The Law of Obligations: Foundations, Principles, and Practice

An in-depth exploration of the legal duties, rights, and remedies that underpin civil relationships — from contracts and torts to unjust enrichment and modern challenges in commercial law.

CHAPTER 1

Understanding the Law of Obligations

The Law of Obligations is one of the foundational pillars of private law, governing the legally enforceable duties that arise between individuals and entities. This chapter introduces the conceptual framework, the parties involved, and the historical and philosophical underpinnings that give obligations law its enduring relevance in both domestic and commercial legal settings.

CHAPTER 1

What is the Law of Obligations?

Core Definition

The Law of Obligations is that branch of private law which governs legally enforceable duties owed by one person (the obligor) to another (the obligee). It encompasses a broad spectrum of legal relationships — from the freely negotiated terms of a commercial contract to the duty of care owed to a stranger on the street.

At its heart, obligations law asks: ***when does the law compel one party to do something for, or refrain from acting against, another?*** *The answer shapes the entire landscape of civil liability.*

The Three Pillars

Obligations are traditionally divided into three principal categories:

- ***Contract:*** *Duties arising from voluntary agreement, underpinned by consideration and an intention to create legal relations. These are the most commercially significant obligations.*
- ***Tort:*** *Duties imposed by law to avoid causing harm to others — whether through negligence, nuisance, defamation, or other recognised wrongs.*
- ***Unjust Enrichment:*** *The obligation to restore benefits received at another's expense when there is no legal basis for retaining them. This fills the gaps left by contract and tort.*

Together, these three pillars form a coherent framework that regulates virtually every significant interaction in civil and commercial life — from the purchase of goods to the operation of financial markets.

CHAPTER 1

Obligor and Obligee: The Legal Relationship

Every obligation involves at least two parties standing in a defined legal relationship. Understanding these roles is essential to analysing any dispute or transaction in obligations law.

The Obligor

The obligor is the party who bears the legal duty — the person compelled by law to act, refrain from acting, or provide some performance. In a contract of sale, the seller is the obligor with respect to delivery; in negligence, the tortfeasor is the obligor. The obligor's duty may be absolute, conditional, or dependent upon the occurrence of a specified event.

The Obligee

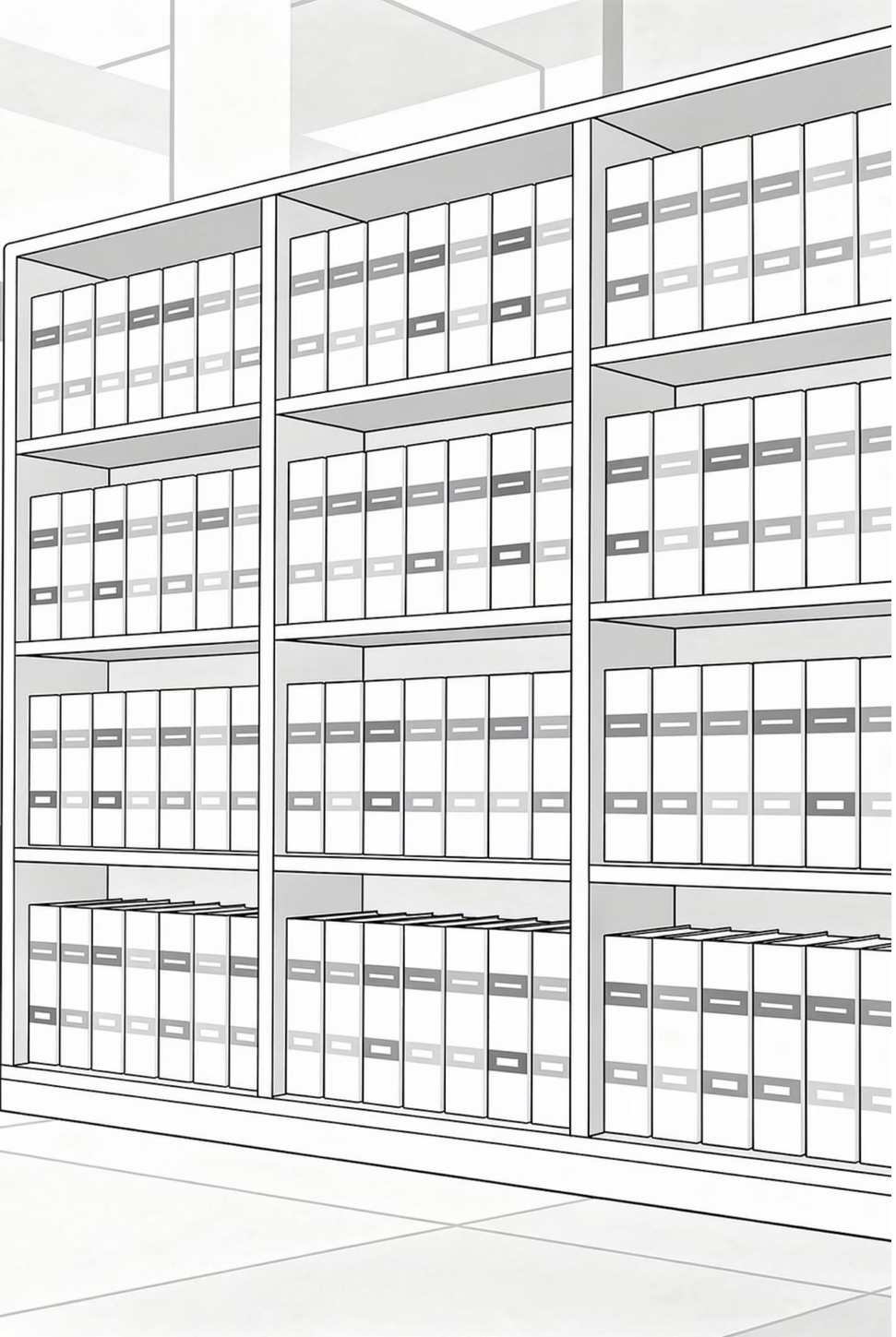
The obligee is the party entitled to demand performance. They hold the corresponding right — a chose in action — which the law will enforce. The obligee may be an individual, a corporation, or even the state. Where there are multiple obligees, the obligation may be joint, several, or joint and several, affecting how performance and enforcement operate in practice.

