-year old receptionist, working in a solicitors' practice. She is woken in the morning by the sound of a text message arriving on her mobile phone. It is from a work colleague, to say that their National Lottery syndicate won £1,000 in last night's draw!

Once she is ready for the day, Emma catches the bus to work, as the car that she bought last week from her local garage won't start. Whilst riding on the bus, she makes a telephone call in response to an advert in the local newspaper and agrees to buy, for £10, a hamster.

On arrival at her office, Emma collects her pay packet from the Finance Department, and then sits down at her desk, where she logs on to her computer. She opens an email in her inbox that confirms she has been successful in her bid to purchase a vintage handbag from an online auction site. After dealing with the payment for her item, she makes a quick phone call to her local college, to enrol on the CILEX course that she had seen advertised in The Legal Executive Journal.

TASK: EMMA'S DAY

Can you identify the contracts that Emma has entered into??

She also sees a poster that has been put up by one of her work colleagues, asking everyone to keep a look out for his lost cat, and offering a £25 reward to anyone who returns his pet to him.

During the afternoon Emma receives a phone call from a distressed client, informing her that her property purchase he was supposed to complete that afternoon is all going wrong. The seller has apparently changed his mind and is now refusing to move out. Emma takes the message and passes it on to the relevant solicitor.

Just before she leaves the office at 5pm, she receives a call from Mrs Green, the lady from whom Emma had agreed to buy the hamster this morning; the hamster has died during the day. Feeling sad at this news, Emma decides to nip to the local supermarket after work to pick up a bottle of wine, which she pays for using her credit card. She is cheered up a little when the sales assistant asks her for some ID. Emma then goes round to her friend's house, where she is babysitting for the evening. As she arrives at the house, her friend promises that, in return for this act, she will help Emma with her CILEX homework when she starts on the course.

