

FQPS Academy

SQE1 · FLK1 · CONTRACT LAW · 2026 - 2027

Contract Law for the SQE

Contract

from offer and acceptance
to remedies, step by step

Formed, then breached, then remedied

FQPS Academy - SQE Prep

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The Ultimate SQE Success Guide.✳

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Most contract questions ask three things: is there a contract, and what follows?

What is This Guide?

A practical route through **Contract Law for SQE1**, in the order a question tests it: **offer and acceptance**, consideration and **promissory estoppel**, intention, certainty and capacity, **privity** and the 1999 Act, express and implied terms, interpretation and **exemption clauses**, the **vitiating factors**, breach and **frustration**, unjust enrichment, then **damages**, remoteness, mitigation, penalties and the equitable remedies. One page of rules, a decision tree and three worked examples.

Who This Guide is For?

- SQE1 candidates sitting FLK1 in 2027
- Anyone who mixes up a counter-offer and a request for information, or Roffey and Foakes v Beer
- Candidates who know UCTA and the Consumer Rights Act exist but not which one applies
- Paralegals in commercial and litigation teams who meet contracts every day

Why It Matters?

Contract questions reward an order of work. Most wrong options state a real rule at the wrong step: a postal rule for a revocation, a statute for the wrong kind of contract, a remedy that the facts do not allow, a loss that is too remote. Run the steps in order and most answers follow.

How Contract Law Is Tested

Contract Law is an **FLK1** subject. From January 2027 it sits in **session 2** of FLK1, with Tort and the Legal System. A question gives you a deal that went wrong and asks: was there a contract, what are its terms, can either side escape it, and what can the innocent party recover?

Area	The SRA's six assessment areas	In this guide
1	Existence and formation of a contract	Chapter 2 (pages 05 to 07)
2	Contents of a contract	Chapter 3 (pages 08 to 10)
3	Causation and remoteness	Chapter 6 (pages 15 and 17)
4	Vitiating elements	Chapter 4 (pages 11 and 12)
5	Discharge of contract and remedies	Chapters 5 and 6 (pages 13 to 17)
6	Unjust enrichment	Chapter 5 (page 14)

How much of the paper

The blueprint gives Contract Law **14 to 20%** of FLK1. Our specification checklist has **37** lines for it.

Which law

The law in force four calendar months before the first day of the window: **11 September 2026** for January 2027 and **12 March 2027** for July 2027.

The question format

Single best answer: five options and "only one correct answer". Closed book, so know the tests by heart.

No cases by name

The Contract Law lines name no cases. Expect the rules applied to facts: know what each case decides, not its citation.

Important: how this guide states case law

We checked every rule against a primary source read on 20 November 2026: legislation on legislation.gov.uk, and judgments on the National Archives' Find Case Law or the Supreme Court website. Where an older case is not online there, we give the rule as a later court stated it, and cite that judgment and paragraph.

Sources: SRA SQE1 Assessment Specification, Contract Law assessment areas and FLK lines, session map and blueprint (as reproduced in the FQPS SQE1 Specification Checklist, January 2027). Accessed 20 November 2026.

Contract Law on One Page

TICK THE BOX WHEN YOU CAN STATE THE RULE AND ITS SOURCE

RULE	KEY WORDS	PAGE	DONE
Forming a contract			
Shop display, advert for goods As stated in Morrison v Reading BC [28], [29]	**Invitation to treat**	05	
A reply with a new term Hyde v Wrench, as stated in London & Medway [8]	**Counter-offer**	05	
Acceptance by post Properly addressed; telephone and telex on receipt	**On posting**	05	
Revocation Any time before acceptance	**Must be communicated**	05	
More pay for the same work Williams v Roffey, as stated in MWB (CA) [42]	**Practical benefit**	06	
Part payment of a debt Foakes v Beer, as stated in MWB (CA) [38]	**No consideration**	06	
Promissory estoppel Promise, reliance, inequitable to go back	**Shield, usually suspensory**	06	
Domestic or commercial Presumptions about intention	**Against or for**	06	
Parties and terms			
Third party rights C(RTP)A 1999 s 1	**Express, or purports to benefit**	08	
Onerous unsigned term Interfoto, as stated in Goodlife [29]	**Fairly brought to notice**	08	
Implied in fact Not because fair (M&S v BNP)	**Necessary or obvious**	09	
Consumer rejects faulty goods Then repair or replace (CRA ss 22, 23)	**30 days**	09	
Default classification Terminate only for serious consequences	**Innominate**	09	
Death or injury from negligence UCTA s 2(1); CRA s 65(1)	**Never excludable**	10	
Reasonableness At the time of contracting (UCTA s 11)	**Party relying proves it**	10	
Vitiating factors, ending and remedies			
Negligent misrepresentation Fraud measure (MA 1967 s 2(1))	**Maker proves belief**	11	
Common mistake Great Peace, as stated in Graves [23]	**Impossible, not harder**	12	
Economic duress Times Travel v PIA	**Threat, cause, no alternative**	12	
Frustration Automatic; not self-induced	**Radically different**	13	
Money after frustration Expenses at the court's discretion (1943 Act s 1(2))	**Paid back; stops being due**	14	
Remoteness Hadley v Baxendale, as stated in Wellesley [69]	**Kind not unlikely**	15	
Mitigation Defendant proves the failure	**No avoidable loss**	15	
Limitation From breach (LA 1980 ss 5, 8)	**6 years; 12 for a deed**	15	
Penalty To a legitimate interest (Cavendish)	**Out of all proportion**	16	

2 Forming a Contract

A contract needs **agreement**, an **intention to be bound**, **consideration**, and terms that are **certain and complete** enough to enforce (Blue v Ashley [49]). The test is objective: not the parties' "subjective state of mind", but "what was communicated between them by words or conduct" (RTS v Müller [45]).

