

Introduction to the English Legal System

Criminal law

The purpose of criminal law is...

- To regulate behaviour.
- To promote public order.
- To preserve national security.

The parties to criminal law are...

- Generally started by the police.
- The state who prosecutes the defendant.

The case is heard at...

- The magistrates court (for summary offences).
- The crown court (for indictable offences).

The burden of proof has to be...

- Beyond all reasonable doubt.

The purpose of penalties is...

- Punishment
- Protection
- Rehabilitation
- Deterrence
- Examples being imprisonment, fines or community service.

The language being

The prosecution/ the crown vs the defendant.

Civil law

The purpose of civil law is...

- To govern relationships between individuals.
- To enforce individual's rights and duties.

The parties to civil law are...

- Generally started by an individual (the claimant).
- The sued individual (the defendant).

The case is heard at...

- The county court (this is where 90% of cases are heard).
- The high court.
- Specialised tribunal.

The burden of proof is on...

- The balance of probabilities.

3. Unilateral mistake
 - Only one party is mistaken, and the other party knows, or should know, about the mistake.
 - Generally, would not invalidate a contract unless mistake of identity, if the contract is not made face to face.
 - **Cundy v Lindsay (1878) – Rogue pretended to be a reputable company and obtained handkerchiefs on credit from claimant and sold them to the defendant. Contract void for mistake of identity.**

Misrepresentation

- During contractual negotiations, one party may make false statements which encourage the other party to enter into the contract.

The element of actionable misrepresentation is...

- The statement must be one of fact not mere opinion. **Bisset v Wilkinson (1927) – Claimant purchased a piece of land to farm sheep and asked the defendant how many sheep it would hold, the defendant didn't know and estimated around 2000 sheep. This was wrong so the claimant said it was a misrepresentation. The council held that the statement was only a matter of opinion and not fact.**
- The statement must induce the other party to enter into the contract.
- If the party checks the truth of the statement, then it will not be actionable. **Attwood v Small (1838) – Claimant wanted to buy some properties and asked the defendant how much income they generated, he got his accountants to check if the figure that he claimed was accurate, they said that it was and he bought the properties. Turns out the figure was greatly exaggerated and he tried to sue, he failed as he relied on his own judgment and not the word of the defendant.**

If there is a change in circumstances, then this is a misrepresentation. A vendor of a medical practice claimed £2000 salary, by the time of sale this dropped significantly, he was found guilty of misrepresentation.

There are 3 types of misrepresentation...

1. Fraudulent misrepresentation
 - Either made knowing that it was untrue, not believing it was true, or not caring if it was true.
 - Largely depends on the defendant's state of mind i.e. did they intend to mislead the claimant or was it an honest mistake.
 - **Derry v Peek (1889) – Claimant bought shares in company which he thought were allowed to use steam powered trams because it said so in their prospectus. They were not allowed to so the claimant sued due to misrepresentation. Court held it was not fraudulent and the defendant made an honest mistake.**
2. Negligent misrepresentation
 - Honestly believing it to be true, but with no grounds for such belief.

Duress and Undue Influence

- Parties must enter contract freely and voluntarily or it may be voidable for duress.
- Used to only include violence or threats of violence, which rarely came to court.
- But can now include economic duress. *Atlas Express Ltd v Kafco Ltd (1989)* – Kafco had a contract with Atlas who would deliver their items, Atlas wanted to charge a higher price and would not deliver the items unless that price was met. Kafco would have gone bankrupt if they could not deliver so signed the new higher price contract. Later they claimed they were under economic duress and had to sign, judge ruled in their favour.

Undue influence is...

- Subtler than duress.
- In certain fiduciary (relationship involving trust) relationships, courts assume that one party is dominant and can influence the other.
- A contract made between parties in such a relationship will thus be assumed to have resulted from undue influence, unless proven otherwise.
- Undue influence renders a contract voidable.

Such fiduciary relationships include...

- Doctor and patient
- Solicitor and client
- Parent and child
- Trustee and beneficiary

Illegality

- Effect of illegality is that a contract would be void and unenforceable.

Contracts illegal at common law include...

- Contracts to commit crimes
- Contract promoting sexual immorality e.g. *Pearce v Brooks (1866)* – Plaintiff sued prostitute for the price of a carriage well knowing what she would do with it, he could not recover money.

Contracts void at common law include...

- Contracts in restraint of trade.

