

‘A’ LEVEL LAW

LAW OF CONTRACT

STUDY GUIDE FOR MODULE 2575
2001-2002

ASIF TUFAL

CONTENTS

Module 2575

Amendment to specifications	03
-----------------------------	----

PRIVITY OF CONTRACT

1. Privity of Contract	04
------------------------	----

VITIATING FACTORS

2. Misrepresentation	06
3. Mistake	09
4. Duress and Undue Influence	11

DISCHARGE OF CONTRACTS

5. Performance	14
6. Frustration	14
7. Agreement	14
8. Breach	14

REMEDIES

9. Common Law and Equitable	17
-----------------------------	----

EXAM PAPERS

Specimen Paper	18
----------------	----

May 2001

NOTICE TO CENTRES

For the attention of: The Head of Law

LAW (7839) – MINOR AMENDMENTS TO SYNOPTIC REQUIREMENT

**Units: 2572 Criminal Law 2
2575 Law of Contract 2
2578 Law of Torts 2**

There has been a minor amendment to the specification for 7839 Law. The synoptic element in the A2 unit (2572, 2575 or 2578), which tests the candidates' understanding of the connections between different elements of the subject has been removed. This means that the 20% synoptic element required is now fulfilled solely by the Special Study Unit (2573, 2576 or 2579), which is the only unit that is required to be taken at the end of the course.

The removal of this synoptic question will take effect immediately with the January and June 2002 question papers.

Any enquiry about this notice should be referred to the Subject Officer for Law, Miss Stephanie Riley, OCR, Mill Wharf, Mill Street, Birmingham, B6 4BU or telephone 01223 552978.

Privity of Contract

What you need to know

Nature; function; established exceptions (not including details of agency or assignment); attempts to avoid the doctrine; statutory reform.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 9

Past Exam Questions

1. Jake is developing a leisure centre in time for the summer holiday trade and he contracts with Kanbild to undertake the installation of a swimming pool. Kanbild contracts with Mariner to supply pipes to build the pool. Kanbild begins work in January, but in May he informs Jake that he will not be able to complete the work because of the steep increase in the cost of materials.

Jake agrees to pay more than was originally agreed, so that Kanbild can obtain the materials needed to complete the pool on time. When the work is finished Jake refuses to pay the extra £2000. Six months after Mariner supplied the pipes, he has still not been paid by Kanbild. Both Kanbild and Mariner are now requesting payment from Jake.

Advise Jake whether he must pay Kanbild the extra £2000 **and** Mariner for the pipes.

(Q6 June 2000)

2. 'The third party rule can no longer be justified. It creates unfairness and prevents effect being given to the intentions of the contracting parties.'

Discuss this view of the doctrine of privity of contract and consider ways in which it could be reformed.

(Q5 June 1999)

3. Ursula's neighbour, Victor, regularly cleans her windows, for which she pays him £10. On one occasion whilst he is doing the work, Ursula mentions that she is worried about her garden which is in need of maintenance. Victor replies that he will do some work on it when he has the time. Two weeks later Ursula arrives home to find that Victor has mowed the lawns, planted new trees in the garden and cleaned her windows. She is very pleased and promises to pay him £70 for the work on the garden and the usual £10 for cleaning the windows.

Ursula receives a telephone call from Yolanda who supplied Victor with the trees for Ursula's garden. Yolanda requires payment of £50.

Advise Ursula whether she must pay Victor **and** Yolanda.

(Q8 June 1998)

4. 'The time has come for a change in the law to allow a third party to benefit from a contract made specifically for his or her benefit.'

Discuss this proposition in relation to the doctrine of privity.

(Q2 June 1997)

5. Is it right or fair that a person for whose benefit a contract has been made may not be able to enforce the benefit merely because of the limitations of the doctrine of privity?

(Q6 June 1995)

6. 'The legal effects of a contract are confined to the contracting parties.' (Pollock)

Comment on the accuracy of this statement and the problems caused by the doctrine of privity of contract.

