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CONTRACT LAW

Comprehensive Study Guide

Chapters 1–13 | Agreement | Consideration | Capacity | Terms | Exemption Clauses | Damages | Remedies | Termination | Misrepresentation | Duress | Mistake & Illegality

This guide covers all 13 chapters of Contract Law including: agreement (offer and acceptance), intention to create legal relations, consideration, parties and privity, capacity, contents and implied terms, exemption clauses, damages, equitable remedies, termination, misrepresentation, duress and undue influence, and mistake and illegality.

Chapter 1 — Agreement

The Three Essential Elements of a Binding Contract

1. Agreement — a definite offer accepted by the other party 2. Intention to create legal relations — the parties intended legal consequences 3. Consideration — something of value exchanged for the promise

1.2 Offers and Invitations to Treat

An offer is an expression of willingness to contract on certain terms, made with the intent that it becomes binding the moment it is accepted. The courts apply an objective approach — what would a reasonable person consider was intended — rather than the parties' subjective internal thoughts.

An offer must be distinguished from an invitation to treat, which is a preliminary statement inviting negotiation and cannot itself be accepted to form a contract.

Type of Communication	Classification	Key Rule
Goods on display in shop	Invitation to treat	Customer makes the offer at checkout; cashier accepts (Pharmaceutical Society v Boots)
General advertisement	Invitation to treat	Too many potential acceptors; seller not bound to have stock
Reward advertisement	Offer (unilateral contract)	Can be accepted by performing the stated act (Carlill v Carbolic Smoke Ball Co)
Auction — fall of gavel	Acceptance of bidder's offer	Bid is the offer; fall of gavel is acceptance
Auction "without reserve"	Unilateral offer by auctioneer	Auctioneer bound to sell to highest bidder (Barry v Davies)
Invitation to tender	Invitation to treat (usually)	Tenders are the offers — but if tender review is promised, unilateral contract may arise (Blackpool & Fylde Aero Club)

- **Bilateral contracts:** a promise in return for a promise.
- **Unilateral contracts ("if" contracts):** a promise in return for an act — e.g. "If you find my dog, I will pay you £50."

⚖ Carlill v Carbolic Smoke Ball Company [1893]

A company's newspaper advertisement promising £100 to anyone who used their smoke ball and still caught flu was held to be a binding offer of a unilateral contract — not merely a sales puff — because money had been deposited in a bank to demonstrate sincerity.

1.3 Acceptance

Acceptance is an unqualified expression of assent to the terms of an offer. It must be communicated to the offeror by the offeree or their authorised agent. Silence does not constitute acceptance.

- **Counter-offer:** A conditional response ("I agree, but only if the price is lower") destroys the original offer and constitutes a new offer that cannot subsequently be accepted.
- **Battle of forms:** Where businesses exchange different standard terms, the "last shot" rule usually applies — the last set of terms sent before performance begins governs the contract.

The Postal Rule
Acceptance by post is effective at the moment of posting — even if the letter is delayed or lost. The rule only applies if: (a) it was reasonable to use the post; (b) the letter was properly addressed, stamped and posted; and (c) the offeror did not exclude the postal rule (e.g. by requiring notice in writing).

1.4 Termination of Offers

Method of Termination	Key Rule
Rejection (express or counter-offer)	Counter-offer destroys the original offer — cannot later be accepted
Revocation	Must be communicated to the offeree; can be via a reliable third party; options (paid-for open offers) are irrevocable
Lapse of time	After the specified time, or after a reasonable time if none stated
Death of offeror/offeree	Terminates the offer in most circumstances

Revocation of Unilateral Offers
Where an offeree has commenced performance of a unilateral contract, the offeror may be prevented from revoking the offer. Starting the requested act may make the offer irrevocable.

1.5 Certainty and Completeness

For a contract to be binding, the parties must agree on all material terms. If terms are too vague (e.g. agreeing to buy "on hire purchase terms" without specifying those terms),

the contract may be void for uncertainty. Courts may look at trade usage or existing arbitration clauses to resolve ambiguities and uphold the contract wherever possible.

