Contract Law Cases

1st S E M E S T E R

Case	Summary	How to Use	Additional/Key Points	Related Topics
HANDOUT No. 1				
Formation – Agreement				
'Invitation to Treat' & Offers				
Advertisements or Displays				
Fisher v Bell [1960] 3 All ER 731	• Shop Window • A shopkeeper displayed a flick knife in his window. The Offensive Weapons Act 1959 prohibited the 'offering for sale' of various offensive weapons, including flick knives. The shopkeeper was prosecuted under the act. • Shop Window	• To show that the display of goods in a shop window is an invitation to treat.	• **Concerning**: display of goods in a shop window; invitation to treat • **Legal Principle**: The prosecution failed. The court held that the display of the knife in the window was an invitation to treat rather than an offer. Therefore, the shopkeeper was not offering it for sale.	**Offer, Invitation to Treat**
***Pharmaceutical Society of GB v Boots [1953] 1 All ER 482	• Self-service store • The defendant changed the format of their shop from counter service to self service Section 18 of the Pharmacy and Poison Act 1933 provided that the sale of certain drugs should not occur 'other than under the supervision of a registered pharmacist".	• To show that the display of goods in a self-service shop is an invitation to treat. • Meaning that the offer to purchase is made at the cash desk by the purchaser. The shop is then free to accept this offer or reject it. This means that shops are not compelled to sell goods at the price at which they are displayed as the purchaser if offering to buy the item at the stated price at the checkout: the shopkeeper can reject that offer if desired.	• **Concerning**: display of goods in a self service shop; invitation to treat • **Legal Principle**: The court of Appeal considered whether the contract was formed at the time that the customer removed the goods from the shelves (not under the supervision of a registered pharmacist) or at the time that the goods were presented at the counter for payment (under the supervision of a registered pharmacist). It was held that the contract was formed when the goods were presented at the cash desk and that the display of goods on the shelf was merely an invitation to treat.	**Offer, Invitation to Treat**
• Partridge v Crittenden [1968] 2 All ER 421	• Advertisement **FACTS**: • The defendant placed an advertisement in a magazine stating 'Bramblefinch cocks, bramblefinch hens 25s each'. He as prosecuted under the Protection of Birds Act 1954 for 'offering for sale' wild birds.	• To show that an advertisement is an invitation to treat	• The advertisement is likely to be construed as an invitation to treat- that is an expression of willingness to accept offers, rather than a unilateral offer that was displayed in Carlill. **Legal Principle:** • The court held that the advertisement was an invitation to treat and not an offer. It was an expression of willingness to receive offers as the starting point of negotiations.	**ADS, Invitation to Treat**

