

# Understanding Contract Law



Max Young

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*Understanding Contract Law* offers a clear introduction to the basic concepts of contract law in England. Built around familiar real-world examples that illustrate the concepts, principles and key cases upon which English contract law is structured, *Understanding Contract Law* is an ideal guide for those approaching an undergraduate law degree, or for general readers interested in this fundamental area of the law.

This concise, student-friendly overview, supported by chapter introductions and summaries throughout, covers the fundamental topics in English contract law, including:

- Agreement and Offer
- Acceptance
- Certainty
- Consideration
- Privity
- Misrepresentation

**Max Young** is Lecturer in Law at Waterford Institute of Technology, Ireland.

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# Introduction

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## 1.1 Introduction – what this book is about

This book is not intended to give a comprehensive coverage of contract law but it is intended to give you a good feel for the topic.

The book will, as far as possible, use examples that you would be familiar with in everyday situations. It will not go into complex contract situations such as purchases of land or houses (which lawyers call ‘real property’); such areas of contract law are very specialized and are areas of law which are dealt with by lawyers as completely different topics.

The book will surprise you, I think, as to how often you enter into contracts on a daily basis without even knowing you're doing that.

The book will try and show you that contract law is not about 'having a good memory', but rather being able to grasp the legal principles and apply them to different situations.

The book will explain how contract law is the fundamental business legal subject. Not only is it obviously relevant to buying and selling goods and services, but it also underlies such areas of law as employment contracts.

An important point to remember when reading through this book is to remember that the parties to a contract, for example, a seller and a buyer, make 'the law' between themselves as regards their contract. There is, generally, no 'law of contract' that imposes on the parties as to what they should agree. This is unlike the 'criminal law' which imposes on people what they must, and must not, do. So if Robert agrees to sell his brand new car that is worth £30,000 to Jill for £10 then that's the contract between the two of them. The law will not interfere with that contract.

One other point to bear in mind when reading through the book is that most people think that there can't be a contract unless there is a signed document. Although many business contracts take the form of a signed document, many do not. How many orders for goods and services are made by telephone, email or on the worldwide web? Every time you go into a shop and buy goods you enter into a contract with the shop; do you ever sign a contract with the shop? Generally not, although when you buy goods on hire purchase you will sign a written contract.

### **1.2 Putting contract law in the context of English common law**

Before starting to look at contract law we briefly need to look at the context in which contract law operates. The law referred to in this book is what is known as the 'English common law'. English common law forms the basis of the legal system in England and Wales (Scotland has its own legal system). English common law gave birth to legal systems around the world, namely Commonwealth countries such as Kenya, India and Canada. It also gave birth to the legal system of the USA (except Louisiana which adopted French law). Although all these countries now have their own developed legal systems, English common law, especially contract law, is still to be found at the heart of much of their own contract law.

### **1.3 What is common law?**

The basis of English common law is that it has been made by the judges sitting in their various courts over the centuries applying their knowledge of previous cases (precedent), their knowledge of commerce and, to a

certain extent, their common sense. To illustrate the longevity point, contract law lawyers still refer to **Pinnel's Case**, which was heard in the court of Common Pleas in 1601. Although the court of Common Pleas has long gone **Pinnel's Case** is still good law today and is regularly followed and referred to in the courts today. Even today the courts are still 'making the common law', although these days changes to the common law are normally brought about by Parliament amending or repealing the common law by Act of Parliament.

## 1.4 Precedent

Precedent is, at its simplest, one court following the decision of a previous court. We'll see this in operation when we examine contract law in more detail. However, precedent does take strong account of the hierarchical nature of the court structure. At the top of the structure is the House of Lords. All courts below the House of Lords must follow the decisions of the House of Lords. The Court immediately below the House of Lords is the Court of Appeal. The Court of Appeal must follow the decisions of the House of Lords. The Court of Appeal also follows its own decisions. Below the Court of Appeal is the High Court. The High Court must follow the decisions of both the House of Lords and the Court of Appeal. The High Court does not have to follow decisions of its own, although it will usually do so. At all levels of the hierarchy a court can hold that the facts of the case before it is fundamentally different from all previous cases. This is known as 'distinguishing' cases. In such an instance the court will decide the case on its own merits and the case will then become precedent for future courts.

