which the defendant refused. The claimant then sought to accept the original offer of £1,000. The defendant refused to sell to the claimant and the claimant brought an action for specific performance.
Held: There was no contract. Where a counter offer is made this destroys the original offer so that it is no longer open to the offeree to accept

Ignorance of Offer examples:

Williams v. Carwardine (1833)
Walter Carwardine was murdered in Hereford. The plaintiff, Mrs Williams, gave evidence at the Hereford assizes against two suspects, but did not say all she knew. The suspects were acquitted. On April 25, 1831, the victim's brother and defendant, Mr Carwardine, published a handbill, stating there would be a £20 for 'whoever would give such information as would lead to the discovery of the murder of Walter Carwardine.' In August, 1831, the Mrs Williams gave more information which led to the conviction of two men (including a Mr John Williams, the plaintiff's husband). She claimed the reward. Mr Carwardine refused to pay. At the trial her motives were examined. It was found that she knew about the reward, but that she did not give information specifically to get the reward. It was apparent that after the first murder trial, Mrs Williams had been savagely beaten by Mr Williams.
Held: The Court, consisting of Lord Denman CJ, Littledale J and Patteson J held, that the plaintiff was entitled to recover the £20. The advertisement amounted to a general promise or contract to pay the offered reward to any person who performed the condition mentioned in it, namely, who gave the information. Two judges clearly stated that motives were irrelevant. Littledale J said, "If the person knows of the handbill and does the thing,that is quite enough."[2] Patteson J said "We cannot go into the plaintiff's motives."

R v. Clarke (Australia 1927)
The claimant wanted to compel the Crown to pay a reward it had offered for information leading to the conviction of a murderer. The claimant gave the information but he gave it while he was under investigation himself for murder. He told the police "exclusively in order to clear himself". It was uncertain whether he was thinking about the reward at the time he provided the information.
Held: Higgins J interpreted the evidence to say that Clarke had forgotten about the offer of the reward. Starke J and Isaacs ACJ only went so far as to say that he had not intended to accept the offer. The Court held it was necessary to act in "reliance on" an offer in order to accept it, and therefore create a contract. Starke J said "the performance of some of the conditions required by the offer also establishes prima facie an acceptance of the offer." But here it was held that the evidence showed, Mr Clarke was not acting on the offer. So a presumption that conduct which appeared to be an acceptance was relying on an offer was displaced.

Gibbons v. Proctor (1891) 64 L.T. 594
A police officer supplied information for which a reward had been offered; he was not aware of the offer at the time that he gave the information but he had become aware of the offer by the time the information reached the relevant party. It was held that the officer was entitled to claim the reward.
Held: This case held that the advertisements of rewards for information leading to the arrest or conviction of the perpetrator of a crime, is treated as an offer, as the intention to be bound is inferred from the fact that no further bargaining is expected to result from them. The case is sometimes wrongly cited as authority for the proposition that acceptance in ignorance of an offer is effective. A closer inspection of the facts of the case reveals that the party claiming the reward possessed full knowledge of the offer at the time when he gave the information.

- No promise will be enforceable unless supported by consideration or made in a deed. A gratuitous promise will not be enforced unless made in a deed.
- Consideration is not about offer and acceptance, but promises.
- Consideration is before a concluded contractual has been formed and made.
- To be enforceable there must be something coming back but the question is what?
- If there is a problem of consideration, find the consideration or put it in a deed.
- Consideration is important.

What is sufficient consideration?
Consideration must be sufficient but does not have to be adequate. But courts will not find everything to be valid consideration. The sufficiency of consideration will be doubtful wen the act in question consists of;

1. a duty imposed by general law
2. a duty imposed to a third party
3. a duty imposed to the promisor by contract

Whether consideration as pastor not is a matter of fact.

Justification for why consideration is important:

1. Evidence of seriousness
2. Justice of exchanges
3. Explains measure of relief
4. Marks boundary of appropriate legal improvement

Currie v. Misa
A company named Lizardi & Co, then in good credit in the City, sold four bills of exchange to Mr Misa, drawn from a bank in Cadiz. Mr Currie was the owner of the banking firm and the plaintiff bringing the action. The bills of exchange were sold on the 11th of February, and by the custom of bill, brokers were to be paid for on the first foreign post-day following the day of the sale. That first day was the 14th of February Lizardi & Co. was much in debt to his banking firm, and being pressed to reduce his balance, gave to the banker a draft or order on Mr Misa for the amount of the four bills. This draft or order was dated on the 14th, though it was, in fact, written on the 13th, and then delivered to the banker. On the morning of the 14th the manager of Misa's business gave a cheque for the amount of the order, which was then given up to him. Lizardi failed, and on the afternoon of the 14th the manager, learning that fact, stopped payment of the cheque.
Held: By Lush J: Consideration is some right, interest, profit of benefit to one party or some forbearance, detriment, loss of responsibility by the other. The role of request v. repricocity.

