CONTRACT LAW PQ TABLE

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TOPIC 1: OFFER AND ACCEPTANCE

General Principles of Contract	
Principle	**Case**
There is no general principle of good faith in English contract law; instead, English law develops piecemeal solutions in response to demonstrated problems of unfairness	*Interfoto v Stiletto* [1989]
Four components are required for the formation of a contract: (1) offer and acceptance; (2) certainty; (3) consideration; (4) intention to create legal relations	
English law adopts the objective approach to determine intention (i.e. reasonable assessment of words or conduct)	*Smith v Hughes* (1871) *RTS Flexible Systems Ltd v Molkerei Alois Muller Gmbh & Company KG (UK Production)* [2010]

Offers and Invitations to Treat	
Principle	**Case**
An offer is "an expression of willingness to contract on specified terms, made with the intention that it is to become binding as soon as it is accepted by the person to whom it is addressed". An invitation to treat is an expression of willingness to negotiate.	Peel
An offer is a clear expression of an unequivocal willingness to be bound upon the offeree's acceptance	Furmston & Tolhurst
An offer can be made to the whole world at once	*Carlill v Carbolic Smoke Ball* [1893]
Mere statement of the lowest price at which the vendor would sell contains no implied contract to sell at that price to the persons making the inquiry	*Harvey v Facey* [1893]
Words can make it clear it is an invitation to treat – 'may be prepared to sell the house at £x price' was an invitation to treat	*Gibson v Manchester CC* [1979]
Display of Goods for Sale – in general the display of goods with price in a shop is an invitation to treat and not an offer	
Display of goods in a shop window merely invitation to treat	*Timothy v Simpson* (1834)
Display of an article with a price on it in a shop window is merely an invitation to treat	*Fisher v Bell* [1961]

TOPIC 2: CONSIDERATION AND PROMISSORY ESTOPPEL

Consideration - Introduction	
In order to be binding, a contract must be supported by consideration. O'Sullivan: consideration is the 'price of the promise'; Burrows: 'to be legally binding, an agreement, unless made by deed, must be supported by consideration.	
Definition of Consideration	
A valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other	*Currie v Misa* (1875)
"Consideration means that, in exchange for a promise by one party, a counter-promise or performance is given by the other party"	Burrows
Gratuitous promises are enforceable without consideration if they are contained in a deed	Law of Property (Miscellaneous Provisions) Act 1989, s.1
In general, consideration can be made in any form and evidenced by any means. However, there are some statutory exceptions to this general rule: (1) Contracts of guarantee have to be evidenced in writing (Statute of Frauds 1677, s.4) (2) Contract for the sale or disposition of an interest in land has to be made in writing (Law of Property (Miscellaneous Provisions) Act, s.2) (3) Regulated consumer credit agreements have to be made in writing, have to be in a particular form, and signed (Consumer Credit Act 1974)	
Consideration in *bilateral* contracts – each party's promise is consideration for the other Consideration in *unilateral* contracts – the promisee's performance of the requested act is the consideration for the promise, and the promise is the consideration for the performance of the requested act	

Requirements for valid consideration
Generally, in order for consideration to be valid, it: (i) must be requested by the promisor; (ii) must move from the promisee; (iii) must be sufficient but it need not be adequate. We will also consider the special case of (iv) forbearance to sue.
Consideration must be requested by the promisor – consideration must be given in return for the promise, there is no consideration if the promisee incurs a detriment or confers a benefit to the promisor in *reliance* on the promise but not in *return* for it