Step	The rule	Source
Offer	"an expression, by words or conduct, of a willingness to be bound by specified terms as soon as there is acceptance"	Blue v Ashley [52]
Invitation to treat	Goods priced in a shop window (Fisher v Bell) and an advert for goods (Partridge v Crittenden)	As stated in Morrison v Reading BC [28], [29]
Unilateral offer	A reward for an act: a contract arises when the offeree starts to perform; the offer cannot then be revoked	Blue [50]; Soulsbury v Soulsbury [49]
Acceptance	By words or conduct, but only conduct done with the intention (objectively shown) of accepting. Silence is not acceptance	Blue [50]; BP v Target Shipping [212]
Counter-offer	A reply that adds a material new term rejects and "kills" the offer (Hyde v Wrench, as stated in London & Medway [8]). It can itself be accepted, even by doing the work	London & Medway v Sunley [8]; Pickfords v Celestica [27]
Battle of the forms	Usually the last set of terms sent before performance wins, unless the parties clearly intended otherwise	Tekdata v Amphenol [1], [11], [21]
When acceptance takes effect	When communicated. By post: when properly posted. Telephone, telex and other instantaneous means: on receipt	Korbetis v Transgrain [10]; Haywood (CA) [29], [30]
Revocation	Any time before acceptance, but it must be communicated to the offeree: so, unlike an acceptance, not on posting	Pickfords [16], [32]

The postal rule, read narrowly

It assumes a letter "properly addressed"; if it is wrongly addressed, "very different considerations apply" (Korbetis [10], [11]).

Certain and complete

Void for uncertainty is "very much a last resort" (Blue [61]); see Wells v Devani [26].

Sources: Blue v Ashley [2017] EWHC 1928 (Comm); RTS Flexible Systems v Molkerei Alois Müller [2010] UKSC 14; Wm Morrison Supermarkets v Reading BC [2012] EWHC 1358 (Admin); Soulsbury v Soulsbury [2007] EWCA Civ 969; BP Oil v Target Shipping [2012] EWHC 1590 (Comm); London & Medway v Sunley Holdings [2013] EWHC 1420 (Ch); Pickfords v Celestica [2003] EWCA Civ 1741; Tekdata v Amphenol [2009] EWCA Civ 1209; Korbetis v Transgrain [2005] EWHC 1345 (QB); Newcastle upon Tyne NHS FT v Haywood [2017] EWCA Civ 153; Wells v Devani [2019] UKSC 4. Accessed 20 November 2026.

Consideration, intention and capacity

Unless made by deed, an agreement must be supported by consideration: "English law will not enforce a promise for which nothing at all has to be done in return" (Blue v Ashley [58]). It must move from the promisee, as a detriment to them or a benefit to the promisor (Attrill v Dresdner [183]).

Situation	The rule	Source
A promise to do what you already must do, for more money	Not good consideration (Stilk v Myrick, as stated in Noga v Abacha [44]), unless the payer obtains a **practical benefit** or avoids a disbenefit, with no economic duress or fraud (Williams v Roffey, as stated in MWB (CA) [42])	Noga v Abacha [44]; MWB (CA) [42]
Paying part of a debt in full settlement	Not enough: "payment of a lesser sum on the day in satisfaction of a greater, cannot be any satisfaction for the whole" (Pinnel's Case, approved in Foakes v Beer, as stated in MWB (CA) [38]). Another act the debtor was not bound to do, or "a horse, hawk or robe", can be	MWB (CA) [38], [41], [85]
Has Roffey changed that?	The Court of Appeal in MWB thought a practical benefit could do; the Supreme Court reversed on another point and left it open: Foakes v Beer "is probably ripe for re-examination". It still binds	MWB (CA) [85]; Rock v MWB (UKSC) [18]

Promissory estoppel

A legal relationship, a promise not to enforce strict rights, and reliance making it inequitable to go back (BP v Hunt, as stated in MWB (CA) [53]). Usually suspensory only (MWB (CA) [56]); it may extinguish a right if going back is inequitable enough (Collier v Wright [37]). It "never stands alone as giving a cause of action" (Combe v Combe, as stated in Petromec [163]).

Intention to create legal relations

Judged objectively (Dresdner v Attrill [62]). **Domestic**: the inclination is against it, and the evidence must be "clear and convincing" (Gould v Gould, as stated in Soulsbury [25]). **Commercial**: the party denying it carries the onus, and a term added to an existing contract is very strongly presumed binding (Dresdner [80], [81]).

Capacity	The rule	Source
Necessaries	A minor, or a person incompetent through mental incapacity or drunkenness, must pay a **reasonable price** for necessaries sold and delivered: goods suitable to their condition in life and actual needs	SGA 1979 s 3(2), (3); MCA 2005 s 7
Mental incapacity	The contract is valid unless the other party knew or ought to have known of the incapacity; then it is voidable	Dunhill v Burgin [1]
Minors	A guarantee of a minor's debt is not unenforceable for that reason alone; the court may order a minor to return property acquired under the contract if just and equitable	Minors' Contracts Act 1987 ss 2, 3(1)
Companies	A company's act cannot be challenged for lack of capacity because of its constitution	CA 2006 s 39(1)

Sources: Blue v Ashley [2017] EWHC 1928 (Comm); Attrill v Dresdner Kleinwort [2012] EWHC 1189 (QB); MWB v Rock Advertising [2016] EWCA Civ 553; Rock Advertising v MWB [2018] UKSC 24; Compagnie Noga v Abacha [2003] EWCA Civ 1100; Collier v P & M J Wright [2007] EWCA Civ 1329; Petromec v Petrobras [2004] EWHC 127 (Comm); Dresdner Kleinwort v Attrill [2013] EWCA Civ 394; Soulsbury v Soulsbury [2007] EWCA Civ 969; Dunhill v Burgin [2014] UKSC 18; Sale of Goods Act 1979 s 3; Mental Capacity Act 2005 s 7; Minors' Contracts Act 1987 ss 2, 3; Companies Act 2006 s 39. Accessed 20 November 2026.

