



## Outline of the Law of Contract

The Law of Contract involves the rules relating to contractual relationships, which determine whether a promise or set of promises made between two or more parties can be enforced in law.

Contract is a very important area of law. Why is it so important? Well, although it is unlikely, you could very well go through your life without coming into direct contact with, say, Criminal Law, Matrimonial Law or even Tort. However, it would be virtually impossible to go through even one day without entering into some sort of contractual relationship with another individual or entity.

Every time we buy a bar of chocolate (or anything else for that matter), get on a bus or train or taxi, book a holiday, order something out of a catalogue, park our car in a car park, or take a book out of the library, we enter into a contractual relationship. We do it so often that it is purely automatic and we do not give it a second thought. It is only when something goes wrong that we have to consider what our contractual rights or responsibilities are.

The examples given above are very simple examples of contractual relationships. Other contracts could be very complicated and involved – for example, buying a house or a new car, entering into a business partnership, or negotiating a loan from the bank. In business particularly, some contracts are both complicated and extremely important. The majority of disputes that come to the courts by way of litigation involve damage that has resulted from a breach of contract.

## Definition of a Contract

A contract is a legally enforceable agreement.

It follows from this that there is, therefore, a difference between an agreement and a contract. To illustrate: A wife may say to her husband, "The hinge on the garden gate has come loose. Would you fix it?" Hubby, being the dutiful spouse that he is, says, "Certainly, my love, I'll do it this afternoon." Here we clearly have an agreement. Husband agrees that he will fix the garden gate that afternoon. Unfortunately, around lunchtime, a friend of the husband calls round and they both go off to the pub, and the gate doesn't get fixed. Clearly, whatever else she may do, the wife is not going to sue him in the courts for not doing what he promised to do. The agreement was not a contract because clearly it was not intended that it should be *legally* enforceable.

We enter into these kinds of agreements all the time. We might agree to go to the cinema with a friend, or to meet them for lunch or what have you. If we fail to turn up, the friend is not going to sue us – or if they did, they would not get very far because such agreements clearly are not intended to be legally enforceable.

So, whereas all contracts are agreements, not all agreements are contracts! Contracts are those agreements that the courts will enforce.

How do we know exactly what does and what does not constitute an agreement which the courts will enforce? That is easy! In order to constitute a contract, an agreement must have seven specific ingredients, which are known as **the seven requirements of a valid contract**. If even one of these seven ingredients is missing, then the agreement is not a legally binding one and cannot constitute a contract.

Before we go on to look at these seven ingredients, however, we must first familiarise ourselves with basic types of contracts and some of the terminology of contracts.



## Outline of the Law of Tort

The Law of Tort involves the rules which impose legal obligations between individuals and which prescribe remedies for those who suffer as a result of a breach of those obligations, causing loss or damage to others. Examples of Torts are negligence (causing others harm or damage through one's actions), nuisance (interfering with another's enjoyment of their property) and trespass (entering another person's land without permission).

The two areas of law studied in this unit are important because they relate to the most common causes of action in connection with civil litigation. Most Civil Court actions are based upon claims for breach of contract or claims for damages as a result of the Torts of negligence or nuisance.

An understanding of these laws will enable the Litigation Secretary to know not only what she or he is doing, but why it is being done and what will be the outcome of it all.

You will remember that the law is basically a set of rules which are designed to regulate the conduct of society within a State and which are enforceable by the State. The Law of Tort comes within those legal rules that require people to be responsible for their own actions and, if such actions should harm others, to compensate them for such harmful actions. We call these "civil wrongs" (as opposed to criminal wrongs).

There are two types of civil wrongs, and we have already looked at the first of these, i.e. those arising from a breach of contract. The second type of civil wrong arises from the breach of a duty fixed by law and owed to people generally, and is called a "Tort".

Like a breach of contract, the breach of a legal duty is remedied by a civil action. The damages sought would be unliquidated damages, i.e. fixed by the court and not ascertainable in advance. For example,

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if someone were to sue you for damages for personal injury as a result of your negligent driving, having suffered a broken leg, a broken arm, and considerable pain and discomfort, it would be impossible for that person to accurately fix what that would be worth in terms of money (damages). That would be for the court to determine. There are also additional and alternative remedies.

The word Tort is an unusual one and conveys little meaning to the layperson. It has two root sources. One is from Norman French, meaning “wrong”, which in turn springs from the Latin tortus, meaning “twisted” or “wrung”.

A Tort signifies a wrong recognised by law. It can be differentiated from a “crime” (which is also a wrong in law) as follows:

## CRIME

- Part of Public Law
- A wrong against the State  
(*or society as a whole*)
- Actionable by the State

## TORT

- Part of Civil (*or Private*) Law
- A wrong against individuals
- Actionable by the person wronged

This is a preview of our course materials. For full access, enrol through our website [here](#).

## Coursework Sample

### Assignment - Tort

Emily decided to plant a row of sunflowers along her property boundary. Her neighbour, Alex, owns a tall and overhanging eucalyptus tree on his adjacent property. Over time, the tree's branches extended over Emily's garden, blocking sunlight to her sunflowers and causing them to wither. Additionally, leaves from the tree frequently fell into her garden, clogging her water feature and causing a buildup of algae.

Emily approached Alex, asking him to trim the tree branches and remove the leaves, but he refused, claiming he is under no obligation to do so. Emily now wishes to take legal action against Alex.

Advise Emily on her legal position in tort law. In your answer, explain the relevant principles of nuisance and trespass, and discuss whether Alex can be held liable for the issues caused by his tree.

**These subjects include one assignment each. Guidance is provided on how to write assignments.**

**A multiple-choice achievement test is also included to assess overall knowledge and understanding.**