

**UNDERSTANDING AND APPLYING CONTRACT LAW IN THE FAMILY BUSINESS**

**By**

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**CONTRACT LAW**

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## **Section 1 – The Principles of Contract Law and the Key Elements of a Binding Contract**

### ***Introduction to Contract Law***

Contracts are the backbone of legal agreements. They are legally binding documents that establish rights and obligations between two or more parties. Contract law is the product of a business civilization. They serve as the cornerstone for regulating agreements and transactions. Contract law creates and carries out the arrangements of an agreement and will seek out a solution if any contravention does occur. (Cartwright, 2023)

### ***Importance***

It is crucial to recognize the importance of contract in any business relationship landscape. It provides legal protection to both the parties involved. It allows businesses to enter into agreements with confidence, knowing that legal aid will be available if contractual obligations are not fulfilled. This certainty provides a conducive environment for business activities. (Davis and Pargendler, 2021)

### ***Key Principles***

Requirements of contract law particularly include essential components needed for a valid and enforceable contract. There are several key components:

*Offer and Acceptance:* There must be a clear expression of willingness to enter into a contract by one party and the other party must accept the terms of the offer without any material changes. (Knapp et al., 2023) The case of *Raffles V Wichelhaus* 1864 emphasizes the necessity of mutual assent in contracts. (*Raffles V Wichelhaus*, 1864)

*Intention to bind legally:* Both parties must intend for the agreement to create a legal relationship. Social agreements, especially within families, may lack this intention unless explicitly stated. (Stone and Devenney, 2022). The case of *Jones V Padavatton* 1969 provides insight on this component. (*Jones V Padavatton*, 1969)

*Consideration:* Each party must provide something of value as consideration to the other party to ensure a mutual exchange and fairness in the contract (Scott and Kraus, 2023) It is a fundamental principle as understood by the case of *Dunlop Pneumatic Tyre Co Ltd V Selfridge and Co Ltd* 1915. (*Dunlop Pneumatic Tyre Co Ltd V Selfridge and Co Ltd*, 1915)

*Legal Capacity:* Minors, individuals with mental illness, and those under the influence of drug or alcohol may lack legal capacity, both parties include must have the legal capacity to enter into a contract (Ionaş, 2023). The example of Nash V Inman 1908 case is a perfect to highlight this component. (Nash V Inman, 1908)

*Legitimate Purpose:* The purpose of the contract must be legal and do not violate public policy or have illegal objectives (Stone and Devenney,2022) The situation in the case of Balfour V Balfour 1919 support this key component. (Balfour V Balfour, 1919)

*Factors:*

*Moral:* Contract law is supported by ethical consideration, reflecting broader societal values. The legal system seeks to enforce agreements that align with principles of honesty, fairness and good faith. (Taylor, 2023)

In the case of Redgrave V Hurd 1881, the moral dimension of contract law is highlighted. Mr. Redgrave hired Mr. Hurd, a solicitor, to purchase a practice. Where Hurd made a fraudulent misrepresentation by assuring Redgrave that the practice was more beneficial than it actually was. The court held that the contact was not valid due to misrepresentation, this underlining the moral imperative of transparency and good faith in contractual dealings. (Redgrave V Hurd, 1881)

*Social:* Contract law grows in round with changes in social practices. The lawful interpretation of contract often takes into account community standards and expectations, ensuring that agreements are consistent with prevailing societal values. (Taylor, 2023)

The case of Smith V Hughes 1871 illustrates the impact of social considerations on contractual interpretation. The dispute centered around the sale of oats. The court in this case focused on the objective understanding of the parties, emphasizing what would be reasonable from the perspective of the community rather than solely focusing on the parties. (Smith V Hughes, 1871)

*Political:* The governmental structure considerably influences contract law. Legitimate changes, such as the introduction of the Consumer Right Act 2015, reshape the contractual setting. Political decisions effect the enforceability of contact, especially in areas like consumer protection, where regulations aim to balance the power dynamic among consumers and business. (Taylor,

2023) The introduction of the Consumer Right Act is significant example that political decisions directly impact contract law. (Consumer Right Act, 2015)

*Commercial:* Contract law is flexible to commercial practices, responds to market elements and industry standards, recognizing the need for adaptability in contractual arrangements to accommodates the diverse needs of businesses. (Taylor, 2023)

The case of *Bannerman V White* 1861 ensure that the commercial adaptability of contract law is conspicuous. As the case involves a specific requirements expressed by the buyer regarding the absence of sulfur in hops, the court deemed this requirement a fundamental term of the contract. (*Bannerman V White*, 1861)

### ***Classifications of Contracts***

Contracts can take various forms. Each form has distinct characteristics and implications:

<b>TYPE</b>	<b>DEFINITION</b>	<b>Example</b>
EXPRESS CONTRACTS	These contracts involve explicit and clear terms, explicitly agreed upon by the parties. (Dagan, 2020)	a written agreement for the purchase of goods or services. (Dagan, 2020)
IMPLIED CONTRACTS	These contracts are not explicitly stated but are inferred from the actions. (Austen-Baker, 2023)	a person entering a shop and purchasing goods without a verbal agreement. (Austen-Baker, 2023)
UNILATERAL CONTRACTS	The contract where one party makes a promise and the other party accept through performance. (Dagan, 2020; Ionaş, 2023)	a reward offers for finding a lost item, where the acceptance is demonstrated by finding and returning the item. (Dagan, 2020)



BILATERAL CONTRACTS	They involve mutual promises between the parties. (Whaley and Horton, 2023; Ionaş, 2023)	A contract for the sale of goods, where one party promises to pay and the other deliver. (Whaley and Horton, 2023)
VOID CONTRACTS	They are not legitimate from the outset. (Whaley and Horton, 2023; Ionaş, 2023)	A contract for an illegal purpose. (Whaley and Horton, 2023)
VOIDABLE CONTRACTS	It is initially valid but gives one party the option to void the contract due to factors like undue influence or fraud (Whaley and Horton, 2023; Ionaş, 2023).	A contract with a minor. (Whaley and Horton, 2023)
EXECUTED CONTRACTS	Both parties have fulfilled their obligations and contract is completed (Austen-Baker, 2023; Ionaş, 2023)	A contract of purchasing good where payment and delivery have occurred (Austen-Baker, 2023)
EXECUTORY CONTRACTS	Involves some obligations yet to be fulfilled by any party. (Austen-Baker, 2023; Ionaş, 2023)	Agreement for future service where the service has not provided yet. (Austen-Baker, 2023)

### ***Key Elements of a Binding Contract***

To grasp an insight of the key elements of a binding contract, comprehensive understanding of the fundamental difference between an offer and an invitation to treat is crucial (Markovits, 2020; Dwivedi et al., 2021).

## *OFFER*

A clear and unequivocal expression of willingness to enter into a contract on specific terms refers to an offer. It is a proposal that forms a binding agreement when accepted (Markovits, 2020; Dwivedi et al., 2021).

*Example:* In the case of *Carlill V Carbolic Smoke Ball Co* 1893, Lord Justice Bowen stated, “I think that the person who acts upon the advertisement does accept the offer (*Carlill V Carbolic Smoke Ball Co*, 1893).

## *INVITATION TO TREAT*

An invitation to treat is an invitation for other to make an offer. It is not an offer itself but an expression of willingness to negotiate or receive offers. (Markovits, 2020; Dwivedi et al., 2021)

*Example:* In the case of *Fisher V Bell* 1961, Lord Parker CJ emphasized that displaying goods with a price tag is an invitation to treat, and the customer's act of picking up the item is making an offer (*Fisher V Bell*, 1961)

## *The Postal Rule*

The postal rule is a notable feature of contract law. It impacts the timing of offer and acceptance in a contractual relation. This rule is significantly relevant when communication occurs via postal services, and its interpretation raises several issues that stimulate contract creation. (Tan, 2023). The Postal Rule was established during the case of *Adams V Lindsell* 1818 (*Adams V Lindsell*, 1818).

## *Issues and Challenges*

*Time Discrepancy:* Time gap between posting and receipt is a key issue. The rule operates on the principle of instantaneous communication, yet the postal system introduces delays. (Ibrahim, Ababneh and Tahat, 2007)

*Revocation Dilemma:* The rule only applies to acceptances and not to revocations of offer. This leads to a situation where an offeror is bound by acceptance while being unaware that he has attempted to revoke the offer. (Ibrahim, Ababneh and Tahat, 2007)

*Modern Communication Challenges:* In today's electronic communication era, the applicability of the postal rule to modern means of communication raises questions, that courts may need to adapt the rules that align with new technologies. (Ibrahim, Ababneh and Tahat, 2007)

*Case Example:* The case of *Holwell Securities V Hughes* 1974, where the court emphasized that the postal rule is not absolute and can be displaced by clear contrary intention or agreement between the parties. It shed light on the flexibility requires in applying the rules based on the situation of each case. (*Holwell Securities V Hughes*, 1974)

### ***Consideration***

Consideration is an act, forbearance, or promise given by one party in exchange for the act, forbearance, or promise given by another. (Scott and Kraus, 2023)

#### *Rules of Consideration*

*Must move from the promisee:* The Promisee must provide the consideration, the party to whom the promise is made. This ensures that there is a reciprocal exchange between the parties. (Scott and Kraus, 2023)

*Must be of some value:* The consideration must be of value, though it doesn't need to be adequate (Scott and Kraus, 2023). In the case of *Chappell and Co Ltd V Nestle Co Ltd* 1960, this was affirmed that it is the presence of consideration, not its fairness, that matter (*Chappell and Co Ltd V Nestle Co Ltd*, 1960).