Is There a Binding Contract?

Our method, built on the rules on pages 05 and 06. Ask the questions in order and stop at the first that ends the tree.

1 **Was there an offer, not an invitation to treat?**
Willing to be bound as soon as the other accepts (Blue v Ashley [52]).

NO → **No contract yet**
A shop display invites offers (page 05).

↓ YES

2 **Did the reply accept that offer exactly, while it was open?**
A material new term makes a counter-offer (Pickfords [27]).

NO → **No contract**
A countered or revoked offer is dead (Pickfords [27], [32]).

↓ YES

3 **Was the acceptance communicated?**
By post: on posting. Instantaneous: on receipt (page 05).

NO → **No contract**
Silence is not acceptance (BP v Target Shipping [212]).

↓ YES

4 **Did each promise get something in return?**
Or is the contract made by deed (Blue v Ashley [58])?

NO → **No enforceable promise**
But promissory estoppel may be a defence (page 06).

↓ YES

5 **Is intention to be bound missing?**
Domestic: presumed against. Commercial: presumed for.

YES → **No contract**
The party who says it is binding must prove it (Soulsbury [25]).

↓ NO

6 **Are the essential terms uncertain or still to be agreed?**
Or is it expressly subject to contract (RTS [49])?

YES → **No contract**
Unless construction or implication fills the gap (Wells v Devani [26], [28]).

↓ NO

7 **A binding contract**
Then check capacity (page 06) and any formality: a contract for land needs signed writing with all the agreed terms (LP(MP)A 1989 s 2). Next: what are its terms (chapter 3)?

Run it: four deals

Facts (all invented)	Stops at	Result
A shop window shows a bike at £90; Ola walks in and says "I accept"	1	Ola makes the offer; the shop may refuse
Ben offers his van for £8,000; Cara replies "yes, at £7,000", then "fine, £8,000"	2	No contract unless Ben accepts again
Dee posts a correctly addressed acceptance on Monday; the offeror's revocation reaches her on Tuesday	None	Contract made on Monday, on posting
A mother promises her adult son £50 a week if he does her shopping	5	Domestic: presumed not binding

Our method and examples. Sources as on pages 05 and 06. Row 3 assumes post is a proper means of acceptance.

3 Parties and Terms

Two questions: **who** can enforce the contract, and **what** did it say? At common law "only a person who is a party to a contract can sue on it" (Dunlop v Selfridge, as stated in Goldkorn v MPA [65]). The 1999 Act makes the main exception.

Question	The rule	Source
Can a third party enforce a term?	Yes if the contract expressly says so, or the term "purports to confer a benefit on him", unless the parties did not intend it to be enforceable by them. They must be identified by name, class or description, but need not exist yet	C(RTP)A 1999 s 1(1) to (3)
Can the parties then vary it?	Not without their consent once they have assented (by post: on receipt) or relied in a way the promisor knows of, or could foresee and that has happened, unless the contract allows it	s 2(1) to (3)
Exceptions	No s 1 rights on, among others, negotiable instruments, the company constitution, carriage of goods (save exclusions), or terms of an employment contract against an employee	s 6
Term or mere representation?	Contractual only if the parties intended it, judged objectively. A statement left out of a later written contract, or made long before it, is less likely a term	Business Environment Bow Lane v Deanwater [23]
Signed documents	A signatory is "generally bound by its terms, whether he has actually read them or not" (L'Estrange v Graucob, as stated in Peekay [43]), but may still rescind for misrepresentation	Peekay v ANZ [43]
Unsigned terms	Notice must come before or at contracting (Thornton v Shoe Lane, as stated in Goodlife [30]). A "particularly onerous or unusual" term binds only if fairly and reasonably brought to the other's attention (Interfoto, as stated in Goodlife [29])	Goodlife Foods v Hall Fire [29], [30]
Variation	A variation is itself a contract. A clause requiring variations in writing is effective: an oral variation is "invalid", save by estoppel	Rock v MWB (UKSC) [7], [15], [16]

The more outlandish, the more notice

"The more outlandish the clause the greater the notice" (Interfoto, as stated in Goodlife [32]). But an exclusion clause is not onerous just because of its type (Goodlife [35]), and the threshold is high between businesses (MS Amlin v King Trader [88]).

Exam angle

Signed? Bound. Unsigned? Was notice given in time, and was any onerous term flagged? Then construction and statute (page 10).

Sources: Contracts (Rights of Third Parties) Act 1999 ss 1, 2, 6; Goldkorn v MPA [2025] EWHC 385 (TCC); Business Environment Bow Lane v Deanwater Estates [2007] EWCA Civ 622; Peekay Intermark v ANZ [2006] EWCA Civ 386; Goodlife Foods v Hall Fire Protection [2018] EWCA Civ 1371; MS Amlin Marine v King Trader [2025] EWCA Civ 1387; Rock Advertising v MWB [2018] UKSC 24. Accessed 20 November 2026.

Implied terms, meaning and classification

A term is implied **in fact** only if it is necessary for business efficacy or so obvious it goes without saying (either will do), and never if it contradicts an express term. Not because it "appears fair" (Marks and Spencer v BNP Paribas [18], [21], [28]). Terms implied **by statute** depend on who the parties are.