Chapter 2 — Intention to Create Legal Relations

The law acknowledges that not all agreements are intended to have legal consequences. Courts apply rebuttable presumptions based on whether the agreement is commercial or domestic.

Type of Agreement	Presumption	Rebuttal
Commercial	Strong presumption of intention to create legal relations	Very difficult to rebut — requires express statement that agreement is "binding in honour only" (Rose & Frank v Crompton)
Domestic / Social	Presumption of NO intention to create legal relations	Rebutted by: separation / solicitors involved; high-value assets; joint business venture; express statement of binding intent

> ⚖️ **Esso Petroleum v Commissioners of Customs and Excise [1976]**
> *Free promotional World Cup coins offered with petrol purchases were held to be part of a legally binding transaction because they had significant economic value to Esso's sales promotion — the commercial context prevailed.*

Conversely, a parent promising a child £10 weekly pocket money for chores is not legally binding — the relationship is very close and the amount nominal. Domestic agreements will be binding where the parties deal at arm's length (e.g. separated spouses settling finances through solicitors) or where the stakes are high.

Chapter 3 — Consideration

Consideration is the third essential element of a binding contract. It is defined as "something in return" for a promise — either a benefit to the promisor or a detriment to the promisee. A party must prove they provided consideration to enforce a promise.

Three Rules of Consideration
1. Consideration need not be adequate (need not be of equal value) — but must have some value 2. Consideration must be sufficient (must be recognised by law as appropriate for a bargain) 3. Past consideration is not good consideration — acts performed before the promise was made cannot support it

3.1.3 Past Consideration — Exception

An exception to the past consideration rule applies if three conditions are met:

- The act was done at the promisor's request
- There was a mutual understanding that the act would be compensated
- The promise would have been legally enforceable if made in advance

⚖ Re Casey's Patents [1892]
A manager who had promoted patent rights was allowed to enforce a later promise for a share in the patents because it was understood at the time of the work that he would be rewarded. The subsequent promise was treated as fixing the amount of a reasonable sum already implied.

3.3 Promises to Pay More — Contractual Variations

The Basic Rule and the Williams v Roffey Exception
General rule: performing an existing contractual duty is NOT good consideration for a promise to pay more. Exception (Williams v Roffey Bros): Performance of an existing duty CAN be consideration if it confers a practical benefit on the other party (such as avoiding a penalty clause in a related contract) AND was not obtained by duress.

3.4 Promises to Accept Less — Pinnel's Case and Promissory Estoppel

Concept	Rule
Rule in Pinnel's Case (confirmed in Foakes v	Part payment of an undisputed debt is NOT good consideration for a promise to forgo the balance. Creditor can

Beer)	sue for remainder.
Common law exceptions	Part payment WITH something extra (e.g. paying early; adding goods) IS good consideration
Promissory estoppel (High Trees case)	Equity prevents creditor going back on a clear promise to accept less if it would be unconscionable to do so — even without consideration

Limitations of Promissory Estoppel

• It is a SHIELD (a defence) not a sword — cannot be used to sue • There must be a clear promise to waive legal rights • The promisee must have acted on the promise • It usually SUSPENDS rights rather than extinguishing them — full payment can be resumed on reasonable notice • The party relying on it must have "clean hands"

Chapter 4 — Parties

Only contracting parties have rights and liabilities under an agreement. The doctrine of privity states that only those "privy" to a contract can sue or be sued on it. This is closely linked to consideration — a person cannot enforce a promise for which they provided no consideration.

