Introductory Reading

Law of Contract

PART I

Welcome to the Law of Contract on the GDL DL!

The purpose of this preliminary reading material is to introduce you to the structure of this GDL DL Contract Law module and apprise you of some of the expectations you can have of both the study weekends and the time in between. In addition, there is some subject specific pre-reading following this introduction which will give you an idea of what to expect in terms of the substantive matters on the module.

In terms of the learning and teaching format structure, you will be provided with a set of instructions containing reading assignments, guidance text, pre-seminar questions, and questions to be discussed during the seminar. The lectures will be loosely based upon the guidance text and the lectures will be accompanied by power point slides. Lectures are recorded and will be made available following each study weekend, as will summary talking points for the lecture slides.

For the seminars, all questions should be prepared as the pre-seminar questions provide a basis for the seminar discussion questions. The seminars will also be accompanied by power points which will provide talking points for our discussion. The seminars will be based around 2-4 problem questions that reflect what you can expect in terms of exam questions, as such, it is vital that each student is prepared to participate.

There will also be the occasional inter-weekend online lectures that will go over aspects of contract law that feed into the primary problem question areas. The information provided in these lectures and the accompanying reading are important as they provide a foundation for the primary examinable topics.

Appendix 2 contains a comprehensive list of the materials you will need to access at the various stages of the course. I recommend you use this list as a guide to ensure you prepare adequately for each study weekend and know what other valuable resources will be available to you for revision.

While the amount of material can seem daunting and even overwhelming at times, our sessions will be energetic and (hopefully) fun to keep you engaged in the learning process. I am in the classroom to facilitate your learning, not to just feed you the info!
Learning Resources

All students on the course are supplied with some materials in the law of contract in the form of a Text book, and a Case book. This is sufficient for most of your study purposes. It is, however, often beneficial to look at more than one book and you will find that the reading list (below) contains books suggested for further reading. You may take Blackstone’s Contract, Tort and Restitution Statutes into the examination with you. Please make a careful note of the regulations concerning the use of statute books in the examination. You will find them in the course handbook.

Recommended Reading List

Elizabeth MacDonald and Ruth Atkins, *Koffman & Macdonald’s Law of Contract* (9th edn, Oxford University Press 2018) (Compulsory Text Provided);


Robert Duxbury, *Nutshells Contract Law* (10th edn, Sweet & Maxwell 2015) (not provided, but worth purchasing as it gives fundamentals upon which the more detailed texts can build);


Always ensure that you refer to the most recent edition.
Study Weekends Content

Areas of Study (keep these topics in mind when engaging in exam revision)

The four study weekends will be broken up as follows:

Study Weekend 1: Fundamental Characteristics of Contractual Agreement (1)

- Contractual Agreement:
  - Offer (or invitations to treat);
  - Means of Acceptance;
  - Revocation; and
  - Intention to create legal relations;

Study Weekend 2: Enforceability, Terms vs Representations, and Misrepresentation

- Consideration & Promissory Estoppel;
- Misrepresentation;

Study Weekend 3: Terms Implied by Statute and When things go Wrong

- Contractual Terms and the Sale of Goods;
- Exclusion Clauses and Unfair Terms;
- Illegality and the Restraint of Trade;
- Frustration;

Study Weekend 4: Vitiating Factors and Remedies

- Mistake;
- Duress and Undue Influence;
- Remedies for Breach of Contract;
- Revision

We will consider the principles of contract law which are still to a large extent judge made. There are, therefore, a large number of cases to consider and precedent is a particularly important concept for the subject area. Appendix 1 has a case that you should read called *Fisher v Bell* 1 QB 394, 3 All ER 731, which is also relevant to the first study weekend. It is important to distinguish those cases which establish principles, and those which are illustrations of the principles.

We will also need to consider some legislation, both statutes and regulations. The legislation you need will be contained in the statute book provided, but you can also access UK legislation very easily online at the Government website. Lexis Library is also a good source of legislation, also providing relevant commentary. This is available through the Online Library.
Contract law is a subject you will come across every day. It impacts upon domestic and international trade, property transactions, employment relations, construction, consumer business, manufacturing, sporting and entertainment events and financial services. In other words, everything from buying a drink in the pub to chartering (i.e. hiring) a super-tanker by a multinational oil company.

Most people regard a contract as something in writing, and usually associate the word with a long and complex document only ever truly understood by lawyers. It is true that there have to be certain formalities for certain types of contract (a notable example being contracts for the sale of land) and they can be very long (the contract to rebuild Walsgrave Hospital in Coventry reputedly ran to 17,000 pages!). However, the vast majority of valid contracts are made orally with little or no formality whatsoever, including without even the need for a signature.

Essentially contract law is about the law relating to agreements and bargains.

How did contract law develop?

In order to put the subject in context, it may be helpful to provide a brief overview of the development of the law of contract. Contracts go back to the origins of man. When the first farmer exchanged a sheep for some of his neighbour’s grain they were making a contract. Laws governing contracts can be traced back to approximately 1750 BC. In England, the modern law of contract developed from the *lex mercatoria*, otherwise known as the 'law merchant' - i.e. the customs and rules established over the centuries by early traders and business people. It too dates back many centuries.

