Inna FROLOVA. ENGLISH LAW for Students of English

Chapter 7. Contract Law

7 Contract Law

1. Types of contract
a) Match the types of contract with the explanations below. Write in the spaces provided. Translate the terms into our own language.

<table>
<thead>
<tr>
<th>a hire purchase contract</th>
<th>a credit sale contract</th>
<th>an employment contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>a leasing contract</td>
<td>an insurance contract</td>
<td>a hire contract</td>
</tr>
<tr>
<td>a mortgage</td>
<td>a purchase contract</td>
<td>a service contract</td>
</tr>
</tbody>
</table>

1. ______________________
a seller transfers the ownership of goods to a buyer for a money consideration called the price; ownership of the goods passes to the buyer when they come into his possession

2. ______________________
goods are bought on credit: payment is made by instalments; ownership of the goods passes to the buyer when the contract is signed

3. ______________________
the owner permits the hirer to take possession of the goods and use them in return for payment; ownership never passes to the hirer

4. ______________________
goods are hired to the customer with an option to purchase; the purchaser takes possession of them as soon as an initial instalment is paid; ownership of the goods does not pass to the buyer until an option to purchase has been exercised, i.e. until the final payment has been made

5. ______________________
goods (often machinery, office equipment or company cars) are hired to a business for a minimum period, e.g. 12 months; the lessor usually undertakes to maintain the equipment regularly

6. ______________________
in return for a payment (called a premium) by a person or organisation, a company takes on an obligation to make good certain losses or injuries

7. ______________________
a financial institution gives a person a loan so that he could buy land or a house; the lender obtains an interest in certain property as security; the interest terminates on payment of the loan

8. ______________________
a contract which creates the relationship of employer and employee: the latter provides labour in return for wages

9. ______________________
a company provides a product or service to the customer, such as repairing a car or arranging a holiday

Note: the word 'a service' collocates with the verbs 'to give, offer, provide, perform, render'.

b) Write sentences contrasting: 1 purchase and credit sale contracts; 2 credit sale and hire purchase contracts; 3 hire and hire purchase contracts; 4 hire and leasing contracts; 5 mortgage and hire purchase contracts, In your answers use the structure: 'A and B are similar in that ... but they are different in that A ... (while B ... )'.
Text 1: Main Elements of a Contract.

2. Pre-reading tasks
1. What do you think ‘an enforceable contract’ means? What contracts do you think are unenforceable?
2. Before you read the text, look at the following statements and mark what you think the answers are. Then scan the text and check your initial hypotheses.
   a. When you board a bus, you make a contract with the bus company. True / False
   b. If you are injured while driving your friend's car, you can sue his insurance company for compensation. True / False
   c. A person who was drunk when he sold his house at half price cannot get it back. True / False

3. Now read the text and answer the questions that follow.

Many people think that a contract is only legally enforceable if it is in writing and signed by the parties to the contract. Yet most of us during our daily lives enter into contracts which are neither written nor signed but are perfectly legal transactions recognised by law. When we buy a newspaper or a bus ticket, we enter into an agreement that is governed by the law of contract and can be enforced through the courts. A contract, thus, is an agreement that the law will recognise. In order to be binding in law a contract must contain certain essential elements.

1 Offer. A contract must begin with an offer. It is made by an offeror to an offeree, and if it is accepted by the offeree, a legally binding contract has come into existence, provided certain other requirements are fulfilled. For example, when a seller places an advertisement in a newspaper offering to sell a car and a buyer contacts him offering to buy it, each of them is making an offer in the everyday sense of the word but only one is making a legal offer. English law takes the view (unlike continental law) that it is the buyer who makes a legal offer, and the seller may then decide whether to accept or reject it. Therefore an advertisement to sell something is not normally considered an offer but an 'invitation to treat', i.e. an invitation to make an offer. And thus, goods in shop windows or on display in the shop are merely invitations to treat: a store does not have to sell you goods it displays for sale.

   Only offers can be accepted; it is not possible to accept invitations to treat. However, because of the 1893 case of Carlill v. Carbolic Smoke Ball Co., English law does consider some kinds of advertisements as offers. The company advertised that they would pay £100 to anyone who used their medicine and still got flu. Mrs Carlill did this but still caught flu, so she asked for the money. The company refused to pay arguing that their advertisement was not an offer but an invitation to treat. However, the court held that when Mrs Carlill saw the advertisement and bought the medicine, she was accepting a specific offer made to her, and so the company was obliged to pay. This case also illustrates that offers can be made not only to a specific person or group of persons (for example, employees) but to the whole world. If an offer has been accepted, it cannot be withdrawn without the agreement of the other side.