Implied term	Trader to consumer (CRA 2015)	Business to business
Goods: satisfactory quality	s 9: what a reasonable person would consider satisfactory	SGA 1979 s 14(2), if sold in the course of a business: a **condition**
Goods: fit for a purpose made known	s 10(3), unless the consumer did not, or could not reasonably, rely on the trader (s 10(4))	SGA s 14(3): a **condition**
Goods: match the description	s 11(1)	SGA s 13: a **condition**
Goods: right to sell	s 17(1): the trader must have the right to sell or transfer the goods	SGA s 12(1): a **condition**
Services	Reasonable care and skill (s 49); reasonable time if none fixed (s 52); what the trader says about the service, if the consumer takes it into account (s 50)	SGSA 1982: reasonable care and skill (s 13), reasonable time (s 14), reasonable charge (s 15)

Consumer remedies for faulty goods (CRA 2015)

1. Short-term right to reject	30 days from the day after ownership or possession passes and the goods are delivered (s 22(3)); refund within 14 days (s 20(15))
2. Repair or replacement	Within a reasonable time, without significant inconvenience, at the trader's cost (s 23(2))
3. Price reduction or final right to reject	After one failed repair or replacement, among other cases; one, not both. No deduction for use in the first 6 months, save for some goods such as motor vehicles (s 24(5), (10))

Interpretation

What a reasonable person with the parties' background knowledge would understand the words to mean (Arnold v Britton [15]). The clearer the words, the harder to depart from them; the court does not rewrite a bad bargain (Arnold [18], [20]). Two possible meanings: prefer the one consistent with business common sense (Rainy Sky [21]). Prior negotiations are excluded (Wood v Capita [10]). Consumer contracts: the meaning most favourable to the consumer (CRA s 69(1)).

Conditions, warranties, innominate terms

Breach of a **condition** lets the innocent party terminate, however small the breach; a **warranty** gives damages only. Most terms are **innominate**: termination depends on how serious the consequences are (Spar Shipping [20], [52]). A term is innominate unless clearly intended otherwise (Spar [92]). Between businesses, unless a contrary intention appears, a slight breach of SGA ss 13 to 15 is treated as breach of warranty; the seller must prove it was slight (SGA s 15A).

Sources: Marks and Spencer v BNP Paribas [2015] UKSC 72; Consumer Rights Act 2015 ss 9, 10, 11, 17, 20, 22 to 24, 49, 50, 52, 69; Sale of Goods Act 1979 ss 12 to 15A; Supply of Goods and Services Act 1982 ss 13 to 15; Arnold v Britton [2015] UKSC 36; Rainy Sky v Kookmin Bank [2011] UKSC 50; Wood v Capita [2017] UKSC 24; Grand China Logistics v Spar Shipping [2016] EWCA Civ 982. Accessed 20 November 2026.

Exemption Clauses: Worked Example

Three steps, in order. **1. Incorporated?** (page 08). **2. Do its words cover the loss?** Clear words are needed to take away valuable rights (Triple Point [106], [108]); contra proferentem now has "a very limited role" between equal businesses (Persimmon v Arup [52]); in a consumer contract the meaning most favourable to the consumer wins (CRA s 69). **3. Does statute stop it?**

Liability the clause excludes	Business to business (UCTA 1977)	Trader to consumer (CRA 2015)
Death or personal injury from negligence	**Never (s 2(1))**	**Never (s 65(1))**
Other loss or damage from negligence	Only if reasonable (s 2(2))	Not binding if unfair (s 62)
Breach, on one side's written standard terms	Only if reasonable (s 3)	Not binding if unfair (s 62)
Goods: title	**Never (s 6(1))**	**Not binding (s 31)**
Goods: description, quality, fitness	Only if reasonable (s 6(1A))	**Not binding (s 31)**
Services: reasonable care and skill	Only if reasonable, as negligence (s 2(2))	**Not binding (s 57(1))**
Misrepresentation	Only if reasonable (MA 1967 s 3)	Not binding if unfair (s 62; MA s 3(2))

Reasonableness: judged when the contract was made (UCTA s 11(1)); the party relying on the clause must prove it (s 11(5)). For goods clauses (ss 6, 7) the Sch 2 guidelines apply: bargaining strength, any inducement, a course of dealing (s 11(2)); for a cap at a sum, resources and insurance count (s 11(4)). **Unfair**: contrary to good faith, a significant imbalance to the consumer's detriment (CRA s 62(4)); the court must consider it even if no one raises it, if it has the material (s 71).

Run it: the guillotine

Invented facts. **Pine Ltd**, a print shop, buys a paper guillotine from **Edge Ltd** on Edge's written standard terms, which Pine signs. Clause 9: "Edge's liability for any defect is limited to replacing the part. Edge is not liable for any injury however caused." A defect, caused by Edge's negligent assembly, injures Pine's manager and stops production for a week.

Question	Answer	Why
Is clause 9 part of the contract?	**Yes**	Pine signed: bound whether or not it read the terms (Peekay [43])
Does it protect Edge against the injury claim?	**No**	Death or personal injury from negligence cannot be excluded (UCTA s 2(1))
Does the limit to "replacing the part" stop Pine's claim for lost production?	**Only if reasonable**	It restricts liability for satisfactory quality, a condition (SGA s 14(2), (6)): UCTA s 6(1A). Edge must prove it reasonable (s 11(5))

Change one fact

Kim buys the same machine for her home craft hobby	A consumer contract: the limit is not binding as to quality (CRA ss 9, 31); UCTA does not apply (UCTA s 3(3))
Pine did not sign; clause 9 was on a notice shown only after payment	Not incorporated: not fairly brought to notice before contracting (Thornton, as stated in Goodlife [30])

Our example, invented facts. Rules: Unfair Contract Terms Act 1977 ss 1 to 3, 6, 11, Sch 2; Consumer Rights Act 2015 ss 31, 57, 62, 65, 69, 71; Misrepresentation Act 1967 s 3; Sale of Goods Act 1979 s 14; Triple Point v PTT [2021] UKSC 29; Persimmon Homes v Ove Arup [2017] EWCA Civ 373; and page 08.

4 Vitiating Factors

A vitiating factor means the contract exists but can be escaped, or never bound at all. Start with **misrepresentation**: a false statement of fact that induced the contract. An opinion can carry an implied statement that the maker knows of no facts making it untrue (IFE v Goldman Sachs [32]). There is in general no duty to disclose in commercial negotiations (IFE [17]).