A particularly important period of development of the law of contract took place during the industrial revolution in the nineteenth century. The expansion in trade resulted in a vast increase in the number of contracts made. In addition to this increase in numbers, there was a widening in the types of persons making contracts. Formerly, landowners and merchants made contracts but, during this period, more and more people from all walks of life began to make contracts. The 'consumer society' was developing.

Freedom of Contract

The accepted economic theory of the nineteenth century was "*laissez-faire*", often translated as “hands-off” or “let (the market) alone” and encapsulates the idea that people should be free to make the bargains that they wish and that courts should not interfere in such bargains. This mirrors the economic stance that the market should be left to function naturally according to concepts of supply and demand. Freedom of contract therefore depends heavily on the autonomy of the individual. When persons of full age and capacity freely enter into a contract by which they intend to be bound, then they are strictly bound. A court would not interfere in that agreement if it was freely made. This approach is known as the 'doctrine of freedom of contract' and it forms the basis of modern English contract law. It was usefully described by a judge, Sir Eric Jessel, in these words:

"... if there is one thing more than another which public policy requires, it is that men of full age and competent understanding shall have the utmost liberty in..."
The courts will not, therefore, set aside a contract merely because one of the parties made a bad bargain. If a contract is made to sell a Rolls Royce for £5 it is legally binding provided it is freely entered into.

The doctrine can work fairly when a contract is made between parties of equal bargaining power, particularly between two businesses each trying to negotiate the best deal. Problems arise, however, when the parties are of unequal bargaining power. It often seems unfair to enforce the contract against the weaker party, particularly if that party had little or no choice other than to enter into the contract. The classic example is an ordinary consumer dealing with a large organisation, the more so where the organisation insists on using a ‘standard form contract’ - i.e. its own printed terms and conditions.

In everyday life an individual frequently has no choice but to accept the other party’s contractual terms. If, for example, there is no ‘on street’ parking in a city then a car park must be used. Most, if not all car parks display terms and conditions which are not negotiable and which must be accepted. Most large organisations, such as banks and insurance companies also insist on using their own standard form of contract and refuse to negotiate or vary them.

In these situations it is illusory to say that the contract is freely negotiated, but it is still a fact that, theoretically, the potential customer could refuse to enter the contract at all. The doctrine of freedom of contract can, however, operate unfairly.

Statute law

Under the common law, on which much of the law of contract is based, the courts were, or felt that they were, powerless to intervene against the doctrine of freedom of contract. In the twentieth century several attempts were made, particularly by the late Lord Denning, (a name with which you will become increasingly familiar) to do so. Parliament has intervened, by passing various statutes which provide protection for the weaker party. Important legislation that apply to contracts, namely the Sale of Goods Act 1979, the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015, considerably reduce the hardship of the doctrine of freedom of contract. Even so, it must be remembered, this doctrine continues to form an important basis of the law of contract, which is why the intention of the parties is an important focus when determining whether or not a contract will be enforceable.

THE IMPORTANCE OF CONTRACT LAW

The law of contract is a collective body of legal rules relating to legally binding agreements made between persons in society. It is of relevance and importance to us all. Most days we enter into a contract of some sort. Whenever we spend money, such as on food or clothes we make a legally binding contract. Obviously not all contracts are such simple types. Contracts dealing with the construction of ships or buildings are highly complex. Nevertheless, across the spectrum of contracts the underlying principles remain the same.

Contract law is of vital importance to business organisations. They perform most of their business by making contracts, whether it is with customers, suppliers or employees. Few organisations would want to enter into an agreement which could not be enforced by legal sanctions, even if only as the last resort.
To the law student, the study of the law of contract is also of great importance. This subject forms the basis for the understanding of many other legal subjects. Obvious subjects to mention are company law, employment law, commercial law, and consumer law, but there are many others. In whatever area of law your interests and future careers lie, a clear understanding of the law of contract is essential.

DEFINITION OF A CONTRACT

An Agreement

It is easy to state that the law of contract is based on agreements. However, it is not so easy to identify what is meant by agreement. Often it is stated that there must be a ‘meeting of minds’.

There are also a number of qualifications that must also be considered:

1. Objectivity

The courts generally adopt an objective view to decide whether there is an agreement and, if so, what are its terms. They are concerned with the objective appearance rather than the actual fact of agreement. If a person so conducts himself as to give the appearance that he has agreed, then he may be found by the court to have agreed even though he thought in his own mind he had not. They will look at what is said and done between the parties from the point of view of the reasonable person and try to decide what he would have thought was going on, establishing an objective intention.

2. A Voluntary Transaction

An agreement being a voluntary transaction suggests that parties are free to decide what is included in the agreement. In the nineteenth century judges took the view that people of full capacity should, therefore, in general be allowed to make what contracts they liked and on what terms they liked. Accordingly, the law would only interfere on specific grounds such as duress.

However, standard term contracts, common in modern commercial and consumer agreements, sometimes prove to be contrary to these fundamental characteristics. They often create and sustain an inequality of bargaining positions.