2 Acceptance. The acceptance must mirror the offer exactly (this is called the 'mirror image' rule). There must be no 'ifs' or 'buts'; if you say 'yes, but. ..', and name some condition, this would not be an unconditional acceptance and therefore not an acceptance at all. In fact, it would be treated by the court as a counter-offer, and a rejection of the first offer. An old case Hyde v. Wrench (1840) illustrates the point. A farm was offered at £1000. The offeree thought the price was too high and offered £950, but this was refused. Anxious to obtain the farm, he communicated acceptance of the original price but the farm was sold to another buyer. The court held that the offer of £950 was a counter-offer and was the same as a rejection.

   Acceptance must be communicated to the offeror, either by word of mouth or in writing, or it may be inferred from the offeree's conduct: for example, if he receives goods on approval and
starts making use of them. Mental acceptance or mere silence is not sufficient. With an instantaneous form of communication, such as fax or email, the general rule is that acceptance takes place when the message is received. With postal communication the rule is the direct opposite: the contract is concluded when the letter of acceptance is posted, provided it is correctly stamped and addressed.

An offer is capable of acceptance only by a person who knows of its existence: for example, a person giving information cannot claim a reward if he did not know of its existence.

3 Consideration. A legally binding agreement must be supported by consideration. It is something of value which exchanges between the parties as a result of the agreement. For example, if a company sells a laser printer for £900, it is supplying consideration in the form of a laser printer and the buyer is supplying consideration in the form of £900. A promise not to sue someone, in return for some act on the wrongdoer's side, is a common form of consideration. Without consideration an agreement is not binding - it is a naked agreement (a nudi pactum).

Consideration must have some economic value; natural love and affection or a moral duty is not enough to render a promise enforceable. However, although consideration must be sufficient, it need not be adequate. If a person agrees to sell his £50,000 house for £5,000, the buyer is giving sufficient consideration despite its manifest inadequacy. This is so because the principle of the freedom of contract requires that it is for the parties themselves, not the courts, to determine what constitutes a good bargain.

Consideration must work in both directions. A promise of a gift cannot be enforced because a gift is one-way consideration. (Only if it is made in the form of a deed - a document signed, sealed and delivered - can such an agreement be legally binding. A deed allows consideration to be one-way and is enforceable in the courts.) Each of the parties has to lose something and gain something else.

Another rule is that consideration must never be in the past; promises for services rendered in the past are not legally binding. If someone promises to thank a person for some service he rendered and then changes his mind, that person cannot enforce the promise on two grounds: first, because the promise is merely one-way and therefore a gift and, second, because his consideration is in the past. In commercial dealings, however, where work is done first and payment is made afterwards, the rule about past consideration does not apply, because the promise to pay is implied in law.

If someone promises to do something which he ought to have done anyway, for example, to improve his attitude to work, he is promising to fulfil an existing obligation, and that in law is not consideration, and therefore he cannot sue if he does not receive the promised benefit. For this reason, new promises made by one party after the entry into the contract are not binding if they are not matched by the other party's fresh consideration.

At common law, only the person providing the consideration could sue on a contract, in other words, only parties to a contract could sue on it. The most notable exception to this rule was in motor insurance cases: an injured person can sue the motorist's insurance company even though the person was not a party to the insurance contract. As a result of the enactment of the Contracts (Rights of Third Parties) Act 1999 the rights of third parties have been substantially widened. Now a third party has a right to enforce a term of the contract where the contract expressly provides that he may enter into for his benefit.

4 Capacity. To be legally entitled to contract, a person must have full legal capacity. It is attained at the age of 18 by persons of sound mind. Capacity also includes appropriate status for making contracts: for example, some contracts can only be signed by the directors of a company.

A person who has not reached the age of majority is known as a minor. Minors do not have full contractual capacity, so most agreements cannot be enforced against them. However, if a minor makes a contract for necessaries - things which a minor needs, like clothes - it is valid. Any contract of employment or training that is advantageous to the minor is also a valid contract. If, for example, a young person signs an apprenticeship agreement which stipulates that he must remain with the company for two years but he decides to leave after a year, the company may
sue him for damages for the money they have spent on his training (although in practice this is rarely done). Other contracts relating to minors are not valid - they can be void or voidable. A *void* contract is one that has no legal force from the moment of its making. Any agreement to supply goods which are not necessaries to a minor is void. Similarly, credit and hire-purchase agreements with minors are void, but the courts have a discretion, under the Minors Contracts Act 1987, to order a young person to return property or goods acquired in this way. A voidable contract is one that is valid when made but may be later set aside (cancelled) by an order of a court. Agreements with minors to lease a flat or house, to buy company shares or to enter partnerships are voidable. A young person may avoid the contract (cannot be bound by it) before he comes of age, but at 18, if he fails to formally repudiate (cancel) the contract, he becomes fully bound. This is not possible with void contracts.

