

6) Scope and Content

- The Terms of a Contract
- Construction and Classification of Terms
- Exclusion Clauses

15) Avoidance

- Misleading or Deceptive Conduct
- Mistake
- Duress
- Undue Influence
- Unconscionable Conduct
- Unfair Terms
- Illegality and Public Policy

35) Performance and Termination

- Performance
- Termination by Agreement
- Termination for Breach
- Termination by Frustration

49) Remedies

- Damages and Liquidated Claims
- Equitable Remedies

Formalities

General rule: most contracts can be made without the parties reducing their agreement to writing or complying with any other formalities. Has to have however

- Agreement
- Consideration
- Intention

Contracts can be made orally, in conduct or in writing or combinations

However, contract will only be valid but not enforceable

Exceptions

- Contracts for the sale of land, or an interest in land
- Contracts for the sale of goods
- Contracts of guarantee
- Consumer contracts

Satisfying the formalities

1. Note or memorandum sufficient: However, document must contain
 - All essential terms of the contract, including the identity of the parties
 - A clear description of the property
 - The consideration, except in the case of a contract of guarantee
 - An acknowledgement that there was an agreement

UK: Elias v George Sahey & Co (Barbados) Ltd: Elias sought specific performance of an oral contract for the sale of land. Sahey claimed that the document had not been evidenced in writing as required by the Statute of Frauds in relation to land contracts.

1. Letter written by his lawyer which contained material terms (price)
2. A receipt for deposit

Held: Lord Scarman, delivering the Board's advice, held that there was an oral contract. Board held that the receipt and letter could be read together; provided they were read together they satisfied the formality requirements in the Statute of Frauds.

2. Document must be created before proceeding are commenced
3. Must contain signature

Consequences of non-compliance

- Renders contract unenforceable, however still valid
- Not void or illegal

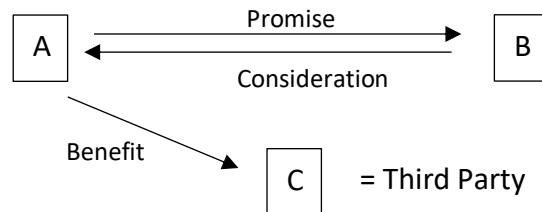
Have to tell the courts that the contract was oral for them to deem in unenforceable, if you don't they can enforce

Doctrine of part performance: Where obligation under alleged contract has been partly performed, equity may enforce

Exists to prevent revenue fraud by a party using statute (ect. Statute of frauds) as defence to performing obligations under a contract they have made

Privity of Contract

Privity means only a person that is a party to a contract is bound by the contract and can sue on the contract – you need to be a part of the contract to sue on the contract.



If Benefit created for C or obligation imposed on C, C can't enforce decision, or sue on the contract as they aren't apart of contract.

Dunlop Pneumatic Tyre Co Ltd v Selfridge and Co Ltd: The plaintiff (Dunlop) sought to establish and enforce a resale price maintenance (RPM) scheme. The plaintiff sold tyres to Dew & Co (a tyre dealer) which then sold to Selfridge on condition that Selfridge would not sell below the list price. Selfridge failed to comply with the condition; the plaintiff sued for breach of contract.

Court held Dunlop was not entitled to enforce the contract against Selfridge because it was not a party to the contract.

Privity and Consideration: A, B and C entered into an agreement whereby A promises B and C to confer a benefit on C in exchange for consideration from B alone. However, although a party to the contract C will not be able to enforce A's promise as C did not provide consideration. Such as above case, however there are exceptions to this.

Trident General Insurance Co Ltd v McNiece Bros Pty Ltd: Blue Circle Cement entered into a contract of insurance with Trident. The insurance policy covered liability for accidents occurring during this construction and defined the 'assured' parties as including all Blue Circle's contractors and sub-contractors (which included McNiece). McNiece subsequently became the principal contractor for work being carried out at the Blue Circle plant. A worker was seriously injured and recovered a judgment against McNiece who sought indemnity under the policy from Trident. Trident denied liability on the ground that McNiece was not a party to the insurance contract.

In relation to insurance policies, and almost certainly in relation to contract of indemnity generally, where the evidence is that third parties were in the contemplation of the principal, then those third parties can enforce the contract. That was the case here - Trident was liable.

If B provided consideration on behalf of both B and C, then C could enforce A's promise.

Coulls v Bagots Executor & Trustee Co Ltd: Mr Coulls entered into a contract to allow O'Neil Constructions to quarry part of his land. In exchange, O'Neil was to pay royalties to Mr Coulls and his wife as joint tenants. Following Mr Coulls' death, his executor (Bagots) sought to determine whether O'Neil was required to pay the royalties to the estate or to Mrs Coulls.

A majority of the High Court held that the royalties were payable only to the estate on the ground Mrs Coulls was not a party to the contract. In discussing the issue of consideration, a majority of judges (concurring with Barwick CJ) concluded that where a promise is made to joint promisees then either promisee can enforce even though consideration only moved from one.