> ⚖ **Tweddle v Atkinson (1861)**
> *A son could not enforce a contract between his father and father-in-law to pay him money, even though the contract expressly gave him the right to do so. He was not a party and had provided no consideration.*

4.3 Contracts (Rights of Third Parties) Act 1999

The Act is the primary exception to the privity doctrine. A third party may enforce a contractual term in two situations:

- The contract expressly provides that they may enforce it
- A term purports to confer a benefit on them — unless it is clear that the parties did not intend this to be enforceable by the third party

The third party must be expressly identified by name, class (e.g. "employees"), or description. A common example is a gift receipt — it confers direct contractual rights on the recipient.

4.4 Agency

An agent has the power to change the legal relations of a principal by contracting with a third party. Once the contract is formed, the agent typically "drops out" leaving a direct legal relationship between the principal and the third party.

Type of Authority	Definition	Example
Express actual authority	Specifically stated in words or writing	Agent told to purchase goods up to £5,000
Implied actual authority	Derived from circumstances, role, or trade custom	Salesperson has implied authority to receive payments
Apparent (ostensible) authority	Principal represents to a third party that the agent has authority, even if they do not	Sales manager restricted to 3 cars per deal — employer bound if customer unaware of restriction

Apparent Authority — Three Conditions

1. The PRINCIPAL must have represented (by words or conduct) that the agent had authority 2. The third party must have RELIED on this representation 3. The third party must have ALTERED their position (e.g. entered the contract) in reliance on it

Chapter 5 — Capacity

Capacity refers to the legal power to enter binding contracts. The general rule is that all persons have full contractual capacity. Specific categories have restricted capacity.

5.2 Minors (under 18)

General Rule
Minors are NOT bound by contracts they enter. However, the other party REMAINS bound and can be sued by the minor.

Exception	Test / Rule
Contracts for necessaries	Goods/services suitable to the minor's "condition in life" and "actual requirements" at time of delivery — extends to items appropriate to their social status
Contracts of service (employment/apprenticeship)	Binding if the contract is, on balance, BENEFICIAL to the minor

⚖ **Proform Sports Management Ltd v Proactive Sports Management [2006] — "Wayne Rooney Case"**
A 15-year-old Rooney was entitled to terminate an agency contract because it was not a contract for necessaries and was not beneficial in the way a training contract would be.

5.3 Mental Incapacity

Contracts are valid unless: (a) the person was incapable of understanding the nature of the transaction; AND (b) the other party knew of the incapacity. If both conditions are met, the contract is voidable. If the other party is unaware, the contract remains binding.

5.4 Corporations

Type	Capacity Rule
Registered companies (Companies Act 2006)	Can be bound by ultra vires contracts if the third party acted in good faith — but advisable to check capacity
Statutory corporations (e.g. local authorities)	Ultra vires contracts are void — capacity defined by specific statute
Limited Liability Partnerships (LLPA 2000)	Unlimited contractual capacity

Chapter 6 — Contents of a Contract

6.1 Express Terms — Incorporation

For "small print" to form part of a contract it must be incorporated through one of three methods:

Method	Key Rule
Signature	Signing binds the party to all terms regardless of whether they read them — except where the document was misrepresented
Reasonable notice	For unsigned documents: notice must be given BEFORE or AT the time of contract; the document must be clearly contractual; onerous terms need extra highlighting
Previous consistent course of dealing	Parties with a regular history of dealing on the same terms may be bound — requires regularity and consistency

Onerous Terms — Extra Notice Required
Particularly harsh or unusual terms require more than standard notice — the party relying on them must take additional steps to bring them to the other party's attention (e.g. bold print, specific verbal mention).

6.1.2 Classification of Express Terms

Classification	Remedy for Breach
Condition (fundamental term)	Innocent party may TERMINATE the contract AND claim damages — even if the breach itself is minor
Warranty (minor term)	Innocent party may claim DAMAGES only — contract must continue
Innominate (intermediate) term	Remedy depends on the EFFECT of the breach: if it deprives the innocent party of substantially the whole benefit, they can terminate; otherwise damages only (Hong Kong Fir Shipping approach)