	information to a fellow policeman for him to forward to Superintendent Penn. It was held that he was entitled to the reward. But it appears from the report that at the time the information was actually given to Penn, which constituted acceptance, the claimant knew of the reward. So the case is **weak** authority for saying that one can accept in ignorance of an offer.	knowledge at the crucial time; terms of the offer in this case required the information to be given to a particular person and at the time the information was received by that person the offeree had required the knowledge.		
Counter Offers				
***Hyde v Wrench (1840) 3 Beav 334	• 'Acceptance' that does not match the offer = a counter offer. • 6 June A offers £1000 • 8 June B replies at £950 • 17 June A refuses £950 price • 19 June B 'accepts' at £1000 • Counter offer destroys original offer • Counter offer is next stage in negotiations **Facts**: • Wrench offered to sell a form to Hyde for £1,000. Hyde rejected this price and offered to pay £950. Wrench rejected Hyde's offer. Wrench then sold the farm to a third party. Hyde attempted to accept the original offer of £1000 and sue Wrench for breach of contract when Wrench sold the farm to another party.	• To show that a counter offer will destroy an initial offer such that it may no longer be accepted. • Effect of counter offer- not acceptance and destroys the original offer.	**Concerning:** • Acceptance; counter offer **Legal Principle:** • Hyde's claim was rejected. The Court held that the counter offer of the £950 had impliedly rejected the original offer and, since the original offer had been destroyed, it was no longer open for Hyde to accept.	Offer, Acceptance,
Contrast: Stevenson v Maclean (1880) 5 QBD 34	**Facts**: • McLean telegraphed Stevenson offering to sell 3,800 tons of iron' at 40s net cash per ton, open till Monday'. On Monday morning Stevenson telegrammed McLean: 'Please wire whether you would accept forty for delivery over two months or if not longest limit you would give." McLean did not respond and at 1:34pm Stevenson telegrammed again, accepting the original letter. McLean had already sold the iron to a third party of which he advised Stevenson by telegram at 1:25pm. That telegram crossed with Stevenson's second telegram. Stevenson sued for breach of contract.	• An inquiry for information is not a counter offer • Lush J in this case distinguished Hyde v Wrench, differentiated between a 'counter proposal' (ie a counter offer) which terminates the original offer and a 'mere inquiry' (request for further info) which does not.	**Legal Principle:** • Stevenson's first telegram was not a counter offer. It was a mere request for information. Consequently, McLean's offer was still open at 1:34pm. It was validly accepted. Therefore there was a valid contract of which McLean was in breach. As Lush J said: *"Here there is no counter-proposal. The words are: "Please wire whether you would accept forty for delivery over two months, or if not, the longest limit you would give.' There is nothing specific by way of offer or rejection, but a mere inquiry, which should have been answered and not treated as a rejection of the offer".*	Acceptance, Request for Information
'Battle of the Forms'				

	• Facts: • An acceptance was sent by telex out of office hours.		and therefore acceptance could only be effective when the office re-opened. Lord Wilberfroce summarised the situation in relation to modern communications methods by state that: • • "No universal rule can cover all such cases; they must be resolved by reference to the intention of the parties, by sound business practice and in some cases by judgement where the risk should lie"	
Newer Forms of Communication				
Electronic Mail				
Thomas v BPE Solicitors [2010] EWHC 306	• The issue arose in the context of a professional negligence dispute over whether a share purchase transaction had been completed or not on a particular day. An email had been sent between solicitors acting for the respective parties at 18:00 hrs on a Friday evening before a bank holiday weekend. The defendant solicitors submitted that the email was not effective from the moment it was received because it was sent after working hours, and it could not have been effective until it came to the recipient's eye on the Tuesday morning. The claimant, however, submitted that the email was effective from 18:00 hrs Friday evening by analogy with the postal rule (ie effective at the moment of dispatch).	• Blair J's judgment makes it clear there is no clear cut rule. The outcome in each case will depend on the context, including the intentions of the parties and "sound business practice".	• Blair J decided that the issue must be resolved by reference to the intentions of the parties, by sound business practice and in some cases by a judgment as to where the risks should lie. In the context in which the email had been sent (that is, a transaction which all had agreed could have been completed that evening), then the email was not outside working hours. Therefore, the email was available to be read within working hours, despite the fact that its intended recipient had gone home. If that email had been an acceptance (which Blair J held it was not in this case for other reasons), then it would have taken effect at 18:00 hrs. • Blair J's finding that 18:00 hrs was not outside working hours for this particular transaction needs to be viewed against the backdrop of a transaction which all parties had agreed and expected would be completed that day by the provision of solicitors' undertakings to transfer the finance funds (as the time for instructing the bank to do so had already passed earlier on the Friday afternoon). Nevertheless, this judgment is the only authority on the issue of when an email communication can be said to be effective in relation to contractual offer and acceptance.	
Chwee Kin Keong v Digilandmall.com [2004] 2 SLR 594	• Owing to an employee's mistake a particular type of commercial laser printer was advertised for sale on the defendant's website for $66 instead of $3,854. Before the mistake was detected, 784 individuals		• a decision of the Singapore High Court therefore not binding on the English court AND the judge's analysis of the rules pertaining to email communication was obiter	