TOPIC 3: CERTAINTY AND ICLR

Certainty	
An agreement that is too vague or incomplete is not legally enforceable. The requirement of certainty seeks to maintain a balance between giving effect to the parties' intentions while not entering the realm of making contracts for the parties.	
General Principles – the dominant judicial philosophy seems to be in favour of curing the agreement and upholding it as a valid contract	
Disagreement about contract does not make it uncertain. It is very rare for a contract to be uncertain – it has to be legally or practically impossible to give to the parties' agreement any sensible content	*Scammel v Dicker* [2005]
The role of the court in a commercial dispute is to give legal effect to what the parties have agreed. To hold that a clause is too uncertain to be enforceable is a last resort.	*Astor Management v Atalaya Mining* [2017]
Judges have different views on the extent to which it is desirable to cure vagueness in contract. The attempt to find 'coherent principles' in cases on certainty is a 'fool's errand'	Macneil
Whole or partly performed agreements – more likely to be certain	
Where at least one party has at least partly performed, the court is more willing to find that a contract is sufficiently certain.	*G Percy Trentham Ltd v Archital Luxfer Ltd* [1993]
Courts are pragmatic and are more inclined to enforce substantially settled agreements	*Liverpool CC v Walton* (2001)
A binding oral contract was formed even though the trigger event for the payment of commission was not expressly identified. The courts are reluctant to find an agreement is too vague or uncertain to be enforced where it is found that the parties had the intention of being contractually bound and have acted on their agreement.	*Wells v Devani* [2019]
However, part (or even full) performance does not necessarily mean that the courts will find that the contract is sufficiently certain. The lack of agreement on several important matters might indicate that the parties did not intend to be legally bound.	*British Steel Corp v Cleveland Bridge & Engineering Co* [1984]
Previous dealings between parties – more likely to be certain	
If the parties had similar agreements in the past, the courts may fill the gaps in the current arrangement by looking at the terms that were previously agreed. Uncertainty can also sometimes be resolved by reference to trade custom.	*Hillas & Co v Arcos* (1932)
Standards of reasonableness and standard types of agreement	

Damages in respect of T's loss – the *Albazero* exception	
The idea is that courts should avoid a contractual 'black hole': In common commercial practice when a consignor B delivers goods to a carrier A for delivery to a consignee T, the ownership of the goods passes immediately to T. However, the contract of carriage is entered into between the consignor B and carrier A. Should there be a loss at sea, the consignee T cannot sue the carrier in contract because they are not party to the contract. On the other hand, B, who is a party to the contract, cannot recover any substantial damages because he suffers no loss, the property having already passed. Therefore, legal black hole allowing the A to escape liability entirely and the law moved to plug this by *The Albazero* exception, giving the B a right to claim substantial damages suffered by the T on T's behalf. (note: in carriage of goods by sea cases black hole was plugged by parliament in Bills of Lading Act 1855)	
Three elements for the principle to apply: *(i)* There is a commercial contract concerning goods *(ii)* A and B contemplate that the proprietary interests in the goods may be transferred by B after the contract has been entered into but before the breach occurs *(iii)* A and B intended that B should be able to recover damages for C	*Albazero* [1977]
Interpretation of *Albazero*: broad and narrow ground Narrow Ground (per Lord Browne-Wilkinson, supported by Lords Keith, Bridge and Ackner) ● B claims substantial damages in respect of T's loss, in order to avoid an unfair outcome Broad Ground (per Lord Griffiths) ● There is a general exception that allows B to recover damages as their own loss (as opposed to recovering damages for T's loss) ● This treats B as suffering a loss merely because he did not get what he bargained for: the breach *itself* is a loss to B	*St Martins Property v Sir Robert McAlpine* [1994]
Steyn LJ expressed support for Lord Griffith's broad ground approach, though the other two judges did not	*Darlington BC v Wiltshier Northern* [1995]
On the facts, there was also a contract between A and T for A to exercise reasonable care and skill (which was a lower threshold that the contract between A and B). B sued for defective building, on the A-B contract, to T's benefit. 3-2 split, B could not recover damages because of the A-T contract, which granted T a direct right of action. Narrow Ground: Lords Clyde and Jauncey. B cannot sue on T's behalf, as T had suffered the loss and T could claim themselves through the A-T contract. No need to provide B with the right to claim damages. Broad Ground: Lords Goff and Millett. B can sue for their own loss of the breach of contract, and claim substantial damages. Mix of both: Lord Browne-Wilkinson (who gave the majority decision promoting the narrow ground in *St Martins*). The claim would have been allowed on the broad ground, if there had been no A-T contract.	*Panatown* [2001]

