

Unit 21: Aspects of Contract and Business Law

Unit code:	F/502/5452
QCF Level 3:	BTEC National
Credit value:	10
Guided learning hours:	60

● Aim and purpose

The aim of this unit is to introduce learners to the operation of the law of contract as it applies to businesses. Learners will apply the law to business and consumer situations and consider the meaning and effect of standard form contracts.

● Unit introduction

A business can only make money legitimately by making contracts with other businesses and customers. Businesses want to make the terms of these contracts the most favourable to themselves. All those involved in a contract need to know the exact terms on which it is based so that their rights and obligations are clearly understood and appropriate action can be taken if the contract is not implemented satisfactorily. Many businesses try to minimise their responsibilities under a contract, and the law attempts to balance the customer's interests and gives consumers, in particular, rights in relation to business sellers and service providers.

Learners will consider rules for the formation of contracts and develop an understanding of the legal effect of each stage in negotiating a contract, up to and including the final agreement. The law on misrepresentation and the terms in contracts are explored. It is central to the unit that learners understand the meaning of express and implied terms in a contract. They will examine a contract or contracts to consider the use of key terms. For example, terms with respect to payment can be analysed and put into the context of implied terms found in legislation and the remedies available for failure to honour the terms of a contract.

Exclusion clauses that attempt to remove all or some liability for one party's breach of contract are a common part of written contracts, yet these terms often have no legal effect. The law is concerned to balance freedom of contract with protection of the weaker party (usually a consumer) and this can be evaluated as part of the overall contract.

Learners will also consider the statutory consumer protection laws in relation to contracts for the sale and supply of goods and services, both face to face and at a distance. Learners will analyse the terms of contracts so as to understand the rights and responsibilities that arise from the contract and consider the overall effect of the contract and the remedies that are available.

● Learning outcomes

On completion of this unit a learner should:

- 1 Understand the legal requirements for a valid contract
- 2 Understand the meaning and effect of terms in a standard form contract
- 3 Understand the impact of statutory consumer protection on the parties to a contract
- 4 Know the remedies available to the parties to a contract.

Unit content

1 Understand the legal requirements for a valid contract

Contracts: definition; types; verbal, written, standard form; offers – distinguishing invitations to treat; counter-offers; communication of offers; acceptance; the battle of the forms; consideration and the Contracts (Rights of Third Parties) Act 1999; application of requirements

Factors which invalidate/vitiate: misrepresentation

2 Understand the meaning and effect of terms in a standard form contract

Sale of goods: definitions of goods; implied terms for title, description, fitness, satisfactory quality; sample under Sale of Goods Act 1979 (as amended)

Supply of goods and services: definitions; implied terms for supply of goods and services, work and materials; implied terms for hire of goods under Supply of Goods and Services Act 1982

3 Understand the impact of statutory consumer protection on the parties to a contract

Types of term: express, implied; distinction between express and implied

Impact of contractual terms: time for performance and rejection of goods; price variation; payment terms; quality and quantity of goods delivered; reservation of title; exclusion clauses; Standard form contracts

Impact of statutes on common contractual terms: up-to-date legislation eg Unfair Contract Terms Act 1977, Unfair Terms in Consumer Contract Regulations 1994, the Consumer Protection (Distance Selling) Regulations 2000 (as amended); the Electronic Commerce (EC Directive) Regulations 2002

4 Know the remedies available to the parties to a contract

Remedies: damages; liquidated and unliquidated; mitigation of loss; rejection; lien, resale; reservation of title; injunctions; specific performance

Application of remedies: courts; time limits

Assessment and grading criteria

In order to pass this unit, the evidence that the learner presents for assessment needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria for a pass grade describe the level of achievement required to pass this unit.

Assessment and grading criteria		
To achieve a pass grade the evidence must show that the learner is able to:	To achieve a merit grade the evidence must show that, in addition to the pass criteria, the learner is able to:	To achieve a distinction grade the evidence must show that, in addition to the pass and merit criteria, the learner is able to:
P1 identify the legal criteria for offer and acceptance in a valid contract [IE]	M1 analyse the impact of the requirements for a valid contract in a given situation	
P2 explain the law in relation to the formation of a contract in a given situation		
P3 describe the law with respect to misrepresentation in a given situation		
P4 describe the meaning of terms in a standard form contract		D1 evaluate the effectiveness of terms in a given contract
P5 explain the effect of terms in a contract [SM, RL]		
P6 explain the law with respect to consumer protection in given situations	M2 analyse how consumers are protected in the event of breach of contract for the supply/sale of goods or services	D2 evaluate the statutory protection given to a consumer in their dealings with a business and the remedies available.
P7 describe the remedies available for breach of contract. [IE]	M3 analyse the remedies available to a business provider in the event of breach of contract for the supply of goods or services.	