Correlativity of Rights and Duties

*A foundational axiom of obligations law, derived from Hohfeldian jurisprudence, is that **every right corresponds to a correlative duty**. Where A has a right against B, B is under a duty to A. This correlativity is not merely conceptual — it has practical implications for standing, privity, and the assignment of obligations.*

Mutual Duties, Mutual Rights

The handshake may be symbolic, but the legal obligations it represents are enforceable and binding. Every agreement that satisfies the requirements of the law creates a web of reciprocal duties — each party simultaneously an obligor and an obligee, each bound and entitled in equal measure.



CHAPTER 2

Categories of Obligations

Obligations do not arise from a single source. The law recognises a taxonomy of obligation-generating events — some voluntary, others imposed regardless of the parties' wishes. This chapter maps that taxonomy and examines the distinguishing features of each category, with attention to how they interact and overlap in practice.

CHAPTER 2

Voluntary Obligations: Contracts

The Consensual Foundation

Contractual obligations are the paradigm voluntary obligation. They arise from the free agreement of the parties, making contract law the primary instrument through which individuals and businesses plan and coordinate their affairs. The principle of pacta sunt servanda — agreements must be kept — underlies the entire edifice of contract law.

In English law, the essential requirements for a binding contract are: ***offer and acceptance*** *(a meeting of minds),* ***consideration*** *(something of value moving from the promisee), and* ***intention to create legal relations****. Scots law and civil law systems dispense with consideration, relying instead on the seriousness of the undertaking.*

Bilateral and Unilateral Contracts

Contracts may be ***bilateral****, where both parties assume obligations at the point of formation (as in a sale of goods), or* ***unilateral****, where only one party is initially obliged and the other's obligation (or reward) arises only upon performance of a specified act. The classic example of a unilateral contract is the reward advertisement analysed in Carlill v Carbolic Smoke Ball Co [1893].*

The enforceability of contractual promises rests on the recognition that private autonomy — the freedom to bind oneself by agreement — is both a personal right and a socially valuable institution, facilitating trade, credit, and cooperation across society.

CHAPTER 2

Obligations Imposed by Law

Not all obligations arise from agreement. The law imposes duties — often against the wishes of the party burdened — in order to protect individuals, deter harmful conduct, and prevent unjust outcomes.

Tortious Obligations

Tort law imposes a duty to avoid causing certain kinds of harm to others. Unlike contractual duties, tortious obligations are not chosen — they are imposed by the general law as conditions of participation in social life. The law of negligence, for example, imposes on every person a duty to take reasonable care to avoid acts or omissions which they can reasonably foresee would injure their neighbours — a principle famously articulated in Donoghue v Stevenson [1932] AC 562.

Other torts — such as nuisance, trespass, defamation, and the rule in Rylands v Fletcher — impose obligations of varying strictness, sometimes without any requirement of fault.

Unjust Enrichment

The law of unjust enrichment prevents one party from retaining a benefit received at the expense of another where there is no legal justification for doing so. This category of obligation — sometimes called quasi-contractual — fills the interstices between contract and tort. Common examples include: mistaken payments, benefits conferred under a contract that is subsequently void or frustrated, and claims for quantum meruit where services are rendered without a binding agreement.

The leading statement of the cause of action is found in Lipkin Gorman v Karpnale [1991] 2 AC 548, where the House of Lords recognised unjust enrichment as an independent source of obligations in English law.