Type	Test	Damages
Fraudulent	Made "knowingly, or … without belief in its truth, or … recklessly, careless whether it be true or false" (Derry v Peek, as stated in Eco3 v Ludsin [72])	All loss caused by entering the contract (Taberna [43])
Negligent (statutory)	Liable unless the maker proves reasonable grounds to believe, and did believe, the facts true up to the time of contracting (MA 1967 s 2(1))	On the fraud measure (Royscot, as stated in Taberna [41], [43]); only against the other contracting party (Taberna [44])
Innocent	Honest and on reasonable grounds	None as of right; the court may award damages in lieu of rescission (s 2(2))

Inducement

The claimant need not have believed the statement was true (Hayward v Zurich [18]). Inducement is inferred from a material misrepresentation, and the inference is "very difficult to rebut" (Hayward [34], [37]).

Rescission and its bars

Available for every type, even after performance (MA 1967 s 1). Barred by affirmation, intervening third party rights, a delay that makes it inequitable, or impossibility of restitution, though "practical justice" is enough (Salt v Stratstone [2], [17], [30], [43]).

Damages in lieu: a trap

The leading view: only where rescission is still available, not once it is barred (Salt [17]). Never for fraud (s 2(2)).

Excluding liability

A term excluding liability for misrepresentation must satisfy the UCTA reasonableness test; the party relying on it must prove it (MA 1967 s 3), and that includes a non-reliance clause (First Tower v CDS [111]).

Sources: IFE Fund v Goldman Sachs [2007] EWCA Civ 811; Eco3 Capital v Ludsin Overseas [2013] EWCA Civ 413; Misrepresentation Act 1967 ss 1 to 3; Taberna Europe CDO II v Selskabet [2016] EWCA Civ 1262; Hayward v Zurich Insurance [2016] UKSC 48; Salt v Stratstone Specialist [2015] EWCA Civ 745; First Tower Trustees v CDS [2018] EWCA Civ 1396. Accessed 20 November 2026.

Mistake, duress, undue influence and illegality

Doctrine	The rule	Source
Common mistake	A shared assumption, no warranty by either party, no fault, and its falsity makes performance **impossible** (Great Peace, as stated in Graves [23]). Look first at whether the contract allocates the risk. Merely more onerous is not enough. The contract is void	Graves v Graves [23], [27], [33]; Brennan v Bolt Burdon [17]
Identity	A written contract with a fraudster posing as a named person is with that person, and void (Shogun v Hudson, as stated in P&P Property [54])	P&P Property v Owen White [54]
Unilateral mistake as to terms	A party who knows the terms the other means to put forward cannot hold them to a different meaning (Smith v Hughes, as stated in Daventry [178])	Daventry DC v Daventry Housing [178]
Rectification	The document fails to record a prior contract, or a common intention shown by an "outward expression of accord"	FSHC v GLAS Trust [176]
Non est factum	The document was fundamentally different from what the signer thought, and signing was not negligent; a heavy burden	CF Asset Finance v Okonji [28], [36]

Economic duress

Three elements: "an illegitimate threat; sufficient causation; and that the threatened party had no reasonable alternative to giving in" (Lord Burrows in Times Travel v PIA [136], agreed by the majority at [1]). Causation means a significant cause ([78]). "A demand motivated by commercial self-interest is, in general, justified" ([136]). The contract is voidable.

Undue influence

Actual: overt acts of improper pressure or coercion (Etridge, as stated in Times Travel [90]). Presumed: trust and confidence plus a transaction that "calls for explanation" shifts the evidential burden (Etridge, as stated in Turkey v Awadh [13], [36]). Rebuttal usually needs informed, independent advice (Awadh [36]).

Banks and sureties

A lender is put on inquiry whenever the surety's relationship with the debtor is non-commercial; it must then take the Etridge steps, including a solicitor's written confirmation, or be deemed to have notice (Waller-Edwards v One Savings Bank [31], [33]). Since 2025 this includes a joint loan with a more than de minimis part paying one borrower's debts ([57]).

Illegality

Would enforcing the claim harm the integrity of the legal system? Consider the purpose of the rule broken, any other public policy, and whether denying the claim is proportionate (Patel v Mirza [120]). Money paid for an unlawful purpose may still be recovered ([121]).

Void or voidable?

Operative common mistake and the identity fraud in Shogun: **void**: no contract at all. Misrepresentation, duress and undue influence: **voidable**: the remedy is rescission, and the bars to rescission (page 11) apply.

Sources: Graves v Graves [2007] EWCA Civ 660; Brennan v Bolt Burdon [2004] EWCA Civ 1017; P&P Property v Owen White & Catlin [2018] EWCA Civ 1082; Daventry DC v Daventry & District Housing [2011] EWCA Civ 1153; FSHC Group v GLAS Trust [2019] EWCA Civ 1361; CF Asset Finance v Okonji [2014] EWCA Civ 870; Times Travel v Pakistan International Airline [2021] UKSC 40; Turkey v Awadh [2005] EWCA Civ 382; Waller-Edwards v One Savings Bank [2025] UKSC 22; Patel v Mirza [2016] UKSC 42. Accessed 20 November 2026.



Ending a Contract

A contract ends by **performance**, by **agreement** or a specified event, by **breach** that the innocent party accepts, or by **frustration**. Breach needs an election; frustration does not.

Route	The rule	Source
Entire obligation	For a lump sum, no price until the work is complete (Sumpter v Hedges, as stated in Cleveland Bridge [94])	Cleveland Bridge v Multiplex [94]
Repudiatory breach	Breach of a condition, or conduct that deprives the innocent party of "substantially the whole of the benefit"	Spar Shipping [18], [67]
The election	A repudiatory breach "does not automatically discharge" the contract: terminate, or affirm and wait (Cottonex [36]). It ends the contract only if and when accepted (Geys [15])	Cottonex [36]; Geys [15]
Renunciation before performance is due	The innocent party may accept it at once, sue now for damages, and must mitigate from then (Hochster v De la Tour, as stated in Bunge [12])	Bunge v Nidera [12]
Affirming regardless	Not where the innocent party has "no legitimate interest" in performing rather than claiming damages (White & Carter, as stated in Cottonex [32])	Cottonex [32], [42], [43]
Frustration	Without either party's default, performance would be "a thing radically different from that which was undertaken" (Davis Contractors, as stated in Sea Angel [84]). Ends the contract automatically	The Sea Angel [84]; Canary Wharf v EMA [24]
Not frustration	"mere incidence of expense or delay or onerousness"; a bargain that now looks too dear; an event within the party's own control (self-induced)	Sea Angel [111]; Canary Wharf [38], [44]

Termination looks forward

Accrued rights survive, such as liquidated damages already due (Triple Point [35], [37]).