PLTS: This summary references where applicable, in the square brackets, the elements of the personal, learning and thinking skills applicable in the pass criteria. It identifies opportunities for learners to demonstrate effective application of the referenced elements of the skills.

Key	IE – independent enquirers	RL – reflective learners	SM – self-managers
	CT – creative thinkers	TW – team workers	EP – effective participators

Essential guidance for tutors

Delivery

This unit offers learners the opportunity to understand the impact of contract law on business. The aim is to make learners aware of how contracts are formed and the rights and remedies that flow from the contract. Some law needs to be studied from a technical viewpoint. Offer and acceptance can be examined through cases, extracting the way in which distinctions between invitation, offer and counter offer are made and applying the rules to everyday business situations. This will lead to a discussion of the battle of the forms, and learners can consider the implications of this for the businesses involved.

Formation of a contract leads to an investigation of the power of people to make contracts on behalf of businesses or others. This does not need a detailed examination of the law of agency, but makes the link between employees and the contracts they make on behalf of their employers. Similarly, the law with respect to the rights of people who are not a party to the contract needs to be examined.

Finally on formation, the effect of pre-contractual discussions and data should be understood. This links to the law on misrepresentation and the introduction of consumer protection through the criminal sanctions under the law on trade descriptions. Trading standards staff may be willing to spend time outlining their role to learners, and there is some useful material about their role on the internet.

The negotiations leading to the formation of the contract will have established the terms of the contract. This needs to be examined in the context of real contracts used by businesses. Nearly all businesses that have an internet presence publish their standard conditions of trading. Many invoices have conditions of trading printed on the reverse. These contract terms need to be understood and form the basis of much of the study that is to follow. Once the meaning of the contract terms is established, the reasons for their inclusion and the effect they have on the parties to the contract need to be discussed. Key terms will include reservation of title clauses, price variation clauses, clauses with respect to time, quantity and quality of delivery, notification of defects and payment details. Many of these terms will be exclusion clauses and this will lead to examining the law in this area, again looking at the effect on the business inserting the clause, and consumers and businesses affected by the clause.

The statutory protection that affects the terms of the contract can then be examined. This can either be regulations with respect to the requirements of business providers in particular areas, or standard consumer protection. Particular areas will depend on the nature of the contracts chosen, but it is likely that distance selling and e-commerce regulations will be appropriate. When learners investigate their contracts for assessment, they may need to use other pieces of legislation specific to the chosen contract.

The final area is that of remedies. This follows from any liquidated damages clause that might have appeared in the contract. Learners need to understand the difference between damages, equitable remedies and real remedies and consider the advantage to a business of real remedies, rather than the vague possibility of getting money later. The effects and benefits of remedies need to be considered from a consumer point of view so that learners are aware of the difficulties facing both businesses and consumers when a contract is implemented unsatisfactorily. This leads to a discussion on which courts are used for the settlement of a dispute, but can be limited to small claims in the county court. A discussion of the time limits for starting a claim, and the cost and time taken to resolve a dispute, will help complete the unit.

Throughout this specification the law has been set out as at the time of writing. Given the dynamic nature of law, tutors need to ensure that the up-to-date equivalent is being considered. Usually a 12-month time lag is allowable.

Outline learning plan

The outline learning plan has been included in this unit as guidance and can be used in conjunction with the programme of suggested assignments.

The outline learning plan demonstrates one way in planning the delivery and assessment of this unit.

Topic and suggested assignments/activities and/assessment
Introduction to unit content
Basic legal terminology
Speakers, visits
Formation of contract – legal principles
Offer and acceptance problems
Distance selling legislation and application
Research and group work
Assignment 1: Is There a Contract?
Getting standard form contracts
Attempting to understand the meaning of the terms
Research and group work
Assignment 2: Standard Form Contracts
Misrepresentation
Misrepresentation and formation of contract
The express terms of a contract
Application of the law to chosen contracts
Implied terms of a contract – sale of goods
Implied terms of a contract – provision of services
Application of the law to chosen contracts and scenarios
Research and group work
Assignment 3: Sale of Goods and Protection
Remedies for breach of contract and their application
Evaluation of effectiveness of contracts and assignment work
Assignment 4: Remedies
Supervised assignment time
Non-supervised study time and completion of assignments

Assessment

Assessment can best be carried out by completing one assignment that can be broken into tasks that help assessors decide on achievement of the individual criteria. Using a real contract will help learners understand the importance of contract law in everyday life, to both consumers and businesses. The first task is to start learners searching for an appropriate contract that can be used as a vehicle for much of the assignment. A learner's first choice can often be inappropriate as being overlong or complicated, reliant on very obscure legislation or referring to many other documents. This does, however, illustrate the point that businesses start by trying to protect themselves. Learners may wish to look at mobile phone contracts to illustrate the point, even though many of them may well have these contracts.