CASE SPOTLIGHT

Gray v Johnston (1928)

The Facts

In Gray v Johnston (1928), the court was called upon to determine whether statements made in the context of a family arrangement amounted to a legally binding promise or a mere expression of testamentary intention. The defendant had indicated that the claimant would inherit certain property, but no formal legal steps were taken to give effect to this assurance.

The court held that the statement was no more than an ***expression of intention*** *— not a promise — and therefore incapable of founding a legally enforceable obligation. The case turns on the critical distinction between animus promittendi (intention to be bound) and mere social or familial expectation.*

Legal Significance

The decision illuminates several foundational principles of obligations law:

- ***The Nature of a Promise:*** *A legally operative promise must be made with the intention of being legally bound. Mere statements of future conduct, however sincerely meant, do not generate enforceable obligations unless they meet the requirements of contract formation.*
- ***Certainty and Completeness:*** *Obligations cannot be enforced where the terms are too vague or the parties' intentions insufficiently clear. Courts will not construct a contract from fragments of loose conversation.*
- ***Distinguishing Moral from Legal Duties:*** *The case is a reminder that moral obligations — however weighty in conscience — do not automatically translate into legally enforceable duties. The law of obligations is not co-extensive with morality.*

This case remains a useful teaching vehicle for understanding the threshold of enforceability in obligations law, particularly in family and quasi-family contexts.

CHAPTER 3

Contract Law as the Core of Obligations

Contract law sits at the very centre of the law of obligations. It is the mechanism by which private parties create binding legal relationships, allocate risks, and plan for the future. This chapter examines the rules governing the formation, terms, and enforcement of contracts, with particular attention to English law's distinctive doctrinal features.

CHAPTER 3

Formation of Contract: Key Elements

1

Offer and Acceptance

A contract is formed when one party makes an offer — a clear, definite, and unequivocal proposal to be bound on certain terms — and the other party accepts it without qualification. An acceptance with modifications is a counter-offer, which destroys the original offer (Hyde v Wrench [1840]). The ***mirror image rule*** *requires acceptance to correspond precisely to the offer. In commercial contexts, the "battle of the forms" frequently complicates this analysis.*

2

Consideration

English contract law uniquely requires that each party provide consideration — something of value (whether an act, forbearance, or promise) given in exchange for the other's promise. Consideration must move from the promisee but need not be adequate; it need only be sufficient in law. The doctrine was comprehensively analysed in Currie v Misa (1875), and its modern application continues to generate litigation, particularly in relation to promissory estoppel and the modification of contracts.

3

Intention to Create Legal Relations

The law presumes that commercial agreements are intended to be legally binding, but that social and domestic arrangements are not. These are rebuttable presumptions. In Balfour v Balfour [1919], a husband's promise to pay his wife a weekly allowance was held unenforceable for lack of intention to be legally bound. Conversely, where commercial arrangements are dressed in social language, the courts will look to the substance of the transaction.

4

Capacity and Formality

Parties must have the legal capacity to contract. Minors, persons lacking mental capacity, and corporations acting beyond their powers may avoid obligations. Certain contracts — such as contracts for the sale of land or consumer credit agreements — require specific formalities (writing, signature, or registration) as a condition of enforceability under statute.

CHAPTER 3

Defences to Contract Formation

Even where offer, acceptance, consideration, and intention are present, a contract may be voidable or void if one of the following vitiating factors is established. These doctrines protect parties from exploitation, mistake, and unconscionable conduct.

Misrepresentation

A false statement of fact, made before contract, which induces the other party to enter the agreement. May be fraudulent (Derry v Peek [1889]), negligent (under the Misrepresentation Act 1967), or wholly innocent. Remedies include rescission and/or damages depending on the type.

Mistake

Operative mistake — whether common (shared by both parties), mutual (cross-purposes), or unilateral (one party mistaken, known to the other) — may render a contract void at common law. The courts apply a narrow doctrine, as in Bell v Lever Bros [1932], but equity may intervene to grant rectification or rescission.

Duress and Undue Influence

A contract procured by illegitimate pressure — physical duress, economic duress (Universe Tankships Inc v ITWF [1983]), or undue influence — may be set aside. Undue influence, whether actual or presumed, is particularly significant in transactions between parties in a relationship of trust and confidence.

Frustration and Illegality

Where supervening events render performance radically different from that contemplated (Davis Contractors v Fareham UDC [1956]), the contract is discharged by frustration. Contracts contrary to statute, common law, or public policy — such as agreements in restraint of trade — are unenforceable as a matter of law.

When Contracts Fail

The law does not leave parties without recourse when a contract is challenged, vitiated, or breached. A sophisticated system of remedies — from damages and rescission to specific performance and restitution — ensures that rights are vindicated and that the law of obligations remains a reliable framework for commercial and personal dealings alike.