Thomas v. Thomas
John Thomas, shortly before dying, orally expressed a desire for his wife to have either the house used as their residence and its contents or £100 in addition to the other provisions made for her in his will. After his death the executors of his estate (Samuel Thomas, his brother, and Benjamin Thomas) entered into an agreement with Eleanor (his wife) “in consideration of John's desires” whereby Elanor would take possession of the house and in return maintain the house and pay

Jones v. Padavatton.
A mother promised to pay her daughter $200 per month if she gave up her job in the US and went to London to study for the bar. The daughter was reluctant to do so at first as she had a well paid job with the Indian embassy in Washington and was quite happy and settled, however, the mother persuaded her that it would be in her interest to do so. The mother's idea was that the daughter could then join her in Trinidad as a lawyer. This initial agreement wasn't working out as the daughter believed the $200 was US dollars whereas the mother meant Trinidad dollars which was about less than half what she was expecting. This meant the daughter could only afford to rent one room for her and her son to live in. The Mother then agreed to purchase a house for the daughter to live in. She purchased a large house so that the daughter could rent out other rooms and use the income as her maintenance. The daughter then married and did not complete her studies. The mother sought possession of the house. The question for the court was whether there existed a legally binding agreement between the mother and daughter or whether the agreement was merely a family agreement not intended to be binding.
Held: The agreement was purely a domestic agreement which raises a presumption that the parties do not intend to be legally bound by the agreement. There was no evidence to rebut this presumption.

Coulls v. Bagots Trustee
(Cant find case online)
Consideration had been provided jointly by two promisees (payment had been authorised to wife as a joint tenant.)
Consideration does not have to be furnished separately.

New Zealand Co v A.M. Satterthwaite:
A contract for the carriage of a machine by ship to New Zealand provided that the owners of the goods could not sue the carriers or stevedores unless any claim was brought within one year of the action giving rise to the cause of action. The stevedores were independent contractors who were engaged to load and unload the ship by the ship owner. A stevedore damaged the machine whilst unloading it. The owner of the machine brought an action against the stevedore after the limitation period specified in the contract. The stevedore sought to rely upon the clause in order to escape liability. The owner of the machine argued that the stevedores could not rely on the clause as they were not privy to the contract and had not provided them with any consideration.
Held: The stevedores had provided consideration in the form of services of unloading the machine. Relying on the case of Scotson v Pegg, there is nothing to prevent consideration owed to a 3rd party being valid consideration for a new promise to another party. Therefore the stevedores had protection from the limitation clause. The claimant's action was unsuccessful.

Past Consideration:
Consideration cannot be past. A promise which is made after an act has been performed is generally not enforceable. (Illustrated in the case below.)

Re McArdle
Majorie McArdle carried out certain improvements and repairs on a bungalow. The bungalow formed part of the estate of her husband's father who had died leaving the property to his wife for life and then on trust for Majorie's husband and his four siblings. After the work had been carried out the brothers and sisters signed a document stating in consideration of you carrying out the repairs we agree that the executors pay you £480 from the proceeds of sale. However, the payment

Duty already owed to promisor by contract:

1. **Promising extra**:

Stilk v Myick:
The claimant was a seaman on a voyage from London to the Baltic and back. He was to be paid £5 per month. During the voyage two of the 12 crew deserted. The captain promised the remaining crew members that if they worked the ship undermanned as it was back to London he would divide the wages due to the deserters between them. The claimant agreed. The captain never made the extra payment promised.
Held: The claimant was under an existing duty to work the ship back to London and undertook to submit to all the emergencies that entailed. Therefore he had not provided any consideration for the promise for extra money. Consequently he was entitled to nothing.

- Promise to pay more wages was held to be unenforceable.
- No consideration because the crew was only doing what they contractually obliged to do.
- Role of public policy here: importance of marine commerce (especially during war times)
- Is the promise made enforceable? Its not a question of whether offer or acceptance is made.
- This promise to pay extra was not enforced by consideration, which therefore means the promise is not enforceable.
- However to what extent is this decision influenced by public policy? The courts didn't want to seamen to turn around mid-journey to turn around and say "I'm not doing any more work until you pay more."

Doctrine of Duress: At the time of Stilk v Myrick there was physical duress however there was no doctrine of economic duress.

There needs to be fresh consideration in order for a promise to be enforceable. Every time a new promise is made or changed, fresh consideration is needed for support.

Contrasting case to the above:

Hartley v Ponsonby
Half of a ship's crew deserted on a voyage. The captain promised the remaining crew members extra money if they worked the ship and completed the voyage. The captain then refused to pay up.
Held: The crew were entitled to the extra payment promised on the grounds that either they had gone beyond their existing contractual duty or that the voyage had become too dangerous frustrating the original contract and leaving the crew free to negotiate a new contract.

- Crew entitled to enforce Captain's promise to pay more because they did more than their contractual obligation.
- New circumstances had arisen before the new promise was made which entitled refusal of initial obligations.
- This amounted to a fresh bargain and a second contract – not a modification of the first contract.