	had been completed. The defendant promised the claimant that if he arranged for a bankers draft for the deposit to be delivered to the defendant before 10.00 am on the 22nd December he would complete the written contract. The claimant duly complied with the request but the defendant refused to complete. The claimant brought an action stating that unilateral contract existed and the defendant was thus bound by that contract to complete the written contract for the sale of the property. **Held**: A unilateral contract did exist.		*qualification- there must be an implied obligation on the part of the Offeror not to prevent the condition being satisfied, an obligation which arises as soon as the offeree starts to perform. Until then the Offeror can revoke the whole thing, but once the offeree has embarked on performance, it is too late for the Offeror to revoke his offer.*	
• Soulsbury v Soulsbury [2007] EWCA Civ 969	**Problem**: • 'acceptance' by completion of performance? **Facts**: • The deceased former husband of the claimant promised her that she would receive £100,000 on his death if she did not enforce an order of periodical payments in her favor against him or seek any other order for ancillary relief against him. The question was whetehr what constituted a binding contract that could be enforced by the claimant against the estate of the deceased.		• Ward LJ in the leading judgment focused on dismissing policy obligations to the enforceability of the contract (eg that it ousted the jurisdiction of the courts) • Longmore LJ agreed but also stressed that the facts involved a unilateral contract.	
Shuey v United States 92 US 73 (1875)	Facts: • United states posted an award of $25,000 for information leading to the apprehension of a particular criminal. 7 months later, a notice revoking the offer was published. 4 months later, Cm unaware that the offer had been revoked, provided information on the criminal. The court found in favour of the defendant (US). Withdrawing offers made to many people • give same degree of notoriety	• Since a unilateral offer is a promise in return for an act, it may be accepted by anyone who performs the act stipulated in the offer. Therefore in order to revoke a unilateral offer (to the world at large) the offeror must take reasonable steps to notify those persons who might be likely to accept. This case is the generally accepted authority for this proposition, although it is an American case and therefore carries only persuasive authority in England & Wales. • **If the offeree has started performance of the act specified in a unilateral offer then it may not be revoked, even if the act is incomplete.**	• The offeree had not begun 'part-performance' before the offer was revoked. • The revocation was given the same notoriety as the offer (had been done in the same way)	
Revocation and 'Firm' Offers				
Routledge v Grant (1828) 4 Bing 653	Facts: • In the case, Grant wrote to Routledge	• that an offer can be withdrawn at any time up to it being	• Generally speaking , an offer may be withdrawn at any time prior to	

Snelling v John G Snelling [1973] 1 QB 87	• In March 1966 three brothers, who were directors of John G Snelling Ltd (the company), had borrowed, on behalf of the company, £40,000 from Credit for Industry Ltd. Security for the loan was a mortgage on the properties of the company. On 22 March 1968 the brothers entered into an agreement between themselves whereby they agreed that in the event of any director voluntarily resigning he would immediately forfeit all moneys due to him from the company by way of loan account 'or similar'. This agreement was to remain in force until Credit for Industry Ltd's loan had been repaid. On 28 June 1968 Brian Snelling resigned as a director of the company and claimed repayment of the £15,268 owed to him by the company. • The issue before the court was whether the company, John G Snelling Ltd, could enforce the agreement against Brian Snelling since the company was not a party to the agreement of 22 March.	Context in which arrangement made: • Agreement between family members but in a business context • **HELD**: Parties intended legal relations.	• **Where domestic parties are clearly in business together**, the presumption will likely be that they are intending legal consequences unless there is clear evidence to the contrary.	
Parker v Clark [1960] 1 WLR 286	• Mrs Parker was the niece of Mrs Clarke. An agreement was made that the Parkers would sell their house and live with the Clarkes. They would share the bills and the Clarkes would then leave the house to the Parkers. Mrs Clarke wrote to the Parkers giving them the details of expenses and confirming the agreement. The Parkers sold their house and moved in. Mr Clarke changed his will leaving the house to the Parkers. Later the couples fell out and the Parkers were asked to leave. They claimed damages for breach of contract. • It was **held** that the exchange of letters showed the two couples were serious and the agreement was intended to be legally binding because (1) the Parkers had sold their own home, and (2) Mr Clarke changed his will. Therefore the Parkers were entitled to damages.		More than 'trivial matters' at stake: • Agreement was more than 'trivial'; it involved selling own home	