III. UCTA

Unfair Contract Terms Act 1977	
UCTA applies when the parties are acting in the course of a business (UCTA s.1(3)(a)), acting to invalidate certain exclusion or limitation clauses.	
A clause excluding or limiting liability for negligently caused death or personal injury is invalid	UCTA s.2(1)
A clause excluding or limiting liability for negligently caused loss or damage is only valid if it satisfies the s.11 test of reasonableness	UCTA s.2(2)
Most important for contract PQs: (i) Where the claimant is dealing on D's written standard terms of business (s.3(1)), (ii) An exclusion or limitation of liability for breach of a contractual obligation is invalid under it satisfies the test of reasonableness in s.11(1) (s.3(2)) Sample sentence for PQ Since the exclusion clause was not individually negotiated and the parties were dealing on [insert party name]'s standard terms (s.3(1)), [insert clause] will be subject to the s.11 reasonableness test (s.3(2)).	
Dealing on D's written standard terms	
A contract between two commercial parties was made subject to the general conditions of a regulatory body. Those terms, although plainly written and standard, were not the *defendants'* written standard terms of business, since they did not 'invariably or usually use the model form'.	*British Fermentation Products v Compare Reavell* [1999]
Terms as to the payment of discretionary bonuses in a bank employee's contract of employment were not the bank's written standard *terms of business*, because the business was banking and provisions as to remuneration are not the standard terms of the business of banking.	*Keen v Commerzbank AG* [2006]
If there was substantial individual negotiation that modified the standard terms, then it cannot be regarded as on standard terms. However, where the modifications are 'immaterial' and 'narrow and insubstantial', the contracts were essentially still made on standard terms.	*Watford Electronics v Sanderson* [2001]
The greater the degree of negotiation, the less likely terms are likely to be found to be standard terms	*African Export-Import Bank v Shebah Exploration* [2018]

If the agreement is latently (objectively) ambiguous, it is impossible to work out what the apparent intention of the parties are. As such, the objective principle cannot apply. We turn instead to subjective intention which did not coincide: as such, there is no contract.	*Raffles v Wichelhaus* (1864)
Exception 2: Mistake to terms of the contract	
The basic proposition here is that where one party makes a mistake about the terms of the supposed contract (e.g. the terms contained in the offer) then, if the other party knows or ought to have known of his mistake, no contract has been formed on ordinary objective principles (i.e. non-mistaken party cannot assert that there was a contract).	
If one party knew or ought to have known that there was an error in the contract, the objective approach is displaced and there is no contract.	*Hartog v Colin & Shields* [1939]
However, where the other party did not know or ought to know about the mistake, they will still be bound by the contract.	*OT Africa Line v Vickers* [1996]
The mistake must be to the *terms* of the contract, not a mistake about e.g. the substance or quality of the product. Here (old oats/new oats case), the appellate court held that the previous jury direction did not sufficiently distinguish between a mistake on the part of the defendant that the oats were old oats (mistake to quality/substance), and a mistake that they were being offered to him as old oats (mistake to terms).	*Smith v Hughes* [1871]
A mistake about a fact which forms the basis on which one party enters the contract is insufficient to get relief to avoid the general objective rule (even so if the other party knew about the mistake). Here, the seller mixed up dates of shipping which made them mistakenly price the transaction too low. Importantly, they intended that price but got to it by mistaking the underlying facts. This was a mistake as to a fact which did not form a term of the contract itself.	*Statoil v Louis Dreyfus* [2008]
Exception 3: Mistake to identity of other party	
In general, an offer can only be accepted by the person that it is addressed to. Per the principle of objective interpretation, the question is if it reasonably appeared to the person in question that the offer was addressed to them.	
When a contract is made, in which the personality of the contracting party is or may be of importance, no other person can interpose and adopt the contract.	*Boulton v Jones* (1857)
The traditional case is where there is a sale of goods on credit by (innocent) A to (wicked) B who impersonates / pretends to be someone else; B then sells the goods in turn to (innocent) C and disappears with C's money; B's cheque having bounced, A wants to get the goods back (i.e. claims them from C). So the real issue is, which of two innocent parties (A or C) wins, i.e. ends up with the goods. Note here that A has a cast-iron claim for *fraudulent misrepresentation* against B, but that only makes the contract *voidable* (not void) and recission is barred because a third party's (C's) rights have intervened. The only change A has of winning is if they can persuade the court that the contract with B was *void* (i.e. there never was a contract). That way, B had no title to the goods to pass to C, so C loses.	