Contracts with mentally disordered and drunk persons are voidable. Such a person may avoid the agreement provided he can prove a) that he was drunk or insane at the time he made the agreement and b) that the other party realised the fact. However, a person is not to be treated as lacking capacity merely because of his old age or a condition of his or because he makes an unwise decision. At common law, where the incapacity is not known to the other party, the contract cannot be set aside, unless the bargain is so unconscionable that it can be contested in the law of equity. And only in certain specific cases is the contractual capacity of persons suffering from a mental illness completely removed by statute and their property made subject to the control of the court.

5 Legal intent. This is the intention of the parties that their agreement should have legal consequences. Indeed, there would be no contract if, for example, they were merely joking when they made the agreement. This is supported by a case decided in 1605 (*Weeks* v. *Tybalt*) when a man joked that he would pay money to any man who would marry his daughter. In establishing legal intent the courts examine what the parties actually said and did (an objective test) rather than what they intended to say or do (a subjective test), because otherwise people who appear to have agreed to certain terms may try to escape liability by claiming that they had no 'real' intention to agree to them.

In *business* agreements which contain all the essential elements, legal intent is presumed by law. If, however, one party states that the agreement is 'binding in honour only', then the legal intent has been specifically removed, and the agreement becomes void. In *domestic* and *social* arrangements the presumption is the opposite: the court will presume the absence of legal intent. For example, if a father promises his son £5 a week for walking the dog and then refuses to pay, even though the son has fulfilled his side of the agreement, there will be no breach of contract since no contract exists because of the absence of legal intent. However, domestic agreements between spouses who are separated or are in business together are enforceable. *Gaming* and *wagering* contracts used to be null and void because the law presumed the absence of legal intent; parties could not sue on the contract nor recover money or property transferred. Since the passing of the Gambling Act 2005 such contracts can be enforced.

6 Certainty of terms. The terms to which the parties are agreeing must be certain, they should not be unduly vague or incomplete. A typical situation will be when one party withdraws from an agreement before the terms have been finalised, and the other party sues them for breach of contract. The court may well agree with the first party that there was no contract because the terms are too vague or have not been finalised. This happened, for example, in *Loftus* v. *Roberts* (1902) where an actress was engaged to perform in a West End play with the salary 'to be mutually arranged between us'.

7 No vitiating factors. Vitiating factors make a contract invalid. They can make it either void (and then neither party can enforce the agreement) or voidable (then it is up to an innocent party whether or not to end the contract). The factors that the law recognises as undermining a contract are illegality, mistake, misrepresentation, duress and undue influence.

All *illegal* contracts are unenforceable. These include agreements: a) to commit a crime, b) to defraud the Inland Revenue, c) involving public safety (e.g. contracts with persons living in
enemy territory), d) involving sexual immorality (e.g. a contract with a prostitute for sexual services is not illegal, but it would be unenforceable in court because it is immoral), e) tending to the corruption of public life (e.g. bribery); e) prejudicial to the administration of justice; f) prejudicial to friendly foreign countries.

Special rules exist for interpreting contracts in which one contractor made a mistake or was tricked or pressured into making an agreement. If one party knows that the other party made a **mistake** as to the terms of the offer and fails to bring it to his notice, he will not be able to enforce the contract according to his version of its terms. If one party had **misrepresented** the facts to the other, there would be 'no meeting of the minds' between the parties (no **consensus ad idem**, to use an old-fashioned term), and the court would not normally uphold this agreement. Equally voidable are contracts entered into under duress. **Duress** can take the form of a physical threat to the person or an economic one, where a threat is made to break an existing contract or to commit a tort and the injured party has no practical alternative to agreeing to the terms proposed by the person making the threat. **Undue influence** is an equitable doctrine which arose independently of common-law duress. Undue influence is presumed in certain relationships, for example, between doctor and patient, solicitor and client, parent and child, where the weaker party might fall under too much influence of the stronger party so that it prevents him from exercising an independent judgment. If a client then decides to sue the professional for loss caused by wrong advice, the latter may rebut the presumption by presenting evidence that the client had access to independent advice.