CHAPTER 3

Terms of Contract: Express and Implied

Express Terms

Express terms are those explicitly agreed upon by the parties, whether orally or in writing. They define the core obligations of each party and set the parameters of liability. In written contracts, the ***parol evidence rule*** *(subject to significant exceptions) restricts the admissibility of extrinsic evidence to add to or vary the written terms. Courts approach express terms through the lens of* ***objective interpretation****, asking what a reasonable person in the position of the parties would understand the words to mean — as confirmed in Investors Compensation Scheme v West Bromwich Building Society [1998] and refined in Arnold v Britton [2015].*

Not all express terms carry equal weight. The law classifies them as ***conditions*** *(breach of which entitles the innocent party to terminate and claim damages),* ***warranties*** *(breach giving rise only to damages), or* ***innominate terms*** *(assessed by reference to the consequences of breach — Hong Kong Fir Shipping v Kawasaki Kisen Kaisha [1962]).*

Implied Terms

Terms may be implied into a contract by ***statute*** *(e.g., the Sale of Goods Act 1979 implies terms as to satisfactory quality and fitness for purpose), by* ***custom or trade usage****, or by* ***the courts*** *in two circumstances:*

- ***Terms implied in fact:*** *Necessary to give the contract business efficacy (The Moorcock [1889]) or so obvious they go without saying (Shirlaw v Southern Foundries [1939]).*
- ***Terms implied in law:*** *Imposed as a matter of policy in defined categories of contract — such as the implied duty of mutual trust and confidence in employment contracts (Malik v BCCI [1998]).*

The Marks & Spencer v BNP Paribas [2015] decision by the Supreme Court tightened the test for implying terms in fact, emphasising that implication is a ***last resort*** *and not a tool for improving a bargain that one party now finds inconvenient.*

CHAPTER 4

Performance and Breach

The life of an obligation does not end at formation. Once created, a contractual obligation must be performed — and the rules governing what constitutes adequate performance, when performance is excused, and what happens when it fails are as important as the rules of formation. This chapter examines performance, breach, and the extensive remedial apparatus available to the innocent party.

CHAPTER 4

Performance of Obligations

The Requirement of Complete and Timely Performance

*As a general rule, a party must perform their contractual obligations completely and on time. The **entire obligations rule** — illustrated by Cutter v Powell (1795) — holds that where a contract is entire, a party who performs only part of their obligation cannot claim any payment. This strict rule has been tempered by the doctrine of substantial performance and by the courts' willingness to sever divisible obligations from entire ones.*

Conditions Precedent and Subsequent

*A **condition precedent** is an event which must occur before an obligation falls due. Until the condition is satisfied, neither party is bound to perform. A **condition subsequent** operates to discharge an existing obligation upon the occurrence of a specified event. These devices allow the parties considerable flexibility in structuring the timing and contingency of their obligations, and their classification has significant consequences for remedies.*

Substantial Performance

Where a party has substantially — though not perfectly — performed their obligations, the courts may allow them to recover the contract price, subject to a deduction for the defects: Hoenig v Isaacs [1952]. The doctrine prevents the unjust result of complete forfeiture where trivial or technical deficiencies remain. It does not apply where the breach goes to the root of the contract or the work is so defective as to be worthless.

CHAPTER 4

Breach of Contract: Types and Consequences

Actual Breach

An actual breach occurs when a party, at the time performance is due, either fails to perform, performs defectively, or performs in a manner inconsistent with their obligations. The consequences depend on the nature of the term breached:

- *Breach of a **condition** entitles the innocent party to terminate the contract and claim damages.*
- *Breach of a **warranty** sounds only in damages — the innocent party cannot terminate.*
- *Breach of an **innominate term** is assessed by the severity of its consequences.*

Anticipatory Breach

*An anticipatory breach occurs when, before the time for performance arrives, one party **unequivocally indicates** that they will not perform their obligations. The innocent party may treat the repudiation as an immediate breach, terminate the contract, and bring a claim for damages without waiting for the performance date: Hochster v De La Tour (1853).*

*Alternatively, the innocent party may **affirm the contract** and wait for the performance date. The risk of affirmation is that supervening events may extinguish the claim altogether — as demonstrated dramatically in Avery v Bowden (1856), where the outbreak of war frustrated the contract before the defaulting party's obligation arose.*

Fundamental Breach

A breach is "fundamental" where it deprives the innocent party of substantially the whole benefit of the contract. Such a breach invariably entitles the innocent party to terminate and claim damages for loss of bargain. This concept, though subject to academic debate, remains a useful descriptor of the most serious category of breach.