Standard term contracts are now very common and seek to protect the interests of the party who drafted it at the expense of the other. The contract is presented on a ‘take it or leave it’ basis with no opportunity to negotiate the terms. The strength of the bargaining position of the party who drafted it means that the weaker party has the terms imposed on him and thus is not really free to choose between agreeing to them and rejecting them.
CONTRACTUAL TERMS AND INFLUENCES ON UK CONTRACT LAW

Imposition of terms by law

Certain terms are implied by law into specific types of contracts, such as the sale of goods or landlord and tenant. The parties will, therefore, be bound by terms they did not expressly agree to and to which they may never have given any thought. Particularly relevant for this course will be those terms implied by the Sale of Goods Act 1979, Consumer Rights Act 2015 and Contracts (Rights of Third Parties) Act 1999, all of which will be dealt with in later study sessions.

Interrelationship of the Law of Contract and Tort

Sometimes the subjects of contract and tort are considered as two limbs of a wider subject - the law of obligations. There is, however, a division between obligations voluntarily assumed and those imposed by law. In contract the parties generally take on those obligations voluntarily and thus are free to decide whether to do so. In tort the obligations are imposed without agreement and are derived from standards of behaviour imposed by the law e.g. the duty to take reasonable care when driving a car.

These two subjects may overlap. For example, one set of facts may give rise to liabilities in contract and tort.

If there is such an overlap the HL decided in Henderson v Merrett Syndicates Ltd., [1994] 3 All ER 506 that a defendant can be liable in both contract and tort. This does not mean the claimant is entitled to recover twice for the same breach. It may be preferable to sue in contract rather than tort for a number of reasons.

Form of Contract

The general rule is that an agreement does not have to take a specific written form in order to be a binding contract. Often the contract will simply be oral. As it can be difficult to prove later what was said there are obviously practical advantages in putting a contract in writing even though there is no legal requirement to do so.

There are some types of contract which require certain formalities to be followed to make them enforceable. They fall into three groups:

- Contracts which must be made by deed, e.g. a conveyance of land. (A deed may also be used as a way of making a promise binding without the need for consideration from the other party.)
- Contracts which must be in writing, e.g. cheques, contracts for the sale of land, certain consumer credit agreements.
- Contracts which must be evidenced in writing, e.g. certain contracts of guarantee.

Enforcement of Contractual Obligations

Although we speak of the enforcement of contractual obligations the main remedy for breach of contract is compensation, or damages, for non-performance rather than compulsion of the performance promised in the contract.
Remedies are studied at the end of the course but it is the area that are often of most interest to clients. Generally, the injured party is seeking the payment of damages. One fundamental point needs to be made at this early stage. The courts could choose to put the injured party in the position as if the contract had never been made or they might choose to put him in the position as if contract had been properly performed. Generally, the courts take the latter approach. Therefore, the courts compensate the injured party not because he is worse off than before the contract was made, but because the other party has failed to make him better off.

**Limitation Periods**

It is important to note that lapse of time may render a contract unenforceable in a court of law. The Limitation Act 1980 provides:

- Actions on simple contracts (not made by deed) are barred after six years from the date upon which the claimant could first have brought his action. A cause of action accrues from the moment when a breach occurs, not from the date when the contract was made.
- Actions on contracts made by deed are barred after twelve years.
- Where the claimant’s claims include a claim for damages in respect of personal injuries the limitation period is three years.

**European Contract Law?**

The English law of contract is increasingly influenced by the European Union and the legal systems of its Member States because of the need for harmonisation in the development of a single market in the Community. An example is the **Consumer Protection from Unfair Trading Regulations 2008** which implement an EC Directive.

There has been some discussion about harmonising the law of contract in the member states of the EU. Although at the moment there is no general European law of contract a Common Frame of Reference has been proposed which will be a non-binding collection of principles of contract law. It will not, therefore, replace the law of member states but perhaps in the longer term may be an alternative system which parties to a contract could choose to apply to their contracts. European directives in the meantime continue to exert an increasing influence on English contract law especially in relation to consumer law. Of course, this aspect is subject to change in the event that Brexit dis-applies EU law from the UK legal system.

Your study of the law of contract, therefore, will be a mixture of the common law rules and statute. The common law has been influenced by the doctrine of freedom of contract, whilst the protection of the weaker party has been introduced by statute.
## Examples of Contractual Terms

### Your Order
On receipt of your order and subject to availability of the goods, we will debit your debit/credit card for the price. We will not debit your card until such time as the goods are ready to be despatched. Once we have received payment from you we will confirm that your order has been accepted by sending an email to you at the email address you provide in your order form. All orders for goods shall be deemed to be an offer by you, the buyer to purchase goods pursuant to these terms and conditions. Our acceptance of your order brings into existence a legally binding contract between us.

### Goods
All goods promoted for sale by us are of satisfactory quality and conform with the description on our website. We reserve the right to make any changes in the descriptions necessary to comply with legal requirements or changes in the product specification.

### Delivery
Where the goods are in stock on receipt of your order we will deliver within 30 days of your order. Otherwise, we will deliver the goods to you as soon as possible after we have received them and once we have accepted your order. Any dates quoted for delivery are estimated delivery times only. We are not responsible for any direct or indirect or consequential loss caused by late delivery or failure to deliver, except where the same results from our negligence.