North Ocean Shipping Ltd v Hyundai

The defendants agreed to build a ship for the claimants for a certain price specified in US dollars. After entering the contract the US dollar was devalued by 10%. The defendants threatened not to complete unless the claimants paid an additional 10% on the contractually agreed price. The claimants had a valuable charter lined up so agreed to pay the additional sums and did pay them without protest. 8 months after delivery of the ship the claimants brought an action to recover the additional sums paid.

Held: The contract was voidable for duress, however, since the claimants had left it so long in bringing their claim they had affirmed the contract and lost their right to rescind.

- The shipbuilders had undertaken an additional contractual obligation which rendered them liable to an increased detriment.
- This constituted consideration for the promise.
- No automatic obligation so no existing contractual duty to do so.
- Element of economic duress here but not operative.
- These cases seem to suggest that the concept of 'existing duty' will be construed narrowly.

2. Duty owed to promisor – Paying More

Williams v Rofey Bros & Nicholls (Court of Appeal)

The defendants were building contractors who entered an agreement with Shepherds Bush Housing Association to refurbish a block of 27 flats. This contract was subject to a liquidated damages clause if they did not complete the contract on time. The defendants engaged the claimant to do the carpentry work for an agreed price of £20,000. 6 months after commencing the work, the claimant realised he had priced the job too low and would be unable to complete at the originally agreed price. He approached the defendant who had recognised that the price was particularly low and was concerned about completing the contract on time. The defendant agreed to pay the claimant an additional £575 per flat. The claimant continued work on the flats for a further 6 weeks but only received an additional £500. He then ran out of money and refused to continue unless payment was made. The defendant engaged another carpenter to complete the contract and refused to pay the claimant the further sums promised arguing that the claimant had not provided any consideration as he was already under an existing contractual duty to complete the work.

Held: Consideration was provided by the claimant conferring a benefit on the defendant by helping them to avoid the penalty clause. Therefore the defendant was liable to make the extra payments promised.

- Although P was doing no more than he was already legally obliged to, the promise was enforceable.
- D had obtained a practical benefit from the promise to pay more for performance.
- The practical benefit was the avoidance of the late penalty and that they didn't need to hire someone else.
- This will amount to good consideration in the absence of duress or fraud.
- It was relevant that the D was the party that commenced re-negotiation.
- Practical benefit, avoiding..? The carpenters were threatening to break the contract in order to get more money.
- Glidewell LJ: The present state of the law on this subject can be expressed in the following proposition.

Modern Doctrine:

Central London Properties Trust v High Trees House

High Trees leased a block of flats from CLP at a ground rent of £2,500. It was a new block of flats at the time the lease was taken out in 1937. The defendant had difficulty in getting tenants for all the flats and the ground rent left High Trees with no profit. In 1940 many of the flats were still unoccupied and with the conditions of the war prevailing, it did not look as if there was to be any change to this situation in the near future. CLP agreed to reduce the rent to £1,250 during the war years. The agreement was put in writing and High Trees paid the reduced rent from 1941. When the war was over the flats became fully occupied and the claimant sought to return to the originally agreed rent.

Held: The rent would be returned to the originally agreed price for the future only. CLP could not claim back the arrears accrued during the war years. This case is important as Denning J (as he then was) established the doctrine of promissory estoppel. Promissory estoppel prevented CLP going back on their promise to accept a lower rent despite the fact that the promise was unsupported by consideration. Denning LJ "In my opinion, the time has now come for the validity of such a promise to be recognised. The logical consequence, no doubt is that a promise to accept a smaller sum in discharge of a larger sum, if acted upon, is binding notwithstanding the absence of consideration." Negates requirement of consideration.

Ratio (Reasons for the decision): Lower rent apply only while flats not let – so arrears in 1945 were payable. Rent goes back to full amount.

Obiter Dicta (remarks the judge made when making the decision): "a promise to accept a smaller sum in discharge of a larger sum, if acted on, is binding, notwithstanding the absence of consideration…"

Requirements of promissory estoppel:

1. **Detrimental Reliance**

   Detrimental reliance is a term commonly used to force another to perform their obligations under a contract, using the theory of promissory estoppel. Promissory estoppel may apply when the following elements are proven: A promise was made, Relying on the promise was reasonable or foreseeable, There was actual and reasonable reliance on the promise, The reliance was detrimental, Injustice can only be prevented by enforcing the promise. Detrimental reliance must be shown to involve reliance that is reasonable, which is a determination made on an individual case-by-case basis, taking all factors into consideration. Detrimental means that some type of harm is suffered.

   Ajayi v RT Briscoe Ltd.

   Ajayi sued Briscoe for the balance of the purchase price of eleven Seddon Tipper lorries which Briscoe had purchased from Ajayi on hire purchase. Briscoe's defence was based on promissory estoppel; he claimed that Ajayi was estopped from claiming the money owed because Ajayi had written to Briscoe stating '... we confirm herewith that we are agreeable to your withholding instalments due on the Seddon Tippers as long as they are withdrawn from active service.' Briscoe argued that since the lorries were still off the road Ajayi could not go back on the promise they had made in their letter.