Fraudulent misrepresentation	
In cases of fraudulent misrepresentation, it is sufficient to show that C was materially influenced by the misrepresentation merely in the sense that it had some impact on their thinking.	*Edgington v Fitzmaurice* (1885)
There is a presumption in cases of fraud that a misrepresentation intended to induce a contract does in fact induce it.	*BV Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises* [2019]
(4) Other criteria in determining reliance	
Representee's mind affected by misrepresentation	
The misrepresentation must have operated on the mind of the representee. The misrepresentation might not have so operated because C was not influenced by it, or because C was unaware of the representation.	*Hayward v Zurich Insurance* [2016]
Awareness is an essential component of reliance, C must demonstrate that they were aware of the alleged representation.	*Leeds City Council v Barclays Bank* [2021]
No need for sole inducement	
The representation need not be the sole or main inducement. It is enough that it was one of the factors inducing the representee to enter in the contract or to assent to the particular terms.	*Dadourian Group International v Simms* [2009] *Edgington v Fitzmaurice* (1885)
Belief in truth of representation unnecessary	
Belief in the truth of the representation is not a necessary requirement.	*Hayward v Zurich Insurance* [2016]
Opportunity to discover truth	
A false representation is actionable even though the representee could have found the truth of the matter herself but did not do so	*Redgrave v Hurd* (1881)
However, note that Redgrave is qualified in two ways: (1) Who is better informed – where the representee is better informed than the representor, the opposite conclusion may be appropriate. (2) Remedy being sought – Redgrave involved a claim for recission. Where the claim is for damages for negligent misrepresentation, other considerations like contributory negligence might be important. In Peekay v ANZ, there was no reliance on the misrepresentation where there was a detailed contract thoroughly stating the terms, which C did not read, instead signing based on oral misrepresentations. Here, it was regarding the purchase of bonds (i.e. complex financial instruments), and C as an experienced investor could be reasonably	

(2) C contracts with D (a driveway company) to resurface C's driveway. D's price is £5000. D repudiates the contract by failing to do the work at all. Other contractors charge £7000 for the same job (the "market value"). The difference in value measure is £2000.	
(1b) Cost of cure measure – awarding damages representing the cost of 'curing' defective performance	
Cost of cure measure to be used where the difference in value measure is inappropriate, especially when the failure the perform resulted in no difference in value. (contract to build wall on land which did not change value of the land, but C wanted wall)	*Radford v De Froberville* [1977]
Promisee cannot insist on cost of cure when this would greatly exceed the increase in value it would bring, and would thus be wholly unreasonable or disproportionate. (planting trees on island)	*Tito v Waddell (No. 2)* [1977]
(1c) Middle ground award – *Ruxley v Forsyth*	
It is possible to receive a middle ground award representing loss of amenity. Here, the cost of cure would have been disproportionate, while the difference in value measure (nil) would fail to acknowledge that he had not received the contractual performance that he bargained for. ● Lord Mustill – award represents consumer surplus (something more important to C than the average consumer) ● Lord Lloyd – compensating for loss of amenity	*Ruxley v Forsyth*
(1d) Non-pecuniary loss (damages for distress, inconvenience or disappointment)	
In general, non-pecuniary losses are not recoverable on breach of contract.	*Addis v Gramophone* [1909] *Dunnachie v Kingston-upon-Hull CC* [2003]
However, two exceptions to the general rule: (1) Where the very object of a contract is to provide pleasure, relaxation, peace of mind or freedom from molestation (2) For physical inconvenience and discomfort caused by the breach and mental suffering directly related to that inconvenience	*Watts v Morrow* [1991]
Holiday contracts are a clear example of exception 1 – they are meant to give you relaxation	*Jarvis v Swan Tours* [1973]
It is sufficient to bring a case within the first exception that mental satisfaction was *an important* object of the contract even though not the predominant, or very, object of the contract. (Aircraft noise above house was physical inconvenience, surveyor had been tasked to report on aircraft noise)	*Farley v Skinner* [2001]
(1e) Loss of reputation	
In general, there are no damages for a non-pecuniary loss of reputation	*Addis v Gramophone*