Foreseeable is not fatal

Foreseeable events can still frustrate, though less readily (Sea Angel [127]).

Sources: Cleveland Bridge v Multiplex [2010] EWCA Civ 139; Grand China Logistics v Spar Shipping [2016] EWCA Civ 982; MSC v Cottonex [2016] EWCA Civ 789; Société Générale v Geys [2012] UKSC 63; Bunge v Nidera [2015] UKSC 43; Edwinton v Tsavliris (The Sea Angel) [2007] EWCA Civ 547; Canary Wharf (BP4) T1 v European Medicines Agency [2019] EWHC 335 (Ch); Triple Point v PTT [2021] UKSC 29. Accessed 20 November 2026.

Worked Example: Breach or Frustration?

Invented facts. **Ria** hires a riverside hall from **Weir Ltd** for her wedding on 5 June 2027 for £10,000. She pays a £4,000 deposit; the £6,000 balance fell due on 1 May, but she has not paid it. Weir spends £1,500 preparing the hall. On 20 May a flood destroys the hall. The contract says nothing about floods.

Question	Answer	Why
Is the contract frustrated?	**Yes**	Destruction of the subject matter, with no fault of either party (Canary Wharf [24], [41])
Must either party do anything to end it?	**No**	Frustration ends it "forthwith, without more and automatically" (The Super Servant Two, as stated in Canary Wharf [24])
The £4,000 deposit?	**Recoverable**	Money paid before discharge is recoverable (LRFCA 1943 s 1(2))
The £6,000 balance?	**Not payable**	It was payable before the flood, so it ceases to be payable (s 1(2))
Weir's £1,500 of expenses?	**Up to £1,500**	Out of the sums paid or payable before the flood, the court may let Weir keep or recover, if just, up to its expenses (s 1(2) proviso). Ria would then recover between £2,500 and £4,000
Weir's insurer pays for the hall	**Ignored**	Unless the contract obliged Weir to insure (s 1(5))

Change one fact

If	Then
No flood: Weir lets the hall to a bigger party on the same day	Not frustration: the event was within Weir's control (Canary Wharf [44]). Weir is in repudiatory breach; Ria can terminate and claim damages
On 1 March Weir e-mails: "we will not host your wedding"	Renunciation. Ria may accept it at once, sue now, and must mitigate from then, for example by booking another venue (Bunge [12])
Weir's staff and energy costs rise by 40%	Not frustration: "mere incidence of expense" is not enough (Sea Angel [111])
The contract says the deposit is kept if a flood stops the event	The court gives effect to that term; the Act applies only so far as consistent with it (s 2(3))

Unjust enrichment: the four questions

Has the defendant been enriched? At the claimant's expense? Was it unjust? Any defence? (Benedetti v Sawiris [10]). Services are valued at their objective market value when received (Benedetti [14], [15]). Money paid for a performance that never comes is recoverable at common law only if the basis failed totally (Fibrosa, as stated in Bank of New York Mellon v Cine-UK [49]), and the claim cannot cut across the risks the contract allocates (Cine-UK [144], [160]).

Our example, invented facts and figures. Rules: Law Reform (Frustrated Contracts) Act 1943 ss 1, 2; the cases on page 13; Benedetti v Sawiris [2013] UKSC 50; Bank of New York Mellon v Cine-UK [2022] EWCA Civ 1021.

6 Remedies

The innocent party is "so far as money can do it, to be placed in the same situation … as if the contract had been performed" (Robinson v Harman, as stated in Morris-Garner v One Step [32]). Damages compensate: they do not punish a deliberate breach or strip the breaker's profit (Morris-Garner [35]). With no loss proved, only nominal damages (Morris-Garner [95]).

Hurdle	The rule	Source
Causation	The breach must cause the loss, not merely provide "the occasion for the loss". A breach that combines with another effective cause still counts	Wellesley v Withers [140]; Thai Airways [176]
Remoteness	Liable if, when the contract was made, a reasonable person in the breaker's shoes "would have had damage of that kind in mind as not unlikely to result" (Hadley v Baxendale, as restated in Wellesley [69])	Wellesley [69]
Kind, not extent	In Victoria Laundry ordinary lost profits were recoverable, but a lucrative government contract the breaker did not know of was loss of a different kind (as stated in Wellesley [87], [174])	Wellesley [87], [174]
Mitigation	No recovery for avoidable loss; the costs of reasonable attempts to avoid loss are recoverable. The defendant must prove a failure to mitigate	Thai Airways [32], [38]

Cost of cure or loss in value?

For defective work, usually the cost of making good (Manchikalapati [89]); not where it is "out of all proportion to the benefit" (Ruxley, as stated in Mears v Costplan [73]).

Distress and disappointment

Not usually recoverable, but they are for a contract to provide "entertainment and enjoyment", such as a holiday (Jarvis v Swan Tours, as stated in Milner v Carnival [32]; and [31]).

Time limits

Six years from breach for a simple contract (Limitation Act 1980 s 5); twelve for a deed (s 8). In contract, time runs from the breach, not the damage (Arriva [58]).

Fraud, concealment, mistake

Time runs from when the claimant discovered it, or "could with reasonable diligence have discovered it" (s 32(1)). A signed written acknowledgment of a debt restarts time, but cannot revive a barred claim (ss 29, 30).