6.2 Implied Terms

Basis	Examples
By custom	Terms based on well-known and legally binding trade customs — must not contradict express terms
In fact (business	Terms so obvious they "go without saying" — implied to give

efficacy)	commercial sense to a contract
In law	Necessary incident of a specific type of contract (e.g. employer's implied duty to provide a safe working environment)

6.2.2 Terms Implied by Statute

Contract Type	Statute	Key Implied Terms
Business-to-Business (B2B) — goods	Sale of Goods Act 1979 (SGA)	s13: match description (condition); s14(2): satisfactory quality (condition); s14(3): fit for particular purpose (condition)
B2B — services	Supply of Goods and Services Act 1982 (SGSA)	s13: reasonable care and skill (innominate); s14: within reasonable time (innominate)
Business-to-Consumer (B2C)	Consumer Rights Act 2015 (CRA)	Goods: ss9-11 (satisfactory quality, fit for purpose, match description — non-excludable); Services: ss49-52 (care and skill, reasonable price, reasonable time)

Consumer Remedies — "Pecking Order" for Goods (CRA 2015 ss 19–24)

1. Short-term right to reject: 30 days to return faulty goods for a full refund 2. Repair or replacement: if 30-day limit has passed 3. Price reduction or final right to reject: if repair/replacement is not possible or fails For Services (s 54): right to repeat performance or price reduction

Chapter 7 — Exemption Clauses

Exemption clauses attempt to limit or exclude a party's liability for breach. To be upheld, they must clear three hurdles: incorporation, construction, and statutory control.

The Three Hurdles for Exemption Clauses

1. INCORPORATION — Is the clause validly part of the contract? (signature / reasonable notice / course of dealing) 2. CONSTRUCTION — Does the wording of the clause actually cover the breach that occurred? 3. STATUTORY CONTROL — Does UCTA 1977 (B2B) or the CRA 2015 (B2C) render the clause void or ineffective?

7.2.2 Construction — Contra Proferentem

If the wording of a clause is ambiguous or uncertain, the courts apply the contra proferentem rule — the clause is construed against the person trying to rely on it. To exclude liability for negligence, the language must be exceptionally clear and unambiguous.

7.3 Statutory Controls

Statute	Applies to	Key Rule
UCTA 1977 s 2(1)	B2B — negligence	Death or personal injury: NEVER excludable
UCTA 1977 s 2(2)	B2B — other negligence losses	Only valid if REASONABLE (Schedule 2 factors apply)
CRA 2015 s 31	B2C — goods terms	Cannot exclude satisfactory quality, fitness for purpose, or description — these are non-excludable statutory rights
CRA 2015 s 57	B2C — service terms	Cannot exclude liability for failure to perform with reasonable care and skill

UCTA Reasonableness Test — Schedule 2 Guidelines

• Relative BARGAINING STRENGTH of the parties • Whether the customer received an INDUCEMENT (e.g. lower price) to agree to the clause • Whether the customer KNEW or should have known about the clause • For limitation clauses: the defendant's available RESOURCES and ability to obtain INSURANCE

7.4 Exemption Clauses and Third Parties

The privity doctrine means only contracting parties can rely on an exemption clause. However, under the Contracts (Rights of Third Parties) Act 1999, a named or identified third party (e.g. "employees") who the clause was intended to protect may rely on it to the same extent as a contracting party.

Continued in Part 2 — Chapters 8–13

Chapter 8 — Damages

Purpose of Damages
Damages are COMPENSATORY — to place the claimant in the position they would have been in had the contract been properly performed. They do NOT punish the defendant. • Nominal damages (e.g. £10) — acknowledge a breach where no loss is suffered • Substantial damages — for genuine loss • Claimant must prove CAUSATION — the breach (not some other factor) caused the loss

8.2 Expectation and Reliance Loss

Type of Loss	Definition	Example
Expectation (loss of bargain)	Puts claimant in position as if contract was performed	Vase sold as Ming (£50k) worth only £1k but genuine value would be £60k — damages = £59k
Reliance loss	Covers expenses incurred in reliance on the contract being performed	Used where expected profit is too speculative to calculate

8.3 Types of Loss Recoverable

- **Pecuniary losses:** financial consequences — lost profit, property damage (easily calculated).
- **Non-pecuniary losses:** physical inconvenience, pain, suffering, mental distress. Damages for disappointment or distress are rare in contract — usually only awarded if the contract's primary purpose was to provide pleasure or peace of mind (e.g. a wedding or holiday).

