**A LEVEL LAW: AQA PAPER 3**

**THE LAW OF CONTRACT**

**INTRODUCTION STUDY PACK 1**

1 WHAT IS A CONTRACT?

2 WHAT IS THE LAW OF CONTRACT?

3 NATURE OF LIABILITY IN CONTRACT

4 FORMATION OF A CONTRACT

5 CONTENTS OF A CONTRACT

6 VITIATING FACTORS

7 DISCHARGE OF CONTRACT

8 REMEDIES FOR BREACH OF CONTRACT

9 CONTRACT LAW AND MORALITY

 10 CONTRACT LAW AND SOCIETY:

BALANCING CONFLICTING INTERESTS

 11 CONTRACT LAW AND JUSTICE:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**1 WHAT IS A CONTRACT?**

 - an **agreement** between two parties:

 - based on mutuality

 - legally binding on both parties

 - legally enforceable

 - examples:

 - distinguish: - agreements which are not legally enforceable:

 - examples:

 PURPOSE OF THE LAW OF CONTRACT:

 - to enable parties to make arrangements which are:

 - legally binding

 - legally enforceable

 - examples:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

FREEDOM OF CONTRACT:

 - general principle: - parties free:

 - to decide whether to enter into contract

 - to agree the terms of the contract

 - example:

 BUT: - significant exceptions:

 - example:

**2 WHAT IS THE LAW OF CONTRACT?**

 - 3 sources of contract law:

 - statute law: eg: Consumer Rights Act 2015

 - delegated legislation:

eg: Unfair Terms in Consumer Contracts Regulations 1999

 - common law: eg: Fisher v Bell (1961)

 NB: - consider: - relationship between contract law and EU law:

 - Consumer Rights Act 2015 implements

 EU Directives on sales of consumer goods

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NB: - distinguish:

 - general law of contract

 - [law relating to particular types of contract:

- eg: ]

**3 NATURE OF LIABILITY IN CONTRACT:**

 - liability in contract = civil liability

 - therefore:

1. - claims in contract are brought in civil courts:
* County Courts: District Judge / Circuit Judge
* High Court [QBD]: High Court Judge

 - consider: Access to Justice / Funding

2 - claim brought by Claimant against Defendant

3 - burden of proof: - on the Claimant – to prove his claim

4 - standard of proof: - on the balance of probabilities

 5 - remedies: - to compensate the innocent party

 - not to punish the wrongdoer

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**4** **FORMATION OF CONTRACTS:**

NB: - no general requirement that contract must be made in writing

- **4** necessary elements for a legally binding and enforceable contact:

 - **offer**:

 - example:

 - **acceptance**:

 - example:

 - **intention to create legal relations**:

 - example:

 - **consideration**:

 - example:

**5 CONTENTS OF A CONTRACT:**

 - a contract is made up of one or more **terms**:

 - example:

 - terms may be:

 - express: - expressly agreed between the parties

 and/or - implied: - not expressly agreed between parties

 - implied by law

 eg:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 - consider: - relative importance of terms:

 - terms may be: - conditions: - major terms of the contract

 - warranties: - minor terms of the contract

 - innominate: - importance decided only when breached

 COMMENT:

 Exclusion/exemption clauses:

 - terms which limit / exclude liability of one / both parties:

 - example:

**6 VITIATING FACTORS:**

 - a factor which is present before a contract is made:

 - which may affect the validity of the contract after it is made

 **2** vitiating factors:-

 - **misrepresentation**: - where one party makes a pre-contract false

 statement

 eg:

 - **economic duress**: - where one party makes a commercial threat

 against the other to induce them to enter into

 the contract

 eg:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**7 DISCHARGE OF CONTRACT:**

 - how a contract comes to an end:

 **3** ways to discharge a contract:

 1 - by full **performance**:

* both parties perform their obligations in full:

- example:

 2 - by **breach**:

* one party fails to perform their obligations:
* the other party may treat the contract as at an end

 - example:

 3 - by **frustration**:

* where there is a change in circumstances after the contract is made:
* which make it impossible to perform the contract

 - example:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**8 REMEDIES FOR BREACH OF CONTRACT:**

 - where one party is in breach of contract:

 - the party not in breach may claim a remedy:

 - **damages**: - financial compensation

 - calculated to put the party not in breach in the position they

 would have been in if the contract had been properly

 performed

- example:

- **specific performance**: - an order requiring party in [anticipatory] breach to

 carry out their positive obligations under the

 contract

- example:

 - **injunction**: - an order requiring party in breach to carry our their negative

 obligations under the contract

- example:

SP1 INTRODUCTION TO THE LAW OF CONTRACT PAPER 3

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**9 CONTRACT LAW AND MORALITY:**

 - consider: - relationship laws / morals:

1 - where two parties make an agreement:

 - is there a moral obligation to carry out the agreement?

 - is there a legal obligation to carry out the agreement?

 - example:

 2 - where one party fails to perform their contractual obligations

- does the other party have a moral right to a remedy?

 - does the other party have a legal right to a remedy?

 - example:

**10 CONTRACT LAW AND SOCIETY:**

- consider: - are parties to contracts always equal?

- does the law have a responsibility to protect the rights

 of an unequal party?

 - example:

**11 CONTRACT LAW AND JUSTICE:**

- consider: - are the rules on formation of contract law fair and just? parties

- does the law on exclusion clauses achieve justice? - Should the weaker contracting party be protected against the use of exclusions clauses? To ensure they are used fairly what legal principles are in place?

 - example:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_