**8 Form.** In the majority of cases the law is not concerned with the form in which the contract is made. However, some contracts under English law must always be in writing in order to be legally binding, for example, sale of land contracts, leases of three years or more, insurance contracts, loan and hire purchase agreements, agreements to buy company shares, etc.

### 3. Text 1 comprehension questions.
**Answer these questions.**

1. Why cannot a buyer demand to buy goods on display in a shop if the seller refuses to sell them?
2. At what point do an offer and acceptance take place when you buy things in a supermarket?
3. Why is it dangerous to bargain over the price if you are really anxious to buy the thing in question?
4. Why are gratuitous promises not enforceable?
5. What is the difference between void and voidable contracts? Give examples of each.
6. What is the advantage of an objective test in establishing legal intent?
7. How can legal intent be removed from or included into an agreement?

### 4. True-false statements
**Confirm or refute these statements. Begin with a short answer, e.g. 'Yes, it is/has/does, etc.' or 'No, it isn't/hasn't/doesn't, etc.' and add one sentence to prove your point.**

1. Acceptance by post takes place when the other party receives the letter.
2. Courts are not concerned with the adequacy of consideration.
3. Third parties cannot sue on a contract.
4. Minors cannot make valid contracts.
5. Agreements between husbands and wives are never enforceable.
6. If one party knows that the other party has misunderstood the terms of the offer, he has an obligation to inform him about the mistake.
7. Oral contracts cannot be enforced through the courts.
5. Elements of a contract 1

Read the examples and say what essential elements of a contract are missing in these situations. Prove your point.

1. You are in a shop and want to buy something on display. You offer the shopkeeper the money but he won't sell.

2. A small country hotel advertises cheap weekends in November. A school teacher writes asking for the last weekend in November and, assuming that a booking has been made, arrives at the hotel to find it fully booked.

3. The owner of a small building firm is grateful to his friend who has many times fixed computers in his office free of charge. The businessman promises to repair the friend's conservatory for no payment but the work is never done.


5. A husband promises to pay his wife £100 a month if she will help him with the typing of his manuscripts.

6. Two parties enter into a contract to facilitate the forcible overthrow of the government of a country friendly to the UK.

7. A man sells his nearly new BMW car for £1000 because the buyer is pointing a gun at his head.

8. A man buys a television from a shop on a hire purchase agreement. He negotiates the terms of the agreement with the manager and they both agree that there is no need for a written contract.

6. Definitions

Match the terms (1 - 7) with their defining words (a - g). Then write full definitions. Do not borrow dictionary definitions.

<table>
<thead>
<tr>
<th>Term</th>
<th>Defining word</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 an offer</td>
<td>a the price</td>
</tr>
<tr>
<td>2 an acceptance</td>
<td>b the ability</td>
</tr>
<tr>
<td>3 consideration</td>
<td>c a statement</td>
</tr>
<tr>
<td>4 capacity</td>
<td>d the requirement</td>
</tr>
<tr>
<td>5 legality</td>
<td>e an intention</td>
</tr>
<tr>
<td>6 certainty of terms</td>
<td>f a statement / an agreement</td>
</tr>
<tr>
<td>7 legal intent</td>
<td>g the requirement</td>
</tr>
</tbody>
</table>

7. Collocations with 'contract'

The noun 'contract' can collocate with any of the verbs below. Choose two verbs from each column and write six sentences to illustrate the meaning of these collocations.

| to sign a contract        | to enforce         | to break / breach |
| to enter into             | to recognise       | to avoid          |
| to make                   | to interpret       | to cancel         |
| to conclude               | to uphold          | to set aside      |
| to be bound by            |                    | to repudiate      |

8. Elements of a contract

Use Figure 7.1 to talk about the main elements of a contract. Begin the explanation of each element with a definition. Think how to link each prompt with the next. For example, you can say something like this: 'There are three points to remember about offers. First of all ... Secondly ... And finally ...'
## Elements of a Contract