*Must be real:* Consideration must not be something illusory but genuine. A promise to do something that one is already obligated to do lacks the necessary legitimate value. (Scott and Kraus, 2023)

#### *Test of Enforceability*

*Bargained for exchange:* It was established in the case of *Currie V Misa* 1875. The test of enforceability revolves around whether there is a bargained for exchange. Each party must give or promise something, including the other party to do the same (*Currie V Misa*, 1875; Li et al., 2020).

*Past consideration:* It is not generally valid, however an exception exists when a past act was done at the promisor's request, and there was an expectation of payment (Li et al., 2020), as

this was seen in the case of *Lampleigh V Bathwait* happened in 1615 (*Lampleigh V Bathwait*, 1615).

*Enforceable consideration*: The case of *Hammer V Sidway* 1891, sheds light on enforceable consideration where the promise to refrain from a lawful act smoking and drinking was exchanged for a benefit financial payment. (*Hammer V Sidway*, 1891; Li et al., 2020)

*Practical benefits and legal detriment*: Consideration can take form of a practical benefit to the promisor or a legal detriment to the promisee (Li et al., 2020), as established in *Williams V Roffey Bros and Nicholls contractors Ltd* that took place in 1990 (*Williams V Roffey Bros and Nicholls contractors Ltd*, 1990).

### ***Importance of Acceptance***

Acceptance is a pivotal component in the creation of a contract. It represents the unqualified assent to the term of an offer. There are multiple methods exits for conveying acceptance, each having its own effectiveness criteria. (Ibrahim, Ababneh and Tahat, 2007)

#### *Express Acceptance*

It involves the use of clear and direct communication, stating written agreements with the terms of the offer. Generally, its effectiveness is upon communication to the offeror. (Barnett and Oman, 2021). As highlighted in the case of 1908 *Powell V Lee*, that acceptance was effective when conveyed through a third party. (*Powell V Lee*, 1908)

#### *Implied Acceptance*

Not explicitly communicated but inferred from the action of the offeree. It becomes effective when the offeree's actions unequivocally demonstrate an intention to accept (Barnett and Oman, 2021) as illustrated in the case of 1893 *Carlill V Carbolic Smoke Call Co*, where using the product constitute implied acceptance. (*Carlill V Carbolic Smoke Call Co*, 1893)

#### *Silence Acceptance*

Silence is generally not considered acceptance unless there is a clear understanding between the parties that silence indicates agreement. Silence is ineffective as acceptance, except in some cases (Barnett and Oman, 2021). Like *Felthouse V Bindley* 1862, where the court inferred acceptance due to the offeree's failure to reject the offer (*Felthouse V Bindley*, 1862)

### *Postal rule in acceptance*

When acceptance is sent through the post, the postal rule dictates that it becomes effective upon posting. The acceptance is deemed effective when posted, even if the offeror is unaware, (Ibrahim, Ababneh and Tahat, 2007), as demonstrated in the case of *Adam V Lindell* which happened in 1818 (*Adam V Lindell* happened, 1818)

### *Electronic communication*

Considering the modern context, acceptance through electronic communication like email or fax is prevalent. It is typically effective upon reaching the offeror's system, (Tjong Tjin Tai, 2023) this was established in the case of *Entores Ltd V Miles Fast East Corporation* that took place in 1955 for instantaneous communication (*Entores Ltd V Miles Fast East Corporation*, 1955)

### ***Key Theories of Contract law***

Contract law is carried by multiple theories that provides distinguish perspectives on the nature and creation of contract. (Scot and kraus, 2023)

#### *Equity Theory*

This theory is rooted in fairness and justice that seeks to ensure that both parties involved in the contract are treated equal and solutions for any problems are reasonable. (Mittlaender, 2022)

*Analysis:* Equity theory is applied in contracts striving to prevent circumstances where one party is unjustly enriched at the expense of another. (Mittlaender, 2022) The case of *Crabtree V Robinson* that happened in 1843, where the court utilized equitable principle to prevent unjust enrichment (*Crabtree V Robinson*, 1843).

#### *Will Theory*

This is also known as subjective theory of contract, that focuses on the intent of both parties, considering their internal state of mind. (Mittlaender, 2022)

*Analysis:* Will theory ensures that contractual parties are willingly creating a lawful relationship. (Mittlaender, 2022) The case of *Carlill V Carbolic Smoke Balls Co* 1893 shed light on this theory, in this case the court examined the company's will to be bound by the offer through its advertisement (*Carlill V Carbolic Smoke Call Co*, 1893).

## Formalist Theory

This theory specifically emphasizes the form of the contract, considering external manifestations of assent, like spoken or words or in written. (Mittlaender, 2022)

*Analysis:* Formalist theory incorporation in contract analysis ensure the compliance with required formalities. The cases governed by the Statute of Frauds, failure to adhere to formal requirements condense a contract unenforceable (Mittlaender, 2022).

