

# Contract Law and Vitiating Factors

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## Part 1 – Contract Law

1. It is presumed the parties do not intend to create legal relations in: (1.4)

- a. Business agreements
- b. All agreements
- c. Social and domestic agreements
- d. Commercial agreements

This concept is illustrated in *Balfour v Balfour* [1919] (*Balfour v Balfour*, 1919). Mr Balfour made an arrangement to give his wife £30 a month for maintenance as he worked abroad. When their relationship broke down his wife Mrs Balfour attempted to have him hold up the agreement.

The court ruled that he didn't have to hold up the agreement as he made it with no intention to be legally bound. Family agreements are rebuttable presumptions which means they are presumed to be made with no intention to be legally binding, unless proven otherwise.

2. *Carlill v Carbolic Smoke Ball Co* (1893) is a leading case in relation to Contract Law. Using this case and other relevant cases, explain why the *Carlill* case was deemed to be a valid contract. Within your answer, ensure that you can explain the essential elements required for a legally binding contract. (1.1 and 1.2)

A contract is an agreement that is legally binding. For a contract to exist the following 3 conditions should be met.

There has to be an agreement i.e. offer and acceptance. There should be some form of Consideration and there must be an intention to create legal relations.

In *Carlill v Carbolic smoke ball co.* (1893) (*Carlill v Carbolic smoke ball company*, 1893), the company put an advertisement in the paper announcing that anyone who caught influenza after using the Carbolic smoke ball as instructed, would receive £100. The advertisement also stated that the company set £1000 aside for that purpose.



Figure 1: Newspaper Ad for the Carbolic Smoke Ball Company (Newspaper ad)

When Mrs Carlill caught the flu after using their product as instructed they refused to pay her the £100.

The court ruled that the Carbolic smoke ball company were in breach of a contract. They reasoned that the advertisement was an offer to the world, the offer was accepted when a consumer bought the product and followed the instructions constituting an agreement and consideration was provided when the consumer bought the product. In addition the company's claim of depositing £1000 for the purpose of paying the rewards; showed intention to be legally bound. Therefore Carbolic smoke ball company were in a contract with Mrs Carlill and had to fulfil the terms of the agreement.

3. Which of the following cases are an invitation to treat (You may select more than one) (1.1-1.3)

- a) Fishers V Bell
- b) Carlill v Carbolic Smoke Ball co.
- c) Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd

In both Fisher v Bell [1961] and Pharmaceutical Society of GB v Boots Cash Chemists (Southern) Ltd [1953] the products were on display inviting people to make an offer if they wished to purchase them, which could either be accepted or declined. While in Carlill v Carbolic Smoke Ball Company (1893), an offer was made to the world through the advertisement.

4. Case Study: David's cat has gone missing. He has placed an advertisement in his local shop stating that there will be a reward offered to whoever locates his cat and brings it to him. The reward is for £500.00. Jo finds David's cat and requests the reward. David refuses to pay. Is this a valid contract, what action can Jo take and why? (1.3)

Yes this is a valid contract because all the elements of a contract are present. The advertisement offering a reward to whoever finds the cat, is an offer to the world, (as in Carlill v Carbolic Smoke Ball Company [1893]), this offer is accepted by Jo when she finds the cat, and the return of the cat acts as consideration.

Jo can seek loss of bargain damages of £500, as this shall place her in the position she would have been in, had the contract not been breached.

5. Dan agrees to purchase Bess's mobile phone for 10p. Is this a valid contract? Explain why using relevant case law. (2.1, 2.2)

a) Yes - 10p is sufficient it need not be adequate consideration

b) No - the phone is worth more than 10p

c) No - the contract is unfair

d) Yes - but Bess can ask for more money if she wishes

Consideration refers to what is exchanged for a contract to be formed.

Consideration is necessary for a contract to exist, but it does not have to match the value of the exchange.

As illustrated in Chappell v Nestle Co Ltd (1959) (Chappell and company limited V the Nestle company limited, 1959).

Nestle sold records valued at 6s for 1s 6d and 3 chocolate wrappers. Chappell owned the copyrights to the records, entitling them to 6.25% of the retail selling price in royalties, according to the copyright act 1956. Nestle only paid royalties on

1s 6d, which Chappell argued was not enough and sought an injunction to stop Nestle from selling the records for breach of the copyright act 1956. The court granted the injunction as they concluded that the 3 chocolate wrappers, despite having no value, were part of the consideration for the sale of the records. Since a non-monetary consideration was not within the copyright act, Nestle were in breach of the act.

Bearing this case in mind; although Dan's 10p doesn't match the value of the phone, it is sufficient consideration.

Bess only had the option of revoking her offer before it was accepted. However once Dan has accepted the offer and an agreement has been reached, the contract is valid and it's up to Dan's discretion to end the current contract and accept a new offer.