   Lord Hodson: "The principle, which has been described as quasi estoppel and perhaps more aptly as promissory estoppel, is that when one party to a contract in the absence of fresh consideration agrees not to enforce his rights an equity will be raised in favour of the other

and said he would pay future tax as it fell due and the arrears at £1000 a month. Mr Polland said he would have to check and would contact the managing director if it was unacceptable. Selectmove Ltd heard nothing till a £25,650 notice came in and a threat of a wind-up petition. Mr ffooks subsequently claimed that the Revenue had said he could repay less. The High Court held that even if that were found to be true, Mr Polland had not bound the Revenue, and there was no consideration for the varied agreement anyway.
Held: The person who made the promise had no authority to make such an agreement. No promise may have been made at all.

Estoppel and part payment of debts:

Collier v P & M J Wright Holdings Ltd.
Mr Collier was one of three partners of a property developer. They had assented to a court order to pay £46,000 to Wright Ltd in monthly installments of £600, and were jointly liable. From 1999 the payments went down to £200 a month. In 2000, swore Mr Collier, there was a meeting where Wright Ltd said he would be severally liable (for £15,600), rather than jointly (as a partner). The other two partners went bankrupt in 2002 and 2004. In 2006, when Mr Collier had finished paying his lot, Wright Ltd went after Mr Collier for the lot outstanding. Mr Collier applied under rule 6.4 of the Insolvency Rules 1986, because the debt was disputable on 'substantial grounds' (r.6.5(4)(b)). So the court just had to decide, was there a 'genuine triable issue'. He alleged the variation agreement was binding, or if not that Wright Ltd was estopped from enforcing the full payment.
Held: Agreement to limit liability unsupported by consideration but promissory estoppel can enforce promises to make part payment of debts. Part payment must actually be made (not just the promise to pay). Must be true accord or voluntary acceptance by creditor. Undermines the ruling of Foakes v Beer.
If a debtor offered to pay part only of the amount he owed: the creditor voluntarily accepted that offer; and in reliance on the creditor's acceptance the debtor paid that part of the amount he owed in full, the creditor would, by virtue of the doctrine of promissory estoppel, be bound to accept that sum in full and final satisfaction of the whole debt. For him to resile would of itself be inequitable. In addition, in those circumstances, the promissory estoppel had the effect of extinguishing the creditor's right to the balance of the debt.

Promissory Estoppel does not create a cause of action:

Coombe v Coombe
A husband promised to make maintenance payments to his estranged wife but failed to do so. The wife brought an action to enforce the promise invoking promissory estoppel.
Held: Her action failed. There was no pre-existing agreement which was later modified by a promise. The wife sought to use promissory estoppel as sword and not a shield. Estoppel cannot be used to create a cause of action where one did not exist. It only operates as a defence. Promissory estoppel leaves the principle of consideration intact.

Existing contractual relationship:
It had been thought that an existing legal relationship was required between the parties to invoke promissory estoppel.

Walton Stores Ltd v. Maher (Australia)
Maher owned some property with buildings on it in Nowra. He was negotiating with a department

on the clause in the form even though the claimant had signed it. Denning LJ: Signature obtained by misrepresentation misled as to the extent of exemption, disentitles cleaners from relying on clause.

2. Reasonable notice

3. Course of dealing and custom

Oral terms overriding Written terms.
In some contracts oral statements can override express written ones – this is sometimes referred to as an oral 'collateral contract' or 'collateral term'.

City and Westminster Properties v Mudd [1959]
The lease said the tenant could only use No 4 New Cavendish Street, London, for business purposes only. Mr Mudd, the tenant was an antique dealer. He had been assured he could live in the back room of the shop and using the basement a living space as a wartime arrangement since 1941. The written agreements followed from 1943 and excluded using the premises to live since 1947. In 1957, after some changes of landlord and caution of surveyors, the new landlord tried to eject Mr Mudd. Mr Mudd refused to leave and was brought to court.
Counsel for the landlord (City and Westminster Properties) argued that reasonable notice was being given and therefore it could not fall within the *High Trees case*. Mr Mudd had no right to remain.

Incorporation by Notice
Usually unsigned but written contract.
Three Requirements:

1. Notice must be given before or at the time of contracting
   Olley v Marlborough Court
   The claimant booked into a hotel. The contract was made at the reception desk where there was no mention of an exclusion clause. In the hotel room on the back of the door a notice sought to exclude liability of the hotel proprietors for any lost, stolen or damaged property. The claimant had her fur coat stolen.
   Held: The notice was ineffective. The contract had already been made by the time the claimant had seen the notice. It did not therefore form part of the contract.

2. Term must be contained or referred to in document intended to have contractual effect.
   Chapelton v Barry UDC
   The claimant hired a deck chair from Barry UDC for use on the beach. There was a notice on the beach next to the deck chairs stating that the deck chairs could be hired at 2d for three hours and also 'respectfully requested' the public to obtain tickets issued by the chair attendants. The claimant obtained a ticket and put it in his pocket without reading it. In fact there was an exclusion clause printed on the ticket excluding the council's liability for personal injury caused in using the deck chair. The claimant was injured when he sat on the chair. The fabric of the deck chair split away from the frame. He brought an action against the council and they sought to rely on the exclusion clause contained in the ticket.
   Held: The exclusion clause was not incorporated into the contract. A reasonable person would regard the ticket as nothing more than a receipt and would not expect it to contain contractual terms. Furthermore, the wording of the notice suggested that a person could

Held: Court of Appeal held clauses can be unusual without being particularly onerous or unreasonable. Sufficient notice give, rules were referred to on face of scratch card. Merely, deprives claimant of windfall!