The first assessed task is likely to be the outline descriptions of the law required in P1-P6. These must be in the learner's own words and explain all technical terms. Thus when outlining the protection given in a sale by sample under the Sale of Goods Act 1979, learners will need to give a situation where there is a sale by sample, such as buying cheese from a sample at a stall. Some, or all, of this could be done by means of a presentation with appropriate back-up notes and witness statements.

P1 and P2 require learners to identify and explain when (and therefore how) the contract chosen would come into existence. This will require an analysis of the law relating to invitations to treat, which party makes the offer, any counter-offers, acceptance and consideration and the application of these principles to the contract in question.

P3 requires application of the law on misrepresentation to a given situation in relation to the formation of contract so that the types of misrepresentation can be explored in the context of an everyday contract.

For P4 and P5, the chosen contract can then be translated into everyday language. Each learner should use a different contract as this will go some way to ensure authenticity of work. Selected terms will then be considered in the light of the relevant statutory protection. This should be the significant terms of the contract. Learners can have help in identifying the terms to be considered, and the number will vary with the contract chosen.

P6 requires an explanation of the effect of legislation on contracts for the sale of goods and sale of services, or a combination of the two. Currently, this would include the Sale of Goods Act 1979 implied terms in sections 12-15. The explanation needs to include all technical terms used, such as satisfactory quality and an investigation of the law set out in the Supply of Goods and Services Act 1982 and associated legislation and cases.

P7 requires learners to consider remedies and damages in some detail. This will include the idea of damages as compensation for loss, which losses can be claimed and which are too remote. Equitable remedies such as an injunction are less relevant, although brief mention may be made of specific performance. More important are real remedies such as refusing further performance and resale. Learners need to demonstrate understanding of the distinction between ownership and possession.

The three merit grade criteria all require analysis of the law as it is applied. M1 requires consideration of the formation of a contract ie the typical offer and acceptance problem. This could be a group activity seeking the solution, but learners must write up the solution individually. This theoretical problem can then be used to analyse the formation of a real contract within the experience of the learner. Tutors may wish to construct individual scenarios for each learner, to allow them to demonstrate application of the law to a contract. The principles of consideration will also be applied here.

M2 can then be covered on the basis of some hypothetical failures in a consumer contract. For example, failure of the modem firewall or a broadband connection in the context of a contract for broadband connection. Learners would need to apply relevant legislation to the relevant terms and conclude the likely outcome. This is likely to include examination of exclusion clauses and the legislation that applies to the validity of such terms.

M3 can be a continuation of M2. Again an analysis of the stated law will be used to conclude with respect to both the availability of a remedy and the most appropriate one.

To meet distinction level criteria, learners should reach a justified conclusion and evaluation from the point of view of both parties to the contract. For D1, this requires detailed consideration of a chosen contract. As previously indicated, it is best for learners to choose their own contracts and then be guided as to their suitability. Many broadband and mobile phone contracts should be suitable. Where learners are in work, their employer's contract for the supply of goods or services would be fine. A contract of employment is not suitable. The effectiveness of the terms should be considered from the point of view of both parties to the contract, for example businesses expecting to protect themselves from losses through non-payment or claims for incomplete performance, consumers with respect to receiving defective goods, poor service or late delivery.

D2 leads on from D1 in that the effectiveness of the statutory protection of consumers should be evaluated. Much of this will relate to the validity of contract terms. Consideration is then given to the effectiveness of the remedies. This may include a discussion of potential difficulties of enforcement but does not need to consider the underlying problems of the limits of equitable remedies.

Programme of suggested assignments

The table below shows a programme of suggested assignments that cover the pass, merit and distinction criteria in the grading grid. This is for guidance and it is recommended that centres either write their own assignments or adapt any Edexcel assignments to meet local needs and resources.