HANDOUT No. 2

Consideration

Benefit/ Detriment Analysis:

Roscorla v Thomas [1842] 3 QB 234	FACTS: • On 28 September 1840 Roscorla's servant bought a horse for his master from Thomas for £30; Roscorla was to pay for the horse at a later date. On the following day Thomas called on Roscorla for payment. Roscorla gave Thomas the £30 and in return Thomas gave Roscorla a memorandum which stated that • 'I have this day sold to Roscorla a bay nag for £30 which I warrant not to exceed five years off, and to be sound in wind and limb, perfect in vision, and free from vice.' • Roscorla sued Thomas for breach of this warranty claiming that horse was not free from vice, but, on the contrary, was [illegible] very vicious and restless. • The issue before the court was whether the warranty was given before or at the time of making of the contract or whether it was given after the contract had been made. • Oral warranty as to the soundness of a horse, given after the sale of the horse, **HELD** to be unenforceable. • There was no link between the consideration and the promise; ie there was no bargain	• If a guarantee is made in respect of something after it has been sold then there is no consideration for that guarantee and it is not binding. • The misrepresentation must be made *before* the contract is formed. A statement that is made after formation of the contract cannot be actionable.	•	
Lampleigh v Brathwait (1615) 80 ER 255	• FACTS; • Braithwaite had killed another man and asked Lampleigh to secure a pardon. Lampleigh went to considerable effort and expense to secure the pardon for Brathwait who subsequently promised to pay Lampleigh £100. Braithwaite then failed to pay the £100. Lampleigh sued. • Services performed at promisor's request and later promise • Implication of payment (old doctrine of implied assumpsit)	• To demonstrate an exception to the general rule that consideration cannot be past.	**Legal Principle:** • Lampleigh's claimwas successful, even though, on the basis of past consideration, his efforts were in the past in relation to the promise to pay. The court, however, considered that the original request by Braithwaite in fact contained an implied promise that he would reward and reimburse Lampleigh for his efforts; therefore, the previous request and the subsequent promise were part of the same transaction and were enforceable.	Past consideration; exception to the general rule
Pao On v Lau Yiu [1979] 3 All ER 65	**Facts:** • The claimants threatened not to proceed with the sale of shares unless the defendant agreed to renegotiation on other peripheral issues. The defendants wanted to avoid litigation and were anxious to reach agreement for the sale of the shares so agreed. The claimants tried to enforce the agreement but the defendants resisted on the basis of duress. The Privy Council found in favour of the claimants on the	• To set out the requirements of economic duress. • This is an important case discussing: • Ingredients for a claim in duress. ○ Previous request device as a means of avoiding past consideration ○ Consideration in the form of promising to perform an	• If services are rendered on request and where both parties understand that payment will be made, the promise may be enforceable even though the consideration is past. Criteria was restated in this case: • 1. The act must have been done at the promisor's request • 2. The parties must have understood that the act was to be remunerated further by	economic duress

Limitations of Promissory Estoppel

Suspension of Rights

Tool Metal v Tungsten [1955] 2 All ER 657	• Tungsten had been infringing a patent right held by TMM. When TMM heard of this they waived all infringements in return for Tungsten paying 10% Royalty and also 30% 'compensation' if sales exceeded 50KG in any month. These sums were excessive but Tungsten agreed to pay them otherwise they would be faced with a claim for infringing the copyright. Tungsten struggled to make payments. They got into arrears during the war times and an agreement was reached to waive the 'compensation' payments during the war years. • Confirms that on reasonable notice can return to strict legal rights	• During the period when the promise was operative, and until reasonable notice expired, the right to compensation was extinguished so that TMMC could not later claim compensation for that period. The implication therefore, is that for the period during which a promise is intended to be operative, the doctrine is extinctive.	• **Held**: TMM could not enforce the compensation payments during the war years but could enforce them on termination of the war. TMM were estopped from going back on their promise to waive the payments in equity. Generally promissory estoppel will merely suspend legal rights rather than extinguish them. However, where periodic payments are involved and a promise has been made to reduce the payments because of pressing circumstances which are not likely to persist, promissory estoppel can be used to extinguish legal rights.	