Incorporation by Course of Dealing

The relational history of business conducted between two or more business parties that establish boundaries for acceptable practices and behaviors between those specific parties.

McCutcheon v MacBrayne 1964 HOL

The claimant's car sank in a car ferry owned by the defendant. The claimant had used the car ferry on a few occasions previously. Sometimes he had been asked to sign a document containing an exclusion clause sometimes he had not been asked to sign a form. On this occasion he had not been asked to sign a document. The defendant sought to rely on the exclusion clause claiming it had been incorporated through previous dealings.
Held: There was no consistency in the course of dealings and therefore the clause was not incorporated. The defendant was liable to pay damages.

British Crane Hire Corp v Ipswich Plant 1975

Both parties were in the business of hiring out plant machinery. The defendants, Ipswich Plant Hire (IPH), were doing some work on some marsh land and needed a dragline crane urgently so contacted the claimant, British Crane Hire (BCH), to hire one. The hire of the crane was dependent upon having the claimant's driver. Unfortunately the crane sank in the marsh land so much that it was out of sight. It was accepted that this was not that fault of either of the parties. However it cost a great deal of money to get it out. The contract between the parties was concluded over the phone. A copy of the terms and conditions of hire were handed to the defendant on delivery of the crane, although the defendant had not yet read or signed it. The contract specified that the risk of hire remained with the hirer.
Held: The term relating to risk was not incorporated into the contract as the defendant was unaware of it at the time the contract was made, however the court implied the term into the contract as both parties were in the business of plant hire and it was known to both that the use of such terms was prevalent in the trade.
Cause was incorporated not by course of dealing but because both parties knew quite well substance of the conditions, common in the trade.

Statutory intervention

Unfair Contract Terms Act 1977 submit exclusion clause to test of reasonableness so incorporation not so key. *Unfair Terms in Consumer Contracts Regs 1999* stated a non-negotiated contract term shall be unfair if contrary to good faith it causes significant imbalance in parties rights and obligations to detriment of consumer: cannot be relied on.

Tests

There is a basic test that is illustrated in the case of Heilbut Symons & Co v Buckleton [1913] AC 30. 3 principles were established of how to distinguish where oral statements are, and these are; i) importance, ii) whether party told to verify and iii) special knowledge.

Heilbut Symons & Co v Buckleton [1913] AC 30

Heilbut, Symons & Co were rubber merchants who were underwriting shares of what they claimed was a rubber company. Buckleton called up a manager at Heilbut to inquire about the shares. In response to the questions, the manager stated that they were "bringing out a rubber company". Based on this statement, Buckleton purchased a large number of shares. The shares turned out not

The effect of a finding of misrepresentation is the contract is voidable. The remedy available depends on the type of misrepresentation, but generally consists of rescission and/or damages. The law relating to misrepresentation is mainly found in common law, as well as the Misrepresentation Act 1967 providing further details.

In order to amount to an actionable misrepresentation, certain criteria must be satisfied:

1. False Statement
   There must be a false statement of fact or law as oppose to opinion or estimate of future events.
   Bisset v Wilkinson [1927] AC 177
   The claimant purchased a piece of farm land to use as a sheep farm. He asked the seller how many sheep the land would hold. The seller had not used it as a sheep farm but estimated that it would carry 2,000 sheep. In reliance of this statement the claimant purchased the land. The estimate turned out to be wrong and the claimant brought an action for misrepresentation.
   Held: The Privy Council held that the statement was only a statement of opinion and not a statement of fact and therefore not an actionable misrepresentation. The claimant's action was therefore unsuccessful.

   Esso Petroleum v Mardon [1976] QB 801
   Mr Mardon entered a tenancy agreement with Esso Petroleum in respect of a new Petrol station. Esso's experts had estimated that the petrol station would sell 200,000 gallons of petrol. This estimate was based on figures which were prepared prior to planning application. The planning permission changed the prominence of the petrol station which would have an adverse effect on the sale rate. Esso made no amendments to the estimate. The rent under the tenancy was also based on the erroneous estimate. Consequently it became impossible for Mr Mardon to run the petrol station profitably. In fact, despite his best endeavours the petrol station only sold 78,000 gallons in the first year and made a loss of £6,000.
   Held: The Court of Appeal held that there was no action for misrepresentation as the statement was an estimate of future sales rather than a statement of fact. However, the claimant was entitled to damages based on either negligent misstatement at common law or breach of warranty of a collateral contract.

   A statement of opinion may amount to an actionable misrepresentation where the representor was in a position to know the facts:

   Smith v Land & House Property Corp [1884] 28 Ch D 7
   The claimant purchased a hotel. The seller described one of the tenants as being 'most desirable'. In fact, as the seller knew, the tenant was in arrears and on the verge of bankruptcy. This was held to be a statement of fact rather than opinion as the seller was in a position to know the facts.