## ***INSTANTANEOUS METHODS ISSUES***

### *Lack of Formality*

While using this methods parties must be cautious about relying solely on informal electronic exchanges for contractual agreements. In some critical circumstances it is advisable to follow with traditional written documentation to ensure clarity. (Tjong Tjin Tai, 2023)

### *Vagueness in Communication*

While using this method, assuring that the message explicitly conveys the intended contractual terms is crucial to prevent misunderstandings. (Tjong Tjin Tai, 2023)

### *Timing and Receipt*

While using this method parties should consider time zone differences, server delay, and issue related to the acknowledgement of receipt to establish contract timelines. (Tjong Tjin Tai, 2023)

### *Authentication and Authorization*

Both parties must implement secure communication channels to prevent frauds agreements. Proper authentication is essential to ensure the identity of parties. (Tjong Tjin Tai, 2023)

### *Admissibility in court*

Both parties must have to keep detailed records of electronic exchange to ensure evidence that communication meet legal standards. (Tjong Tjin Tai, 2023)

## Section 2 – Contractual Terms and Exclusion Clauses

### *Condition vs. Warranty*

There is a nuanced difference between conditions and warranties and it is essential to understand this difference to navigate the intricacies in the web of contract law. (Markovits and Atiq, 2021)

<b>Conditions</b>	<b>Warranties</b>
<p>Conditions represent fundamental contract terms, integral to the essence of the agreement. Breach of a condition empowers the innocent party to terminate the contract and seek damages (Mckendrick, 2017). The case of <i>Poussard V Spiers and Pond</i> that happened in 1876 is perfect to exemplify the analysis. In this case, Poussard was an opera singer, contracted to perform but fell ill and arrived late. The court deemed her breach of a fundamental term (condition), enabling the theater management to terminate the contract and terminate the contract and claim damages (<i>Poussard V Spiers and Pond</i>, 1876).</p>	<p>Warranties are secondary terms, not pivotal to the core of the contract. Breach of a warranty allows the injured party to claim damages but does not grant the right to terminate the contract (Stone, 2018).</p> <p>The case of <i>Bettini V Gye</i> that took place in 1876 is a perfect example to understand the analysis of warranty. Where Bettini was also an opera singer, breached a secondary term by arriving late. The court considers this breach a warranty, allowing the theater management to claim damages but do not terminate the contract (<i>Bettini V Gye</i>, 1876)</p>

### *Contractual terms implied within contracts*

Term refers to a provision that is part of a contract. It outlines the right and obligations of the parties involved in the contractual agreement. There are different types of terms in a contract: (Austen-Baker, 2023; Verstappen, 2023)

*Express Terms:* Term that are explicitly stated and agreed upon by the parties in written or it can be orally. (Austen-Baker, 2023; Verstappen, 2023)=

*Implied Terms:* These are terms that are not expressly stated by any party but are inferred by law or arise from the nature of transaction and the actions of parties. (Austen-Baker, 2023; Verstappen, 2023)

Illuminating the mechanisms through which terms are implied within the contracts sheds light on the intricacies that reinforce lawful relationship. (Austen-Baker, 2023; Verstappen, 2023)

#### *Common Law Tradition*

They often imply terms based on the presumed intention of the parties, inferred from the nature of the contract and the surrounding situations (Austen-Baker, 2023; Verstappen, 2023). Like in the case of Liverpool City Council V Irwin that took place in 1976 where the court inferred a duty on the landlord to maintain common areas, reflects a presumed intention. (Liverpool City Council V Irwin, 1976)

#### *Statutory influence*

Statutes can introduce implied terms into specify type of contracts providing a standardized framework that parties can rely on. The Sale of Goods ACT 1979 in UK implies conditions regarding the quality and fitness for purpose of goods (Austen-Baker, 2023; Verstappen, 2023)

#### *Customary Practice:*

These practices may arise implied terms and trade usages relevant to a particular industry, e.g., a contract in the construction industry might imply adherence to standard building regulations. (Austen-Baker, 2023; Verstappen, 2023)

#### *Terms Implied to Fill Gaps*

Courts may imply terms to fill the gap of a contract where the parties have not specifically addressed issues. e.g., Implied terms regarding reasonable notice in termination may be inferred in employment contracts. (Austen-Baker, 2023; Verstappen, 2023)

#### *Implied Duty of Good Faith*

An implied duty of good faith and fair dealing may influence both parties' behavior in certain jurisdictions and circumstances. e.g., The obligation to act in good faith in performance and enforcement of a contract. (Austen-Baker, 2023; Verstappen, 2023)

#### *Real World Dynamic*



*Employment Contracts:* Implied terms related to the duty of mutual trust and confidence may be inherent in employment contracts, affecting the employer-employee bond. (Austen-Baker, 2023; Verstappen, 2023)

*Consumer Contracts:* Statutory implied term protecting consumers' right may be automatically incorporated into contracts in the retail sector. (Austen-Baker, 2023; Verstappen, 2023)

Comprehensive understanding on how terms are implied within contracts opens up a dynamic interplay between legal frameworks, traditions and the specifics of the legal relation.