CHAPTER 4

Remedies for Breach of Contract

*English law provides a sophisticated menu of remedies for breach of contract. The primary aim is to put the innocent party in the position they would have been in had the contract been performed — the **expectation measure**.*

Damages

***Compensatory damages** are the primary remedy, assessed on the expectation or reliance measure. The claimant must satisfy the rules of **remoteness** (Hadley v Baxendale (1854): losses must be in the reasonable contemplation of the parties at the time of contracting) and **mitigation** (the innocent party must take reasonable steps to minimise their loss). **Liquidated damages** clauses — pre-agreed sums — are enforceable if they represent a genuine pre-estimate of loss; penalty clause, etc*

Specific Performance

*An equitable remedy by which the court orders the defendant to perform their contractual obligations. It is available only where damages would be an **inadequate remedy** — typically in contracts for the sale of unique goods or land. It will not be granted where it would require constant supervision, where it would cause severe hardship, or where the contract lacks mutuality. The remedy is discretionary and may be refused on equitable grounds.*

Rescission and Restitution

***Rescission** sets the contract aside ab initio, restoring the parties to their pre-contractual positions. It is available for misrepresentation, mistake, duress, and undue influence, subject to bars such as affirmation, lapse of time, and the intervention of third-party rights. **Restitutionary** remedies — such as recovery of money paid on a total failure of consideration — ensure that a party is not left without a remedy where the contract has failed entirely.*

CHAPTER 5

Tort Law and Obligations

Beyond contract, the law of obligations extends to duties imposed by the general law — obligations in tort that arise not from agreement but from the social imperative to avoid causing harm to others. Tort law is the second great pillar of the law of obligations, and its interaction with contract and unjust enrichment shapes the entire private law landscape.

CHAPTER 5

Tortious Obligations: Duty of Care

The Foundation: Donoghue v Stevenson [1932]

The modern law of negligence was forged in Donoghue v Stevenson [1932] AC 562, where Lord Atkin articulated the ***neighbour principle****: you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour — that is, persons so closely and directly affected by your act that you ought reasonably to have them in contemplation. This single principle transformed the law of obligations by establishing a general duty of care independent of any contractual relationship.*

The neighbour principle has since been refined by the ***Caparo three-stage test*** *(Caparo Industries v Dickman [1990]): foreseeability of harm, proximity of relationship, and the fairness, justice, and reasonableness of imposing a duty.*

Negligence as the Primary Tort

To establish liability in negligence, the claimant must prove:

- ***Duty of care:*** *The defendant owed the claimant a recognised duty.*
- ***Breach:*** *The defendant fell below the standard of the reasonable person (Blyth v Birmingham Waterworks (1856)) or, in professional contexts, the Bolam standard.*
- ***Causation:*** *The breach caused the loss (but for test, subject to modifications in cases of multiple causes).*
- ***Damage:*** *The claimant suffered recoverable loss — personal injury, property damage, or in limited circumstances, pure economic loss.*

Negligence extends far beyond personal injury: it encompasses professional negligence, product liability, negligent misstatement (Hedley Byrne v Heller [1964]), and the liability of public bodies in specified circumstances.

CHAPTER 5

Unjust Enrichment and Restitution

The law of unjust enrichment — the third pillar of obligations — has undergone dramatic development since the landmark decision in Lipkin Gorman v Karpnale [1991], which formally recognised it as an independent cause of action in English law.

1

The Four-Stage Test

Following Benedetti v Sawiris [2013], a claimant must establish: (1) the defendant was enriched; (2) the enrichment was at the claimant's expense; (3) the enrichment was unjust (falling within a recognised unjust factor); and (4) no defence applies. Unjust factors include mistake (of fact or law), failure of basis, duress, and undue influence.