   A statement as to future intent cannot amount to a misrepresentation unless the representor had no intention of carrying out the stated intent:
   Edgington v Fitzmaurice [1885] 29 Ch D 459
   The claimant purchased some shares in the defendant company. The company prospectus stated the shares were being offered in order to raise money to expand the company. In fact

Dimskal Shipping v International Transport Workers Federation (The Evia Luck) [1991] All ER 871
The ITWF threatened strike action unless certain demands were met. The cost of strike action would be astronomical for Dimskal and therefore they agreed to the demands. They later sought to have the agreement set aside as being procured by duress. There was clearly present a coercion of the will and absence of choice the main question for the court was the legitimacy of the pressure. At the time of the threatened strike the Evia Luck was in Sweden. The court had to determine whether English law applied or Swedish law applied to the threatened strike action as under Swedish law the threatened strike would be lawful so there would be no illegitimate pressure applied, however, under English law the strike would be unlawful and the threat would be regarded as illegitimate.
Held: English law applied and the threat was therefore unlawful and illegitimate.

CTN Cash & Carry v Gallagher [1994] 4 All ER 714
The defendants sent a consignment of cigarettes to the wrong address. The cigarettes were then stolen. The defendant mistakenly believed that the cigarettes were at the claimant's risk and sent them an invoice. The defendant threatened to withdraw the claimant's credit facility unless the invoice was paid. The claimants needed the credit facilities and so paid the invoice and then sought to reclaim the money on the grounds of economic duress.
Held: The threat to withdraw credit facility was lawful since under the terms of the credit agreement credit could be withdrawn at any time. Therefore the threat was legitimate and consequently, economic duress could not be established.

However, dicta from Lord Hoffman in the Privy Council case of *R v Attorney General for England and Wales [2003]* suggests a different approach:

"The legitimacy of the pressure must be examined from two aspects: first, the nature of the pressure and secondly, the nature of the demand which the pressure is applied to support: see Lord Scarman in the *Universe Tankships* case, at p 401. Generally speaking, the threat of any form of unlawful action will be regarded as illegitimate. On the other hand, the fact that the threat is lawful does not necessarily make the pressure legitimate. As Lord Atkin said in *Thorne v Motor Trade Association* [1937] AC 797 806:

"The ordinary blackmailer normally threatens to do what he has a perfect right to do - namely, communicate some compromising conduct to a person whose knowledge is likely to affect the person threatened ... What he has to justify is not the threat, but the demand of money.""

Effect of a finding of duress
Since duress operates to deflect the will of the party rather than vitiate consent, the effect of a finding of duress is always to make the contract voidable not void:

IFR Ltd v Federal Trade Spa [2001] EWHC 519
In 1998 an agreement was entered in to between IFR (English company) and Federal (Italian company) whereby IFR were to distribute and give sole right of resale of certain specified items including radio, electronic and telecommunication equipment. The agreement was to last for 2 years. This succeeded an earlier agreement and contained a jurisdiction clause (stating the agreement would be governed by English law) and an arbitration clause which were not in the earlier agreement. Three months before the contract was due to expire IFR gave notice in writing that they would not be renewing the contract when it expired. Under Italian law this termination would give rise to compensation. However, no such compensation was payable under English law. Federal sought to raise duress to render the 1998 agreement void so as to take advantage of the Italian right to compensation.

The effect of a finding of duress has always been to render a contract voidable as oppose to void, however, a voidable contract would not have aided Federal as they had acted on the contract without protest for nearly 2 years so would most certainly have lost their right to rescind. In their argument they raised the earlier case law relating to vitiating consent (The Sibeon & Sibotre, The Atlantic Baron and Pao On) and stated that where there is no consent the contract must be void ab initio as oppose to voidable.
Held: Following later case law (Universe Sentinel etc) the basis of duress is not the absence of consent; when acting under duress the actor will give consent for the contract. The contract is therefore initially valid. It is the absence of choice that renders the contract voidable.

Would a reasonable person in the victim party's place have acted as victim did?
"Relief must depend on the court's assessment of the qualitative impact of the illegitimate pressure, objectively assessed… Relief may not be appropriate, if an innocent party decides as a matter of choice not to pursue an alternative remedy which any and possibly some other reasonable persons in his circumstances would have pursued." (Huyton v Peter Cremer & Co [1998])

Undue influence
Undue influence exists where a contract has been entered as a result of pressure which falls short of amounting to duress, the party subject to the pressure may have a cause of action in equity to have the contract set aside on the grounds of undue influence.
Undue influence operates where there exists a relationship between the parties which has been exploited by one party to gain an unfair advantage. Undue influence is divided into actual undue influence and presumed undue influence. Where a contract is found to be entered into as a result of undue influence, this will render the contract voidable. This will enable the person influenced to have the contract set side as against a party who subjected the other to such influence. In addition, in some instances the party influence may be able to have a contract aside as against a party who was not the person inflicting the influence or pressure.

