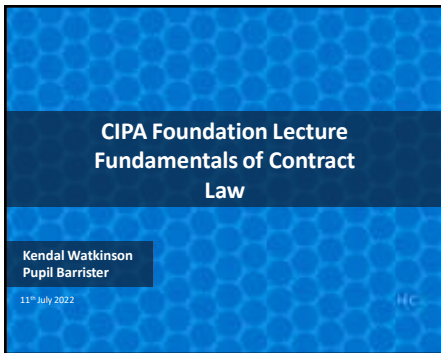




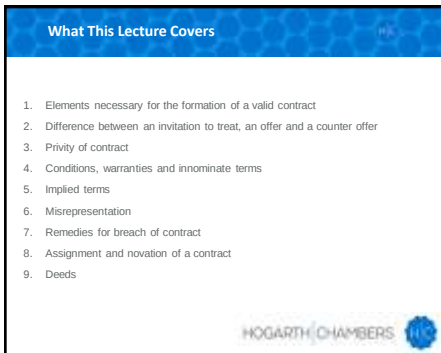
CIPA Foundation Lecture Fundamentals of Contract Law

Kendal Watkinson
Pupil Barrister

11th July 2022

HC

1



What This Lecture Covers

1. Elements necessary for the formation of a valid contract
2. Difference between an invitation to treat, an offer and a counter offer
3. Privity of contract
4. Conditions, warranties and innominate terms
5. Implied terms
6. Misrepresentation
7. Remedies for breach of contract
8. Assignment and novation of a contract
9. Deeds

HOGARTH CHAMBERS 

2

Why Do You Need to Know This?

HIC

- It is all on the syllabus and you will need to know it to pass your exam.
- It is relevant for your future career as patent attorneys.
- It is relevant for your life in general!

HOGARTH CHAMBERS



3

What is a Contract?

HIC

A contract is:

- An agreement
- Giving rise to legal obligations
- Which are enforced or recognised by law.

HOGARTH CHAMBERS



4

Elements Necessary to Form a Contract

HIC

1. An offer
2. Acceptance of that offer
3. Consideration
4. Intention to create legal relations
5. Certainty of terms

HOGARTH CHAMBERS



5

An Offer

HIC

- Unilateral offer – the offeror promises something to the offeree in exchange for the offeree's promise to do something (or not to do something).
- Cf. an offer with an invitation to treat.
- Termination of an offer – was the offer withdrawn before acceptance?
- An offer doesn't need to be in writing, it can be made (and accepted) orally.

HOGARTH CHAMBERS



6

Acceptance

HKG

- Need clear communication of acceptance.
- Have to accept the offer made, not a different offer.
- Cf. a counter-offer.
- Knowledge of acceptor.
- Mode of acceptance.
- Revocation of acceptance.

HOGARTH CHAMBERS



7

Consideration

HKG

- Consideration must be sufficient but need not be adequate.
- Consideration doesn't need to be financial.
- If it is financial, it can be nominal.
- Past consideration is not good consideration.
- A promise to do something in the future is good consideration.
- Consideration can't be anything illegal or comprise the performance of an existing legal duty.
- Don't need consideration if it is a deed.

HOGARTH CHAMBERS



8

Intention to Create Legal Relations

HK

- Agreements will not be enforced unless parties intended to create contractual relations.
- Presumption of an intention not to create legal relations in social/domestic situations.
- Presumption of an intention to create legal relations in commercial situations.
- Intention to create legal relations can be inferred from outward behaviour.
- An objective test based on reasonable expectation.

HOGARTH CHAMBERS



9

Certainty of Terms

HK

- The terms of a contract must be certain in order to be incorporated into the contract and thus be legally binding.
- Ambiguity, vagueness and incompleteness of terms must be avoided.

HOGARTH CHAMBERS



10

Other Things to Consider

HIC

- Both parties must have capacity to enter into a contract. Minors, intoxicated and mentally incapacitated individuals do not have the necessary capacity.
- There must be genuine consent to enter a contract (i.e. no duress or undue influence).
- You can't enter into a contract for something which contravenes public policy.