<table>
<thead>
<tr>
<th>Form</th>
<th>Offer</th>
</tr>
</thead>
</table>
| - generally not important  
- must be in writing: sale of land, leases of 3 years or more; insurance; loan and hire purchase; to buy shares, etc | - advert not offer but invitation to treat  
- can be made to person, group, whole world  
- if accepted, cannot be withdrawn |

| No Vitiating Factors - Illegality  
- mistake  
- misrepresentation  
- duress  
- undue influence | Acceptance - mirror image rule  
- must be communicated to offeror  
- by telex - when received  
- by post - when sent  
- offeree must know of its existence |

| Certainty of Terms not vague or incomplete | Consideration - must have econ. value  
- need not be adequate  
- must be two-way, not gift  
- must not be in the past  
- must not be existing obligation  
- rights of third parties |

| Legal Intent - contract must have legal consequences, not joke  
- business agreements  
- gaming and wagering contracts  
- domestic and social agreement | Capacity - persons of 18 and over  
- of sound mind  
- minors: contracts for necessaries, employment or training valid  
- void and voidable contracts with minors  
- contracts with mentally disordered and drunk |

Figure 7.1 - Elements of a Contract
9. 'To force' or 'to enforce'?  

a) Sometimes the meanings of these verbs overlap; for example, 'It is unlikely that a record company would enforce/force its views on an established artist'. But in legal English they are usually distinguished. Study the synonyms for each verb and work out the difference in meaning. Then complete the gaps in the exercise and say which synonym from the list could be used instead.

To force – make, compel, drive, coerce/pressurise sb into doing smth, put pressure on someone.

To enforce – apply, implement, uphold smth.

1. If you don't comply I'm afraid we'll have to ______________ you.
2. Governments make laws and the police ______________ them.
3. She claimed she was ______________ to take part in the robbery by her husband.
4. Women's organisations are trying to ______________ the government to appoint more women to senior positions.
5. If the seller breaches the contract at this stage, the buyer can have his property rights ______________ in court.
6. Parking restrictions will be strictly ______________.
7. It is obvious that where one party is ______________ to consent by threats or undue persuasion by the other, that consent should be invalid.
8. He tried to keep the dispute out of court by ______________ an arbitration agreement in the franchise contract.

b) Make (or write out of an English-English dictionary) six sentences set in a legal context, illustrating the correct use of these verbs.

10. 'Offeror - offeree'

a) Match the names of parties to a contract in the box to their definitions below and write the names in the spaces provided. The first one has been done for you. Translate the terms into your own language.

<table>
<thead>
<tr>
<th>vendor * lessee / tenant * customer * purchaser * mortgagee * owner employee * consumer * hirer / renter * contractor client * retailer * supplier * employer * mortgagor * lessor</th>
</tr>
</thead>
</table>

1) __________ a person who sells things, esp. on the street; 2) smb who sells a house or land (legal English)
2) __________ a person who sells goods directly to the customer
3) __________ a person who provides goods or equipment
4) __________ a person who owns something
5) __________ a person who conveys property by lease
6) __________ a person to whom property is mortgaged (the lender, usually a bank)
7) __________ a person who contracts to perform work or services
8) __________ a person or company that people work for
9) __________ a person who buys things or uses services
10) __________ a person who buys smth, esp. from a shop
11) __________ a person who buys things (formal)
12) __________ a person who mortgages property (the borrower)
13) __________ a person who is paid to work for a person or company
14) __________ a person who receives advice or a service from a professional person or organization in return for payment
15) ______ a person who pays money to be allowed to use smth for a period of time
16) ______ a person who holds property under a lease

b) Sort out the words into two columns so that they form pairs. E.g.: ‘vendor’-‘purchaser’.

Text 2: Civil Procedure
Pre-reading tasks

11. Before you read the text, look at the following statements and mark what you think the answers are. Then scan the *first section* of the text and check your initial hypotheses.

a. The majority of civil cases are settled privately, without going to court. True/False
b. Most civil cases are heard before a jury. True/False
c. Parties have an obligation to disclose all relevant documents to each other before the trial. True/False

2. What does the expression 'to enforce a court judgment' mean? Read the rest of the text and answer the questions: a) which court remedies were created by the common law and which by the law of equity; b) what is the purpose of all orders mentioned in Section 3; c) how is arbitration different from mediation?

3. Now read the text and answer the questions that follow.

Civil Procedure

Civil law concerns disputes between private individuals and organisations. It also provides a means of challenging the actions of public bodies, such as a local authority or a government ministry that has acted illegally. The purpose of civil proceedings is not to punish but to allow the wronged party to obtain compensation or some other appropriate remedy. However, most civil disputes do not go to court at all, with parties preferring to settle privately, or amicably. Those cases that do come to court are tried either in the county courts (some 90 per cent of all cases) or in the High Court. Proceedings in civil cases are governed by the Civil Procedure Rules (CPR), which came into force in 1999. The new Rules were called for to fight exorbitant costs and delays that had plagued civil litigation. Now it is no longer for the parties themselves to decide at what pace the case should progress or what issues to have heard or what evidence to call. Judges now actively manage cases: they set strict timetables, they control and simplify the issues to be decided and put strict limits on the evidence to be called.