### ***Importance of incorporation***

Incorporation in the domain of contract law is a crucial concept that creates the dynamic of legal relationship. Its importance can be explained as:

#### *Clarity and Precision*

It ensures clarity by specifying the terms and conditions that govern the contract. (Markovits and Atiq, 2021) The case of *L'Estrange V Graucob* 1934 in which the court focuses on the importance of reading and incorporating terms contained in a document. (*L'Estrange V Graucob*, 1934)

#### *Avoid Ambiguity*

It helps in avoiding any uncertainty by explicitly defining the rights and obligations of the parties. (Markovits and Atiq, 2021) The case of *Grogan V Robin Meredith Plant Hire* 1996 highlights the importance of clear and explicit incorporation between parties to avoid misunderstanding (*Grogan V Robin Meredith Plant Hire*, 1996)

#### *Legal Enforceability*

Incorporated terms are legally enforceable, providing a basis for parties to seek remedies in case of a breach. (Li et al., 2020), As the court upheld the enforceability of terms incorporated by a ticket in the case of *Chapelton V Barry Urban District Council* that happened in 1940 (*Chapelton V Barry Urban District Council*, 1940)

### ***Methods of incorporation***

*Signature:*

Term may be incorporated by signing a written contract, it signifies the acceptance and incorporation of its terms. (De Waal, 2021)

*Notice:*

By giving notice of the terms to the other party incorporation can be achieved. (De Waal, 2021) Like the case of Parker V South Eastern Railway Co in 1887, displaying a notice incorporating term on a ticket was considered effective notice. (Parker V South Eastern Railway Co, 1887).

*Course of Dealing:*

Incorporation through a consistent course of dealing between the parties over time. (De Waal, 2021) In Spurling V Bradshaw case that happened in 1956, a consistent business practice was considered sufficient for incorporating terms. (Spurling V Bradshaw, 1956).

*Previous Dealing:*

Terms from previous dealing may be incorporated if they form an established pattern of the party's interactions. e.g., a supplier consistently including certain terms in previous contracts may incorporate those terms in subsequent contract. (De Waal, 2021).

*Custom and Trade Usage:*

In a particular industry, terms may be incorporated based on custom and trade usage. e.g., in the shipping industry, trade customs may incorporate into contracts. (De Waal, 2021).

***Importance of Construction in Contract Interpretation***

In the complex domain of contract, the process of construction holds immense importance in highlighting the intended meanings behind contractual terms. (Thomas and Wright, 2020; Bunni and Bunni, 2022).

*Contextual Understanding*

Construction in contract interpretation allows both parties to understand contractual terms within the broader context of agreement. (Thomas and Wright, 2020; Bunni and Bunni, 2022)

*Reason:* Ambiguities in the contractual language can be clarified by considering the context of the contract overall. (Thomas and Wright, 2020; Bunni and Bunni, 2022).

### *Giving Effect to Intention:*

Construction aims to give effect to the intention of both parties which ensures that the contract achieves its purpose. (Thomas and Wright, 2020; Bunni and Bunni, 2022).

*Reason:* By interpreting terms that align with the parties' intentions, construction contribute to the efficacy of the contract. (Thomas and Wright, 2020; Bunni and Bunni, 2022).

### *Balancing Equities*

Construction help in balancing equality among the parties to promote fairness. (Thomas and Wright, 2020; Bunni and Bunni, 2022)

*Reason:* When any problem arise, construction enables a fair assessment of each party's right. (Thomas and Wright, 2020; Bunni and Bunni, 2022)

### *Adapting to Evolving Circumstances:*

Construction allow the contract to adapt to changing circumstances to maintain relevancy over time. (Thomas and Wright, 2020; Bunni and Bunni, 2022)

*Reason:* in the evolving business environment construction facilitates a dynamic interpretation that align with current realities (Thomas and Wright, 2020; Bunni and Bunni, 2022)

Construction is a cornerstone of effective contract interpretation. The flexibility offered by construction enables contracts to remain robust and adaptable in the era of evolving circumstances.

### ***Distinguishing Term and Representation***

#### *Term*

A term is a fundamental aspect of a contract that hold the potential to be legally enforced. It constitutes a promise or assurance that forms a contractual obligation. Breach of a terms gives rise to legal remedies, including damages or specific performance. (Klass, 2023) The importance of terms can be highlighted through the case of *Bannerman V White 1861* where the buyer specified the requirements of untainted hops for brewing. The outcome of this was the seller's failure to meet this express requirement was deemed a breach of a term, allowing the buyer to reject the good (*Bannerman V White, 1861*)

## *Representation*

Statement made during the pre-contractual stage is a representation. It influences the other party's decision but not forming a contractual obligation. It is a statement of fact made to induce the other party into entering the contract but does not create a binding commitment. Solutions for false representation involve damages, but they are not as extensive as those for a breached term. (Gould, 2021) The case of Oscar Chess Ltd V Williams 1957, where the seller made a false statement about the age of a car highlights the complexities, the outcome was that the statement was considered a representation, and damages were awarded, but the contract remained binding. (Oscar Chess Ltd V Williams, 1957)

Understanding the distinction between terms and representation is a critical aspect that defines legal scenarios of contractual bindings. As highlighted by the case law, each category carries its own set of consequences focuses on the importance of clarity in legal agreements.