Sources: Morris-Garner v One Step (Support) [2018] UKSC 20; Wellesley Partners v Withers [2015] EWCA Civ 1146; Thai Airways v KI Holdings [2015] EWHC 1250 (Comm); Manchikalapati v Zurich Insurance [2019] EWCA Civ 2163; Mears v Costplan Services [2019] EWCA Civ 502; Milner v Carnival [2010] EWCA Civ 389; Limitation Act 1980 ss 5, 8, 29, 30, 32; Secretary of State for Transport v Arriva Rail East Midlands [2019] EWCA Civ 2259. Accessed 20 November 2026.

Agreed sums, equitable remedies, indemnities and guarantees

Topic	The rule	Source
The penalty test	Is the clause "a secondary obligation which imposes a detriment on the contract-breaker out of all proportion to any legitimate interest of the innocent party in the enforcement of the primary obligation"? If so, it is unenforceable	Cavendish v Makdessi [8], [32]
What it catches	Only remedies for breach. A sum due on a conditional primary obligation "cannot be a penalty"	Cavendish [13], [14]
Not the old question	"whether it is penal, not whether it is a pre-estimate of loss". Deterrence is not penal where there is a legitimate interest (ParkingEye's £85 charge)	Cavendish [31], [99]
Specific performance	Not ordered when damages are adequate; land is treated as unique, so a sale of land is the classic case. Called "an exceptional remedy" (Co-operative Insurance v Argyll), a remark the Privy Council saw as apt for positive obligations	Mungalsingh v Juman [32], [33] (Privy Council)
Personal service	Equity will not order an employee who has wrongfully resigned to go back to work	Geys [77]
Negative promise	An injunction to stop a clear breach follows unless there are "special circumstances"	Araci v Fallon [39]
Damages instead	The court may award damages in addition to, or in substitution for, an injunction or specific performance	Senior Courts Act 1981 s 50

Guarantee or indemnity?

	Guarantee	Indemnity
Liability	**Secondary**: someone else is primarily liable; typically a promise to "see to it" that the debtor performs	**Primary**: the surety's own liability
Writing	Unenforceable unless in writing, or evidenced by a note, signed by the guarantor or an authorised agent; an e-mail with a typed first name can do	No writing needed
Creditor and debtor vary the contract	A variation without the guarantor's consent usually discharges the guarantor (Holme v Brunskill, as stated in Topland [13]), unless an indulgence clause covers it	The surety's primary liability survives

Sources for the table: Associated British Ports v Ferryways [1], [11]; Statute of Frauds 1677 s 4; Golden Ocean v Salgaocar [3], [32]; Topland v Smiths News [13]; Aviva v Hackney Empire [79].

Sources: Cavendish Square v Makdessi and ParkingEye v Beavis [2015] UKSC 67; Mungalsingh v Juman [2015] UKPC 38; Société Générale v Geys [2012] UKSC 63; Araci v Fallon [2011] EWCA Civ 668; Senior Courts Act 1981 s 50; Associated British Ports v Ferryways [2009] EWCA Civ 189; Statute of Frauds 1677 s 4; Golden Ocean v Salgaocar [2012] EWCA Civ 265; Topland v Smiths News [2014] EWCA Civ 18; Aviva v Hackney Empire [2012] EWCA Civ 1716. Accessed 20 November 2026.

Worked Example: Damages

Invented facts. **Quill Bakery** buys an oven from **Forge Ltd** for £20,000, for delivery on 1 March 2027. Forge knows Quill supplies bread to local cafés. Forge delivers 30 days late. Without the oven Quill loses £300 of profit a day. Quill had also just won a £40,000 supermarket contract that Forge knew nothing about, and loses it. A similar oven could have been hired for £100 a day.

Loss claimed	Recoverable?	Why
Ordinary lost profits: 30 days at £300 = £9,000	**Only £3,000**	The kind of loss is not too remote, but it was avoidable. Hiring an oven (30 x £100 = £3,000) would have saved it, so Quill recovers the hire cost it should have spent (Thai Airways [32]). Forge must prove the failure to mitigate (Thai Airways [38])
The lost supermarket contract: £40,000	**No**	A loss of a different kind that Forge did not know of: too remote, as with the government contracts in Victoria Laundry (Wellesley [87])
Quill hires an oven for 30 days: £3,000	**Yes, £3,000**	Costs of reasonable steps to avoid loss are recoverable (Thai Airways [32])
Quill's anger and stress	**No**	Not a contract to provide enjoyment (Milner v Carnival [31], [32])
Forge was late on purpose, to serve a richer buyer first	**No extra**	Damages are not increased for a deliberate breach (Morris-Garner [35])

Change one fact

If	Then
Quill told Forge about the supermarket deal before contracting	The loss was then within the parties' contemplation, so it is no longer too remote (The Heron II, as stated in Wellesley [146]). Quill must still prove it and mitigate
The contract says Forge pays £250 for each day of delay	A liquidated damages clause: £7,500 for 30 days without proof of loss (Triple Point [35]), unless out of all proportion to Quill's legitimate interest (Cavendish [32])
The clause said £5,000 a day	Ask the Cavendish question: likely a penalty if it is out of all proportion to any legitimate interest. A penalty is unenforceable (Cavendish [8]), so Quill would have to prove its loss in the usual way
Quill suffered no loss at all	Nominal damages only (Morris-Garner [95])
Quill sues in 2034	Out of time: six years from the breach on 1 March 2027 (Limitation Act 1980 s 5; Arriva [58])

Method: any damages question

1. What would the claimant's position have been if the contract had been performed? 2. Did the breach cause each loss? 3. Was each kind of loss within reasonable contemplation when the contract was made? 4. Could any loss have been avoided by reasonable steps? 5. Is there a valid agreed damages clause?

Our example, invented facts and figures. Rules: the cases on pages 15 and 16.

Exam Traps

Ten ways a plausible option can be wrong. Check every answer against them.