Shield or Sword?

Combe v Combe [1951] 2 KB 215	• Cannot use estoppel instead of consideration to *form* contract • A husband promised to make maintenance payments to his estranged wife but failed to do so. The wife brought an action to enforce the promise invoking promissory estoppel.	**The doctrine of promissory estoppel applies subject to certain requirements:** • The doctrine can only be used as a defence. Since it is an equitable doctrine, the general equitable maxim that 'equity is a shield, not a sword applies. It does not create new rights.	• **Held**: Her action failed. There was no pre-existing agreement which was later modified by a promise. The wife sought to use promissory estoppel as sword and not a shield. • Although she had provided no consideration for her husband's promise, the *High Tree* principle applied. This decision was overturned by the Court of Appeal which held that there was no consideration for the husband's promise and that the *High Tree* principle does not create a cause for action.	

BUT contrast promissory estoppel with proprietary estoppel

Crabb v Arun DC [1975] 3 All ER 865	• The claimant owned land along the side of which was a road owned by the defendant council. The claimant had a right of access to the road at point A and a right of way over the road. He wished to divide his land into 2 to be sold off but to do that he would need another right of access at point B. At a meeting between the claimant, hic architect and the defendant's representative, an agreement in principle was reached that the claimant would be given the second access at point B. The defendant erected a boundary fence and put gates at points A and B. The claimant then sold off that part of his land which	• Proprietary estoppel can create a 'cause of action' (i.e. sword as well as shield)	• The court of appeal, applying as a cause of action a form of estoppel (which Lord Denning MR categorized as proprietary estoppel), Held the action should succeed.	

Distinguish: Terms & Representations

Factors in Distinguishing between Terms & Representations

Importance of the statement: • Bannerman v White (1861) 10 CB NS 844	**Facts:** • The defendant was the purchaser of hops. Before the contract was formed the purchaser stated that 'if they have been treated with sulphur, I am not interested in even knowing the price of them.' The seller stated (wrongly) that they have not be so treated. When the purchaser discovered this, he repudiated the contract. The seller sued on the basis that the discussions were preliminary to the contract and not part of it.	• To show that the more important a pre-contractual statement, the more likely it is to be considered a term of the contract.	**Legal Principle:** • The seller failed. The court held that the statement was no important to the purchaser that it became a term of the contract that had been breached. • Importance attached to the statement test indicates that the statement is a term. It is not merely that the statement is important to the other party but that he makes this importance clear to the other ahead of any statement being made.	Incorporation of terms; importance of statement
Verification: • Ecay v Godfrey (1947) 80 Lloyd's Rep 286	Facts: • The defendant sold a boat to the claimant. He stated that as far as he was aware the boat was sound and free from vice but advised the claimant to have it surveyed. The boat turned out to be defective.		• **Held**: The statement that the boat was sound was merely a representation. The statement was not sufficiently emphatic to amount to a term and the advice to have the boat surveyed demonstrated the defendant did not wish the claimant to rely on the statement.	

Special Knowledge

Compare: • Oscar Chess v Williams [1957] 1 WLR 370	**Facts:** • An erroneous (but honest) statement as to a vehicle's age was made by a private seller with no expertise or specialist skill, the statement was not considered to be a term of the contract but a representation; the party to whom the statement was made was a car dealer and was therefore perfectly capable of determining the veracity of the statement for themselves.	• All the judgements in this case clarified that the test for whether a statement is a mere representation or has been incorporated as a term of the contract is whether the parties *intended* it to be a term (ie intended it to be a warranty or, put another way, intended there to be a guarantee/promise as to the accuracy of the statement). Morris LJ dissented because he considered that the application of that test to the facts meant that there was a warranty.	• **Held**: The statement relating to the age of the car was not a term but a representation. The representee, Oscar Chess ltd as a car dealer, had the greater knowledge and would be in a better position to know the age of the manufacture than the defendant • At the time of this case, the finding that the statement was not a term, so that there was no action for breach of contract, meant that there was no liability at all.	
To: • Dick Bentley v Harold Smith [1965] 1 WLR 623	**Facts:** • The claimant asked the defendants to source a ;well vetted' Bentley. The defendant claimed that a particular car had done 20,000 miles since being fitted with a new engine and gearbox. It had, in fact, done 100,000 miles, which the claimant discovered after purchasing the car.	• To establish that ore-contractual statements made by parties with specialist knowledge can be considered terms of the contract.	**Legal Principle:** • The statement regarding mileage was held to be a term of the contract. The claimant had relied on the specialist knowledge of the dealer in making the statement which was a major factor in his decision to enter into the contract.	**Incorporation of terms; specialist knowledge.**