8.4 Remoteness of Damage

The Remoteness Test (Hadley v Baxendale)

A defendant is NOT liable for all losses — only those not too remote. Losses must be within the REASONABLE CONTEMPLATION of the parties at the time of contracting. • Natural/inevitable consequences: recoverable • Special circumstances: only recoverable if the defendant KNEW of them at the time of contracting

8.5 Mitigation

A claimant must take reasonable steps to mitigate (reduce) their loss — they cannot claim for damages that could have been avoided. E.g. a wrongfully dismissed employee must look for alternative employment. The burden of proving failure to mitigate lies with the DEFENDANT.

8.6 & 8.7 Quantification and Specified Damages

Measure	When Applied
Cost of cure	Cost of reinstating or fixing defective work — applied unless disproportionate to the benefit gained
Difference in value	Difference between value as delivered and value as promised (defective goods)
Loss of amenity / consumer surplus	Where cost of cure is disproportionate and there is no market value difference — smaller award for loss of consumer benefit (Ruxley Electronics v Forsyth)

Clause Type	Definition	Enforceability
Specified (liquidated) damages clause	Genuine pre-estimate of likely loss — parties agree in advance what is payable	BINDING even if actual loss is higher or lower
Penalty clause	Extravagant or disproportionate sum designed to pressure performance	UNENFORCEABLE — damages assessed by court in usual way

⚖ **Cavendish Square Holding BV v Makdessi [2015] UKSC 67**

The Supreme Court held that a penalty clause is one that imposes a detriment out of all proportion to any legitimate interest the innocent party has in enforcing the contract. The relevant question is whether the clause is unconscionable or extravagant — not merely whether it is a genuine pre-estimate.

Chapter 9 — Equitable and Other Remedies

Remedy	Nature	When Available
Action for agreed sum	Debt action for a fixed sum owed	Where the money is due and payment date has passed — no need to prove loss, remoteness or mitigation
Specific performance	Court orders defendant to perform	Only if damages are inadequate (e.g. land — every plot is unique); discretionary; not for service contracts
Injunction	Restrains defendant from breach	Used for restrictive covenants; discretionary; will not force performance of a service contract indirectly

9.2 Restitution

Restitutionary Remedy	When Available
Recovery of money paid (total failure of consideration)	Payee has performed NONE of their obligations — if even partial performance, must sue for damages instead
Quantum meruit ("a reasonable sum")	(a) One party begins performance and the other breaches — performing party may claim reasonable sum as alternative to damages; (b) Where a contract was never actually formed
Restitutionary damages / Account of profits	Exceptional cases where fair response requires stripping the defendant's gains — awarded sparingly (Attorney-General v Blake — spy autobiography)
Negotiating damages	Compensation for the missed opportunity to negotiate a "release fee" from a restrictive covenant

9.3 & 9.4 Guarantees and Indemnities

Feature	Guarantee	Indemnity
Nature of obligation	Secondary — only triggered if primary debtor defaults	Primary — direct and immediate obligation
Writing requirement	Must be EVIDENCED IN WRITING and signed by guarantor	NO writing requirement
Common use	Guarantor promises to pay if borrower defaults	Allocating known risks (e.g. contamination costs on property sale)

Chapter 10 — Termination

10.1 Termination for Repudiatory Breach

What Triggers the Right to Terminate?

A repudiatory breach arises from: • A breach of a CONDITION (fundamental term) • A VERY SERIOUS breach of an innominate term that deprives the innocent party of substantially the whole benefit A repudiatory breach does NOT automatically end the contract. The innocent party has a choice.