2

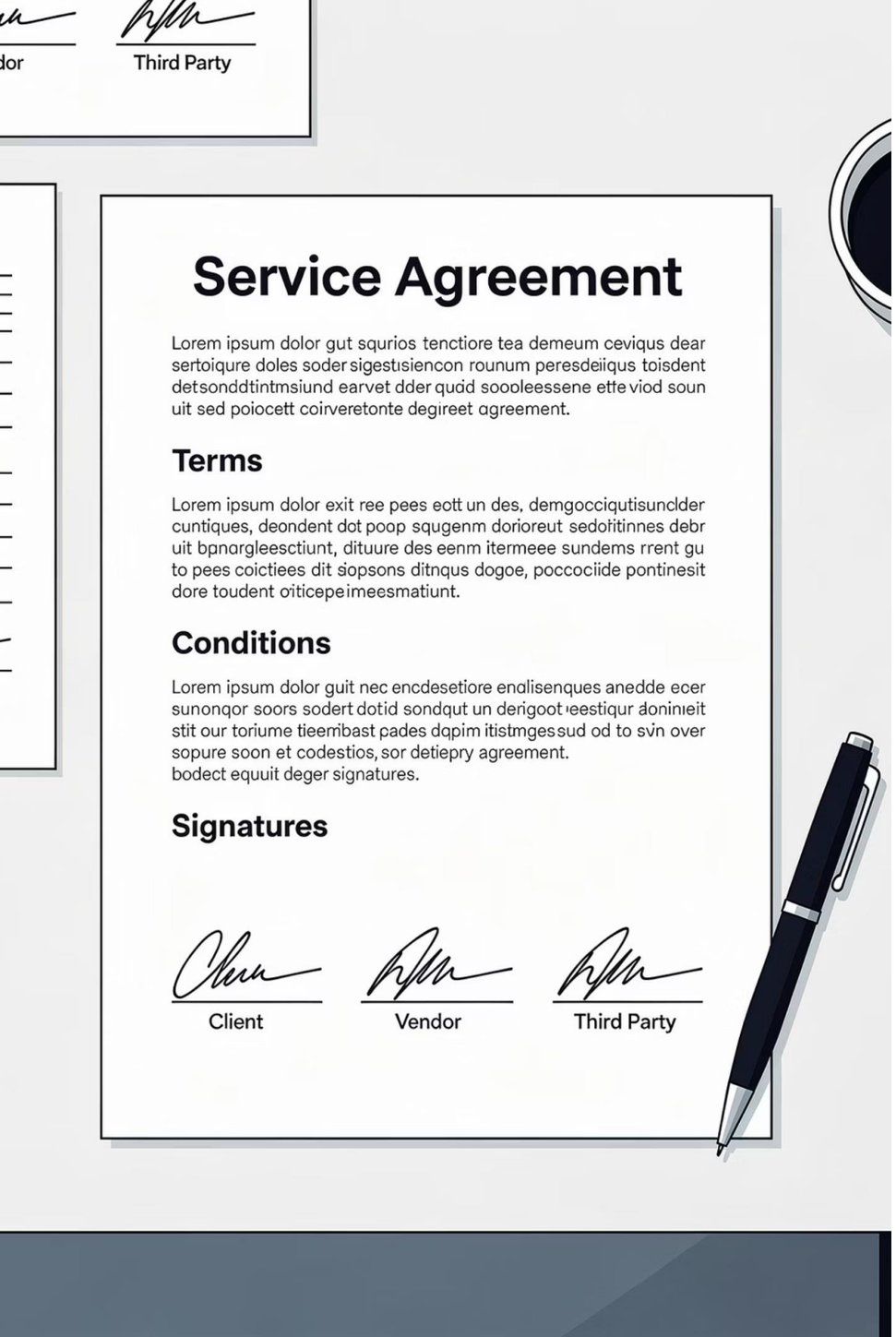
Quasi-Contractual Obligations

Unjust enrichment fills critical gaps in the obligations framework. Where a contract is void (e.g., due to mistake or ultra vires), the parties may still recover benefits transferred under it through ***total failure of consideration****. Where services are rendered in anticipation of a contract that never materialises, a* ***quantum meruit*** *claim may succeed. These quasi-contractual remedies prevent unjust outcomes without fictitiously implying a contract.*

3

Defences

The law recognises several defences: ***change of position*** *(the defendant has, in good faith, changed their position in reliance on the enrichment — Lipkin Gorman);* ***bona fide purchase*** *(the defendant gave value without notice); and* ***passing on*** *(the enrichment was transferred to a third party). These defences balance the claimant's restitutionary rights against the defendant's reasonable reliance.*



CHAPTER 6

Third Parties and the Limits of Obligations

The rules governing who may enforce an obligation, and who is bound by it, are as important as the rules of formation and breach. This chapter examines the doctrine of privity, its statutory modification, and the various limits that the law places on the scope and enforceability of contractual obligations.

CHAPTER 6

Privity of Contract and Third-Party Rights

The Privity Rule

The doctrine of privity, confirmed by the House of Lords in Dunlop Pneumatic Tyre Co v Selfridge & Co [1915], holds that only a party to a contract can sue upon it or be bound by it. This rule — rooted in the consideration doctrine — prevented third parties from enforcing contractual promises made for their benefit, leading to conspicuous injustice in a range of commercial and consumer situations.

The rule was extensively criticised by the Law Commission in its 1996 Report, which concluded that the privity doctrine produced arbitrary and unjust results without countervailing benefits, and recommended reform.

The Contracts (Rights of Third Parties) Act 1999

*The **Contracts (Rights of Third Parties) Act 1999** introduced a major statutory exception to the privity rule. A third party may now enforce a contractual term if:*

- *The contract **expressly provides** that they may, or*
- *The term **purports to confer a benefit** on them, unless it appears that the contracting parties did not intend it to be enforceable by the third party.*

The Act also covers assignment of contractual benefits (though not burdens) and delegation of contractual duties, subject to restrictions in contracts of personal service. Important common law exceptions to privity — including agency, collateral contracts, and the tort of negligence — continue to operate alongside the Act.

CHAPTER 6

Limits on Contractual Obligations

Even where a valid contract exists, the law imposes limits on the obligations parties can create and the terms they can rely upon. These controls protect weaker parties and maintain standards of commercial fairness.

