

CONTRACT LAW SUMMARY



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INTRODUCTION TO CONTRACT LAW

DEFINITION OF CONTRACT LAW

Contract law is one limb of the 'law of obligations'. The law of obligations consists of tort, restitution and contract. Tort is where a duty of care is owed in law by one party towards another and restitution provides a remedy in situations where one party has been unjustly enriched. In contract law, obligations arise because one party has made an agreement with another intending that it should be legally binding. Most contracts arise in the context of commercial relationships (e.g. sale of goods or insurance) but other types of agreement can also give rise to a contract as can be seen in *intention to create legal relations* (p3).

The Classical Model of Contract Law

This 19th century doctrine is the starting point in understanding the main elements of a contract. More importantly, the factors of the doctrine are considered by the courts when deciding whether a legally binding contract exists. The basis for the classical model was to retain freedom of contract as much as possible, whilst protecting reliance on promises. The factors of the model are:

- Intention to create legal relations
- An offer of a promise and a matching acceptance of that promise (an agreement)
- Legal consideration for the agreement; i.e. something must be given in return for the promise so that it is more than just a gift or gratuitous promise
- The privity rule which states that only an individual who was a party to the original contract will be able to enforce it
- The terms of the contract must be certain and unambiguous

SAMPLE

A traditional application of the five factors can be seen in:

***Carlill v. Carbolic Smoke Ball*¹**

FACTS: Carbolic Smoke Ball was a company which provided a 'smoke ball' remedy for influenza. In advertisements it stated that if used in accordance with their instructions, the user still contracted influenza, that the company would offer a payment of £100 to that individual. The company stated in the advertisement that it had deposited £1,000 in a bank account to illustrate its good faith in the matter. The claimant contracted influenza in spite of using the smoke ball in accordance with the instructions and claimed the £100 from the defendants. The defendants refused to pay the claimant on the basis that the words in the advertisement were 'mere puff' and thus, no intention to create legal relations existed, which in turn meant that no contract existed.

DECISION: The court's approach was that the language in the advertisement was clear and unequivocal and thus, amounted to a unilateral offer; an offer to anyone in the world who read the advertisement. Furthermore, in complying with the instructions the claimant had accepted the offer and provided consideration for the £100. The court held for the claimant on the basis that all five factors had been satisfied which meant that a valid, legally enforceable contract existed.

Failure to meet just one of the five conditions can mean that the court will decide that no contract exists. However, whilst this doctrine provides the basis of contract law, developments in the 20th century dictated the need for a change of approach from the courts. For example:

- Standard form contracts where freedom of contract conflicted with fairness
- Contents of contracts could no longer be left to private regulation; they became subject to new public policies laid down by the government
- Maintaining a rigid adherence to the conditions was found to cause manifest unfairness which was deemed unacceptable in a modern society

¹ [1893] 1 QB 256

As a result, the courts still apply the five factors but there has been a relaxation of the strict approach where fairness and good faith dictate the need for it, as can be seen from many post-19th century cases.



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