Choice	Consequence
Affirm the contract	Treat the contract as continuing — cannot later change mind and terminate for that same breach
Accept/discharge the breach	Treat the contract as at an end — both parties released from future obligations; innocent party may sue for damages

10.2 Frustration

Definition of Frustration

An unforeseen event, beyond the control of either party, that makes performance impossible or RADICALLY DIFFERENT from what was originally agreed. The contract is automatically terminated by law — the parties have no choice.

10.2.1 What Constitutes Frustration — Three Criteria

Criterion	Details
Radically different / impossible	Destruction of subject matter; unavailability of crucial person; non-occurrence of fundamental event; government intervention / illegality
Unexpected (not foreseeable)	Foreseeable risks or common occurrences (e.g. road closure) do NOT frustrate; force majeure clauses in contract take priority
Beyond the parties' control	Self-induced events CANNOT frustrate — if the defendant's own choice caused the unavailability, frustration is not available (The Super Servant Two)

What Does NOT Frustrate

• Performance merely becoming more expensive or difficult • Delay — unless it so fundamentally changes the nature of the agreement that it is no longer what was bargained for

10.2.2 Consequences — Law Reform (Frustrated Contracts) Act 1943

Issue	Rule under the 1943 Act
Money paid before the frustrating event	CAN be recovered
Money due before frustrating event	Need NOT be paid
Expenses incurred in performance	Court has DISCRETION to allow recovery up to the amount paid or payable before the event
Valuable benefit conferred on the other party	Court may order a "just sum" to be paid for it

10.3 Discharge by Performance — Complete Performance Rule

The general rule is that obligations must be performed precisely and exactly before payment is due. If performance is incomplete, the payer is technically not required to pay any part of the price.

Exception	Rule
Divisible obligations	Contract split into distinct stages with separate payments — contractor paid in full for each completed stage even if they abandon the rest
Substantial performance	Work finished but slightly defective — contractor may claim full price minus cost of rectification. Generally "substantial" if cost of repair is no more than 1/14 of contract price.
Wrongful prevention	If one party prevents the other from completing — performing party entitled to damages (net profit) OR quantum meruit for work done
Voluntary acceptance of part performance	If non-defaulting party genuinely CHOOSES to accept partial performance — they must pay a reasonable sum. No payment if they had no real choice.

Chapter 11 — Misrepresentation

Misrepresentation is a vitiating factor that makes a contract VOIDABLE — valid until the misled party (the misrepresentee) chooses to set it aside. Misrepresentation occurs when a party is misled into entering a contract by a false statement.

11.2 Categories of Pre-Contract Statements

Category	Legal Status	Remedy if False
Sales puff	Not legally actionable — extravagant talk not taken literally	None
Contract term	Forms part of the contract itself	Breach of contract — damages
Representation	Induces the contract but is not a term	Misrepresentation — rescission and/or damages

To distinguish a term from a representation, courts look for the common intention of the parties using guidelines: relative skill/knowledge of parties; whether repeated in writing; importance attached to statement; whether maker invited verification; lapse of time before contract.

11.3 Definition — Three Requirements

A misrepresentation is an UNTRUE STATEMENT OF FACT that INDUCED the other party to enter the contract

• Must be a statement (oral, written or by conduct — e.g. Spice Girls v Aprilia) • Silence is generally NOT misrepresentation — but exceptions: fiduciary relationship; contracts of utmost good faith (insurance); half-truths; change in circumstances making a previously true statement false • Must be a statement of FACT not opinion or future intention — but lying about actual opinion/intention misrepresents the state of mind, which IS a fact • Must come from the OTHER CONTRACTING PARTY (not a third party) • Must have INDUCED the party to contract — must be a significant (not sole) reason

