

BSB 250 Exam Revision Guide

- It is an open book exam - **you can take in any paper-based materials you would like except text books with no limits to page numbers or formats.**
- We will have a practice exam in Week 13 to help you prepare. The questions in tutorials (weeks 5-12) are very similar to the types of questions you will have in the exam.

Tips

- **Read questions first before reading the problem to find what terms you need to mention/define/base question on**
 - **Instructions say what NOT to include/consider**
- Use ILAC to answer all questions
- Negligence and contracts marks - 2 weeks, 1/3 marks on these
- 1/3 marks split up on the rest of the topics
- Perusal = just write on exam paper
- Don't do question 3 first - start at the start -> Spend more time in higher marks question e.g., Q1 and 2

ILAC model

- Purpose = to analyse and present arguments or case studies

I = issue

- Identify the key issue, problem, or question that needs to be addressed
- Answer in question form
- Example – did the company breach its contractual obligations to the client?

L = law/legal principle

- Outline the relevant law, principle, theory, or framework that applies to the issues
- State the law, no interpretation of how it fits into case
- This could include statutes, case law, regulations, or academic theories depending on the context

A = application/analysis

- Apply the law or theory to the facts of the case or scenario
- Analyse
- Show how the principles interact with the specific details to support your argument

C = conclusion

- Summarise your findings and clearly state the outcome of your analysis
- This should answer the original issue

Example

- Issue = can SolarChoice terminate its contract with a supplier without breaching ethical obligations?
- Law/principle = contract law states that contracts can only be terminated under specific conditions; ethical business principles require consideration of stakeholder impacts
- Application/analysis: SolarChoice can terminate if contractual clauses allow it, but doing so may harm reputation and stakeholder trust. Balancing legal rights and ethical obligations is crucial
- Conclusion: legally, the company may terminate, but ethically, they should negotiate a resolution to maintain stakeholder confidence

Content review

Week 5: Simple apparent contracts = formation

Overview

- *Contracts are legally enforceable agreements*
- *There are often misconceptions about what is and isn't a contract*
- *To have a contract you need:*
 - *An agreement = offer and acceptance, both sides agree*
 - *Intention to create legal relations = both sides intend the agreement is legally binding*
 - *Consideration = something of value is exchanged between both parties, each person must give or promise to give something e.g., I will give you \$100 in exchange for your bike*

What is a contract?

- A legally enforceable agreement
- There are 3 core requirements of a simple apparent contract
 - Agreement
 - Intent
 - Consideration

Agreement (meeting of minds) = offer and acceptance

- A valid offer has been made, and it has been properly accepted
- An offeree accepts the offer when they indicate by words or actions they are willing to immediately enter into a legally enforceable contract with the offeror on the terms offered.
- Once an agreement is reached, the contract comes into existence, and the parties become legally obligated to proceed.
- The person making the offer is called the offeror, person receiving = offeree
- An offer = written, verbal, implied by conduct

Intention to create legal relations = communication occurring between businesses or commercial parties

- Courts look at the conduct of the parties from the perspective of an observer and ask whether the parties were behaving in a way that indicated they intended the agreement to be legally enforceable

- The courts will look at the conduct of the party, words spoken, documentation, the surrounding circumstances and consequences of the agreement (**Fitzpatrick, Jeffery F, 2019**)
- Presumption for intent test = when the agreement was made in a commercial or business context, it is presumed the agreement was intended to be legally enforceable (**Edwards v Skyways Ltd**)

Consideration = both parties provide value

- An agreement is not a contract unless both parties have paid (or promised to pay) a price called consideration e.g., payments, goods, services etc
- Both parties provide something of value
- As a consequence, we concentrate on 2 aspects of consideration
- Consideration must move from the promisee (but not necessarily to the promisor) -> the person who enforces the contract must provide something, but it doesn't have to go to that other person
- Consideration needs to be sufficient but need not be adequate -> what you give just needs to have legal value, it does not have to be a fair deal

If we have a valid simple apparent contract, we need to consider vitiating factors – was there genuine consent?

- Duress = threaten someone's personal safety, property, or economic wellbeing to induce them into a contract
- Undue influence = when there is a pre-existing relationship where one party has more power or influence which affects weaker parties' judgement
- Unconscionability = one party has a weakness or disadvantage and the other party knowingly takes unfair advantage of it

Week 6: Consent, terms and remedies = enforcement

Overview of the week

- *What the terms of the contract are, what was actually agreed on*
- *Considers the Parole Evidence Rule and how to determine if surrounding statements are binding terms*
- *Looks at the use and effect of disclaimers*
- *Explores remedies for breach of contract*
- *Distinguishes between a condition and a warranty*
- *Explains the difference between Common Law remedies and Equitable remedies*