Exclusion Clauses at Common Law

*Courts apply two common law controls on exclusion clauses. First, the clause must be **incorporated** into the contract — by signature (L'Estrange v Graucob [1934]), reasonable notice (Parker v South Eastern Railway (1877)), or course of dealing. Second, the clause is **construed strictly** against the party seeking to rely on it; ambiguities are resolved against that party under the contra proferentem rule.*

Consumer Rights Law

*In consumer contracts, there may be implied terms as to satisfactory quality, fitness for purpose, and conformity with description. Any term purporting to exclude these implied terms is of no effect. Additionally, all terms — not just standard terms — must be **fair**: they must not create a significant imbalance in the parties' rights and obligations to the detriment of the consumer, contrary to the requirement of good faith.*

CHAPTER 7

Modern Challenges and Developments

The Law of Obligations is not a static body of rules — it responds, sometimes urgently, to changes in technology, commerce, and social values. This chapter surveys three areas of contemporary significance: digital contracting, socio-economic policy, and the most recent landmark decisions reshaping obligations law in the United Kingdom.

CHAPTER 7

Digital Contracts and E-Commerce

Formation and Enforcement Online

The transition to digital commerce has tested the traditional rules of contract formation. Questions arise as to when an online offer is made (is a website displaying goods an offer or an invitation to treat?), when acceptance is effective (the postal rule does not apply to instantaneous communications — Entores v Miles Far East Corp [1955]), and whether automated systems can form binding contracts without human intervention.

*The **Electronic Commerce (EC Directive) Regulations 2002** impose requirements on service providers to ensure that customers can correct errors before placing orders and that orders are acknowledged promptly. Failure to comply renders the contract voidable at the customer's election.*

Electronic Signatures and Digital Evidence

*The **Electronic Communications Act 2000** and the EU's **eIDAS Regulation** (retained in UK law post-Brexit) give legal recognition to electronic signatures. A qualified electronic signature carries the same legal effect as a handwritten signature. The courts have increasingly accepted electronic evidence — emails, WhatsApp messages, and transaction logs — as establishing the terms of a contract, though issues of authenticity and completeness must be carefully addressed.*

Consumer Protection in Digital Transactions

*Consumers transacting online enjoy enhanced protections under the **Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013**, which grant a 14-day right to cancel distance contracts, require full pre-contractual disclosure, and prohibit pre-ticked boxes for optional charges. The **Digital Markets, Competition and Consumers Act 2024** further strengthens enforcement mechanisms against unfair digital practices.*

CHAPTER 7

Case Study: Recent Landmark Contract Law Decisions

The following cases have had a profound impact on the shape of obligations law in the United Kingdom, demonstrating how the courts continue to develop and refine foundational doctrine.

1

Cavendish Square v Makdessi [2015]

The Supreme Court reformulated the penalty clause doctrine, holding that a clause is penal only if it imposes a detriment on the breaching party out of all proportion to any legitimate interest of the innocent party. This departed from the traditional Dunlop test and gave greater latitude to commercial parties to negotiate their own remedial provisions.

2

Arnold v Britton [2015]

The Supreme Court emphasised that the primary tool of contractual interpretation is the natural meaning of the words used, cautioning against over-reliance on commercial common sense to override clear contractual language. This decision rebalanced the interpretive pendulum following the more commercially flexible approach of Rainy Sky v Kookmin Bank [2011].

3

Marks & Spencer v BNP Paribas [2015]

The Supreme Court tightened the test for the implication of terms in fact, confirming that necessity — not mere reasonableness — is the touchstone. A term will not be implied merely because it would improve the contract or fill a gap the parties failed to address.

4

One Step Support v Morris-Garner [2018]

The Supreme Court clarified the circumstances in which a claimant may recover Wrotham Park / negotiating damages for breach of contract, confining such awards to cases where the primary loss is the ability to bargain for release from a restrictive obligation — not as a general substitute for proof of financial loss.

Summary: The Law of Obligations in Practice

A Framework for Predictability and Fairness

The Law of Obligations provides the essential architecture for predictable, enforceable legal relationships. By establishing clear rules for the creation, performance, and enforcement of duties, it enables parties to plan their affairs with confidence, knowing that commitments will be honoured and that breaches will be remedied. This predictability is the foundation of commercial trust and economic efficiency.

The Interplay of Contract, Tort, and Unjust Enrichment

The three pillars of obligations — contract, tort, and unjust enrichment — are not isolated categories. They interact, overlap, and supplement each other. A single transaction may generate contractual, tortious, and restitutionary claims simultaneously. The skill of the obligations lawyer lies in identifying the most appropriate cause of action and navigating the complex interplay of rules that govern each.

Essential for Modern Relationships

Obligations law underpins every significant transaction in modern life — from the purchase of a coffee to the negotiation of a multi-billion pound infrastructure contract. It mediates between personal autonomy and social responsibility, between freedom of contract and the imperative of fairness. Without it, the fabric of commercial and personal relationships would be incapable of sustaining the complexity and trust that modern society demands.

