# Contents

Preface	XV	The judiciary	33
Table of cases	xvii	Judicial review	34
Table of statutes	xxvi	Juries	34
Table of statutory instruments	xxxii		
Table of European legislation	XXXV	Essential points	35
		Practice questions	36
Study skills	1	Task 1	36
Get organised from the start	1	2 Making a contract	37
Take advantage of what your lecturer		Definition of a contract	37
tells you	1		
After the lecture/tutorial	1	Offer	37
Answering questions	2	Invitation to treat	38
Using cases and statutes	6	Offer of a unilateral contract	39
		Goods in shops	40
1 The legal system	7	Acceptance	41
Introduction	7	The postal rule	42
Sources of law	8	Acceptance of the offer of a	
Legislation	8	unilateral contract	43
Rules of statutory interpretation	9	Counter offer	44
Judicial precedent	11	Auctions	44
The hierarchy of the courts	11	Tenders	45
The binding part of a case	12	Certainty of agreement	45
European Union law	15	Offer and acceptance when	
The institutions of the EU	17	dealing with machines	47
Sources of EU law	20	Offer and acceptance made over	
Supremacy of EU law	20	the Internet	47
		Termination of offers	48
The Human Rights Act 1998	24	Subject to contract	50
Civil law and criminal law	26	Condition not fulfilled	50
Common law and equity	28	Battle of the forms	50
Features of the English legal system	29	Intention to create legal relations	51
Antiquity and continuity	29	Agreements made in a business or	
The adversarial system of trial	29	commercial context	52
Absence of a legal code	30	Agreements made in a social or	
The law-making role of the judges	30	domestic context	52
Importance of procedure	30	Consideration	53
Absence of Roman law	30	Executed, executory and past	
Other features	31	consideration	54
The legal profession	31	Sufficiency and adequacy	55
The Legal Services Act 2007	32	Performing an existing duty	55

#### viii Contents

Settling out of court Part payment of a debt Promissory estoppel Privity of contract The Contracts (Rights of Third Parties) Act 1999 **Formalities** Contracts which must be made by a deed Contracts which must be in writing Contracts which must be evidenced in writing Minors Valid contracts Voidable contracts Void contracts Essential points Practice questions Task 2

59

59

61

63

65

67

67

68

68

68

68

69 69

69

70

72

78

79 80

81

83 87 90

90

**91** 91 92

Rules about frustration

148

#### 3 The terms of the contract

Nature of terms
Express terms
Terms implied by the courts
Types of terms
Conditions and warranties
Innominate terms
Terms implied by statute
The Sale of Goods Act 1979
Scope of the Sale of Goods
Act 1979
The terms implied by the Sale
of Goods Act 1979
The right to sell (s. 12(1))
Correspondence with description
(s. 13(1))
Quality and fitness in business
sales (s. 14)
Fitness for purpose (s. 14(3))
Sale by sample (s. 15)
The Supply of Goods (Implied Terms) Act 1973
The Supply of Goods and Services Act 1982
Part I of the Act
Part II of the Act

The status of the statutory	
implied terms	94
The Consumer Rights Act 2015	95
Exclusion clauses	104
Is the exclusion clause a term of the	
contract?	104
Does the exclusion clause cover	
the breach which occurred?	106
The Unfair Contract Terms Act 1977	106
Contracts covered by the Act	107
The effect of the Act	107
Essential points	113
Practice questions	114
Task 3	115
4 Misrepresentation,	
mistake, duress and	
illegality	117
The difference between terms	117
and representations	117
Written contracts	117
Oral contracts	118
Actionable misrepresentation	121
Definition of a misrepresentation	121
Remedies for misrepresentation	125
Mistake	130
Common mistake	130
Unilateral mistake	133
Duress and undue influence	137
Duress	137
Undue influence	138
Illegal contracts	139
Contracts which contravene	
public policy	140
Essential points	140
Practice questions	141
Task 4	142
5 Discharge of contracts and	4.45
remedies for breach	143
Discharge of contractual liability	143
Discharge by performance of	140
the contract	143 146
Discharge by agreement Discharge by frustration	146
Discharge by indication	1-1/

Discharge by breach	152
Legislation giving right to cancel	150
concluded contracts	153
Remedies for breach of contract	157
Refusal to perform the contract	157
Damages	157
Suing for the contract price	161
Specific performance	163
Injunction	163
Rectification	164
Quantum meruit (as much as he	
has earned)	164
Time limits on remedies	164
Essential points	165
Practice questions	165
Task 5	166