ELEMENTS OF A CONTRACT

AGREEMENT

CONSIDERATION

CAPACITY

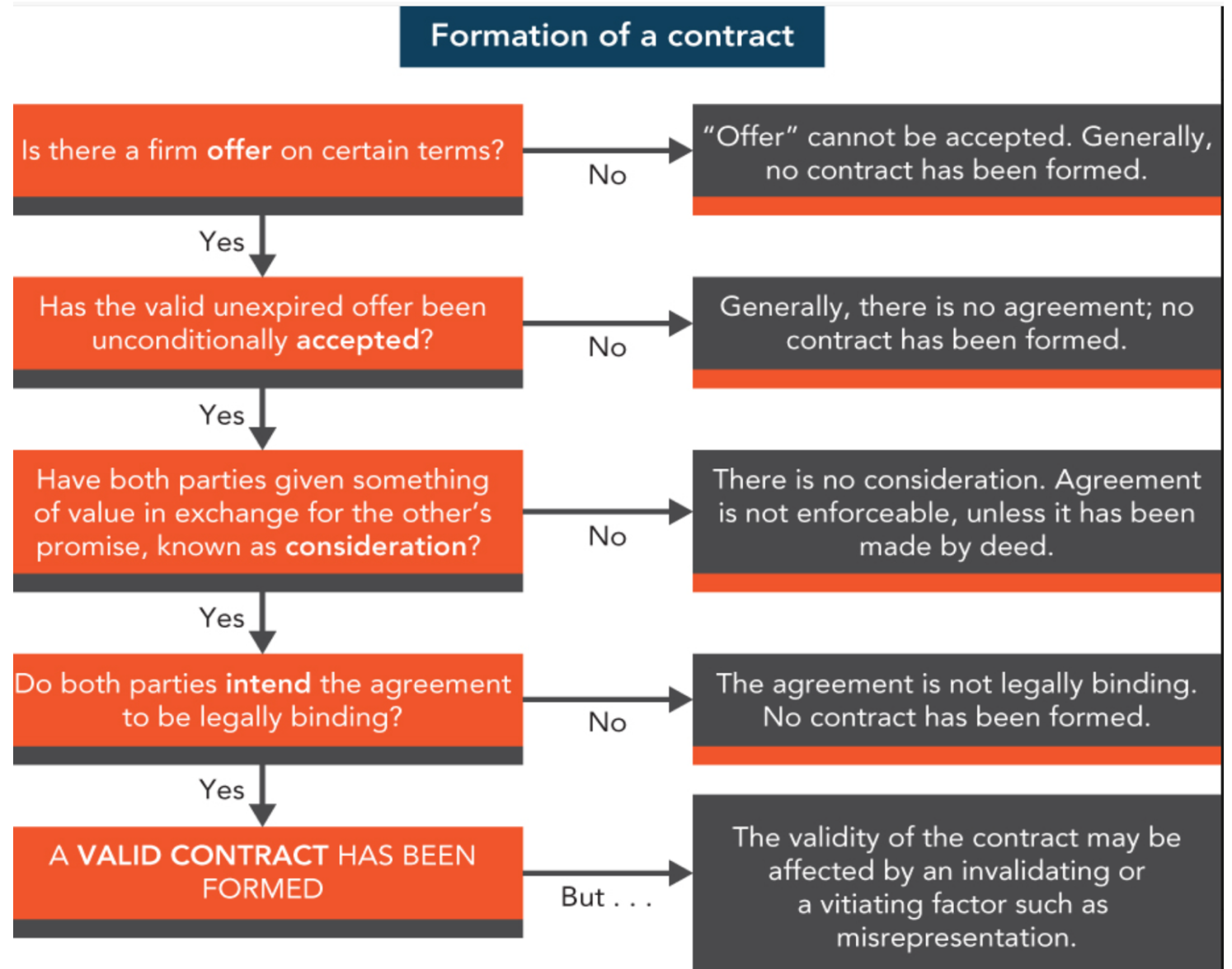
INTENTION
TO CREATE
LEGAL
RELATIONS

FORM

CONSENT

LEGALITY

Formation



ENFORCEABILITY

Depending on which essential element is missing from the contract, will determine the following:

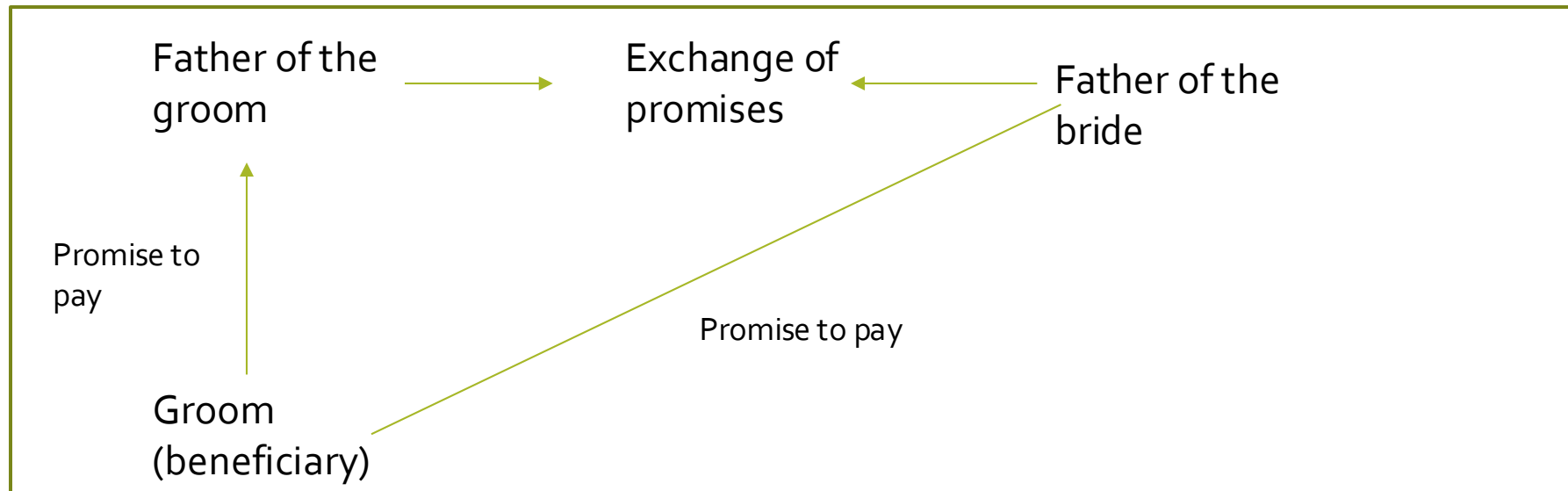
A **void** contract: the whole transaction is regarded as a nullity.

A **voidable** contract: the contract operates in every respect as a valid contract unless one of the parties takes steps to avoid it.

An **unenforceable** contract: cannot be enforced in the courts if one of the parties refuses to carry out its terms.

1. Privity of contract

- Generally, only the parties to a contract are bound by it.
- Leading case: *Tweddle v Atkinson* [1861]



TASK

Find and locate a copy of the case of *Tweddle v Atkinson* [1861] EWHC QB J57, using the link below.

[Tweddle v Atkinson \[1861\] EWHC QB J57 \(7 June 1861\) \(bailii.org\)](#)

- Using the case, answer the following questions:
- (1) Why was the privity of contract rule an issue here?
- (2) What did Crompton J describe as being a “monstrous proposition”?

Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd [1915]

Contract 1:

DUNLOP → SOLD TYRES TO → **WHOLESALER**

Contract 2:

WHOLESALER → SOLD TYRES TO → **SELFRIDGE**

DUNLOP CANNOT SUE SELFRIDGE FOR BREACH because DUNLOP WAS NOT A PARTY TO THE SELFRIDGE CONTRACT

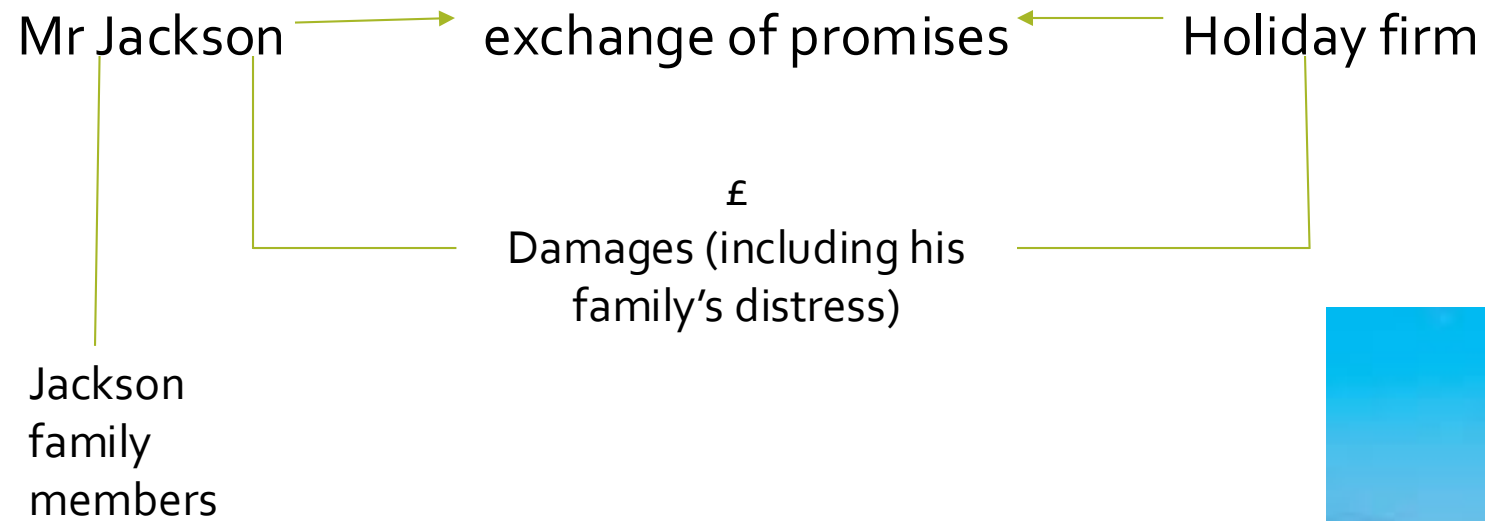
1.1 Privity of contract: EXCEPTIONS TO PRIVACY DOCTRINE

S.11 Married Women's property Act 1882

INSURED PERSON → exchange of promises ← INSURANCE COMPANY

Insured person's spouse,
civil partner or child(ren)
can sue as beneficiaries
of the policy

Jackson v Horizon Holidays Ltd [1975]



1.2 Privity of contract: Contracts (Rights of Third parties) Act 1999

Under s1 C(RTP)A 1999, a third party can enforce the terms of the contract if either

S1(1)(a) the contract expressly says he may ; or

S1(1)(b) the term in question purports to confer a benefit on him.



TASK

Using www.legislation.gov.uk look at what these sections of the C(RTPA)1999 state:

S1(2)

S1(3)

S1(4)

1.3 Privity of contract: Assignment of contractual rights and liabilities

Assignment: The assignor transfers rights, property or other benefits to the assignee.



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graph TD; A[Assignment: The assignor transfers rights, property or other benefits to the assignee.] --> B[Unless an assignment is prohibited in a contract, a party may generally assign the rights (benefit) under the contract to a third party without the consent of the other party. However, you cannot usually assign the obligations (burden) under a contract.]; B --> C[Commercial contracts usually restrict assignment];
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Unless an assignment is prohibited in a contract, a party may generally assign the rights (benefit) under the contract to a third party without the consent of the other party. However, you cannot usually assign the obligations (burden) under a contract.

Commercial contracts
usually restrict
assignment

'Neither party may without the prior written consent of the other party assign a benefit or obligation imposed in this Agreement.'

Privity of contract: “Novation”

- If you want to transfer the burden of the contract as well as the benefits under it, you have to **novate it**.
- In a novation the original contract is extinguished and is replaced by a new one in which a third party takes up rights and obligations which replicate those of one of the original parties to the contract.
- Novation is only possible with the consent of the original contracting parties as well as the new party. Consideration must be provided for this new contract unless the novation is documented in a deed signed by all three parties.

There are three possibilities for novation:

- (1) All or part of the burden of the contract can be transferred to another person.
- (2) All or part of the benefit of the contract can be assigned to another person.
- (3) The whole of the benefit and the burden can be transferred to another person. This is also novation.

ENFORCEABILITY

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SUMMARY



QUESTIONS

1. What are the three basic requirements for a valid contract?
2. What does the phrase 'privity of contract' mean?
3. John orders flowers for Jill, who is in hospital awaiting a serious operation. The florist confuses the greeting on the card. The correct message should read, "All my love, John", but inadvertently puts "So long, mate; nice knowing you. I will be in the pub drinking to absent friends by the time that you get this." Jill is distressed; could she sue the florist for breach of contract?