### Liability
The limit of our liability to you is the exchange of the goods for products of equivalent value or the refund of the price. We will not be responsible to you to any greater extent and we are not responsible for any indirect or consequential loss which you may incur arising out of our failure to comply with these terms and conditions. Nothing in these terms and conditions is intended to exclude or limit our liability to you for any death or personal injury resulting from our negligence or to limit any rights you might have as a consumer under applicable local law or other statutory rights that may not be excluded. We shall have no liability to pay any money to you by way of compensation.

### Third party rights
A person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

### Non-disparagement
For every bad review of our services left on any website, you will be charged a maximum £100 per review.

### Immortal soul
By placing an order via this website, you agree to grant us a non-transferable option to claim, for now and for ever more, your immortal soul. Should we wish to exercise this option, you
agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from us or one of our duly authorised minions. We reserve the right to serve such notice in 6 (six) foot high letters of fire, however we can accept no liability for any loss or damage caused by such an act. If you a) do not believe you have an immortal soul, b) have already given it to another party, or c) do not wish to grant us such a licence, please click the link below to nullify this sub-clause and proceed with your transaction.

**SOME FINAL QUESTIONS WITH ANSWERS**

What is the basis of liability in contract law?

Essentially, English contract law is based on the theory that a contract is formally binding because something is given by both parties in exchange for the other’s promise – a bargain is made. Therefore when you go out for a drink, you promise to pay for the drink in return for the barman’s promise to serve it to you. If either expectation (of payment or service) is not realised there may be a breach of contract for which a remedy can be sought.

What are the functions of contract law?

A number of key functions have been identified:

- Contracts make transactions more secure. If trust is lacking between the parties, a system of legal rules to support agreements is necessary.
- Contracts serve to allocate risk, which is particularly important in commercial transactions. The parties to a contract want to know who will be responsible if things go wrong. They can do this in advance by allocating responsibility in the contract, in the confidence that the law will normally support that allocation.
- This leads to a further function, namely that contract law enforces a person’s word.

What will my study of contract law involve?

When you go into practice a significant part of your work will involve the interpretation of contracts themselves. Most of the cases you will read concern an actual bargain where some issue or issues are in dispute. It will become necessary for you to become familiar with interpreting contracts, usually in the form of lengthy written documents. However, you will only be able to do this when you have a sound basic knowledge of the legal principles that underpin most agreements.

The general principles of contract law are mainly contained in judicial decisions. Case law is still the most important source of contract law. It will be important, therefore, that you become familiar with reading and researching case reports. There is on page six a copy of a case from a law report which you should read and which will be discussed in your first small group session.

The second important source of contract law principles is contained in statute. You will be provided with a statute book when you join the course and given plenty of opportunity to analyse what a statute means and how it applies to a given set of facts.
TERMINOLOGY

Terms used when studying contract law will not necessarily be new to you but they may be everyday words which have a specific meaning in a contractual context. Some terms which need to be understood at this early stage are:

_Bilateral Contract_

Most contracts are bilateral. Each party takes on an obligation, usually by promising the other something, e.g. a promise to sell something is exchanged for the promise to pay for it. A promise is exchanged for a promise.

_Unilateral Contract_

A unilateral contract arises where one party promises to do something (often to pay money) if someone else does something e.g. to pay a reward for the return of a lost dog. This is unilateral because one party takes on an obligation i.e. to pay a reward but the other party does not promise to look for the dog. A promise is exchanged for an act.

_Consideration_

Consideration is the price paid for the other party’s obligation. It may be the performance of an act or a promise to perform. Generally speaking, in English law something must be given in exchange for the other party’s act or promise for there to be a binding contract.

_Void Contract_

A void contract has no legal effect at all and in reality the expression is a contradiction in terms. However, its usage is now well accepted in the law of contract. It is as if no contract had ever been made. Such a contract is often described as void ab initio (void from the outset).

_Voidable Contract_

A voidable contract is legally binding, but one of the parties has the option to set it aside (avoid it) if he so chooses. It remains a valid contract until that party takes steps to set it aside.
WHAT A CONTRACT LAW QUESTION LOOKS LIKE

An Exercise to Focus the Mind on the Task Ahead:

Consider the following:

Eric oversleeps. He jumps out of bed and rushes downstairs to get some breakfast. There is no milk left in the fridge so he collects the bottle left on his doorstep by his milkman. However, it was delivered hours ago and on this hot morning it has already gone sour. He dresses and heads off to work in his car stopping at the corner shop. He sees a number of breakfast cereal bars in the shop window and goes in to buy one but the shopkeeper refuses to sell him one, as he doesn’t like the tie he is wearing. In his hurry and increasingly bad mood Eric forgets to pick up his work colleague despite the fact he promised to give him a lift in to work. He tries to ring his colleague from his car on his new hands free mobile ‘phone but due to a manufacturing fault he cannot get through. When he finally gets to work he is called into his boss’s office and told that he is sacked and that he must collect his belongings and leave the premises at once. His contract of employment contains a clause preventing him from accepting a job with any rival firm or company.

Advise Eric.

Below are some questions which cover the topics you will consider in your study of contract law.