6 A	gen	су
-----	-----	----

What is agency?	168
The authority of the agent	169
Actual authority	169
Apparent authority	169
Ratification	171
Watteau v Fenwick authority	172
Agency by operation of law	173
No authority	174
Liability on contracts made by agents	176
Disclosed agency	176
Undisclosed agency	176
The agent's liability for breach	
of warranty of authority	177
The rights and duties of the agent	178
Contractual duties	178
Fiduciary duties	179
Remedies for breach of fiduciary duties	181
Rights of the agent	181
Termination of agency	184
Termination and the Commercial Agents	
(Council Directive) Regulations 1993	186
Essential points	187
Practice questions	188
Task 6	189

# 7 The Sale of Goods Act 1979 191

The passing of ownership and risk	
The goods become lost or damaged	

Insolvency of the buyer or the seller	193
The Sale of Goods Act rules on	105
the passing of ownership	195
Passing of ownership of specific goods	195
Risk, mistake and frustration	195
Passing of ownership in	190
unascertained goods	199
-	204
Duties of the buyer and the seller The seller's duty to deliver	204
The buyer's duty to pay the price	204
The buyer's duties to accept the	200
goods and take delivery of them	210
Remedies of the buyer and seller	210
The buyer's remedies	210
The seller's remedies	215
Reservation of title (ownership)	
by the seller	220
Claims to goods manufactured	
out of the goods sold	221
The position where the goods are	
sold on	221
Claims to proceeds of sale	222
All moneys clauses	222
Sale by a person who is not	
the owner	223
Agency (s. 21 SGA)	223
Estoppel (s. 21 SGA)	223
Mercantile agency (s. 2(1)	004
Factors Act 1889)	224
Sale by a person with a voidable title (s. 23 SGA)	224
Sale by a seller in possession	227
(s. 24 SGA)	226
Sale by a buyer in possession	
(s. 25 SGA)	226
Motor vehicles on hire-purchase	
(Hire-Purchase Act 1964 s. 27)	227
Essential points	229
Practice questions	229
Task 7	231
8 The tort of negligence	232

Contract and tort	232
Contract remedies and tort remedies	233
Negligence	234
That a duty of care was owed	234

#### X Contents

Breaching the duty	238
A foreseeable type of damage was	
caused by the breach of duty	241
Damages	243
Defences to negligence	244
Negligent misstatement	246
Occupiers' liability	247
Lawful visitors	247
Non-lawful visitors	248
The Consumer Protection	
Act 1987 Part I	249
Who may sue?	249
Who is liable?	249
Defective (unsafe) products	250
Damage suffered	251
Defences	251
Essential points	254
Practice questions	254
Task 8	255

### 9 Nuisance, trespass, defamation and vicarious liability

Private nuisance	256
Remedies	258
Defences	259
Public nuisance	260
Remedies	261
Defences	261
The rule in Rylands v Fletcher	261
Remedies	262
Defences	262
Trespass to land	263
Defences	264
Remedies	264
Trespass to the person	265
Battery	265
Assault	266
False imprisonment	266
Defences to trespass to the person	266
Trespass to goods	266
Defamation	267
Defences	268
Remedies	270
Passing-off	270

238	Vicarious liability	271
	Employees contrasted with	
241	independent contractors	272
243	When is an employee acting in the	
244	course of his or her employment?	275
246	Breach of statutory duty	279
247	Time limits for tort remedies	279
247	Essential points	280
248	Practice questions	280
	Task 9	283
249		
249	10 Companies (1):	
249	<b>Characteristics and</b>	
250	formation	284
251		284
251	The Companies Act 2006 Enhancing shareholder engagement	204
254	and fostering a long-term approach	
254	to investment	284
255		204
200	The 'Think Small First' approach	285
	and better regulation	285
	Ease of formation and flexibility	
OFC	The characteristics of companies	285
256	The company is a separate	
256	legal entity	285
258	Limited liability	287
259	Perpetual succession	288
260	Ownership of property	288
261	Contractual capacity	288
261	Criminal liability	288
261	The corporate veil	289
262	Classification of companies	291
262	Public companies and private	
263	companies	291
263	Unlimited companies	292
264 264	Limited companies	292
	Method of creation	293
265	Size of company	293
265	Formation of registered	
266	companies	294
266	Registration under the Companies	
266	Act 2006	294
266	Old-style registration	296
267		297
268	The constitution of a company	297
270	Constitutionally relevant articles The articles of association	297
270		
210	The legal effect of the constitution	299