### **Section 3 – Further Legal Issues**

#### ***Distinguishing 'term of a contract' from misrepresentation.***

In contract law, clarity on differentiating a 'term of a contract' from misrepresentation is pivotal. While a term forms a contractual obligation, misrepresentation involves false statements inducing parties into contracts. (Klass, 2023) The case of Redgrave V Hurd that occurs in 1881 distinguishes misrepresentation can render a contract voidable on moral ground (Redgrave V Hurd, 1881).

#### ***Types of misrepresentation***

##### ***Innocent Misrepresentation***

Occurs when without intentions false statements are made. (Nadler, 2020) Like in the case of Attwood V Small 1838 where the seller genuinely but mistakenly believed in the value of a mine, leading to innocent misrepresentation. (Attwood V Small, 1838)

##### ***Negligent Misrepresentation***

Involves those false statements that are made without reasonable care. (Nadler, 2020) Like happened in the case of Hedley Byrne and Co Ltd V Heller and Partners Ltd 1964 – Negligent misrepresentation by a bank in a reference led to damages being awarded (Hedley Byrne and Co Ltd V Heller and Partners Ltd, 1964).

### *Fraudulent Misrepresentation*

Involves those intentionally false statements to deceive the other party. (Nadler, 2020) As happened in the case of Derry V Peek 1889, highlighting its potential to result in damages and voidability of a contract (Derry V Peek, 1889).

### ***Categories of mistakes.***

Having a comprehensive understanding of the categories of mistake is essential in contract law, as they have an impact on the enforceability and validity of contracts. (Dagan, 2020)

### *Common Mistake*

Both parties hold the same incorrect belief regarding a fundamental aspect of the contract (Dagan, 2020). As exemplify by the case of Couturier V Hastie 1856 where common mistake was evident when the subject matter of the contract (rotten cargo) ceased to exist before the contract's completion (Couturier V Hastie, 1856)

### *Mutual Mistake*

Both parties made a mistaken understanding, but the mistake is about a fundamental fact (Dagan, 2020) As happened in the case of Smith V Hughes 1871 where the buyer and seller had differing viewed on the quality of oats, constituting a mutual mistake. (Smith V Hughes 1871)

### *Unilateral Mistake*

Where one party is mistaken about a fundamental fact and the other party is not knowing the mistake (Dagan, 2020). This happened in the case of Hartog V Colin 7 Shields 1939 where the seller mistakenly underpriced goods but the buyer was aware of the mistake, making the situation fall into unilateral mistake (Hartog V Colin 7 Shields, 1939).

### ***Impacts on contracts.***

#### *Common and Mutual Mistake:*

These mistakes may render a contract void, as they prevent a meeting in minds. Parties may be relieved from performing contractual obligations. (Sherwin, 2023)

#### *Unilateral Mistake:*

Generally, this mistake does not provide grounds for voiding a contract. If the mistake was known by the other party, it may be possible to set aside the contract. (Sherwin, 2023)

### ***ways in which contract can be frustrated***

Frustration is a legal concept that occurs when an unforeseen event happens, representation a contract impossible to perform. There are several ways in which a contract can be frustrated (Davis and Pargendler, 2021).

#### *Destruction of subject matter*

This can understand by the case of Tylor V Caldwell 1863, where the destruction of a concert hall due to fire frustrated the contract between the parties for hiring the venue. (Tylor V Caldwell, 1863; Davis and Pargendler, 2021)

#### *Nonoccurrence of an Anticipated Event*

The case of Krell V Henry highlights the nonoccurrence of the coronation parade, which was a key event, frustrated a contract for the rental of a room with a view of the parade (Krell V Henry, 1903; Davis and Pargendler, 2021)

#### *Change in circumstances:*

In the case of Davis contractor Ltd V Fareham Urban District Council 1956, a change in law prohibiting construction during weekends frustrated a contract for weekend construction work. (Davis contractor Ltd V Fareham Urban District Council, 1956; Davis and Pargendler, 2021)

#### *Personal Incapacity:*

Herne Bay Steam Boat Co V Hutton 1903 was the case where the illness of the coronation procession's leader frustrated a contract for boat hire (Herne Bay Steam Boat Co V Hutton, 1903; Davis and Pargendler, 2021)

#### *Illegality:*

The case of Appleby V Myers 1867 where a contract for the sale of goods become illegal when a war broke out between the countries of the contracting parties (Appleby V Myers, 1867; Davis and Pargendler, 2021)

Summarizing it provides understanding that frustration can occur due to the destruction of subject matter, nonoccurrence of an anticipated event, change in circumstances, personal Incapacity or Illegality. These instances result in the impracticability of contract performance, and the affected parties may be discharges from their contractual obligation.