11.4 Types of Misrepresentation and Damages

Type	Test	Damages Basis
Fraudulent	Made knowing it is false, without belief in its truth, or recklessly (Derry v Peek)	Tort of deceit — ALL consequential losses; remoteness rules do not apply
Negligent (s	Careless — burden REVERSED:	Same as fraudulent — ALL

2(1) MA 1967)	defendant must prove they had reasonable grounds to believe it was true	consequential losses; remoteness rules do not apply
Innocent	Defendant had reasonable grounds to believe the statement was true	Damages NOT available as of right (court discretion under s 2(2))

11.5 Rescission and Bars to Rescission

Rescission is an equitable remedy that sets the contract aside and returns both parties to their pre-contractual positions (restitution). Because it is equitable and discretionary, it may be lost through bars to rescission:

Bar	Rule
Affirmation	Innocent party continues with the contract after discovering the misrepresentation
Undue delay / lapse of time	Waiting too long to rescind (Leaf v International Galleries) — fraud: time runs from discovery; others: from when it should have been discovered
Third-party rights	Bona fide purchaser acquires rights in the subject matter before rescission (Car & Universal Finance v Caldwell)
Impossibility of restitution	Cannot restore parties to original position (Crystal Palace FC v Dowie — employee had taken another job)

Chapter 12 — Duress and Undue Influence

Key Principle
Where a party is coerced or improperly pressured into a contract, the resulting agreement is VOIDABLE. The only remedy is RESCISSION (not damages). The bars to rescission apply equally to duress and undue influence.

12.2 Duress

Type	Definition / Test
Duress to the person	Threats of physical violence — needs to be only A reason (not the sole reason) the party entered the contract
Economic duress	Threats to economic/business interests — must show: (1) pressure causing lack of practical choice; (2) the pressure was ILLEGITIMATE; (3) pressure was a significant cause of entering the agreement

Legitimate vs Illegitimate Pressure
Legitimate: threatening to sell goods to a competitor; driving a hard bargain Illegitimate: threatening to breach a contract; threatening to commit a tort; acting in bad faith Relevant factors: whether the threat was made in bad faith; whether the victim protested at the time; whether they had any practical alternative

⚖ North Ocean Shipping v Hyundai Construction (The Atlantic Baron) [1979]
Economic duress was found but rescission was refused because the claimants waited 8 months before acting — treated as affirmation and undue delay. Contrast with Atlas Express v Kafco where a small business successfully used economic duress as a DEFENCE against a claim for extra money promised under threat.

Duress and Consideration — Link to Williams v Roffey
Even if an upward variation satisfies the "practical benefit" test in Williams v Roffey (making it validly supported by consideration), the variation will be set aside if it was obtained through duress. Only the specific variation is rescinded — the original contract remains binding.

12.3 Undue Influence

Undue influence focuses on relationships of inequality where one party takes unfair advantage of their dominance over another. Like duress, it makes a contract voidable, remedied solely by rescission, and subject to the same bars.

Type	Test

Actual undue influence	Must be PROVED ON THE FACTS — show that influence went beyond what is acceptable (Daniel v Drew — elderly woman pressured by nephew's threat of court action)
Presumed undue influence	Arises from: (a) a RELATIONSHIP OF TRUST AND CONFIDENCE; AND (b) a TRANSACTION THAT CALLS FOR EXPLANATION — i.e. a deal that is not for the party's benefit or exposes them to significant risk

Relationship Type	Presumption
Presumed by law (irrebuttable)	Solicitor/client; doctor/patient; parent/minor child; religious adviser/follower
Proved on the facts	Husband and wife; other close relationships — innocent party must prove actual trust and confidence in that person regarding those matters

Rebutting the Presumption
Evidence that the innocent party acted INDEPENDENTLY — most commonly, taking INDEPENDENT LEGAL ADVICE. If an independent solicitor advises the party and confirms this in writing to the creditor, the presumption is rebutted.

12.3.2 Undue Influence and Third Parties (Banks)

A common scenario involves a commercial lender (bank), a surety (typically a wife) who provides security for a third-party debtor (typically her husband). If the husband uses undue influence to get the wife to sign security for his business loan, the bank may be unable to enforce it if it has constructive notice of the influence.