Contracts void by statute include...

- Many statutes include prohibitions on certain contracts.

Contract Law – Discharge of a Contract

The ways in which a party's contractual liabilities under a contract cease to exist are...

- Performance of the contract
- Agreement between the parties
- Frustration
- Acceptance of breach
- Use of statutory 'cooling off' period

Discharge by performance

- Relevant to contracts other than for the sale of goods, which are governed by the Sale of Goods Act 1977.
- The general rule is that the complete performance of the party's obligation under the contract are required for discharge to occur.
- The key issue is whether the obligation was completely performed.
- **Cutter v Powell (1795)** – Cutter had agreed to be a ship's mate for the entirety of a voyage, the journey took 2 months but Cutter died ¾ of the way into it. His widow sued for the amount he was owed; it was held that the ship captain did not have to pay because he had not completely performed his obligations.

The four exceptions to the general rule are...

1. Divisible or severable contracts
 - Part-payment must be made for partial performance if the contract is regarded as divisible or severable.
 - If the contract is divisible it will consist of a number of separate obligations and part payment will be required for each obligation performed.
 - **Ritchie v Atkinson (1808)** – A ship agreed to carry cargo for £5 per tone, it only carried half the cargo. Held that it is divisible because the price was said not the lump sum. Captain paid for cargo he carried and did not pay damages for spare cargo.
 - If partial performance nearly account for the whole performance, then it will be paid for.
 - **Hoeing v Isaacs (1952)** – Contract was to decorate and furnish a flat for £750, defects in the work would have cost £56. The court of appeals held that there had been substantial performance so the decorator was paid £750 but had to pay damages of £56.

Acceptance of partial performance...

- If partial performance is freely accepted by the other party as a matter of choice.
- **Sumpter v Hedges (1898)** – Claimant had agreed to build 2 houses for £565, he completed work to the value of £333 and stopped because he ran out of money. Hedges finished the project. Held that Hedges didn't have to

pay agree to vary it or pay Sumpter for the work done, Hedges act of completing the work did not indicate that he had freely accepted the claimant's partial performance.

Prevention of performance...

- Where one of the parties prevents the other from fully performing the contract.
- The party prevented from performing will be paid the amount deserved for the work completed.
- **Planché v Colburn (1831)** – P was commissioned to write a book on costumes, as part of a series, and to be paid £100 once completed. Colburn cancelled the series which had been partially written. Held that P was entitled to a payment of £50 for the work completed.

Discharge by agreement

- Having made the contract, the parties are free to agree to vary or abandon it
- However, agreement to do either must amount to another contract.
- All other requirements of a new contract are necessary.

A waiver is...

- A party may waive (give up) contractual rights by indicating to the other party that the rights will not be insisted on.
- **Charles Rickards Ltd v Oppenheim (1930)** – Charles agreed to sell a specially constructed car to be delivered by March, it was not delivered. Oppenheim then said that if the car was not delivered by July he would not accept delivery. Charles tried to deliver the car in October and Oppenheim refused. The court of appeal held that O was entitled to refuse delivery by giving reasonable notice of delivery before July.

Discharge by frustration

A contract may become frustrated if it becomes...

- Impossible to perform
 - Illegal to perform
 - Radically different from what the parties contemplated.
1. Impossible to perform
 - If a contract becomes impossible to perform it becomes frustrated.
 - **Taylor v Caldwell (1863)** – A music hall was hired out for four days. Before the start date, the hall was accidentally burnt down, it was held that the contract was frustrated.
 - If a party who has contracted to perform the contract personally dies or becomes too ill to perform, the contract will be impossible to perform. It will then be frustrated.

Implied terms may arise from...

- Customs and practice
- Works and staff rules
- Collective agreements
- Statute
- Common law rights and duties

Common Law and Duties

The common law and duties of the employee are...

- To show mutual respect
- To use reasonable care and skill
- To obey lawful and reasonable orders
- To give faithful service to the employer
- To not reveal confidential information

The common law and duties of the employer are...

- To show mutual respect
- To pay wages
- Not to undermine the trust and confidence of the employee
- To provide work or pay employee if no work is available
- To indemnify employees
- If reference is provided it must be true
- To provide safe working conditions

Health and Safety at Work

2 possible rights of action may arise if an employee is injured at work...

1. Breach of statutory duty
 - This is a criminal offence
2. Breach of common law duty of care
 - This is a civil matter