1. Revocation has no postal rule

Acceptance by post takes effect on posting; a revocation only when it reaches the offeree.

2. Roffey is not Foakes

A practical benefit can support a promise to pay more. Foakes v Beer still binds for part payment of a debt until the Supreme Court revisits it.

3. Estoppel is a shield

Promissory estoppel defends against strict rights. It does not create a cause of action.

4. Which statute?

UCTA for businesses, the Consumer Rights Act for consumers. Applying UCTA to a consumer is wrong.

5. Signed means bound

Notice and the onerous term rule are for unsigned terms. A signature binds even if unread.

6. Damages in lieu need rescission

Section 2(2) damages are not available once rescission is barred, and never for fraud.

7. Harder is not impossible

Extra cost or delay neither frustrates a contract nor makes a common mistake operative.

8. Breach needs an election

A repudiatory breach does not end the contract by itself. Frustration does, automatically.

9. Kind, not amount

Remoteness asks whether the kind of loss was not unlikely when the contract was made, not later.

10. Penalty is not pre-estimate

The test is a legitimate interest and proportion. Only clauses triggered by breach are caught.

Before you choose, ask three questions

1

Is there a binding contract, and between whom?

2

What are its terms, and can either side escape it?

3

Has it ended, and what can the innocent party recover?

Test yourself

Cover the answers and give yourself a minute for each. Names, dates and figures are invented; the law is that of England and Wales.

1 Asif offers his car for £5,000. Bea replies, "I accept, if you fit new tyres." Contract?

Answer. No. A material new term makes a counter-offer, which kills the offer (Pickfords [27]).

2 Cal posts a properly addressed acceptance at 10am. A revocation reaches him at 2pm. Contract?

Answer. Yes, from 10am: acceptance on posting, revocation only on communication (Korbetis [10]; Pickfords [32]).

3 A builder is promised £10,000 extra to finish on time, which saves the client a penalty elsewhere. Binding?

Answer. Yes, if a practical benefit and no duress or fraud (Williams v Roffey, as stated in MWB (CA) [42]).

4 A creditor agrees to take £6,000 for a £10,000 debt now due, and is paid. Can it sue for £4,000?

Answer. Yes (Pinnel's Case and Foakes v Beer, as stated in MWB (CA) [38]), unless promissory estoppel makes it inequitable (Collier [37]).

5 Dan and Eve's contract lets Fay enforce clause 4. Fay writes to accept it. Can they now delete it?

Answer. No, not without Fay's consent, unless the contract allows it (C(RTP)A 1999 s 2(1), (3)).

6 Between two businesses, a clause excludes liability for death caused by negligence. Is it reasonable?

Answer. Irrelevant: it is of no effect at all (UCTA s 2(1)).

7 A seller says, honestly but without reasonable grounds, that a flat has planning consent. It has not. Best claim?

Answer. MA 1967 s 2(1): the seller cannot prove reasonable grounds; fraud measure (Taberna [43]).

8 Both parties think a ship is close enough to help. It is further away: the job is possible but slower. Void?

Answer. No. Performance must be impossible, not just harder (Graves [23]; Brennan [17]).

9 A sole supplier refuses to deliver unless the buyer pays 20% more. The buyer pays. Remedy?

Answer. Voidable for economic duress if the threat was illegitimate, a significant cause, and left no reasonable alternative (Times Travel [136]).

10 A hired hall burns down. The hirer paid £2,000; the owner spent £500. What comes back?

Answer. £2,000, less any part up to £500 the court lets the owner keep (LRFCA 1943 s 1(2)).

11 Late delivery costs the buyer a one-off, very profitable deal the seller knew nothing of. Recoverable?

Answer. No: a different kind of loss (Victoria Laundry, as stated in Wellesley [87]).

12 A guarantee of a company's overdraft is agreed by telephone only. Enforceable?

Answer. No: it needs signed writing or a signed note (Statute of Frauds 1677 s 4). Unenforceable, not void (Golden Ocean [15]).

Your Contract Law Checklist

Tick a line only when you can explain it from blank paper, in order, in under two minutes.

Forming a contract

- [ ] I can tell an offer from an invitation to treat, and a counter-offer from an acceptance (page 05)
- [ ] I know when acceptance and revocation take effect, by post and by instant means (page 05)
- [ ] I can apply consideration, Roffey, Foakes v Beer and promissory estoppel (page 06)
- [ ] I know the presumptions on intention, and the rules on certainty and capacity (pages 05 and 06)

Parties and terms

- [ ] I can apply the 1999 Act and the rules on incorporation and variation (page 08)
- [ ] I know the implied terms and remedies under the CRA 2015 and the SGA 1979 (page 09)
- [ ] I can interpret a term and classify it as a condition, warranty or innominate term (page 09)
- [ ] I can run an exemption clause through incorporation, construction, UCTA and the CRA (page 10)

Vitiating factors

- [ ] I can name the type of misrepresentation, its damages and the bars to rescission (page 11)
- [ ] I know common mistake, identity, rectification, duress, undue influence and illegality (page 12)

Ending a contract and remedies

- [ ] I can tell repudiatory breach from frustration, and apply the 1943 Act (pages 13 and 14)
- [ ] I can work out damages: causation, remoteness and mitigation (pages 15 and 17)
- [ ] I know time limits, penalties, specific performance, injunctions and guarantees (pages 15 and 16)

On the day

- [ ] I ask the three questions on page 18, and I have scored twelve out of twelve on the self-test, under time (page 19)

Make the method automatic

STEP 1

Learn the rules

The one-page table on page 04: cover the key words and test yourself.

STEP 2

Find the contract first

Run the decision tree on page 07 before you read the options.

STEP 3

Run the examples

The guillotine on page 10, the wedding hall on page 14 and the oven on page 17, from blank paper.

STEP 4

Test yourself

The twelve questions on page 19, then the traps on page 18.

STEP 5

Build exam pace

Full-length SQE1 mocks in the 2027 format (2 x 85 questions).

STEP 6

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