Before issuing proceedings in court, it is common for the claimant to write a 'letter of claim' to the other party notifying it of his intention to initiate legal proceedings. The letter will outline the nature of the claim and offer terms of settlement. If no reply is received within a stated time, the claimant will commence legal proceedings. To bring a claim, it is necessary to draft two legal documents: a Claim Form (formerly called a 'writ') and Particulars of Claim (details of a claim). The Claim Form will be written on the court's headed notepaper and will contain: the name of the court, the names of parties, brief details of the claim in under 100 words, expected compensation or other remedy that is being sought, the defendant's address and reference to costs. The Particulars of Claim will contain a much more detailed account of the claim, particulars of loss and the remedy that is being sought, as well as a statement of truth confirming
that the facts stated are true. Both these documents are now called Statements of Case but were previously known as 'pleadings'.

The Claim Form functions as a summons: a copy of it is served on the defendant. He can either admit the claim or, if he wishes to defend it, he must file his Statement of Case with the court setting out his answer to the claim. If he also wishes to claim against the claimant, he may do this by filing a document called a Counterclaim. If a defendant does not respond to the claim within 14 days, the claimant may obtain a default judgment, e.g. judgement in his favour without going to trial. If it appears that the defendant has no real defence to the claim or the claimant's claim has no reasonable prospect of succeeding, the court may give summary judgment against either of them without a trial. If a defendant files a defence, the case is allocated to one of the following three tracks: the small claims track for claims of up to £5,000 in value; the fast track for claims of up to £15,000 and the multi-track for the most complicated and valuable claims, usually tried in the High Court.

Many rules of pre-trial procedure are designed to prevent 'surprise', that is, any matter or event that might take the other party by surprise and put them at some disadvantage in litigation. Therefore the next stage in the procedure is disclosure, which enables the parties to find out more details about the claim or the defence from each other. This is followed by inspection of all relevant documents in the possession of the other party and an exchange of witness statements and experts' reports. If parties decide to settle their differences, they may ask the court for a stay (a temporary halt) in proceedings. In fast track cases, the hearing normally takes place 30 weeks from the issue of a claim form. The normal length of a trial is one day.

The trial procedure is essentially the same as for criminal trials. The opening speeches, however, are usually dispensed with 'and the hearing begins with the claimant's counsel conducting examination-in-chief of the claimant in order to set out the claimant's case. The claimant is then cross-examined by the defendant's counsel, and so on. The rules about leading and non-leading questions apply in a civil trial too. Expert evidence is restricted to one expert per party in any field of expertise and limited to two fields of expertise. Almost all civil cases are tried by a judge alone. Juries are used mainly when the action concerns the liberty of the subject, for example, an action against the police for assault and wrongful imprisonment, or his reputation, when the claimant claims damages for defamation of character. (In the United States, on the contrary, nearly all civil trials are held with a jury). The judgment is given either immediately or at a later time (a 'reserved judgment'). Normally the successful party's costs are paid by the other party, but the court has discretionary powers in the matter.

**Remedies for Breach of Contract**

One of the most common kinds of legal action is an action in breach of contract. The court must be satisfied that there was a contract, that one party is in breach, and that the other party has suffered some loss because of the breach. If all these conditions are fulfilled, the court must then decide how the party in breach must compensate the other party. The remedies for breach of contract are damages, a specific performance order or an injunction.

The usual award is damages, or monetary compensation, usually in the form of a lump sum. In deciding just how much in damages to award, the courts try to put the claimant into the same financial position he would have been in if the defendant had carried out the contract properly. Courts will award damages only for loss that arises naturally from the breach and might have been anticipated by both parties when the contract was made. In the 1949 case of *Victoria Laundry (Windsor) Ltd v. Newman Industries Ltd* the defendants were five months late in delivering a new boiler for the laundry. The claimants sued for loss of profits and for loss of a business opportunity. The court awarded damages for loss of normal profits which should have been anticipated by Newman Industries, but it would not award damages for loss of a lucrative contract because the supplying firm could not possibly have known about this. The court decided that the first claim was reasonable but that the second was too *remote*. The claim is considered too remote when the claimant's loss could not be foreseeable by both parties at the time they
made the contract. So, if the connection between the breach of contract and the claimant's loss is too remote, the defendant is not liable. It is an important concept in both contract and tort. The injured party must do his best to minimise the loss resulting from the breach. If, for example, a hotel reservation is cancelled, the hotelier must make all reasonable attempts to relet the room for the period in question, and he cannot claim compensation for any loss caused by his failure to do this.