Criteria covered	Assignment title	Scenario	Assessment method
P1, P2, P3, M1	Is There a Contract?	Based on an offer/ acceptance/counter offer and misrepresentation scenario	Case study
P4, P5, D1	Standard Form Contract	Terms/looking at holiday contracts/contracts of employment	Case study
P6, M2, D2	Sale of Goods and Protection		Case study
P7, M3	Remedies		Case study

Links to National Occupational Standards, other BTEC units, other BTEC qualifications and other relevant units and qualifications

This unit forms part of the BTEC Business sector suite. This unit has particular links with the following unit titles in the Business suite.

Level 2	Level 3
Consumer Rights	Aspects of Civil Liability for Business

This unit links to the Level 3 National Occupational Standards for Legal Advice, particularly Units LA18 and LA48.

Essential resources

For this unit learners should have access to a suitable business teaching environment with access to the internet to carry out research. Tutors may consider building a bank of resource materials to ensure there is a sufficient supply of real and relevant information across a range of business types and sectors.

Learners can generate evidence from a work placement or work experience. Other learners may have access to information from family owned and run businesses.

Employer engagement and vocational contexts

Centres should develop links with local businesses. Many businesses and chambers of commerce want to promote local business and are often willing to provide work placements, visit opportunities, information about businesses and the local business context and visiting speakers. Useful websites include:

Work Experience/Workplace learning frameworks – Centre for Education and Industry (University of Warwick): www.warwick.ac.uk/wie/cei/.

Learning and Skills Network: www.vocationallearning.org.uk.

Network for Science, Technology, Engineering and Maths Network Ambassadors Scheme: www.stemnet.org.uk.

National Education and Business Partnership Network: www.nebpn.org.

Local, regional business links: www.businesslink.gov.uk.

Work-based learning guidance: www.aimhighersw.ac.uk/wbl.htm.

Indicative reading for learners

Textbooks

Most textbooks on contract and consumer law are very technical but some aspects are covered in AS and A2 law books for example:

Martin J – *AS Law* (Hodder Arnold, 2008) ISBN 0340965134

Wortley R et al – *AS Law* (Nelson Thornes, 2008) ISBN 074879865X

Wortley R et al – *A2 Law* (Nelson Thornes, 2009) ISBN 0748798668

Student guides can help such as:

Silberstein S – *Consumer Law Nutshells* (Sweet & Maxwell, 2007) ISBN 0421958901

Websites

www.a-level-law.com	Free notes and resources for AS and A level Law
www.bbc.co.uk/watchdog	General information site
www.citizensadvice.org.uk	Free advice and information service on individuals rights and responsibilities
www.compactlaw.co.uk/free_legal_information/consumer_law/consumer	Resource for legal information
www.intute.ac.uk/socialsciences	Social sciences internet resources
www.tradingstandards.gov.uk	Trading standards institute

Delivery of personal, learning and thinking skills

The table below identifies the opportunities for personal, learning and thinking skills (PLTS) that have been included within the pass assessment criteria of this unit.

Skill	When learners are ...
Independent enquirers	researching the law applying the law to problem scenarios
Reflective learners	explaining the meaning of terms in a contract
Self-managers	explaining the meaning of terms in a contract researching the law and finding appropriate contracts.

Although PLTS are identified within this unit as an inherent part of the assessment criteria, there are further opportunities to develop a range of PLTS through various approaches to teaching and learning.

Skill	When learners are ...
Independent enquirers	planning and carrying out research into law
Creative thinkers	looking at the law
Reflective learners	setting goals, with success criteria, for researching business and the law inviting feedback on their own work and dealing positively with praise, setbacks and criticism evaluating their experiences and learning to inform future progress
Team workers	working in groups to discuss issues managing activities to reach agreements and achieve results
Self-managers	seeking out challenges or new responsibilities and showing flexibility when priorities change dealing with competing pressures, including personal and work-related demands responding positively to change, seeking advice and support when needed
Effective participators	taking part in group activities, working with colleagues, supervisors and managers.

● Functional Skills – Level 2

Skill	When learners are ...
ICT – Use ICT systems	
Manage information storage to enable efficient retrieval	obtaining web-based material
ICT – Find and select information	
Select and use a variety of sources of information independently for a complex task	obtaining web-based material
Access, search for, select and use ICT-based information and evaluate its fitness for purpose	
English	
Speaking and listening – make a range of contributions to discussions and make effective presentations in a wide range of contexts	when discussing material for the assignment
Reading – compare, select, read and understand texts and use them to gather information, ideas, arguments and opinions	when researching and explaining the meaning of terms in a contract
Writing – write documents, including extended writing pieces, communicating information, ideas and opinions, effectively and persuasively	when completing the assignment.