## ***Duress and Undue Influence***

### *Duress*

Duress, inside the domain of contract law, is an idea that alludes to the utilization of dangers, viciousness, or different types of intimidation to propel somebody to go into a legally binding agreement despite their desire to the contrary. Generally, it subverts the willful idea of authoritative assent. (Klass, 2023; Beccalli et al., 2023) An exemplary delineation of coercion can be tracked down on account of *Barton v Armstrong* 1976, where the court held that the danger of uncovering humiliating information added up to Duress. (*Barton v Armstrong*, 1976)

### *Undue Influence*

Undue influence, on the other hand, emerges when one party exploits a place of trust and certainty over another, affecting their independent direction. (Klass, 2023; (Beccalli et al., 2023). This can happen in different connections, like those including relatives, where there is an assumed trust. *Imperial Bank of Scotland v Etridge No 2*, 2002 gives experiences into various sorts of unnecessary impact, remembering genuine Undue influence and assumed excessive impact for explicit connections. (*Imperial Bank of Scotland v Etridge No 2*, 2002)

## ***Remoteness and Measurement of Damages***

### *Understanding Damages*

In the complex domain of contract law, damages represent the monetary compensation awarded to a party who has suffered loss or harm due to a breach of contract. The principles governing the remoteness and measurement of damages play an important role in highlighting the extent to which compensation is granted. (Vaccari, 2023)

### *Proximity in Damages*

The concept of remoteness examines how closely the damages claimed are related to the breach of contract. (Vaccari, 2023) The case of *Hadley v Baxendale* 1854 establishes the basic principles. Damages are recoverable if they arise naturally from the breach or were foreseeable at the time of contract creation. (*Hadley v Baxendale*, 1854)

### *Two Limbs of Hadley v Baxendale*

*Direct Damages (First Limb):* Damages that flow directly from the breach and are foreseeable. (*Hadley v Baxendale*, 1854)

*Consequential Damages (Second Limb):* Damages that, are not a direct result, were foreseeable due to special circumstances known to both parties. (Hadley v Baxendale, 1854)

*Measurement of Damages:*

Determining the amount of damages is a particular process. The objective is to place the innocent party in the position they would have been in had the contract been performed. This involves assessing both direct losses and consequential damages that were reasonably foreseeable. (Vaccari, 2023)

*Causation and Mitigation:*

To successfully claim damages, the innocent party must establish a direct link between the breach and the loss suffered. Additionally, the law requires reasonable efforts to mitigate losses. Failure to mitigate may affect the recoverable amount. (Vaccari, 2023)

*Foreseeability Revisited:*

The foreseeability criterion continues to be applicable when measuring damages. If losses were foreseeable and fall within the contemplation of both parties, they are recoverable. (Vaccari, 2023)

***Actionable Misrepresentation***

This settled inside the complex texture of agreement regulation, comprises a crucial idea forming the shapes of legitimate responsibility. At its center, it epitomizes cases where one party, through bogus proclamations or tricky declarations, controls one more into a legally binding plan. The crucial trademark lies in the 'actionable' idea of the deception, blessing the misdirected party with legitimate plan of action to look for solutions for the resulting misfortunes. (Hunter et al., 2023)

*Key Elements*

*Falsity of statement:* The bedrock of noteworthy distortion settles upon the necessity of a bogus or deceiving explanation. The precision and honesty of the data introduced become basic determinants in assessing the feasibility of legitimate activity. (Hunter et al., 2023)

*Inducement to Contract:* For a distortion to be considered noteworthy, it should employ significant impact, filling in as an impetus that prompts the deluded party to go into the legally binding



understanding. Significance is dependent upon demonstrating that, less the deception, the agreement could not have possibly emerged (Hunter et al., 2023)

### *Classification*

*Fraudulent Misrepresentation:* When a party engages in falsehood while possessing full awareness of the statement's untruthfulness this called fraudulent misrepresentation. The difference in feature lies in the intentional deceit, with knowledge or reckless disregard for the veracity of the representation setting fraudulent misrepresentation apart. (Hunter et al., 2023)

*Negligent Misrepresentation:* It happens when a party fails to exercise due care and makes a false statement. While lacking the intentional deceit inherent in fraudulent misrepresentation, it reflects a failure to ensure the accuracy of the information presented. (Hunter et al., 2023)

### *Solutions for Actionable Misrepresentation*

*Rescission:* A powerful cure permitting the innocent party to dissolve the agreement, rescission successfully deletes the lawful consequences of the agreement as though it won't ever exist. It positions the distressed party to return to the pre-legally binding state. (Hunter et al., 2023)

*Claim for Damages:* Damages emerge as a significant remedy, in the domain of actionable misrepresentation. At the point when the misrepresentation laid out, the innocent party acquires the option to look for pay for the misfortunes brought about. Damages aim to reestablish the honest party to the position they would have involved without the deceptive portrayal (Hunter et al., 2023).