HOGARTH CHAMBERS



11

Variations of Contracts

HIC

- Contracts can be varied after they are entered into.
- Variations can be inferred from a change in behaviour of the parties.
- However, it is best to record variations in writing to avoid any misunderstanding and/or uncertainty.

HOGARTH CHAMBERS



12

Privity of Contract

HK

- Only parties to a contract can legally enforce its terms, unless the contract specifically provides otherwise.
- The Contracts (Rights of Third Parties) Act 1999 provides an exception to the privity of contract rule.

HOGARTH CHAMBERS



13

Different Types of Contract Terms

HK

- Conditions – fundamental terms which go to the heart of the contract.
- Warranties – less fundamental terms which do not go to the heart of the contract.
- Innominate terms – terms which are not defined in the contract and could be either a condition or a warranty. The court will decide.
- Implied terms – usually implied by law, see for example the Consumer Rights Act 2015.

HOGARTH CHAMBERS



14

What is the Effect of Breach of Conditions & Warranties?

- If one party breaches a condition, this merits repudiation of the contract (and a claim for damages).
- In comparison, if a party breaches a warranty, the other party is limited to a claim for damages.
- It is best practice to define clearly in a contract what the effect of breach of a particular term is.

HOGARTH CHAMBERS



15

When is a Term Implied into a Contract?

- Five principles for implying a term into a contract as set out in *BP Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977):
 1. it must be reasonable and equitable;
 2. it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it;
 3. it must be so obvious that "it goes without saying";
 4. it must be capable of clear expression;
 5. it must not contradict any express term of the contract.

HOGARTH CHAMBERS



16

What is Misrepresentation?

- A statement which is untrue and pertains to a specific and verifiable fact or event.
- This statement induces the other side to enter into a contract.
- The party who was induced by the statement suffers loss as a result of the untrue statement.

HOGARTH CHAMBERS



17

Types of Misrepresentation

- Innocent:
 - Statement which the statement maker believes is true and they have not been careless in reaching this conclusion. Burden of proof on C.
 - Remedy is rescission (or damages in lieu of rescission).
- Negligent:
 - Statement which the statement maker believes is true, but they have been careless in reaching this conclusion. Duty of care required. Burden of proof on C.
 - Remedy is damages and/or rescission (i.e. parties are put back into the position they were in before the contract entered into).
- Fraudulent:
 - Statement is made knowingly or recklessly/carelessly to whether it is true or false (i.e. the statement maker knows they are lying). Burden of proof on C.
 - Remedy is the same as for negligent misrepresentation.

HOGARTH CHAMBERS



18

Assignment & Novation of a Contract

HJC

- Assignment – the transfer of a right under a contract from one party to a third party.
- Novation – the replacement of one party to a contract with a third party, with the agreement of all those involved.

HOGARTH CHAMBERS



19

Deeds

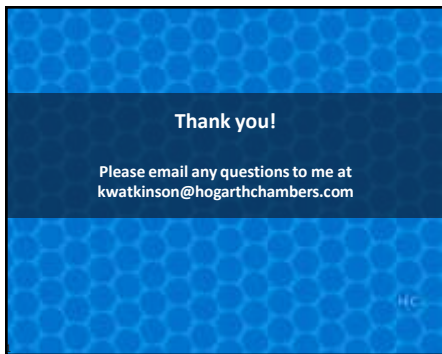
HJC

- Differences between contracts and deeds:
 - Deeds must be written, contracts can also be verbal.
 - Deeds do not require 'consideration', contracts do.
 - Deeds must state that there is an intention to be a deed.
 - A deed involves more formalities to be completed, including requiring witnesses to observe its formation.
- Deeds are required in certain types of transactions, including:
 - The transfer of land.
 - Leases.
 - Appointments of trustees.
 - Powers of attorney.
 - Gifts of tangible goods.
 - Releases and variations.

HOGARTH CHAMBERS



20



21