

11 Introduction to the law of contract

Here is a brief summary of the law of contract. Complete the texts using the words in the box.

agreement breach capacity consideration damages fraud
 illegal obligation oral performance property signed terms

What is a contract?


It is an agreement that creates a binding (1) obligation upon the parties. The essentials of a contract are as follows: mutual (2) _____; a legal (3) _____, which in most instances need not be financial; parties who have legal (4) _____ to make a contract; absence of (5) _____ or duress; and a subject matter that is not (6) _____ or against public policy.

What form does a contract take?

In general, contracts may be either (7) _____ or written. Certain types of contracts, however, in order to be enforceable, must be written and (8) _____. These include contracts involving the sale and transfer of (9) _____.

How does a contract end?

In case of a (10) _____ of contract, the injured party may go to court to sue for financial compensation (or (11) _____), or for rescission, for injunction, or for specific performance if financial compensation would not compensate for the breach. Specific (12) _____ of a contract is the right by one contracting party to have the other contracting party perform the contract according to the precise (13) _____ agreed.

 **Contracts and agreements** are central to many legal relationships between

12 Types of legal contracts

Link the type of contract to its description.

Type	Description
1 Consultancy agreement	a This agreement is used to ensure the repayment of money borrowed, usually in monthly instalments.
2 Distribution agreement	b This agreement is used where one party buys goods from the manufacturer and re-sells them on his own account. He will however be given the right to use the manufacturer's intellectual property rights.
3 Franchise agreement	c This agreement sets out the terms and conditions on which a business supplies goods.
4 Loan agreement	d This agreement is used where one party grants to another the right to run a business in the name of the first party. Examples include Body Shop and McDonalds.
5 Manufacturing licence agreement	e This is the equivalent of a contract of employment for directors.
6 Terms and conditions of sale agreement	f This agreement is used where one party is providing services as an independent advisor to a company.
7 Contract of employment	g This agreement should be used where one party (the licensor) owns intellectual property rights in respect of a product it has developed and wishes to license the manufacture of the product to a third party.
8 Directors' service agreement	h This is intended to govern the relationship between a number of shareholders in a company. The agreement works as a second layer of protection preventing the company from being run in a manner other than has been agreed.
9 Shareholders' agreement	i This contract comes into existence as soon as a job offer is accepted whether that offer is oral or in writing.

 There are many types of legal contracts which create a legal relationship

13 Navigating legal contracts

Look at the following extracts from contract clauses. In each, a navigation word has been underlined. Link the underlined word to its meaning.

Contract clauses	Meaning
1 now it is <u>hereby</u> agreed ...	a by the terms of this agreement
2 subject as <u>hereinafter</u> provided	b to that thing just mentioned
3 you will find in the documents <u>herewith</u> attached	c previously stated
4 the first instalment becoming due one month from the date <u>hereof</u>	d later in this document
5 the failure of either party to exercise any right or remedy to which it is entitled <u>hereunder</u>	e after that event
6 by referring to the points mentioned <u>therein</u>	f by means of this document or declaration
7 as <u>thereby</u> stated	g in that matter
8 and for a period of 12 months <u>thereafter</u>	h on that item
9 the failure of either party to exercise any right or remedy shall not constitute a waiver <u>thereof</u>	i of this event
10 all statutory instruments or orders made pursuant <u>thereto</u>	j for that item
11 the Initial Fee together with any VAT <u>thereon</u>	k with this document
12 the cost of the product, and the monthly payments <u>therefore</u>	l of or about that
13 the <u>aforementioned</u> terms shall prevail over	m by means of or because of that

Legal contracts are complex documents. **Drafters** use many specialist legal terms as well as particular words to navigate through the document and



14 Standard Terms and Conditions of Sale

Below are the main paragraph titles from a Sale Agreement. Link the paragraph titles to the details of the contents of each paragraph.

1 PRICE AND PAYMENT	a The Buyer only receives title to the Goods once he has paid all sums due to the Seller.
2 GOODS	b This prevents a party from relying on something said in pre-contract negotiations that is not excluded in the Agreement itself with the exception of deliberate misrepresentations (which are impossible to exclude).
3 DELIVERY	c The Goods are as specified in the quotation.
4 ACCEPTANCE	d Allows for defaults in the event of happenings outside the control of the Seller.
5 TITLE AND RISK	e The Price is the quoted price; if the Price is not paid on time the Seller is entitled to interest at 4 per cent above base.
6 LIMITATION OF LIABILITY	f This does not prevent the buyer suing for breach of warranty after the 7th day. It is intended to prevent rejection.
7 FORCE MAJEURE	g Specifies which law applies and where the parties must sue.
8 ENTIRE AGREEMENT	h Delivery is as shown on the quotation.
9 GOVERNING LAW AND JURISDICTION	i This is required when selling to consumers. To sell to a consumer without this phrase would be a criminal offence.
10 RIGHTS OF CONSUMER	j Tries to exclude and restrict the liability of the Seller to personal injury and death (the minimum allowed by law). It specifically excludes economic loss and limits the liability of the Seller to the price. There is a risk that these terms would be deemed unfair in a consumer transaction.



This document sets out the terms and conditions on which a business supplies goods and is drafted as far as possible to exclude the business's liability for any faulty products. However, statute usually decrees that when a business contracts with a consumer then certain rights cannot be