Courts may, at their discretion, provide alternative remedies for breach of contract. A specific performance order requires a person to fulfill his obligations under a contract. For example, when contracts have been exchanged for the sale of a house, the court may order a reluctant seller to complete the sale. Specific performance orders will never be granted for any contract of a personal nature. Thus, a person who contracts to work for a company and then refuses to take the job will never be made to do so; the company will only be able to claim damages.

An injunction either prohibits a person from doing or continuing to do a certain act (a prohibitory injunction) or orders him to carry out a certain act (a mandatory injunction). For example, if an artist agrees to take part in a show and then changes his mind, an injunction can be issued to restrain him from appearing elsewhere on that day (in the hope that this might induce him to keep his initial obligation). If he still decides not to perform, then the organisers will be entitled to damages for any losses incurred.

Specific performance and an injunction' are equitable remedies developed by the courts of equity and will only be granted if a) damages are not an adequate remedy and b) if the court can adequately supervise enforcement. Both remedies are discretionary, that is, they will be granted only if the court considers it just and convenient to do so.

In other areas of civil law there are some other specific remedies, for example, in family law cases the court may give orders which regulate how family members are to live. We shall consider remedies specific to other areas of law in later chapters of this book.

**Enforcement**

As almost everyone knows, it is one thing to get a judgment and it may be another to get the money. If the debtor has no money or no assets to sell, then no method of enforcement will succeed. In all other cases there are a number of ways in which a judgment may be enforced.

*Warrant of execution.* In the case of an order to pay money, the court may order that the defendant's property should be seized and sold. In this case, the bailiff will enter the premises and place a lien on certain assets notifying the debtor that these assets will be sold unless the debt is paid in full within a certain period. A lien is the right to hold another's property while pressing a claim against him.

*A charging order* makes it impossible for the debtor to sell his land or securities without paying off the debt.

If a *warrant of specific delivery* is made, the court bailiff is ordered to seize the goods and deliver them to the successful litigant.

The so-called 'garnishee order' is directed to anyone who owes the debtor money requiring them to pay it into the court.

For larger debts, there may be a *bankruptcy* and *liquidation order* declaring the debtor bankrupt. In this case a receiver is appointed by the court to enable the creditor to obtain payment of a debt.

* Receivership. A receiver may also be appointed when the debtor receives an income, such as rent from tenants, which must be collected by an independent person.

*Attachment of earnings.* For smaller debts, there may be an order requiring the debtor's employer to deduct a sum of money from the debtor's wages and transfer it into court. However, the order can be discharged if the debtor loses or changes his employment.

If a person disobeys a court order to do something or not to do something, he will be guilty of *contempt of court* and will be fined or sent to prison.
Alternative Dispute Resolution (ADR)

The formal courts are not the only means of solving disputes. The great majority of civil disputes are settled out of court: by various tribunals, by means of arbitration or mediation. There are literally thousands of tribunals around the country of more than 80 different types. They are independent judicial bodies, which consist of expert assessors sitting alongside legally qualified chairmen. They hear claims where ordinary courts either lack the necessary expertise or are too formal and costly. But although tribunals exist outside the ordinary courts of law, their decisions are subject to judicial control. If a decision is taken on the wrong grounds, it may be challenged in the High Court and can be quashed on review. From the point of view of the lawyer, tribunals are perhaps the least important element in the court system but from the point of view of the ordinary citizen, they are among the most important courts in the country.

Administrative tribunals are set up by Parliament to regulate relations between social groups, such as employers and employees, or between the state and its citizens, as in the welfare system. Examples of these are Employment Tribunals (hear disputes between employers and employees or trade unions); Commissioners for Income Tax (settle disputes involving liability for tax); Social Security Appeal Tribunals (hear claims concerning eligibility for social benefit), etc. Domestic tribunals are set up by statute or by contract between members, and have jurisdiction over the internal affairs of a particular profession or association. Examples include the disciplinary committee of the Law Society or the British Medical Association or a trade union.