(Q4 June 1992)

Misrepresentation

What you need to know

Pre-contractual statements; types of misrepresentation; inducement. Remedies: Misrepresentation Act 1967; rescission and bars.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 5

Past Exam Questions

1. 'The remedies available to a person suffering from a misrepresentation are now not very different from those for breach of contract.'

Discuss the accuracy of this claim.

(Q3 June 2001)

2. In a brochure promoting a new training course for computer engineers, Omnifix describes the computer equipment to be used as 'the most recent available, and suited to the needs of professionals'. Omnifix also explains in the brochure that the course will take place 'in the comfort of top quality hotel accommodation'.

Priya reads the brochure and is impressed by the description of the equipment and accommodation. Despite the high cost of the course, Priya decides to enrol as she hopes that it would enable her to undertake some profitable work. When the course begins, Priya is told that the computer system which was described in the brochure is not available, and she finds that the computers which are being used are of very simple specification. In addition the hotel in which the training takes place is cold and noisy

Priya is annoyed at having paid such a high price for an uncomfortable hotel, and, because of the lack of suitable equipment, she feels that the training has not been sufficient to enable her to undertake new work.

Advise Priya of any remedy she may have against Omnifix.

(Q7 June 2000)

3. Critically assess the remedies available to a person who has suffered from a misrepresentation in forming a contract.

(Q1 June 1999)

4. Quentin buys a second-hand caravan from Romany Ltd which is described as 'in excellent condition, ideal for all year round family holidays'. After delivery of the caravan, Quentin discovers that there are scratch marks along the side of the caravan body and that the water supply does not function. In addition, when he uses the caravan for a holiday in Scotland, he and his family are cold and it is found that the insulation is inadequate, making the caravan unsuitable for winter use.

At the end of his holiday, Quentin also buys a second-hand television for use in the caravan from a fellow holiday maker, Sharina. Quentin purchases this on the basis of Sharina's assurance that it is reliable and provides a very clear picture. However, on returning home, he finds that the picture becomes blurred after about one hour of use. Quentin attempts to return the television to Sharina the following year when they meet again at another caravan site.

Advise Quentin of any remedies he may have in relation to the caravan and the television, both in misrepresentation **and** under statute law.

(Q7 June 1998)

5. Ashley owns a car sales showroom and is visited by Basil, who seeks advice on a suitable car to use for his proposed new taxi business. Whilst showing Basil around his range of new cars, Ashley recommends one particular model, a Supremo, which Ashley claims is 'smart looking and economical to run'. Ashley also tells Basil that he believes that the car has been serviced regularly and that it has recently had a new exhaust system fitted. Basil is impressed and three weeks later decides to buy the Supremo. He collects it the following day.

A month later Basil is disappointed to find that there are some rust patches on the car door and that, far from being economical, the Supremo is very expensive to run. In addition, the exhaust is now worn, since only a small part of the system had been replaced recently. Apart from spending more than he intended on fuel, Basil has lost trade amounting to several hundred pounds as a result of the car being off the road whilst being repaired.

Advise Basil as to any remedies which he may have against Ashley.

(Q7 June 1997)

6. Assess whether the remedies which are available to a person who has been induced into a contract by misrepresentation are satisfactory.

(Q6 June 1996)

7. Is it correct to say that every untrue statement which induces a contract will amount to a misrepresentation in law?

(Q4 June 1995)

8. Shirley wishes to set up an aeroplane service for business people flying between London and Rome. She answers an advertisement in a trade paper for the sale of a light aircraft. Two weeks before completing the contract Shirley is advised by the seller, Dorianne, that the fuel capacity of the aircraft will enable her to fly between the two cities without the need to refuel. She purchases the aeroplane for £500,000 and sets up her business, Exec Jet Ltd. On a trial flight to Rome she is forced to land and refuel before she reaches her destination. Further investigation reveals that the aircraft is only suitable for short flights and does not have the capacity to fly the distances she requires on a single tank of petrol. As a result Shirley is forced to abandon her business plans. The aircraft is worth £100,000 less than Shirley paid for it and, in addition, she has incurred considerable expense in setting up her business which was expected to earn a substantial profit.

