

Unit 38: Law of Contract and Tort

Unit code	M/617/0738
Unit level	5
Credit value	15
Prerequisite	Unit 7

Introduction

The aim of this unit is to give students knowledge and understanding of the essential elements of a valid contract and the principles of the tort of negligence. The unit covers the essential elements of an enforceable contract and the situations wherein the law requires the contract to be in a particular form. The unit also covers how the law determines whether negotiating parties reached an agreement and when the parties will be regarded as intending the agreement to be legally binding. Students will identify the key terms and conditions to be found in a business contract and investigate the importance of classification of terms and how they are established.

This unit will help students to better understand the duty of care in general and especially for businesses. They will be able to illustrate the impact of tort on normal business operations and the role of modern law of negligence such as professional negligence in providing services to clients.

On completion of this unit, students will understand appropriate remedies to contracts that have been discharged by breach and how the law attempts to compensate for harm done by awarding damages to given situations in tort. Students will be able to explore the appropriate remedies to contract and tort in the business scenario, using examples of decided cases.

Learning Outcomes

By the end of this unit students will be able to:

- LO1 Examine the essential elements of a valid contract
- LO2 Discuss how the contents and the terms of contract are established
- LO3 Illustrate the impact of contractual breakdown and suggest remedies available for breach
- LO4 Evaluate the elements of tort of negligence and remedies available.

Essential content

LO1 Examine the essential elements of a valid contract

Contracts and agreements:

Definition of a contract.

The defining aspects of law of contract, e.g. relationships, obligations, measure of damage and remoteness of damages.

Contractual relationships, e.g. third-party contracts.

The elements of a valid contract:

The offer: revocation of offer, counter-offer, lapse of offer, meeting of minds.

Acceptance: acceptance, subject to contract, intention that the agreement should be legally binding.

Consideration: meaning and requirement in English law, types of consideration, past consideration, a promise to perform an existing obligation and public duty, and consideration in deeds.

Capacity and legality:

General rule, corporate capacity to contract, *ultra vires* rule, void, voidable and illegal contracts.

LO2 Discuss how the contents and the terms of contract are established

Incorporation of terms:

By actual notice, signature, reasonable notice, course of previous dealings.

Express and implied terms:

The differences between expressed and implied terms.

Express terms are agreed by parties. Implied terms by courts, by law.

Example of application, e.g. Consumer Rights Act (2015), seller has the right to sell, description, bulk and sample, satisfactory quality.

The status of contractual terms:

Conditions, warranty, how to determine the status of contractual terms, exemption clauses and unfair contract terms.

LO3 Illustrate the impact of contractual breakdown and suggest remedies available for breach

Performance of contract:

Definition of performance contract.

Different types of performance, e.g. actual partial performance, substantial Exceptions, divisible contract, valid reasons for non-performance.

Breach and types of breach:

Meaning of breach, serious breach and the different types of breaches necessary to cause contractual breakdown.

Remedies for breach of contract:

Different types of remedies, e.g. discharge for breach, consumer cases, non-monetary remedies, payment of the price, damages for breach, remoteness and causation, measure, mitigation by claimant and contributory negligence.

LO4 Evaluate the elements of tort of negligence and remedies available.

Tort as a civil wrong and negligence:

Definition of tort and tort of negligence, essential elements such as duty to take care, circumstances required to establish negligence, breach, causation and remoteness, defences in tort.

From *Donoghue v. Stevenson* to the Caparo case – history of the duty of care with decided cases.

The influence of tort in similar areas, e.g. consumer protection, occupiers' liability.

Breach of duty and damages caused by negligence:

The standard of duty to take care, reasonable care, higher duties such as towards vulnerable victims and children. Damages, personal injury, damage to property, financial loss connected to personal injury.

Liability for defective products: consumer protection measures and statutory protection under sale of goods.

Professional negligence:

Breach of duty of care between professionals and clients.

Hedley Byrne Principle and awarding economic loss to the client.

Learning Outcomes and Assessment Criteria

Pass	Merit	Distinction
LO1 Examine the essential elements of a valid contract		LO1, LO2 and LO3 D1 Provide a critical evaluation of how contracts are formed, recognising law and remedies for breach of contract with evidence drawn from local and international case law and judgment.
P1 Examine how the law determines the essential elements of a valid contract to make it enforceable, using case law examples.	M1 Apply examples of case law to determine the elements of valid contract, including consideration in different circumstances.	
LO2 Discuss how the contents and the terms of contract are established		
P2 Examine how law determines whether negotiating parties have reached agreement, using a range of case law examples.	M2 Evaluate the contents of the contract and incorporation of terms, using a range of case law examples.	
P3 Demonstrate how the terms of a contract are established		
LO3 Illustrate the impact of contractual breakdown and suggest remedies available for breach		
P4 Discuss the type of breach necessary to cause contractual breakdown and remedies.	M3 Analyse remedies for breach of contract, including monetary and non-monetary remedies.	D2 Critically evaluate principles of the tort of negligence, with reference to professional advice.
LO4 Evaluate the elements of tort of negligence and defences available.		
P5 Assess the elements of tort of negligence, using specific examples.	M4 Compare and contrast tort of negligence with breach of contract, using specific examples.	

Recommended Resources

Textbooks

- ANDREWS, N. (2015) *Contract Law*. Cambridge: Cambridge University Press.
- FINCH, E. and FAFINSKI, S. (2017) *Tort Law*. 6th Ed. Harlow: Pearson Education.
- HORSEY, K. and RACKLEY, E. (2019) *Tort Law*. 5th Ed. Oxford: Oxford University Press.
- McKENDRICK, E. (2019) *Contract Law*. 5th Ed. Oxford: Red Globe Press.
- MERKIN, R. and SAINTIER, S. (2019) *Poole's Casebook on Contract Law*. 13th Ed. Oxford: Oxford University Press.

Websites

- | | |
|--|---|
| www.chambersstudent.co.uk | Chambers Student
(General reference) |
| www.lawdonut.co.uk | Business Law Donut
(General reference) |
| www.lawinfo.com | LawInfo
Legal resources
(General reference) |

Links

This unit links to the following related units:

Unit 7: Business Law

Unit 29: Managing and Running a Small Business

Unit 39: Company Law and Corporate Governance