Do not expect to know the answers to these questions which we have posed. The questions set out are designed to cause you to think of the many areas that contract law covers and the diverse aspects that you will have to consider as you study. You will meet these same sorts of issues during the course. Also, be prepared to discover that there are often no “absolutely right” answers to some legal problems; it will be a matter for you to justify your view by cogent, logical and persuasive arguments. This is how you will earn a living as a lawyer!

1. How many contracts can you identify?
2. What type of contract was the contract for the delivery of milk?
3. When do you think the contract for the milk was formed?
4. Do you think Eric and the milkman intended to enter into a legal relationship about a pint of milk?
5. What do you think Eric promised in return for the delivery of the milk?
6. Is it enough for the shop to put a cereal bar on display and for Eric to say he wants one to constitute a binding contract (see the case referred to below)?
7. Can there be a contract for the lift into work or would his colleague need to promise something in return?
8. What type of contract was the contract for the mobile ‘phone?

9. Do you think it would make a difference to the contractual position if Eric had bought the mobile ‘phone for his daughter and it did not work?

10. Do you think Eric and the shop assistant who sold it to him expressly agreed that the ‘phone would work properly or do you think they just assumed it would?

11. If there was no express promise that it would work properly does Eric have any remedy if it does not work?

12. Do you think it makes any difference to any claim in contract that Eric may have if it was not the seller’s fault the mobile ‘phone did not work but the manufacturer’s fault?

13. Would it make any difference if on the receipt for the ‘phone there was a notice saying “the seller excludes all liability for any defect in the goods unless notified within 7 days of sale”?

14. Do you think that it would make a difference to the contractual position if Eric were mistaken about the model of the mobile ‘phone that he was buying?

15. Do you think that it would matter to any claim Eric may have if the shop assistant had told Eric that the mobile was a “state of the art” model which would never fail?

16. Do you think that it would make a difference to the contractual position if the seller had held a gun to Eric’s head and made him buy that model?

17. Do you think it would make any difference to the contractual position if after he had bought the mobile ‘phone the ‘phone company’s licence were revoked by the Government so that Eric could no longer use it even if it had no fault?

18. Assuming that there was a breach of a term of the contract for the sale of the mobile ‘phone do you think Eric should only be able to get his money back or should he also receive compensation for the inconvenience he has suffered?

19. If Eric has been wrongly dismissed from his job do you think that a monetary payment is adequate compensation or should Eric be able to get his job back?

20. Do you think that Eric should be prevented from obtaining employment with a rival firm or company?
CASE ANALYSIS

In order to give you an idea of the sort of case law analysis and application that you will be required to do, when considering question 6 above (about the display of the cereal bar) read the decision in Fisher v Bell, [1961] 1 QB 394 over the page. DO NOT concern yourself with the footnotes or the other cases or the statute cited (the latter has been repealed). Please just consider:

- How the judges interpreted the facts;
- How they applied the legal principles; and
- How the case might be relevant to the answer to question six above.

You will meet this case again shortly after the course starts.

Finally, we look forward to your joining the course and to sharing with you the exploration of the law of contract.

Appendix I

Fisher v Bell

Divisional Court
10 November 1960

[1960] 3 W.L.R. 919
[1961] 1 Q.B. 394

Lord Parker C.J., Ashworth and Elwes JJ.
1960 Nov. 10.

Crime—Offensive weapon—"Offers for sale"—"Flick knife" displayed in shop window with ticket bearing description and price—Whether an offence committed—Restriction of Offensive Weapons Act, 1959 (7 & 8 Eliz. 2, c. 37), s. 1 (1).

Statute—Construction—Omission—Interpretation of words used—No power in court to fill in gaps.

A shopkeeper displayed in his shop window a knife of the type commonly known as a "flick knife" with a ticket behind it bearing the words "Ejector knife - 4s." An information was preferred against him by the police alleging that he had offered the knife for sale contrary to section 1 (1) of the Restriction of Offensive Weapons Act, 1959, but the justices concluded that no offence had been committed under the section and dismissed the information. On appeal by the prosecutor:-

Held, that in the absence of any definition in the Act extending the meaning of "offer for sale," that term must be given the meaning attributed to it in the ordinary law of contract, and as thereunder the display of goods in a shop window with a price ticket attached was merely an invitation to treat and not an offer for sale the acceptance of which constituted a contract, the justices had correctly concluded that no offence had been committed.

*Per* Lord Parker C.J. At first sight it seems absurd that knives of this sort cannot be manufactured, sold, hired, lent or given, but can apparently be displayed in shop windows; but even if this is a casus omissus it is not for the court to supply the omission.

CASE STATED by Bristol justices.

On December 14, 1959, an information was preferred by Chief Inspector George Fisher, of the Bristol Constabulary, against James Charles Bell, the defendant, alleging that the defendant, on October 26, 1959, at his premises in The Arcade, Broadmead, Bristol, unlawfully did offer for sale a knife which had a blade which opened automatically by hand pressure applied to a device attached to the handle of the knife (commonly referred to as a "flick knife") contrary to section 1 of the Restriction of Offensive Weapons Act, 1959.