(Q9 June 1994)

9. 'It is unfortunate that the Misrepresentation Act 1967 far from clarifying and codifying the various ... remedies ... appears to have added another layer of complexity on the uncertain foundations of the previous common law.' (Hogan, Seago and Bennett)

In the light of this quotation, discuss the remedies which are available for misrepresentation.

(Q6 June 1992)

Mistake

What you need to know

Different types of mistake: common; mutual (crosspurpose); unilateral; identity. Rectification; *non est factum*.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 6

Past Exam Questions

1. Critically evaluate the circumstances in which a common mistake will result in a contract being declared invalid.

(Q2 June 2000)

2. Analyse the principles upon which the court will find a contract to be void following a common mistake.

(Q5 June 1997)

3. Faridah wishes to sell her rather valuable violin, so advertises it for sale. Germaine visits Faridah, explaining that she would like to buy the violin, and they agree on a price. Germaine produces a cheque book, but Faridah hesitates, saying that she would prefer cash. Germaine then replies, 'Look, you can see who I am,' and produces various items of identity, bearing the same surname as a famous musician. Faridah is embarrassed and agrees to take the cheque, handing over the violin to Germaine.

A few days later Faridah is contacted by her bank manager, who informs her that the cheque from Germaine is worthless, and that Germaine cannot be traced. Faridah is upset at this, but is surprised a few days later to see the same violin for sale in the window of a musical instrument supplier, Humbuskers. She tries to recover the violin from Humbuskers, but they claim that they paid a good price for it from someone who was going abroad, and would certainly not be prepared to give it back to her.

Advise Faridah as to whether she has any legal right to claim the return of the violin.

(Q8 June 1996)

4. Cecilia owns a shop in which she sells antiques. On one occasion a man enters the shop and offers to buy a valuable first edition book. He produces a cheque book with the name Reginald Irving printed on the cheques. Cecilia has heard of a Reginald Irving who is a well-known authority on antique books. She therefore accepts the cheque and allows the man to take the book away.

On the same day Prudence buys a set of cutlery from Cecilia. The cutlery is stored in a box consisting of two layers. Prudence inspects the top layer to satisfy herself that the articles are solid silver. On returning home she discovers that the cutlery in the bottom layer is only silver plated and worth much less than she paid for it.

Advise Cecilia who has since discovered that the man was an imposter; his cheque was worthless and he has sold the book to a third party who refuses to return it. Prudence has returned the box of cutlery and is asking Cecilia to refund her money.

(Q10 June 1993)

5. '... a narrow doctrine of common law mistake, supplemented by a more flexible doctrine of mistake in equity, seems to me to be an entirely sensible and satisfactory state of the law.' (Steyn J., in *Associated Japanese Bank v. Credit du Nord* (1988))

Discuss the limitations of mistake at common law and the circumstances in which equity will provide a remedy to a party who has entered into a contract by mistake.

(Q3 June 1992)

Duress

What you need to know

Common law and economic duress.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 8

Past Exam Questions

1. Critically examine the circumstances in which a claim of economic duress may allow a person to escape their contractual liabilities.

(Q4 June 2001)
2. 'It is when legitimate pressure goes beyond reasonableness that the courts need to consider claims of duress and undue influence.'

How accurate is this view of the courts' approach to such claims?

(Q2 June 1999)
3. 'The grounds upon which economic duress may be claimed are vague, the doctrine itself suffering from a lack of definition.'

How far do you agree with this statement?

(Q1 June 1998)
4. Compare and contrast the doctrines of duress and undue influence. Do these doctrines provide adequate remedies for parties who have entered into a contract without true consent?