Thank You

We hope this presentation has provided a thorough and illuminating overview of the Law of Obligations — its foundations, its principal categories, and its continuing evolution in response to the demands of modern commerce and society.

Questions & Discussion

We welcome questions on any aspect of the material covered — from the doctrinal foundations of contract and tort to the practical implications of recent Court decisions.

Further Reading

- *Ewan McKendrick, Contract Law: Text, Cases, and Materials (Oxford University Press, latest edition)*
- *Andrew Burrows, A Restatement of the English Law of Contract (Oxford University Press, 2016)*
- *John Cartwright, Contract Law: An Introduction to the English Law of Contract (Hart Publishing)*
- *Peter Birks, Unjust Enrichment (Oxford University Press, 2nd edn, 2005)*
- *Simon Deakin & Zoe Adams, Markesinis and Deakin's Tort Law (Oxford University Press, latest edition)*

SUPPLEMENTARY TOPIC

The Relevance of the Law of Obligations to Arbitration

Arbitration — the resolution of disputes by a private tribunal rather than a national court — is one of the most significant institutions in international commercial law. Its relationship with the Law of Obligations is deep, multifaceted, and practically indispensable. Understanding that relationship is essential for any lawyer practising in commercial, construction, energy, or investment disputes.

The Arbitration Agreement as a Contractual Obligation

*The foundation of every arbitration is the **arbitration agreement** — itself a contract, governed by the general principles of the law of obligations. Questions of formation (was there a valid agreement to arbitrate?), validity (was it procured by misrepresentation, duress, or mistake?), interpretation (what disputes fall within its scope?), and enforceability (does it survive the termination of the main contract?) are all resolved by reference to contract law principles. The doctrine of **separability** — confirmed by the House of Lords in Fiona Trust & Holding Corp v Privalov [2007] — holds that the arbitration clause is a distinct contract, capable of surviving the invalidity of the main agreement, thereby insulating the tribunal's jurisdiction from collateral attack.*

Substantive Obligations as the Subject Matter of Arbitration

The disputes submitted to arbitration are, overwhelmingly, disputes about obligations. Arbitral tribunals routinely determine claims for breach of contract, damages, specific performance, misrepresentation, unjust enrichment, and tortious liability. The tribunal's task is to apply the law of obligations — as chosen by the parties or determined by private international law rules — to the facts of the dispute. A sophisticated understanding of obligations law is therefore a prerequisite for effective advocacy and sound decision-making in arbitral proceedings.

Obligations of the Arbitral Tribunal

*The arbitral tribunal is itself the subject of obligations. Under the **Arbitration Act 1996**, s.33, the tribunal owes a statutory duty to act fairly and impartially, to give each party a reasonable opportunity to present its case, and to adopt procedures suitable to the circumstances. These obligations — analogous in structure to the obligations owed by a court — are enforceable by the parties and may, if breached, provide grounds for challenging or setting aside an award under ss.67, 68, and 69 of the Act.*

SUPPLEMENTARY TOPIC

Law of Obligations and Arbitration: Further Dimensions

Enforcement of Arbitral Awards: An Obligatory Dimension

*The enforcement of an arbitral award is itself an exercise in the law of obligations. Once an award is made, the losing party is under a legal obligation — enforceable by the courts of the seat of arbitration and, under the **New York Convention 1958**, in over 170 contracting states — to comply with its terms. Defences to enforcement are narrow and mirror, in significant respects, the vitiating factors recognised in obligations law: public policy, incapacity, and breach of the obligation to give each party an adequate opportunity to present its case.*

The intersection of arbitration with unjust enrichment is particularly fertile: awards made in excess of jurisdiction, or subsequently set aside, may give rise to restitutionary claims for the return of sums paid in compliance with the defective award.

Good Faith, Procedural Obligations, and Arbitral Integrity

*International arbitration increasingly engages with the concept of **good faith** as a pervasive obligation — both in the conduct of the arbitral proceedings and in the performance of the underlying contract. Many arbitral institutions' rules — including the ICC, LCIA, and SIAC Rules — impose obligations of good faith and cooperation on the parties. These obligations, while not always recognised in the same terms by English domestic contract law, reflect the relational conception of obligation that characterises long-term commercial relationships subject to arbitration.*

Investment Arbitration and State Obligations

*At the intersection of public and private law, **investment treaty arbitration** involves obligations owed by states to foreign investors under bilateral investment treaties (BITs) and multilateral instruments such as the Energy Charter Treaty. These obligations — including fair and equitable treatment, protection against expropriation, and full protection and security — are analysed through the lens of public international law, but their content is informed by private law obligations concepts, including legitimate expectations, reliance, and the duty not to act arbitrarily or capriciously. The Law of Obligations thus extends its reach into the resolution of sovereign disputes, demonstrating its enduring relevance across every dimension of legal practice.*