## 6. How can a contract come to an end? (3.1)

A contract can be brought to an end through:

- Performance. When all parties have completed their obligations a contract shall automatically come to an end.
- Agreement. The parties that set up a contract can agree to end the contract.
- Frustration. A contract shall come to an end if circumstances beyond the control of the contracting parties make it impossible or impractical for the contract to be completed. As seen in the case of Taylor v Caldwell [1863] (Taylor v Caldwell, 1863). Taylor agreed to rent a music hall but a week before the agreed lease, the hall burnt down. Taylor then took legal action against Caldwell, the owner of the hall, for breach of contract in failing to rent out the hall as they had agreed.

The court ruled that both parties were freed from their contract obligations as it could not be completed without the hall and the destruction of the hall was neither of their fault.

- Breach of contract. Depending on the contract and breach, a party may be able to end a contract that has been breached.
- Vitiating factors. These are factors that can affect a contract's validity and render it voidable or void.

7. Your employer has agreed to give you a Summer Bonus of £150.00 but then does not pay you. Are they in breach of contract? (1.1-1.3)

- a) Your employer did not intend to be bound by this offer?
- b) Your employer could claim he was drunk when he made the offer?
- c) If the promise was given in writing, then he must pay it by law?
- d) There is no consideration given for this gift of £150.00

8. using relevant case law, explain the difference between Actual and anticipatory breach (3.1)

Actual breach is when a party fails to uphold a contract during the course of the contract or on the due date as in *Carlill v Carbolic Smoke Ball Company* [1893]. While anticipatory breach is when a contracting party declares beforehand that they shall not uphold the contract or does something that disables them from carrying out the contract. For example in (*Omnium D'Enterprises v Sutherland* , 1919) , Sutherland sold the ship they were supposed to charter to Omnium D' Enterprises, thereby rendering themselves unable to undertake the contract; and in (*Hochster v De La Tour*, 1853), De La Tour wrote to Hochster before the start date of the contract, stating he no longer wanted his services. In both cases there was a breach of contract and the claimants were entitled to compensation before the start date of the contract.

9) Case Study: Louise runs a homemade cake business. Cook & Co contract to sell her a large industrial oven to expand her business by enabling her to increase cake production. Louise tells Cake & Co that she has been awarded a contract to bake 100 jacket potatoes daily during November and December for a local street fair in the run up to Christmas and so needs the oven by 31 October. Cook & Co agree to deliver the oven by 28 October. Unknown to Cook & Co, Louise has also agreed to allow Bob the Baker to use the oven on Fridays (her day off) so that he can meet his extra customer demands over the weekends. Owing to a dispute between the manufacturer and Cook & Co, the oven is not delivered to Louise until 23rd November. Louise is therefore unable to fulfil the jacket potatoes contract and also is unable to increase cake production as

planned. She has also lost the hire payment agreed by Bob in respect of two Fridays.

What remedies are available to Louise? Use relevant case law to demonstrate your full understanding. (3.2)

Louise is entitled to damages. Damages is financial compensation that is awarded with the aim of putting the claimant in the position they would have been in, had the contract not been breached. The awarding of damages is subject to the rules of causation, mitigation and remoteness.

Therefore Louise shall be compensated for the Jacket potatoes contract she has not been able to fulfill and the estimated loss in cake production caused by the late delivery of the oven. However, Louise shall not be compensated for the hire payment agreed by Bob, because Cook & Co were not aware of that being one of the consequences of their breach of contract. This is due to the principles developed in *Hadley v Baxendale* [1854] (*Hadley v Baxendale*, 1854)

Baxendale failed to deliver a repaired mill part to Hadley on time. Resulting in the loss of business for Hadley. The court of appeal ruled that Baxendale was not liable for Hadley's loss of business Because he wasn't aware, at the time of setting up the contract, of the circumstances that would lead to Hadley losing business due to late delivery of the part. Baron Alderson stated the following in his judgement:

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it."

## Part 2 – Vitiating Factors of a Contract

10 Explain the term misrepresentation, including the three types. (1.1-1.2)

Misrepresentation is a false statement or conduct that Influences a party to enter into a contract.

Misrepresentation can either be:



Innocent: This misrepresentation arises when a party makes a false statement they believe to be true at the time.

Fraudulent: This is when a party knowingly and intentionally makes a false or misleading statement to get the other party to enter into a contract.

Or negligent (by means of non-disclosure): This arises when a party fails to disclose important information before a contract is agreed upon.

11) The cases of *Bisset v Wilkinson* [1927] and *Smith v Land & House Property Corp* [1884] are leading cases in misrepresentation. How do their outcomes differ and why? (1.1-1.2)

In the case of *Bisset v Wilkinson* [1927] (*Bisset v Wilkinson*, 1927), Mr. Wilkinson told Mr. Bisset, during the negotiations of a sale of farm land, that he believed the land could support 2000 sheep. Mr. Bisset acquired the land and later claimed that the land could not support 2000 sheep and sought to end the contract on the basis of misrepresentation. The court concluded that the contract was still valid as the statement made by Mr. Wilkinson was merely an estimate. Since both parties were aware that the land had never been used for sheep farming and therefore any statements made about the land's capacity to hold sheep would only have been an opinion not fact.