(Q2 June 1996)
5. 'The effectiveness of the doctrine of economic duress is weakened by the lack of a clear definition of the limits of its applicability.'

Discuss.

(Q3 June 1994)

Undue Influence

What you need to know

Equitable nature of undue influence, proved and presumed.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 8

Past Exam Questions

1. Rory and his wife, Sheena, run a business which is experiencing financial difficulties. Rory, approaches Theo, the manager of Lonit bank, for advice. Theo suggests a short term bank loan to support the business and to finance the purchase of new equipment.

Theo also suggests that Rory and Sheena seek further advice from their accountant, but he points out that if Rory wishes to proceed with the loan, he must act very quickly to obtain favourable terms. Rory therefore agrees immediately to have the loan and, at Theo's request, takes a form home for Sheena to sign. Rory persuades Sheena to sign the form, which states that the family home will be used as security for the loan, and returns it to the bank.

One year later the business is still not successful. Sheena receives a letter from the bank explaining that the loan has now become unacceptably large and since repayments have been outstanding for some considerable time, Lonit will be taking action to sell the house to settle the debt.

Advise Sheena.

(Q8 June 2000)

2. 'It is when legitimate pressure goes beyond reasonableness that the courts need to consider claims of duress and undue influence.'

How accurate is this view of the courts' approach to such claims?

(Q2 June 1999)

3. Floyd is a lecturer in Economics. Grady is one of Floyd's students who has frequently sought his advice over finance. Floyd advises Grady to invest his student loan and savings, amounting to £3,000, in a local company, Huffanpuff, of which Floyd is a director.

During the next year Huffanpuff has operating difficulties and the value of its shares fall dramatically, so that Grady's investment is now worth £500. Grady was planning to use the money to start a business of his own and he is now unable to do this. He claims that he was greatly influenced by the advice given by Floyd and feels that Floyd should have known the difficulties of Huffanpuff, which have caused him to lose a lot of his investment.

Advise Grady of his remedies, if any, in the law of contract.

(Q9 June 1997)

4. Compare and contrast the doctrines of duress and undue influence. Do these doctrines provide adequate remedies for parties who have entered into a contract without true consent?

(Q2 June 1996)

5. Mortimer visits Ravinder, the manager of Centrebank, and discusses with her the possibility of borrowing money to fund a business venture. Mortimer takes some application forms home and persuades his wife, Ophelia, to sign them. She does so, under the impression that the loan is £30,000 on a short term basis. Centrebank later makes the money available using a house owned by Mortimer and Ophelia as security.

After some time it becomes obvious that Mortimer's business venture is failing. To her dismay, Ophelia learns for the first time that the loan is for £80,000. Centrebank wishes to sell the house to recover the amount loaned.

How, if at all, would Ophelia be able to defend her position?

(Q9 June 1995)

6. 'The effectiveness of the doctrine of economic duress is weakened by the lack of a clear definition of the limits of its applicability.'

Discuss.

(Q3 June 1994)

7. 'There is no precisely defined law setting limits to the equitable jurisdiction of a court to relieve against undue influence ... Definition is a poor instrument when used to determine whether a transaction is or is not unconscionable; this is a question which depends upon the particular facts of the case.' (Lord Scarman in *National Westminster Bank v. Morgan* (1985))

Through an examination of relevant cases discuss this view of undue influence.

(Q5 June 1993)

8. Sheila consults her bank manager, Ms Suet, over her plans to sell her house. Sheila is a widow and she frequently consults Ms Suet on financial and personal matters. When told that Sheila intends to sell her house, Ms Suet offers to buy it at the current market price. Sheila accepts the offer and the sale is completed. Six months later house prices have risen by 25% and Sheila is seeking to have the sale of the house set aside, on the grounds that Ms Suet had taken advantage of her position as Sheila's bank manager.

Advise Sheila.

(Q9 June 1992)

Discharge of Contracts

What you need to know

Effects of different methods and burden of loss.

Performance - Exact and complete; substantial; partial; tender; prevention; time and vicarious performance.