### ***Impact of 'mistake' on a contract***

#### *Common Mistake*

Common Mistakes strike at the actual groundwork of legally binding arrangements. At the point when the parties share a misconception about a basic perspective, the agreement is viewed as void. This intends that, all along, there was no agreement. Thusly, the lawful outcome is in many cases the compensation of advantages traded. (Sherwin, 2023) For example, on account of *Smith v Hughes*, where the parties involved had contrasting understandings of the quality of oats being sold, the court decided for the party mixed up about the quality, underscoring the shortfall of an agreement promotion *idem* (*Smith v Hughes*, 1871)

### *Mutual Mistake*

It is, where the parties involved hold indistinguishable mistaken convictions, can prompt rescission of the contract. The lawful cure includes unwinding the legally binding commitments as though the agreement won't ever exist. (Sherwin, 2023) An illustrative model is tracked down in *Couturier v Hastie*, where the two players were ignorant that the topic (cargo of corn) had proactively perished before the agreement's creation. The court allowed rescission because of the shared mistake (*Couturier v Hastie*, 1856)

### *Unilateral Mistake*

This, includes a blunder made by one party, present a nuanced dynamic. The effect relies upon elements, for example the nature of the mistake, the degree of investigation practiced by the other party, and the obligation to uncover the error (Sherwin, 2023). In *Great Peace Shipping Ltd V Tsavliris International Ltd 2002*, the court underlined that a one-sided misstep may not necessarily in every case render an agreement void, particularly if the mistake that is connected with the quality of a subject and the other party knows nothing about the mistake. (*Great Peace Shipping Ltd V Tsavliris International Ltd*, 2002).

### ***Remedies for misrepresentation.***

#### *Rescission*

Aims to set aside the contract returning both parties to their pre contractual positions. (Hunter et al., 2023) As happened in the case of *Leaf V International Galleries*, where the rescission was granted due to innocent misrepresentation regarding the authenticity of a painting (*Leaf V International Galleries*, 1950)

#### *Damages*

This Provides monetary compensation for losses suffered as a result of the misrepresentation. (Hunter et al., 2023) Like in the case of *Roy scot Trust Ltd V Rogerson* where the damages awarded for negligent misrepresentation related to financial projections (*Roy scot Trust Ltd V Rogerson*, 1991)

### *Affirmation and Estoppel*

If the misled party affirms the contract despite discovering the misrepresentation, remedies like rescission may be barred. (Hunter et al., 2023) The case of Long V Lloyd highlights that continued affirmation post-discovery impacted the availability of rescission (Long V Lloyd, 1958)

### *ANALYSIS*

**Innocent Misrepresentation:** Rescission is available, but damages are generally not recoverable, (Hunter et al., 2023) The case of 1969, Doyle V Olby (Ironmongers) Ltd showcases the court's reluctance to award damages for innocent misrepresentation (Doyle V Olby (Ironmongers) Ltd, 1969)

**Negligent Misrepresentation:** Both are potential remedies, rescission and damages (Hunter et al., 2023). As highlighted by the case of 1964 of Hedley Byrne and Co Ltd V Heller and Partner Ltd, damages were awarded for negligent misrepresentation in a business context (Hedley Byrne and Co Ltd V Heller and Partner Ltd, 1964)

**Fraudulent Misrepresentation:** Rescission and damages, including punitive damages, may be available. (Hunter et al., 2023) The case of Whittington V Seale Hayne exemplifies this, where punitive damages were awarded for fraudulent misrepresentation (Whittington V Seale Hayne, 1990).

### ***Impact of 'duress' and 'undue influence' on the contract***

#### *Duress*

It involves coercive acts that vitiate genuine consent, rendering a contract voidable. The impact of duress on contracts can be understood by the example of cases like, Barton V Armstrong happened in 1976 where the threats of bankruptcy were deemed duress, leading to the contract rescission. (Barton V Armstrong, 1976)

#### *Undue Influence*

It arises when one party exploits a relationship's power dynamics and its impacts can be understood by the case of Allcard V Skinner where the Clergy's undue influence on a vulnerable woman led to the cancellation of the agreement

### *Analysis*

Duress involves coercion, undue influence, on the other hand, exploits relationships. The legal principles regarding this in ensuring agreements clarified in the case of RBS v Etridge no 2 (RBS v Etridge no 2, 2001).

### ***Impact of 'remoteness and measurement of damages' with examples.***

#### *Remoteness:*

Impact of remoteness, it sets the boundaries for damages, allowing recovery only for losses that were foreseeable or within then contemplation of those parties involved at the time of contracting. Like in the case of Hadley V Baxendale where the foreseeability test was established that dictates that damages must arise naturally, or be foreseeable, from the breach. (Hadley V Baxendale, 1854)

#### *Measurement of Damages:*

Damages aim to restore the innocent party to the position they would have been in if the contract was performed, measured by the pecuniary value of the loss. Robinson V Harman 1848 case, emphasizes the principles of awarding damages to compensate for the actual financial loss suffered (Robinson V Harman, 1848).

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