While in *Smith v Land & House Property Corp* [1884] (*Smith v Land & House Property Corp*, 1884). Land and House Property Corp agreed to buy a hotel Mr. Smith was selling after having been convinced by his advertisement in which he stated that the current tenant, Mr. Fleck, 'was a most desirable tenant'. As it turned out Mr. Fleck was owing rent and went bankrupt before the sale was finalized. Land and House Property Corp then refused to complete the transaction and Mr. Smith took them to court for breach of contract.

The court argued that since Mr. Smith was Mr. Fleck's landlord, it is expected that he had adequate knowledge of Mr. Fleck's tenancy. Therefore any statement he made would have been treated as fact.

Since Land and House Property Corp entered into the contract relying on Mr. Smith's statement, about his tenant, which turned out to be false; the court rescinded the contract on the basis of misrepresentation.

These two cases' outcomes differ in that, in the first case both parties were aware the land had never been used for sheep farming and therefore any statements made were merely opinions. While in the second case Mr. Smith had sufficient

knowledge regarding the tenant and for that reason any statements he made were to be treated as fact.

12) What statute applies to misrepresentation? (1.1)

- a) Misrepresentation Act 1976
- b) Law Reform (Misrepresentation) Act 1945
- c) Law Reform (Misrepresentation) Act 1943
- d) Misrepresentation Act 1967

13) Explain the difference between VOID and VOIDABLE – using relevant case law to illustrate your understanding. (1.2)

- A contract that is void is invalid and cannot be performed by either party nor is it enforceable by law. For example in the case of Scott v Coulson [1903] (Scott v Coulson , 1903 ) both parties believed that the person who was taking out life insurance was still alive, but as it turned out he was dead. The contract therefore was void by common mistake of res extincta (matter that has ceased to exist).
- A voidable contract is a valid contract that is still enforceable but one party has the option to void it. Such as in the case of Cooper v Phibbs (1867) (Cooper v Phibbs , 1867)  
Mr. Cooper leased a fishery from his uncle. When his uncle died, Mr. Cooper renewed his lease with his uncle's family then later found out that his uncle had left him a lifetime tenancy in his will. The court held the contract to be voidable as for the common mistake of res sua (where the subject matter already belongs to oneself).

14) Sometimes people make mistakes, even in relation to contracts. Explain the types of mistakes that are made in relation to contract law – you may wish to use case law to illustrate your answers. (2.1)

A mistake in contract law is wrongly believing that certain facts are true when entering into a contract.

Types of mistakes:

- Common mistake is when both parties are mistaken about the same thing as in *Scott v Coulson* [1903]
- Mutual mistake is when the contracting parties are both mistaken about what they are agreeing to, and agree to something different from what the other party is agreeing to. This is illustrated in *Raffles v Wilhelhuas* [1864] (*Raffles v Wilhelhuas*, 1864). The two parties entered into a contract for the shipment of cotton by a ship named the *Peerless* from Bombay. However one party believed they were agreeing on the shipment sailing in October while the other party was referring to another ship of the same name also sailing from Bombay in December.
- Unilateral mistake is when only one of the parties is mistaken. For example in *Hartog v Colin & Shields* [1939] (*Hartog v Colin & Shields*, 1939). Colin and Shields mistakenly offered hare skins per pound (lb.) when they meant to offer them per piece. Mr. Hartog was aware of the error but still sought to obtain the hare skins at the bargain price.

15) A mistake at common law renders a contract voidable – Explain your answer (2.2)

a) True

b) False

Not all mistakes are rendered voidable. Common Mistakes such as in the case of *Scott v Coulson* [1903], can render a contract void. And some mistakes do not affect the validity of a contract.

16) Explain how a person may enter into a contract under duress and evaluate whether the contract will be VALID, VOID or VOIDABLE. How does this differ to Undue influence? (3.1, 3.2)

Duress is forcing a party to enter into a contract with threats and/ or violence. This can either be through:

Threats to property, as in *Maskell v Horner* [1915] (*Maskell v Horner*, 1915), where Horner demanded that Maskell pay him a fee for a market stall, and threatened to seize Maskell's stock if he did not pay.

Threats of physical violence as in *Barton v Armstrong* (1976) (*Barton v Armstrong*, 1976), where Armstrong forced Barton into a contract by threatening to have him killed.

And economic duress such as in *North Ocean Shipping v Hyundai Construction (The Atlantic Baron)* [1979] (*North Ocean Shipping v Hyundai Construction*). Hyundai threatened to stop the construction of a ship unless North Ocean Shipping paid 10 percent more than they had initially agreed. In fear of losing the charter with Shell North ocean shipping agreed to pay.

A contract agreed upon, under duress is rendered voidable.

Undue influence is when a party is pressured into a contract but the pressure doesn't amount to duress. For example in relationships where one party has great influence over the other such as parent and child and solicitor and client or situations where an individual is pestered until they give into entering a contract.

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