Frustration - Nature and purpose; impossibility; illegality; radical difference; limits; effects; Law Reform (Frustrated Contracts) Act 1943.

Agreement - Variation and ending of obligations, connection with consideration.

Breach - Actual and anticipatory, repudiatory and non-repudiatory.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 10

Past Exam Questions

1. Fern books a room, for one day in May, in the Grove Hotel so that she and her friends can watch the Notting Mount festival activities due to take place that day. Fern pays a deposit of £20 on making the booking in March, the remaining £100 to be paid on the day of the festival. The festival is unexpectedly cancelled on the Friday before the festival, due to storm damage in the area.

Fern has also ordered a new dress for the festival from Harriet's Boutique. It is a particularly unusual dress, and is being made to order, to be ready in time for the festival. One week before the delivery date, Fern tells Harriet that she will not need the dress, as her aunt has given her a similar one.

Fern also orders a luxury taxi from Kardeals for a dance on the evening of the festival. When the taxi arrives Fern is told that Kardeals are busy with other customers, so Jellicabs are to take her instead. The small taxi supplied is cold, noisy and dirty, and breaks down on the way to the dance, so that Fern and her friends arrive late.

Advise Fern concerning her agreements with the Grove Hotel, Harriet's Boutique and Kardeals.

(Q7 June 2001)

2. 'Sometimes it is convenient for one party to claim that a contract has been frustrated rather than breached.'

(a) When is a contract frustrated?

(b) Critically discuss the effect that frustration will have on the contract.

(Q5 June 2000)

3. Examine the reasons for claiming that a contract is frustrated rather than breached.
(Q4 June 1999)
4. Andrew owns the Hotel Splendid. In May Bruce reserves and pays for accommodation in the hotel, including the hire of a very large meeting room. Bruce and some of his business colleagues plan to use the accommodation for a conference in July. In June Andrew informs Bruce that a fire has damaged most of the hotel, but that the group could have rooms in a nearby guest house which Andrew also owns. However, the facilities in the guest house are inferior and there are no conference rooms. Bruce wishes to cancel the booking but Andrew insists that the payment cannot be refunded.

Advise Bruce.
(Q6 June 1998)
5. How have the courts attempted to place limits on the doctrine of frustration, and why should they wish to do so?
(Q1 June 1997)
6. Consider whether the doctrine of frustration gives the courts the opportunity to apportion fairly the loss between two relatively innocent parties.
(Q3 June 1996)
7. Zena buys a fruit farm and agrees to supply William with a specified quantity of various fruits per year over a three year period. William owns a processing plant and produces jams and other products from the fruit. He installs extra equipment costing £500 in preparation for the fruit which he expects from Zena. During the first year the summer is extremely hot, and most of Zena's crop is destroyed by a very bad fire. She makes no effort to find an alternative source of fruit, and after two weeks it becomes apparent that she will not be able to keep to her part of the agreement. William is unable at this stage to obtain another supplier of fruit.

Advise William as to whether the contract will be frustrated.
(Q10 June 1995)
8. 'The doctrine of frustration is merely an excuse for people to escape from a contract simply because things have not turned out as they expected.'

Discuss.
(Q1 June 1994)
9. 'The basic rule is that the performance must strictly and entirely match the terms of the contract ... As with many other legal rules however, it is in practice less important than the large number of exceptions which qualify it. The possible injustice and harshness of the rule is accordingly heavily mitigated.' (Hogan, Seago and Bennett)

Discuss.
(Q4 June 1993)

10. Dawn and June are keen birdwatchers. They decide to spend two weeks' holiday watching birds in a famous wildfowl reserve. They arrange to rent a cottage owned by Twitcher, which is two miles from the reserve. The rent is £150 per week, £50 of which is payable in advance with the remainder payable on arrival at the cottage. When booking the cottage Dawn and June tell Twitcher that they intend to spend most of their time visiting the wildfowl reserve.

