**A LEVEL LAW: AQA PAPER 3**

**THE LAW OF CONTRACT**

**INTRODUCTION STUDY PACK 1**

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2 WHAT IS THE LAW OF CONTRACT?

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**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:

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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

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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

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**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:

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- 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:

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**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:

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**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:

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**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:

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