The justices heard the information on February 3, 1960, and found the following facts: The defendant was the occupier of a shop and premises situate at 15-16, The Arcade, Broadmead, at which premises he carried on business as a retail shopkeeper trading under the name of Bell's Music Shop. At 3.15 p.m. on October 26, 1959, Police Constable John Kingston saw displayed in the window of the shop amongst other articles a knife, behind which was a ticket upon which the words "Ejector knife - 4s." were printed. The words referred to the knife in question. The police constable entered the shop, saw the defendant, and said he had reason to believe it was a flick knife displayed in the shop window. He asked if he might examine the knife. The defendant removed the knife from the window and said he had had other policemen in there about the knives. The constable examined the knife and pursuant to the invitation of the defendant took it away from the premises for examination by a superintendent of police. Later the same day he returned to the defendant's premises and informed him that in his opinion the knife was a flick knife. The defendant said "Why do manufacturers still bring them round for us to sell?" The constable informed the defendant that he would be reported for offering for sale a flick knife and the defendant replied "Fair enough."

It was contended by the prosecutor that the defendant by his actions in displaying the knife in the window with the ticket behind it and referring to it, such actions being carried out with the object of attracting the attention of a buyer of such knife and selling the same to such buyer, had on the day in question offered the knife for sale within the meaning of the Restriction of Offensive Weapons Act, 1959.

It was contended by the defendant that on the facts he at no time offered the knife for sale within the meaning of the Act.

The justices were of opinion that in the absence of a definition in the Act of 1959, the words "offer for sale" ought to be construed as they were in the law of contract, so that, in this instance, the defendant's action was but an invitation to treat, and not a firm offer which needed but a customer's acceptance to make a binding contract of sale. They accordingly dismissed the information. The prosecutor appealed.
J. A. Cox for the prosecutor. The sole question is whether this knife exhibited in the shop window with the price ticket behind it was an offer for sale within the meaning of section 1 (1) of the Restriction of Offensive Weapons Act, 1959. Having regard to the context in which the words are found and the mischief at which the Act is aimed, the words "offer for sale" should be construed to cover circumstances such as the present, although it is conceded that in the ordinary law of contract the exhibition of goods in a shop window amounts to no more than an invitation to treat. Support for that submission is to be found in Keating v. Horwood, where, in a prosecution under the Sale of Food Order, 1921, which prohibited the offering or exposing for sale of under-weight bread, Lord Hewart C.J. held that a quantity of bread placed in a baker's motor-car and taken on a delivery round was both offered and exposed for sale. See also Wiles v. Maddison, where there was a prosecution under the Meat (Maximum Retail Prices) Order, 1940. Reliance is placed on the words of Viscount Caldecote C.J. to the effect that a person who put goods in his shop window to be sold at an excessive price could be convicted of making an offer at too high a price. That case also shows that for the purpose of provisions of this kind an offer can exist without its actually being communicated to the offeree. This knife in the shop window was offered for sale. It may have been a conditional offer, but if a person entered the shop and asked why it was in the window the answer must have been: It is for sale.

[LORD PARKER C.J. In Keating v. Horwood two members of the court are in your favour, but this point was not argued.]

The original authority for the proposition that under the law of contract putting something in a shop window is merely an invitation to treat is the old case of Timothy v. Simpson, which is cited in Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd. The latter case is not of assistance as it turned on the provisions of an Act which was concerned solely with completed sales as opposed to offers for sale. Phillips v. Dalziel, which was concerned with emergency legislation relating to the sale of footwear, turned on a statutory definition, but the facts there were similar to those in Wiles v. Maddison. In both cases there was an intention to sell goods later. Had the court not had to consider a statutory definition in Phillips v. Dalziel, it would not have been surprising if it had decided that the transaction in that case had reached the stage reached in Wiles v. Maddison. Once the legislature embarks on a definition the expression unius rule applies. Where there is no definition Wiles v. Maddison is authority for the proposition that in legislation which is aimed at a particular mischief it is permissible to construe words more widely than they can be construed in the general law of contract. The Act of 1959 is clearly intended to effect a complete ban on flick knives, and therefore the words "offer for sale" in section 1 (1) should be given a meaning wide enough to prevent such goods being placed in shop windows with price tickets behind them.

P. Chadd for the defendant. The Act upon its face prohibits the manufacture, disposition and marketing of flick knives, but it is not aimed against possession. Mere possession of such a knife, even if it is in a shop window, is not an offence within the Act. The expression "offer for sale" is not defined by the Act and therefore it can only be interpreted by reference to the general law. Displaying goods in a shop window does not amount to an offer for sale; it is merely an invitation to treat: Timothy v. Simpson. Where Parliament wishes to extend the ordinary meaning of "offer for sale" it usually adopts a standard form: see Prices of Goods Act, 1939, s. 20, and Goods and Services (Price Control) Act, 1941, s. 20 (4). It would have
been simple for the draftsman to have included a definition of "offer for sale" in the Act of 1959, but he has not done so. The words of section 1 are clear. "Exposed for sale" is not an offence under the section. This is not an omission or a mistake on the part of Parliament, and, even if it were, it would not be for this court to read words into the Act to perfect it: Bristol Guardians v. Bristol Waterworks Co. 12

[LORD PARKER C.J. There is a stronger statement of the principle by Lord Simonds in Magor and St. Mellons Rural District Council v. Newport Corporation. 15]

Yes; it is not necessary to read words into the Act in order to make it effective. In a civil case no one would contend that it was. Still less should such a course be adopted in a criminal case. In a penal statute the court should not do violence to the words of a statute in order to bring people within it.