Classes of undue influence
There are three classes of undue influence which were set out in the following case:
Bank of Credit & Commerce International v Aboody [1990] 1 QB 923
A husband exerted actual undue influence over his wife in order to get her to sign a charge securing the family home on the debts owed by the company in which the husband and wife owned shares. The couple were unable to repay the mortgage and the bank sought to repossess the home. The wife sought to have the mortgage set aside on the grounds that it was procured by actual undue influence of the husband.
Held: The husband had exerted actual undue influence on the wife. However, the transaction was not to the manifest disadvantage of the wife since she owned shares in the company. In considering whether a transaction was to the manifest disadvantage the court was to have regard to any benefits received in addition to the risks undertaken. Therefore the bank were granted possession.
NB - it is no longer necessary to establish manifest disadvantage in cases involving actual undue influence.

The Court of Appeal set out the classes of undue influence:

are relevant to the seriousness of the risks involved.

(iii) The solicitor will need to state clearly that the wife has a choice. The decision is hers and hers alone. Explanation of the choice facing the wife will call for some discussion of the present financial position, including the amount of the husband's present indebtedness, and the amount of his current overdraft facility.

(iv) The solicitor should check whether the wife wishes to proceed. She should be asked whether she is content that the solicitor should write to the bank confirming he has explained to her the nature of the documents and the practical implications they may have for her, or whether, for instance, she would prefer him to negotiate with the bank on the terms of the transaction. Matters for negotiation could include the sequence in which the various securities will be called upon or a specific or lower limit to her liabilities. The solicitor should not give any confirmation to the bank without the wife's authority.

The solicitor's discussion with the wife should take place at a face-to-face meeting, in the absence of the husband. The solicitor's explanations should use non-technical language. The solicitor should obtain from the bank any information he needs. If the bank fails for any reason to provide information requested by the solicitor, the solicitor should decline to provide the confirmation sought by the bank.

Legislative interventions
Section 137 Consumer Credit Act 1974 (now repealed) which was then replaced by the new section 140A CCA 1974, inserted in 2006.

Illegality

Courts will generally not enforce a contract which is illegal or otherwise contrary to public policy. Courts will generally not order return of money paid or return of property transferred or recovery of benefits provided under an illegal or contrary to public policy contract either.

When determining whether a contract is illegal you have to distinguish between the following;

1. That the contract was illegal from the very beginning or it had an illegal object.
2. The contract was originally valid but it later becomes illegal because it is performed in an illegal way. E.g. St. John Shipping Corp v Rank [1957] - (Cant find Case summary.)

A position of a party who does not know neither do they consent to the illegality may be able to enforce the contract, as illustrated in Archbolds v Spanglett [1961]. (Cant find case summary.)

A position of a party who knew of the illegality will less likely be able to enforce, for example, Ashmore Benson Pease & Co v Dawson [1973].

Different "heads" of illegality

- Contracts made illegal by specific statute
- Gaming contracts; *section 18 Gaming Act 1845*, repealed by *section 335 Gambling Act 2005*.
- Contracts illegal at common law as contrary to public policy;

However, recovery or return may exceptionally be possible on an unjust enrichment basis, and assumes one of the usual grounds for restitution would help.

Recovery of benefits conferred/ property transferred under illegal contract may be possible by less "blameworthy" party, if parties not *in pari delito*:

1. Claimant reasonably didn't know contract was illegal:
   Oom v Bruce [1810]

2. Claimant entered into contract in reliance on Defendant's fraudulent misrepresentation which hid illegal nature of the contract:
   Hughes v Liverpool Victoria Friendly Society [1916]

3. If contract was illegal under statute enacted to protect people in Claimant's position:
   Kiriri Cotton v Diwani [1960]

Recovery of benefits conferred/property transferred under illegal contract may be possible:

1. If the claimant withdraws from a partly performed contract:
   Taylor v Bowers [1876]

   Tribe v Tribe [1996]
   A father transferred company shares to his son (presumption of advancement) to preserve them for the family's benefit because he could be soon liable for dilapidations under commercial leases. It turned out he was not liable. The son refused to re-transfer shares.

2. If the claimant can establish his right to the money or property without needing to rely on the illegal contract, i.e. if he has another basis for his claim that does not depend on the illegality.
   Bowmakers Ltd v Barnet Instruments Ltd [1945]
   The Defendant hired some machine tools from the Claimant under a hire purchase agreement. The agreement did not comply with statutory requirements. The Defendant missed payments due under the agreement and the Claimant sought to recover the machines. The Defendant argued that the Claimant's illegality in failing to comply with the statutory requirements, barred their recovery.
   Held: The Claimant was successful. The Claimant did not plead the illegal agreement in making their claim. It was based on their ownership of the machine and therefore they did not need to rely on their illegality to found the claim.