⚖ Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44
A creditor has CONSTRUCTIVE NOTICE if: (a) it is "put on inquiry" — this happens in ALL non-commercial cases where the loan is not for the joint benefit of debtor and surety; AND (b) it fails to take REASONABLE STEPS to ensure the surety is aware of the risks. Reasonable steps = insisting the surety receives independent advice from a solicitor.

Practical Outcome for Banks
• Bank receives solicitor's certificate confirming surety was independently advised → security upheld; any further claim by surety is against the solicitor • Bank fails to take these steps AND undue influence is present → surety may rescind the agreement; bank becomes an UNSECURED creditor against the husband

Chapter 13 — Mistake and Illegality

Void vs Voidable — Key Distinction

VOID contracts (mistake and illegality): treated as if they NEVER EXISTED — void ab initio. No remedies for breach; no damages available. Courts apply this very rarely. VOIDABLE contracts (misrepresentation, duress, undue influence): valid until the innocent party CHOOSES to rescind them. Rights of innocent third parties may be affected before rescission.

13.1 Mistake

In contract law, "mistake" has a much more restricted meaning than in everyday usage. The doctrine only applies when a mistake is so fundamental that it NEGATES the agreement. The mistake must precede formation and have induced the parties to enter the contract.

Type of Mistake	Definition / Test	Key Case
Common mistake	Both parties make the SAME fundamental error regarding a crucial fact — not the fault of either; must render performance impossible or radically different	Bell v Lever Bros — mistake about prior breachable conduct: NOT fundamental enough to void
Cross-purpose mistake	Parties at cross-purposes about a vital part of the contract — objective analysis cannot resolve the ambiguity	Raffles v Wickelhaus — two ships both named "Peerless": impossible to determine which was intended → void
Unilateral mistake	Only ONE party is mistaken — typically about the IDENTITY of the other. Identity must be vitally important; mistake about attributes (e.g. creditworthiness) is insufficient	Cundy v Lindsay (written — void); Lewis v Averay (face-to-face — voidable for misrepresentation, not void for mistake)

The Rogue / Identity Mistake Distinction

WRITTEN dealings (Cundy v Lindsay): contract is VOID — the offer was not addressed to the rogue FACE-TO-FACE dealings (Lewis v Averay): strong presumption of intent to deal with the person present → contract is VOIDABLE for misrepresentation (not void for mistake) This distinction critically affects whether a bona fide third party purchaser gets good title to goods.

13.2 Illegal Contracts

A contract is illegal if its formation, purpose or performance involves the commission of a legal wrong (crime, tort, or violation of public policy). Illegal contracts are generally void and benefits conferred cannot be recovered.

Type	Rule
Illegal act merely incidental (e.g. driver speeding)	Does NOT usually affect contract validity — driver is punished but contract stands
Both parties know of and intend illegal performance	Contract is VOID
Only one party intends illegality	Innocent party may still be able to enforce the contract
Illegal under statute (e.g. Competition Act 1998)	Contracts distorting, preventing or restricting trade are unenforceable

13.2.3 Covenants in Restraint of Trade

Covenants restricting a person's ability to work for a competitor or set up a rival business are prima facie void — public policy encourages free trade and the ability to earn a living.

Two Requirements for an Enforceable Restraint

1. LEGITIMATE BUSINESS INTEREST to protect — e.g. trade secrets, customer lists, goodwill. Restricting a low-level employee with no access to such information is unenforceable. 2. REASONABLE in: geographical area; duration; and scope of activities prohibited. Senior executives may justify longer and broader restraints than junior staff.

If a restraint is found reasonable, the enforcing party can seek DAMAGES or an INJUNCTION to stop the breach.

END OF DOCUMENT — CONTRACT LAW

All 13 Chapters | Agreement to Illegality | Fully Enhanced