As to Keating v. Horwood, 12 there was there an obvious exposure for sale, so that it was unnecessary for the court to decide whether there was an offer for sale or not. No authorities on this point were cited in that case, nor was this point argued in Wiles v. Maddison, 18 the whole basis of which was that the prosecution only proved an intention to commit an offence the following day. It would be wrong to attach importance to the incidental words of Viscount Caldecote C.J. 19 on which the appellant relies.

Cox in reply. The Act of 1959 may not be aimed at possession, but it is aimed at preventing people from getting possession of flick knives. Its object is to prevent trafficking in such articles. The meaning of the words "offer for sale" in this particular statute must be drawn from the four corners of the statute itself, and if, interpreting the statute as a whole, and bearing in mind its object, the words are seen to be given a wider meaning than they would bear in the law of contract, that is the meaning that should be given to them.

The definitions in the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941, cover matters so widely different, e.g., publishing a price list, making a quotation, that, were it not for the definitions, they could not amount in law to an offer for sale and so would have fallen outside the statutes, but that is no reason for saying that where there is no definition section the words must necessarily be construed as in the law of contract. It is not suggested that words should be read into the Act. The intention of the Act is clear and the court should give the words the meaning they ought to bear having regard to the object of the Act.

LORD PARKER C.J. read section 1 (1) of the Restriction of Offensive Weapons Act, 1959, stated the facts and continued:

The sole question is whether the exhibition of that knife in the window with the ticket constituted an offer for sale within the statute. I confess that I think most lay people and, indeed, I myself when I first read the papers, would be inclined to the view that to say that if a knife was displayed in a window like that with a price attached to it was not offering it for sale was just nonsense. In ordinary language it is there inviting people to buy it, and it is for sale; but any statute must of course be looked at in the light of the general law of the country. Parliament in its wisdom in passing an Act must be taken to know the general law. It is
perfectly clear that according to the ordinary law of contract the display of an article with a price on it in a shop window is merely an invitation to treat. It is in no sense an offer for sale the acceptance of which constitutes a contract. That is clearly the general law of the country. Not only is that so, but it is to be observed that in many statutes and orders which prohibit selling and offering for sale of goods it is very common when it is so desired to insert the words "offering or exposing for sale." "exposing for sale" being clearly words which would cover the display of goods in a shop window. Not only that, but it appears that under several statutes - we have been referred in particular to the Prices of Goods Act, 1939, and the Goods and Services (Price Control) Act, 1941 - Parliament, when it desires to enlarge the ordinary meaning of those words, includes a definition section enlarging the ordinary meaning of "offer for sale" to cover other matters including, be it observed, exposure of goods for sale with the price attached.

In those circumstances I am driven to the conclusion, though I confess reluctantly, that no offence was here committed. At first sight it sounds absurd that knives of this sort cannot be manufactured, sold, hired, lent, or given, but apparently they can be displayed in shop windows; but even if this - and I am by no means saying it is - is a casus omissus it is not for this court to supply the omission. I am mindful of the strong words of Lord Simonds in Magor and St. Mellons Rural District Council v. Newport Corporation. In that case one of the Lords Justices in the Court of Appeal had, in effect, said that the court having discovered the supposed intention of Parliament must proceed to fill in the gaps - what the Legislature has not written the court must write - and in answer to that contention Lord Simonds in his speech said: "It appears to me to be a naked usurpation of the legislative function under the thin disguise of interpretation." Approaching this matter apart from authority, I find it quite impossible to say that an exhibition of goods in a shop window is itself an offer for sale. We were, however, referred to several cases, one of which is Keating v. Horwood, a decision of this court. There, a baker's van was being driven on its rounds. There was bread in it that had been ordered and bread in it that was for sale, and it was found that that bread was under weight contrary to the Sale of Food Order, 1921. That order was an order of the sort to which I have referred already which prohibited the offering or exposing for sale. In giving his judgment, Lord Hewart C.J. said this: "The question is whether on the facts there were, (1) an offering, and (2) an exposure, for sale. In my opinion, there were both." Avory J. said: "I agree and have nothing to add." Shearman J., however, said: "I am of the same opinion. I am quite clear that this bread was exposed for sale, but have had some doubt whether it can be said to have been offered for sale until a particular loaf was tendered to a particular customer." There are three matters to observe on that case. The first is that the order plainly contained the words "expose for sale," and on any view there was an exposing for sale. Therefore the question whether there was an offer for sale was unnecessary for decision. Secondly, the principles of general contract law were never referred to, and thirdly, albeit all part of the second ground. The respondent was not represented and there was in fact no argument. I cannot take that as an authority for the proposition that the display here in a shop window was an offer for sale.