   Tinsley v Milligan [1994]
   The Claimant and Defendant were lovers. Together they purchased a property from which they jointly ran a business by letting out the rooms in the house. It was agreed that the house was to be registered in the name of the Claimant alone. This was so that the Defendant would be able to fraudulently claim social security benefits which would go into their joint bank account. The relationship broke down and the Claimant sought possession of the house asserting full ownership. The Defendant sought a declaration that the property was held on trust for both of them in equal shares. The Court of Appeal applied the public conscience test and held that it would be an affront to the public conscience to allow the

Claimant to keep the whole interest in the house. The Claimant appealed to the Lords. Held: The House of Lords rejected the public conscience test as it was inconsistent with previous authorities and gave too much discretion to the court. They applied the reliance principle; the Defendant did not have to plead the illegality to succeed, it was sufficient that she had contributed to the purchase price and there was a common understanding that they would own the house equally.

Overall to conclude illegality; Courts will not give effect to an illegal contract or one that breaches public policy. In practice, significant judicial discretion applied here with a view to achieving fairness between parties in individual cases.

Discharge by breach & Discharge through performance

There are 4 possible ways that a contract could be discharge or brought to an end (according to McKendrick):

1. **By the parties performing according to the terms of the contract (most common)**

2. **By the parties agreeing to abandon/discharge the contract (needs consideration or deed)**

3. **By operation of law (e.g. frustration)**

4. **By breach**
   "Where a party without lawful excuse fails or refuses to perform what is due from him under the contract, or performs defectively, or incapacitates himself from performing." – Treitel

   Consequences of breach of contract:
   -Other party always has the right to claim damages
   -Other party may also have right to stop performing his obligations under the contract
   -Other party may also have right lawfully to bring contract to an end.
   -The breach does not automatically terminate the contract, it just gives the other party the option.
   -Not the same as rescission, for example for misrepresentation. (termination here operates with future effect only.)

Discharge by breach (In more detail)
A contract may, in some circumstances, be discharged by a breach of contract. Where there exists a breach of condition (as opposed to a breach of warranty) this will enable the innocent party the right to repudiate the contract (bring the contract to an end) in addition to claiming damages. A contract cannot be discharged by a breach of warranty.

Anticipatory breach
Where a party indicates their intention not to perform their contractual obligations, the innocent party is not obliged to wait for the breach to actually occur before they bring their action for breach.

Hochster v De la Tour [1853] 2 E & B 678
The claimant agreed to be a courier for the defendant for 3 months starting on 1st June 1852. On the 11th May the defendant wrote to the claimant stating he no longer wanted his services and refused

3. Discomfort or disappointment

Damages to reflect discomfort and disappointment can only be claimed where enjoyment was part of the bargain of the contract. This is most commonly seen in holidays which fail to meet the standard the holiday maker was lead to believe would be enjoyed.

Jarvis v Swann Tours [1972] 3 WLR 954

Mr Jarvis, a solicitor, booked a 15 day ski-ing holiday over the Christmas period with Swan Tours. The brochure in which the holiday was advertised made several claims about the provision of enjoyment relating to house parties, a friendly welcome from English speaking hotel owner, a variety of ski–runs, afternoon tea and cakes and a Yodler evening. Many of these either did not go ahead or were not as described. Mr Jarvis brought a claim for breach of contract based on his disappointment. At trial, the judge awarded him £30 damages on the basis that he had only been provided with half of what he had paid for and that no damages could be recovered for disappointment. Mr Jarvis appealed.

Held: Where a contract is entered for the specific purpose of the provision of enjoyment or entertainment, damages may be awarded for the disappointment, distress, upset and frustration caused by a breach of contract in failing to provide the enjoyment or entertainment.

Jackson v Horizon Holidays [1975] 1 WLR 1468

Mr Jackson booked a 28 day holiday in Ceylon for himself and his family through Horizon Holidays. The hotel turned out to be unsatisfactory for various reasons relating to cleanliness and provision of services. The trial judge made an award for the disappointment suffered by Mr Jackson, but stated he could not take into account the disappointment suffered by his wife and children since they were not party to the contract. Mr Jackson appealed.

Held: Mr Jackson was able to recover for the disappointment suffered by his wife and children. This amounts to an exception to the rule of privity of contract based on the decision in *Beswick v Beswick* (1968) AC 58.

4. Inconvenience

Where the claimant has been put to physical inconvenience rather than anger or disappointment that the defendant has not met his contractual obligation, the court may award a sum to reflect such inconvenience.

Bailey v Bullock [1950] 2 All ER 1167

A solicitor failed to take action to recover the claimant's house. As a consequence the claimant and his wife had to move in with his in-laws for two years. It was held that he was entitled to recover damages to reflect the inconvenience of having to live in overcrowded circumstances. Barry J emphasised that there is a distinction between mere annoyance or disappointment at the failure of the other party to carry out his contractual obligation and actual physical inconvenience and discomfort caused by the breach.

5. Diminution of future prospects

Where a breach of contract adversely affects the claimant's future prospects, for example a contract promising training and qualifications, a sum can be awarded to reflect the loss.

Dunk v George Waller [1970] 2 QB 163

The defendant engaged the claimant under a four year apprenticeship to train him as an engineer. The defendant terminated the contract before the completion of the contractually agreed time. The claimant bought an action for wrongful dismissal.