Express Terms

Oral Contracts

Thornton v Shoe Lane Parking [1971] 2 QB 163	• Facts: • There was sign at the entrance to a car park which stated the parking fees and a notice that parking was 'at the owner's risk'. Drivers were required to stop at a barrier on entry to the car park and take a ticket from a machine. The barrier would then left. Each ticket contained a statement saying that 'This ticket is issued subject to the conditions of issue as displayed on the premises'. The conditions of the contract were displayed on notice inside the car park. These included a clause which excluded liability for damage to property and personal injury. The claimant was injured in the car park and sued for damages. The defendants argued that they were covered by the exclusion clause. • Held: Reasonable notice was NOT given of the exclusion clause Exclusion term for personal injury would require more notice (e.g. print in red ink with red hand pointing to it)	• To demonstrate that a very high degree of notice is required for particularly onerous exclusion clauses to be effective. • Incorporation by reasonable notice and automatic machines. The notice at the entrance, which was incorporated, was interpreted so that it did not cover personal injury, only damage to or loss from cars.	**Legal Principle:** • The claim was successful. The court considered that the operators of the car park had no taken sufficient steps to draw the exclusion clause to the claimant's attention before the contract was made. Lord Denning concluded that the contract was formed at the moment that the barrier was activated: *"the customer has no chance of negotiating. He pays his money and gets a ticket. He cannot refuse it. He cannot get his oney back. He may protest to the machine, even swear at it. But it will remain unmoved. He is committed beyond recall…the contract was concluded at this time."*	**Incorporation of Terms.**
Interfoto v Stiletto [1988] 1 All ER 348	Facts: • A clause imposed a fee of £5 per day for the late return of photographic transparencies. There were 47 of these transparencies and they had been kept inadvertently for an additional 2 weeks and a charge of £3,783.50 had been imposed. CA held that this term has not been incorporated since it was particularly onerous and unusual and therefore had to be fairly and reasonably brought to the other's attention, which had not happened. • Held: same principles apply to any onerous clause, not just exclusions of liability	• A higher standard of incorporation will apply of the particular clause is considered to be onerous or unusual.	• Contracts which contain unusually burdensome contract terms. • 'if one condition in a set of printed conditions is particularly onerous or unusual, the party seeking to enforce it must show that that condition was fairly brought to the attention of the other party in the most explicit way."	
Problems with this approach:				
AEG v Logic Resource [1996] CLC 265	Facts: • Logic Resources , the defendants, placed an order with the claimants , AEG, for the purchase of cathode ray tube for export to Iranian customers. The claimants sent a confirmation note which detailed the equipment ordered ad provided in small capitals that 'orders are subject to our conditions of sale- for extract see reverse'. The reverse extracted five conditions from the full conditions of sale and at the bottom of the following was printed, 'a copy of the full conditions of sale is		• It was common ground that the claimants' condition were not standard for the industry and that during negotiations the claimants had not specifically drawn condition 7 to the defendants attention. Condition 7.5 was part of condition 7. By condition 7.1 the supplier warranted the goods to be free of defects, and by condition 7.3 the purchaser was required to give notice of defects within 7 days of discovery. By condition 7.4 the purchaser was required to allow such time and opportunity as estimated by the supplier	