LESSON Four: LAW

# Contract.

A contract is a legally binding agreement enforceable in a court of law.

There are 3 elements – all must be present to make it a valid contract

* Agreement (offer and acceptance)
* Consideration (Value)
* Intention to create legal relations

## Agreement

An offer is a quote, it can be verbal or written.

There are 2 parties to the offer, the offeror and the offeree

An invitation to treat is an advert, catalogue or price label.

Offers may be brought to an end:

* Set time period (or reasonable period of time)
* Revocation – must be before acceptance
* Rejection
* Rejection by a counter offer
* Acceptance

## Consideration

There must be some value given or promised, doesn’t have to be money.

## Intention to create legal relations

Business agreements are assumed to be intended to create legal relations and are therefore enforceable by law.

Agreements with friends and family are presumed not to have the intention to create legal relations.

Defective contracts: There are some situations in which a contract has limited or no legal effect.

* Void contracts:
  + fundamental mistake,
  + Not bound by contract.
* Voidable contracts:
  + placing people under duress,
  + minors,
  + one person can set aside.
* Unenforceable contracts:
* This is a valid contract,
* not completed if no evidence.

# Questions

1. Which of the following are features of a simple contract:
   1. Offer
   2. Consideration
   3. Relations
   4. Acceptance
   5. Invitation
   6. Certainty of terms
   7. Intention to create legal relations
   8. Invitation to treat
      1. All of them
      2. i,ii,iii,v,vi
      3. i,ii,iii,iv,viii
      4. i,ii,iv,vi,vii
2. Rachael has a notice in the window saying that all books are for sale half price. This is an example of:
   * 1. Offer
     2. Acceptance
     3. Invitation to treat
     4. Consideration
3. Lisa orders an Indian takeaway on the telephone and says she will pay on collection. Which of the following would constitute consideration:
   * 1. Placing the order
     2. Paying for the order
     3. Saying she will pay for the order
     4. Picking up the order
4. A void contract is a contract that :
   * 1. Is valid
     2. Can be enforced by law
     3. Can be nullified
     4. Cannot be enforced by law

# Breach of Contract.

Where one party does not fulfil their part of the agreement.

If the terms of the contract are not fulfilled then one party is in breach of contract.

## Terms

* Express terms:
  + Terms specifically stated in the contact,
  + binding on both parties.
* Conditions:
  + Fundamental terms,
  + If broken=breach of contract so contact ends.
  + Can sue for damages
* Warranties:
  + Less important term.
  + If not fulfilled=breach of contract, contract stands.
  + Can claim damages.
* Implied terms:
  + Not specifically stated but implied by trade custom or law.

## Remedies for Breach of contract

* Action for price:

Court action to recover agreed price

* Monetary damages:

Compensation for loss.

* Termination:

One party refusing to carry on contract

* Specific performance:

Court order, one party must fulfil their obligations

* Quantum meruit:

Payment ordered for part of the work done.

* Injunction:

One party ordered not to do something.

## Which court?

Under £5000 County Court – Small Claims Track

Under £25000 County Court – Fast Track (less than one day)

Over £25000 County Court – Multi Track

## Receiving payment under a court order

* Attachment of earnings:

Individuals in work paid direct via employer.

* Garnishee order:

3rd part debt order paid direct via a 3rd party.

* Warrant of execution:

Bailiff seizes customer’s goods, sells them, we get proceeds.

* Administrative order:

Court agreement to pay a set amount per month/week.

* Receiver:

Appointed to receive money owing to your customer.

* Charge:

Legal charge placed on property/ assets. They are sold and funds used to pay debt.

* Bankruptcy notice:
* Liquidation:

# Bankruptcy and Insolvency.

Bankruptcy relates to individuals. Companies become insolvent.

## Bankruptcy

Statutory demand: If customer (trade receivable) owes at least £750 then a statutory demand can be issued for payment due in a certain time. If the customer does not pay then a petition for bankruptcy will be received from the court.

### Consequences of a petition for bankruptcy.

* The customer cannot pay other suppliers or dispose of assets.
* Legal proceedings relating to property & debts are suspended.
* Interim receiver is appointed.

### Consequences of a bankruptcy order.

* Receiver takes control of assets of the business.
* A statement of affairs is drawn up: list of assets & liabilities.
* Arrange a meeting of creditors-within 12 weeks.
* The creditors appoint a trustee in bankruptcy.
* Assets are realised. Distribution to creditors
* Creditor who presented the petition does not get priority.

### Assets are distributed in this order.

* Secured creditors
* Bankruptcy costs
* Preferential creditors: employees, HMRC, pensions.
* Unsecured creditors-our debt.
* Bankrupt’s spouse
* The bankrupt

## Insolvency

2 main options

### Liquidation.

Company is dissolved and assets are realised. Debts paid, excess returned to shareholders.

### Administration.

Company continues to operate but under an insolvency practitioner. Aim is to save the company.

# Other legislation.

## Retention of Title Clause

Buyer does not obtain ownership of goods until they are paid for. Must be written into contract.

## Trade descriptions Act

Criminal offence to make false or misleading statements about goods /services.

## Unfair Contract Terms Act

Cannot include unfair terms in the small print.

## Sale of Goods Act 1893 and 1979

Title passes immediately NOT when paid for, unless it is sold on ‘sale or return’ then it is when buyer approves.

In a shop goods must be:

* Satisfactory quality
* Fit for purpose
* As described

## Consumer Credit Act

Gives rights to individuals (not companies) who become credit customers.

## Late Payment of Commercial Debts Act

From 2002 all businesses and public sector organisations have the right to claim interest on debts.

Bank of England base rate +8%

Starts one day after debt due.

Plus fines

# Data Protection Act.

Relates to information held about individuals not organisations.

* Personal information about a living person. Fact or opinion.
* Data subject is the individual
* Data controller is the person who holds and processes information.
* Relates to paper and computer records.

## Principles of good practice

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## Data subjects have rights

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