The other case to which I should refer is Wiles v. Maddison. I find it unnecessary to go through the facts of that case, which was a very different case and where all that was proved was an intention to commit an offence the next day, but in the course of his judgment Viscount Caldecote C.J. said: "A person might, for instance, be convicted of making an offer of an article of food at too high a price by putting it in his shop window to be sold at an excessive price, although there would be no evidence of anybody having passed the shop window or having seen the offer or the exposure of the article for sale at that price."
be it observed, that was a case where under the Meat (Maximum Retail Prices) Order, 1940, the words were "No person shall sell or offer or expose for sale or buy or offer to buy." Although the Lord Chief Justice does refer to the making of an offer by putting it in the shop window, before the sentence is closed he has in fact turned the phrase to one of exposing the article. I cannot get any assistance in favour of the prosecutor from that passage. Accordingly, I have come to the conclusion in this case that the justices were right, and this appeal must be dismissed.

ASHWORTH J.
I agree.

ELWES J.
I also agree.

Representation


Appeal dismissed with costs. (E. M. W.)

1. Restriction of Offensive Weapons Act, 1959, s. 1 (1) : "Any person who manufactures, sells or hires or offers for sale or hire, or lends or gives to any other person - (a) any knife which has a blade which opens automatically by hand pressure applied to a button, spring or other device in or attached to the handle of the knife, sometimes known as a 'flick knife' or 'flick gun'; ... shall be guilty of an offence and shall be liable on summary conviction in the case of a first offence to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both such imprisonment and fine, ..."
2. (1926) 28 Cox C.C. 198, D.C.
3. Ibid. 201.
4. [1943] 1 All E.R. 315, D.C.
5. Ibid. 317.
6. 28 Cox C.C. 198.
7. (1834) 6 C. & P. 499.
14. 6 C. & P. 499.
15. [1914] A.C. 379, H.L.
17. 28 Cox C.C. 198.
19. Ibid. 317.
23. (1926) 28 Cox C.C. 198, D.C.
24. Ibid. 201.
25. Ibid.
26. Ibid.
27. [1943] W.N. 40; [1943] 1 All E.R. 315, D.C.

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Appendix 2: Timeline of Materials for Preparation and Revision

Before preparing for Weekend 1:

1. GDL DL Law of Contract Introductory Reading

Preparation for Weekend 1

3. Read or browse the Guidance Text available in the Study Weekend 1 section of the Contents of the contract Law NOW Learning Room.
4. Read the Seminar Instructions (available in the learning room)
6. Attempt all the questions set out in the Seminar Instructions and be prepared to discuss the Seminar Discussion Questions.

After Study Weekend 1

7. Review the Lecture Slides for Study Weekend 1.
8. Review the Seminar Slides and the notes provided.
9. Review the Question Answering Framework.
10. Attempt the practice question and submit by the stated deadline to the Dropbox.
11. Indicative Answer will be available after the deadline.

Preparation for Weekend 2

12. View the inter-weekend lecture(s) available in Study Weekend 2 contents.
13. Read the Guidance Text available in the Study Weekend 2 section of the Contents of the contract Law NOW Learning Room.
14. Read the Seminar Instructions (available in the learning room)
15. Do the assigned reading set out in the seminar instructions.
16. Attempt all the questions set out in the Seminar Instructions and be prepared to discuss the Seminar Discussion Questions.

After Study Weekend 2

17. Review the Lecture Slides for Study Weekend 2.
18. Review the Seminar Slides and the notes provided.
19. Review the Question Answering Frameworks.
20. Attempt the practice question and submit by the stated deadline to the Dropbox.
21. Indicative Answers will be available after the deadline.

Preparation for Weekend 3

22. View the inter-weekend lecture(s) available in Study Weekend 3 contents.
23. Read or browse the Guidance Text available in the Study Weekend 3 section of the
22

Contents of the contract Law NOW Learning Room.
24. Read the Seminar Instructions for Study Weekend 3 (available in the learning room)
25. Do the assigned reading set out in the Seminar Instructions.
26. Attempt all the questions set out in the Seminar Instructions and be prepared to
discuss the Seminar Discussion Questions.

After Study Weekend 3

27. Review the Lecture Slides for Study Weekend 3 (these will contain some video or
audio summaries to help your revision).
28. Review the Seminar Slides and the notes provided.
29. Review Question Answering Frameworks.
30. Attempt the practice question and submit by the stated deadline to the Dropbox.
31. Indicative Answers will be available after the deadline.

Preparation for Study Weekend 4

32. View the inter-weekend lecture(s) available in Study Weekend 4 contents.
33. Read or browse the Guidance Text available in the Study Weekend 4 section of the
Contents of the contract Law NOW Learning Room.
34. Read the Seminar Instructions for Study Weekend 4 (available in the learning room)
35. Do the assigned reading set out in the Seminar Instructions.
36. Attempt all the questions set out in the Seminar Instructions and be prepared to
discuss the Seminar Discussion Questions.

After Study Weekend 4

37. Review the Lecture Slides for Study Weekend 4 (these will contain some video or
audio summaries to help your revision).
38. Review the Seminar Slides and the notes provided.
40. Attempt the practice question and submit by the stated deadline to the Dropbox.
41. Indicative Answers will be available after the deadline.