Burrows notes that in deciding whether subsequent illegality frustrates a contract, one must consider its impact on the contract. A short delay because of a prohibition is unlikely to mean that the contract is terminated. In Metropolitan Water Board, the delay was substantial and indefinite and so amounted to frustration. In contrast, in Panalpina, legal impossibility constituted by temporary closure of the road to the defendant's warehouse did not amount to frustration of the 10 year lease.	
(2) Physical Impossibility	
Contract was frustrated where concert hall burned down, although gardens outside the hall could have still been provided and used, the contract was held to be frustrated.	*Taylor v Caldwell*
Contract was frustrated where the premises and machines were destroyed by fire.	*Appleby v Myers*
However, there is no general rule of supervening impossibility.	*Joseph Constantine Steamship v Imperial Smelting Corporation*
It is ultimately still a matter of construction of the contract as to whether it places the risk of destruction on one party.	*Bunge SA v Kyla Shipping*
Impossibility must be assessed in the light of the purpose of the contract.	*Jackson v Union Marine Insurance*
For employment contracts, employee incapacity will tend to frustrate the contract.	*Notcutt v Universal Equipment*
(3) Frustration of common purpose	
This refers to where an event *fails* to occur that at least one party assumed would occur, which renders performance of the contract pointless, for one or both parties.	
Two cases which are famously difficult to reconcile, concerning the coronation of King Edward VII, who took ill and the coronation processions had to be cancelled: ● Krell v Henry – flat along Pall Mall rented out to watch procession, contract was frustrated ● Herne Bay Steam Boat v Hutton – boat rented out to bring passengers out to watch naval review, contract was not frustrated Reconciling the two cases: ● O'Sullivan – the cases are borderline, but are correctly decided. In Krell, they discussed a hypothetical example of a cab driver engaged to take someone to the races, and held that the cancellation of the races would not frustrate the contract. From this, we can see that **(i)** the fact that one party makes an assumption which subsequent events show to be incorrect is not enough to frustrate the contract; and **(ii)** if the other party knows about this assumption at the time of contracting, this is still not enough to bring the contract to an end. ● In Krell, the fact pattern was highly unusual – (1) C advertised that he was selling a view of the royal procession, rather than simply letting the room; (2) only offered the use of room in the day and not at night; (3) he was not in the business of hiring out his room regularly. ● Hence, in Krell, the contract was frustrated because both parties had assumed the procession would go ahead and neither would have made the contract otherwise; there was a joint assumption to this important matter, and their common purpose was frustrated.	

There is no need for wrongdoing in the usual sense, and undue influence can be presumed even if there was no wrongdoing.	*Hackett v CPS*

However, this is not to say that presumed undue influence has nothing to do with wrongdoing. It is wrongful *per se* to prefer your own interests where someone has placed trust and confidence in you, without seeing to it that he or she was acting freely and voluntarily (Etridge). in Goodchild v Bradbury, the CA accepted that the reasoning in Etridge means that undue influence has 'a connotation of impropriety'. Likewise for Norris J in Davies v AIB Group (UK) plc, undue influence involves 'wrongdoing' and the law 'does not protect against folly, but against victimisation'.

Requirement 1 – Relationship of trust and confidence

Class 2A – relationships that will always be held to be relationships of trust and confidence

- Solicitor and client (Wright v Carter; Markham v Karsten)
- Doctor and patient (Mitchell v Homfray)
- Spiritual adviser and novice (Allcard v Skinner; Roche v Sherrington)
- Parent and child (Etridge) – although note that this is unlikely to apply to *adult children*, this only worked in Bainbrigge v Browne because none of the children were emancipated from their father's control
- Note that husband and wife is not included in this list.

In Etridge, Lord Nicholls described relationships falling into this first category as raising an *irrebuttable* presumption, but this probably means no more than that these relationships invariably involve influence (and so are relationships of trust and confidence), but it may or may not give rise to a presumption of undue influence, depending on whether there is a suspicious transaction as well. a relationship of trust and confidence is not on its own sufficient to give rise to a presumption of undue influence.

Class 2A – trust and confidence shown on the particular facts

- Elderly widower and housekeeper (Re Craig)
- Young pop singer and songwriter/manager (O'Sullivan v Management Agency & Music)
- Divorced lady and her new gentleman-friend (Leeder v Stevens)
- Non-English speaking widow and her son (Abbey National Bank v Stringer)
- Widow and step-sister (Watson v Huber)
- Generally, a relationship giving rise to the presumption of undue influence can be found in what is normally an exclusively commercial situation, if the facts are exceptional enough to suggest that one party reposed trust and confidence in the other (Credit Lyonnais Bank v Burch; Trustees of Beardsley v Yardley)

Requirement 2 – Suspicious transaction that calls for an explanation

- This is a necessary limitation upon the width of the first prerequisite (Lord Nicholls in Etridge)
- If the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act, the burden is on the donee to support the gift (Allcard v Skinner)
- Now, the test is a transaction that calls for explanation (Etridge), which is shorthand for the formula in Allcard v Skinner (Smith v Cooper).
- Turkey v Awadh – transaction not set aside because it was explicable by ordinary motives of people in the position of the parties.