Terms, Conditions, and Warranties

- Terms of the contract = the specific rights and obligations of the parties, what both parties agreed to
- There are 2 kinds of terms in a contract
- Conditions = important terms
- if a condition is breached the party can confirm the contract and recover damages or terminate the contract and recover damages
- Warranties = less important
- If a warranty is breached, injured party must still perform the contract, but might be able to sue for damages for less suffered
- If there is a breach of contract, the remedy (or what you can do about the breach) varies between a breach of condition vs warranty
- Whether a term is a condition or warranty is determined objectively by the conduct and context

Determining the terms of the contract

- 2 broad types of terms:
- Express terms = clearly and obviously stated in spoken or written form, explicitly agreed on
- Implied terms = where an intended term was not clearly expressed in the contract

- Representations = statements made by the parties around the contract that do not form part of the terms (or obligations)

Express terms

- There are 3 key principles that we will use to help classify if a statement is an express term of the contract
 1. Parol Evidence Rule = if it is not in the written contract, it usually does not count
 2. Written statement in a signed document is evidence of agreement to the term
 3. The test for whether a statement is a representation of term is partially written or verbal contracts

The Parol Evidence Rule

- If parties have taken the time to formally draft up a contract that expresses their whole agreement, then the rule will apply
- This document and only this document will be used to determine the terms of the contract
- Other evidence that varies, adds to, or contradicts the document will not be used
- **Mercantile Bank of Sydney V Taylor** confirms the Parol Evidence Rule
- A person who signs a written agreement is bound by it, even if they have not read it or unaware of its contents – **L'Estrange v F Graucob 1934**

Differentiating a representation from a term

- Representation = a statement of fact made by one party to another to induce them to enter into a contract, but it is not itself a term of the contract
- Non-contractual representation = when a representation i.e., a statement or fact is made during negotiations but is not intended to become a term of the contract
- **Dick Bentley Productions Ltd V Harold Smith Motors 1965** – what would a reasonable person, aware of the circumstances of the case believe to be the parties intention. We look at:
 - Time lapse between statement and final agreement – longer the time, less likely intention to be a term of contract
 - Importance attached to the statement – more important = more likely
 - Whether the parties had special skills or knowledge = if party has special skills = most likely to be a term

Collateral contract

- A secondary agreement made to induce entry into main contract
- If a representation (fact) in it is false = can claim damages, but cannot terminate main contract
- It arises when a prior statement leads a party to enter a written main contract

Disclaimers

- Used when businesses want to eliminate or limit their liability/responsibility (protect themselves from risks), meaning they may not be in breach even if they fail to perform
- Known as exclusion clauses, exemption clauses, or limitation of liability clauses
- Courts apply the **contra proferentem rule**, the court interprets the disclaimer in a way that favours the other party
- This protects parties from hidden or unfair exclusions, especially where there is a power imbalance
- Examples = loss, injury, missing/stolen goods

What does it take for disclaimers to be effective

Disclaimers must be part of the contract. They are part of the contract if:

- It is set out in a written contract signed by both parties **L'Estrange V Graucob Ltd**
- Brought to attention of other party by reasonable notice before contract was formed **Thorton V Shoe Lane Parking**
- It is implied into the contract as a result of prior dealings between the parties e.g., parties have done business on these terms before – **Balmain New Ferry Co Ltd v Robertson 1906**

Disclaimers are interpreted narrowly

- The court will interpret the disclaimer contra proferentem (see above)
- Four Corners Rule = when a disclaimer is unclear or ambiguous, courts look at the “Four Corners” **Council of the City of Sydney V West** of the contract, meaning the entire written contract
- They determine whether the disclaimer applies to all situations or only to matters covered within the contract itself
- If it is not clear, the court will interpret the clause narrowly, so it only covers what is clearly in the contract’s scope

Disclaimers must not be misrepresented

- A disclaimer is invalid if its true effect is misrepresented, even if the other party saw it before contracting
- You cannot hide or twist the meaning of a disclaimer to avoid liability

Remedies

- If one party breaches a term of the contract and they aren't protected from liability by an effective disclaimer, there are legal remedies available

The key remedies available for the injured party are:

- Damages = most common form, purpose = to restore the other party to the position they would have been in if breach or misrepresentation did not occur
- A party will be entitled to damages when there has been
 - i. A breach of contract to the other party
 - ii. A breach of collateral contract by other party
 - iii. Fraudulent or negligent misrepresentation by the other party
- Equitable remedies = if an aggrieved party can demonstrate that damages is not satisfactory
- specific performance = the court order directs the party to fulfil their duties
- injunction = court forbids someone from engaging in a particular conduct that is a breach of the law
- Terminating the contract (in some cases) = an injured party can only terminate for a breach of condition (if there is a breach of warranty and the injured party stops performing their obligations = they are in breach and liable for damages)
- Note: not all remedies are available in all circumstances