Two weeks later before they are due to go on holiday, there is a fire at the reserve which destroys the habitat and kills most of the birds. Dawn and June write to Twitcher cancelling the holiday and requesting the return of the £50 deposit. Twitcher refuses to return the deposit and claims an additional £75 which he spent on decorating the cottage in preparation for their stay.

Advise Dawn and June.

(Q7 June 1992)

Remedies

What you need to know

Common law and equitable in outline only.

Recommended Reading

Elliot and Quinn, *Contract Law*, Longman, ch 11

Past Exam Questions

1. Critically examine the circumstances in which an express provision for breach of contract will amount to a penalty clause.
(Q4 June 1996)
2. Analyze the factors the courts will take into account when awarding damages for breach of a contract, where there is no provision for this in the contract.
(Q5 June 1995)
3. What problems can arise over the concept of remoteness of damage?
(Q5 June 1994)
4. Does the discretionary nature of specific performance mean that the courts award this remedy in an arbitrary manner?
(Q6 June 1994)

Oxford Cambridge and RSA Examinations

Advanced GCE

LAW

LAW OF CONTRACT 2

2575

Specimen Paper

Additional materials:
Answer paper

TIME 1 hour 30 minutes

INSTRUCTIONS TO CANDIDATES

Write your name, Centre number and candidate number in the spaces provided on the answer booklet.

Write all your answers on the separate answer paper provided.

If you use more than one sheet of paper, fasten the sheets together.

Answer **two** questions, one from Section A and one from Section B.

INFORMATION FOR CANDIDATES

The number of marks is given in brackets [] at the end of each question or part question.

You will be awarded marks for the quality of written communication where an answer requires a piece of extended writing.

Answer **TWO** questions, **one** from Section A and **one** from Section B.

SECTION A

1. Critically assess whether the remedies which are available to a person who has been induced into a contract by misrepresentation are satisfactory.
[50 marks]
2. To what extent does the doctrine of frustration give the courts the opportunity to apportion loss between two relatively innocent parties?
[50 marks]

SECTION B

- 3 Faridah wishes to sell her valuable violin, so advertises it for sale. Germaine visits Faridah, explaining that she would like to buy the violin, and they agree on a price. Germaine produces a cheque book, but Faridah hesitates, saying that she would prefer cash. Germaine then replies, "Look, you can see who I am", and produces various items of identity, bearing the same surname as a famous musician. Faridah is embarrassed and agrees to take the cheque, handing over the violin to Germaine.

A few days later Faridah is contacted by her bank, who informs her that the cheque from Germaine is worthless, and that Germaine cannot be traced. Faridah is upset at this, but to her surprise a few days later to see "her" violin for sale in the window of a musical instrument supplier, Humbuskers. She tries to recover the violin from Humbuskers, but they claim that they paid a good price for it from someone going abroad, and would certainly not be prepared to just give it back to her.

- (a) Advise Faridah as to whether she has any legal right to claim the return of the violin.
[40]
- (b) If Faridah wishes to take legal action against Humbuskers, advise her as to how she may be able to get help with the cost of such an action.
[10]

[Total: 50 marks]

- 4 Jake is a lecturer in Economics. Kevin is one of Jake's students who has frequently sought his advice over finance. Jake advises Kevin to invest his student loan and savings amounting to £3,000, in a local company, Leeways Ltd, of which Jake is a director.

During the next year Leeways Ltd has operating difficulties and the value of its shares falls dramatically, so that Kevin's investment is now worth £500. Kevin was planning to use the money to start a business of his own and he is now unable to do this. He claims that he was greatly influenced by the advice given by Jake and feels that Jake should have known of the difficulties of Leeways Ltd, which have caused him to lose a lot of his investment.

- (a) Advise Kevin of his remedies, if any, in the law of contract.
[40]
- (b) Kevin would prefer not to take a court action against Jake. Explain to him how the matter could be resolved without going to court.
[10]

[Total: 50 marks]