Both the tribunals and the claims they consider are the product of legislation. In contrast, arbitration is a private means of solving disputes by an independent body or person. Often businesses entering into legal contracts will insert a clause that, in the event of a dispute, settlement will be by an independent arbitrator. The judgment of an arbitrator is known as an award. If both parties have agreed to arbitration, the matter cannot then normally be raised in the courts but it is possible to appeal to the High Court on a question of law. There is, as we have seen, an arbitration service for small claims available in the county court. Where appropriate, parties can have recourse to mediation - a flexible process conducted confidentially in which a neutral person actively assists parties to work out a negotiated agreement. Unlike arbitrators, mediators do not have decision-making powers and cannot force the parties to accept a settlement. In fact, the civil courts actively encourage parties to use ADR, and in particular mediation.

12. Comprehension questions. Answer these questions.

1. What four options are open to a defendant when he receives a Claim Form from the other party?
2. In what three cases can a court give summary judgment without a trial?
3. Why do you think measures are taken to prevent the parties being taken by surprise in civil proceedings?
4. What three things need to be proved in order to start an action in breach of contract?
5. On what general principle are damages for breach of contract calculated?
6. When is a claim considered too remote?
7. Why will the court never impose a specific performance order in employment contracts?
8. Which method of enforcing a court's judgment do you think is the most expensive?
9. Which means of ADR are public and which are private?

13. Elements of a contract Law

Read the examples and in each case say: a) will the claimant be successful in suing for breach of contract; b) if not, what element is in question? Prove your point.

1. A farmer sees a new mower in the showroom of a firm which deals in agricultural machinery.
He is impressed by the mower's quality but the price is rather more than he wishes to pay. He tells the manager that with £500 off the price he would be prepared to buy it. The manager promises to 'think about it'. But when the farmer calls the next day, he finds out that the machine has been sold. He is angry and intends to sue the firm.

2. Two friends have been drinking in a pub. The woman, rather much the worse for drink, agrees to sell her car to her drinking companion. When he goes the next day to collect the car, she refuses to hand it over.

3. You buy a ticket at the theatre but you don't like the performance and want your money back.

4. A man promised to pay a woman if she would become his mistress. When he refused to pay up, she took the matter to court.

5. On entering a religious order a woman gave all her property to it. She later changed her mind and tried to win her property back arguing that at the time she was excessively dependent on the Mother Superior, who had failed to ensure that the woman had access to independent advice.

6. A language school wrote a letter requesting to book premises for three days in order to conduct international examinations. The owner of the premises wrote a letter confirming the booking. Before receiving the reply, the language school secretary phones to cancel the arrangements.

7. A man advertised rare birds for sale at a stated price (in a newspaper). No offers to buy are forthcoming, nevertheless he is charged with the offence of 'offering for sale' wild live birds contrary to the Protection of Birds Act 1954.

8. Knowing that the other party is in a desperate financial situation, a company put pressure on them to accept £300 in full settlement of a bill for nearly £500. The claimant accepts under protest but later brings legal proceedings against the debtor for the balance of the sum.

14. Common collocations

The collocations below are all from the text. Choose one phrase from each group and write six sentences to illustrate their meanings in legal contexts.

- to issue proceedings in court, to initiate / commence legal proceedings; to ask the court for a stay in proceedings

- to bring a claim; to file a claim with the court; to press a claim against smb; to outline / state the nature of the claim; to set out one's case; to serve a claim on a defendant; to respond to a claim; to admit a claim; to set out one's answer to the claim; to defend a claim; to file a defence; to claim against the claimant

- to put strict limits on the evidence to be called; to restrict evidence to one expert per party; to limit evidence to two fields of expertise

- to cause loss; to minimise the loss resulting from the breach; to sue for loss of profits; to sue for loss of a business opportunity; to suffer / incur some loss because of the breach; to anticipate a loss

- to obtain a default judgment; to give (summary) judgment against smb; to get a judgment; to enforce a judgment

- to seek a remedy; to claim compensation / damages; to be entitled to damages for any losses incurred; to award damages for loss of profits; to provide alternative remedies for breach of contract; to grant / issue an injunction (a specific performance order)

15. Civil Procedure. Read the first section of Text 2 and make a flowchart of the stages of a civil process.
16. 'Damage' or 'damages'? (Revision)
a) Fill the gaps with the appropriate option.
1. The revelations caused untold_________ to his political reputation.
2. He brought an action for breach of contract against the insurance company, seeking__________.
3. Mrs. Owen was ordered to pay_________ of $6,000.
4. The earthquake caused_________ estimated at 300 million pounds.
5. The house suffered only superficial_________ from the fire.
6. The vandals did over £20,000 worth of__________.
7. Unofficial strikes are doing serious_________ to the British economy.
8. The court awarded the victim £1,500 in_________.