

## Week 1 - Introduction to Contracts: Overview of Contract Remedies

### Contract Law Study Methodology and the Legal Problem-Solving Model

The study of contract law is deeply rooted in the **common law** and **Equity**, developed incrementally over centuries by judges through specific case judgments. This approach follows the **case-law method** pioneered by **Christopher Columbus Langdell**, which emphasizes learning legal principles from the "bottom up" by applying law to decided cases. While common law provides the bulk of principles, **statutes**—legislation created by Parliament—frequently update, modify, or add to these rules and hold supremacy over all other legal sources.

To excel in contract law, students should focus on identifying legal tests, threshold requirements, and keywords within court decisions. For exam preparation and solving hypothetical problems, the **ILAC model** is the standard framework: identifying the **Issue**, determining the relevant **Law**, **Applying** the law to the specific facts, and reaching a **Conclusion**.

### Significance and Sources of Contract Law

Contract law is fundamental to social and commercial reality, providing the principles courts use to force individuals to fulfill their promises or compensate for damages. It is categorized under the **Law of Obligations**; while contracts arise from promises between parties, **torts** arise from legal rules such as the duty of care in negligence.

There are three primary sources of contract law:

- **Common Law:** Originating from Anglo-Saxon custom and fused with French law after 1066, it evolved into a centralized system of royal courts using **precedent** and **inductive reasoning**.
- **Equity:** Established through the **Court of Chancery** to address the rigidity of the common law, Equity is based on **conscience** and moral principles, offering flexible remedies to achieve justice.
- **Statute:** Acts of Parliament and delegated regulations are now the primary law-making bodies. Significant statutes impacting contracts include the **Australian Consumer Law (ACL)**, the **Contracts Review Act**, and the **Frustrated Contracts Act**.

In the hierarchy of sources, **statutes prevail over all**, and **Equity prevails over common law** in the event of a conflict between the two.

### Definitions and Classifications of Contracts

A contract is defined as an agreement between two or more parties that a court will enforce, typically involving an exchange of promises and consideration. Contracts are classified according to intent, formation, and enforceability.

#### 1. Promissory Intent

- **Bilateral Contracts:** These involve an exchange of promises where both parties are obligated to perform at the time the contract is formed.
- **Unilateral Contracts:** The contract is formed when the offeree performs an act specified in the offer; it is an act exchanged for a promise.

#### 2. Formation

- **Express Contracts:** These are created through oral or written words, or a combination of both.
- **Implied Contracts:** These are inferred from the conduct of the parties. In **Clarke v Dunraven AC 59**, the court recognized an implied contract arising from the conduct of yacht owners participating in a race, despite the lack of a formal agreement between them.

- **Simple Contracts:** These require no particular form (oral or written) but must have **consideration** (an exchange of value) to be enforceable.
- **Formal Contracts (Deeds):** These represent a solemn unilateral promise that must be in writing. The specific form—"signed, sealed, and delivered"—takes the place of consideration.

### 3. Enforceability and Performance

- **Valid:** Satisfies all formative elements and is fully enforceable.
- **Void:** The contract is considered never to have existed (*ab initio*), meaning no legal rights or obligations ever arose.
- **Voidable:** A valid contract that can be **rescinded** (cancelled) by an innocent party, often due to a vitiating factor like a lack of genuine consent.
- **Unenforceable:** Valid but cannot be enforced due to technicalities, such as a lack of writing required by statute.
- **Illegal:** The purpose of the contract contravenes statute or common law/public policy.
- **Executed vs. Executory:** An **executed** contract is one where all obligations have been performed, whereas an **executory** contract has outstanding obligations yet to be fulfilled.

### Essential Elements of Contract Formation

To form a legally binding contract, six elements must be satisfied:

1. **Offer:** A tentative promise starting negotiations, indicating a desire to enter a legal relationship.
2. **Acceptance:** Positive conduct or communication confirming agreement to the offer's terms.
3. **Consideration:** An exchange of value between parties (tangible goods/money or intangible services/promises).
4. **Intention:** A genuine desire to establish legal relations, determined by an **objective test** of what a reasonable bystander would perceive.
5. **Capacity:** The legal ability to enter a contract, which may be limited for **minors** or those of **unsound mind**.
6. **Legality:** The contract must have a legal purpose and object.

### Remedies for Breach of Contract

Remedies are provided by both common law and Equity, as well as external legal frameworks.

#### Common Law Remedies

The default remedy for a breach is **damages**, which are monetary compensations awarded **as of right**. The court determines the **quantum** by comparing the plaintiff's current position to the position they would have occupied had the breach not occurred.

#### Equitable Remedies

Equitable remedies are **discretionary**, meaning the court decides whether to grant them based on justice and fairness.

- **Specific Performance:** A court order forcing a party to fulfill a positive contractual obligation.
- **Injunction:** A court order enforcing a negative obligation (e.g., restraining a football player from signing with another team during a binding contract).
- **Rescission:** Cancelling the contract to restore parties to their **status quo** prior to the agreement.