## 1.5 An overview of contract law

The book deals with the following areas of contract law:

- Agreement, offer and acceptance
- Certainty
- Consideration
- Intention to create legal relations
- Variation of contracts
- Privity of contract
- Terms of the contract
- Exemption clauses
- Misrepresentation
- Remedies for breach of contract.

## **1.6 Agreement, offer and acceptance**

Agreement, offer and acceptance together deal with the formation – the making – of contracts. Formation deals with such issues as when is the contract made? Where is the contract made (an ever important issue now that more goods are purchased over the worldwide web from abroad)? When is the order placed? When will the goods arrive?

Formation is also very important in business contracts. When a business, Business 'A', orders goods or services on its own standard form contract is the contract made on their terms? What if their supplier 'accepts' Business 'A's order on their own standard form contract? Now on whose terms is the contract made; Business A's terms or the supplier's terms?

## **1.7 Certainty of terms**

Since the formation of a contract is all about agreement between the parties it is essential that both parties know exactly what has been agreed. This is where 'certainty of terms' comes in. 'Certainty of terms' deals with issues such as what is meant by ordering goods 'on the usual terms' from a regular supplier. What have the parties actually agreed? Are there regular terms between the parties? Are there different terms depending on what types of goods have been ordered? If the parties are not certain what they've agreed then there can be no contract between them.

## **1.8 Consideration and variation of contracts**

Consideration and variation of contract terms are important and related features of English contract law. English contract law is based on the idea of a bargain. Both parties 'give' the other party something – the something is the consideration. Normally there is no problem in identifying what both parties give to the other. In a contract for the sale of goods one party gives the goods to the other party in exchange for the other party giving the seller money (the price). In such a case the seller's consideration to the buyer is the goods and the buyer's consideration to the seller is the money paid to the seller. However, what if you want to vary the terms of the original contract? This you can only do if you enter into a new contract which varies the terms of the original contract. In this case very often 'consideration' is missing from the new agreement. If this is the case you will be bound by the original contract.

For example, if you order 400 kettles from a supplier and then discover that you only need 200, can you 'cancel' 200 kettles?

Even if your supplier agrees can he later change his mind and make you take the whole 400?

## **1.9 Intention to create legal relations**

When we look to see if a valid contract has been formed not only do we have to consider the formation of the contract and the presence of consideration, but we also have to consider if the parties to the agreement really intended to create legal relations (intended to be legally bound) to each other by way of contract.

### **1.10 Privity of contract**

This area of law deals with the type of situation where you buy a holiday from a travel company for you and your family. If the holiday ‘goes wrong’, you can sue the travel company, but can the members of your family sue the travel company?

Another example. Assume that your company enters into a contract with another company. Say that under one of the terms of that contract the other company agrees to pay some money to ‘your’ company and some money direct to you in your own personal capacity. What happens if the other company then refuses to pay you? Can you sue the other company?

### **1.11 Terms of the contract**

What do we mean by ‘terms’ of the contract? In the example above of Robert selling his brand new car that is worth £30,000 to Jill for £10 then the terms of the contract are Robert agreeing to sell his car to Jill for £10 and Jill agreeing to pay Robert the £10.

Other points to consider is how important are the terms of the contract? Are all the terms of equal importance? Can you break some terms but not others? Are the ‘penalties’ for breaking some terms less onerous than others?

### **1.12 Exclusion/exemption clauses**

If the other party breaks a term of the contract can he escape liability because the contract contains a term which excludes his liability for that particular breach? Just suppose that the contract contains a term that says that if the other party does break a certain term then he will not be liable for that breach. This is what’s known as an exclusion or exemption clause. Is it valid? This section on exemption clauses looks at the common law approach and the statutory approach to terms of the contract that purport to limit or exclude liability for breach of contract.



### **1.13 Misrepresentation**

If a person sells you a second-hand car and tells you that he has owned it from new and it later turns out that it's been owned by 10 people, what are your remedies?

Has that person's statement been made a part of the contract, i.e. has it become a term of the contract? If it wasn't a term have you a remedy? Can you sue the seller for the false statement that he made to you?

### **1.14 Remedies for breach of contract**

This section deals with what is meant by breach of contract and the effects of such a breach. Does every breach of contract entitle the innocent party to treat the contract as at an end if he so chooses or must he go on with the contract and settle for monetary compensation (damages)? This section will also examine the nature of penalty clauses in English contract law. Do they exist? Are they effective?