Off-the-shelf companies	300
Contracts made before the company	
is formed	301
The company name	301
Prohibited names	302
Objection to a company name	302
Publication of name and address	302
Change of name	303
The Registrar of Companies	303
Essential points	304
Practice questions	304
Task 10	305

#### 11 Companies (2): Management, control and winding up

Management and control of
companies
Appointment and removal of
directors
The powers of directors
Directors as agents
Remuneration of directors
Directors' duties
Disqualification of directors
The register of directors
Control of the company
Types of shares
Company meetings
Resolutions
The position of minority
shareholders
Statutory protection of minority
shareholders Protection from the courts
The company secretary
Company registers
Annual return
Accounts and accounting records
Accounting records
The annual accounts
The auditor
The need to have an auditor
Appointment and leaving office
Auditor's duties
Liability limitation agreements

Loans to the company	332
Fixed charges	332
Floating charges	332
Registration of charges	334
Priority of charges	334
Winding up of companies	334
Liquidation by court order	334
Voluntary liquidation	335
Liability arising from insolvency	336
Administration	337
Company voluntary arrangement (CVA)	338
Essential points	338
Practice questions	339
Task 11	341

# 307 12 Partnership, limited liability partnership 307 and choice of legal status

	Partnership	342
307	Definition of a partnership	342
308	Characteristics of a partnership	343
309	Agency	344
311	Partnership agreements	348
311	The partnership deed	349
315	Management of partnerships	349
316	The partnership name	353
317	Fiduciary duties	354
317	Partnership property	356
318	Winding up of partnerships	356
320	Limited liability partnerships	358
	Formation of LLPs	359
322	Members and designated members	359
	Accounts and accounting records	360
323	Minority protection	360
326	Winding up of limited liability	
327	partnerships	360
328	Are LLPs more like companies	
	or partnerships?	360
328	Company, partnership or limited	
329	liability partnership? Choice of	
329	legal status	361
329	Limited liability	361
330	The right to manage	361
330	Agency	363
330	Withdrawal from the business	363
331	Business property	364
331	Borrowing power	364

Formation	364
Formalities	365
Publicity	365
Tax	365
Perpetual succession	366
Sole traders	366
Essential points	366
Practice questions	367
Task 12	368

13	Employment (1): The
	contract of employment,
	employment rights and
	dismissal

The contract of employment	370
'Gig' economy	370
Written statement of employment	
particulars	371
Itemised pay statements	372
Implied obligations of the parties	372
Variation of the terms of the contract	373
Statutory rights of the employee	374
Maternity rights	374
Paternity leave and pay	374
Shared parental leave and pay	375
Adoption leave and pay	375
Parental leave and time off for	
dependants	376
Flexible working for parents	
and carers	376
Transfer of employees	376
National minimum wage	377
The Working Time Regulations 1998	377
ACAS grievance procedure	379
Unfair and wrongful dismissal	379
Unfair dismissal	380
Who can claim?	380
What is a dismissal?	380
When is a dismissal unfair?	382
Was the dismissal actually fair?	382
Disciplinary and dismissal procedure	383
Automatically unfair dismissals	384
The effective date of termination	384
Remedies for unfair dismissal	385
Wrongful dismissal	386
Constructive dismissal	387

How much notice?	387
Redundancy	389
Who can claim redundancy?	389
Offer of suitable alternative employment	389
Redundancy payments	390
Essential points	391
Practice questions	392
Task 13	393

#### 14 Employment (2): Discrimination and health and safety

370	Introduction	394
	The Equality Act 2010	394
370	The protected characteristics	394
370	Direct discrimination	396
074	Indirect discrimination	397
371	Harassment	399
372	Victimisation	399
372	Discrimination against employees	
373	and applicants for employment	400
374	Equal pay and conditions for women	401
374	Remedies under the Act	404
374	Burden of proof under the Act	405
375	Public sector equality duty	405
375	Positive action	405
	Discrimination against part-time	
376	workers	405
	Fixed-term workers	406
376	Persons with criminal records	406
376	The Agency Workers Regulations 2010	407
377	Health and safety	408
377	Health and Safety at Work Act 1974	408
379	Common law health and safety	410
379	Control of Substances Hazardous	
380	to Health Regulations 2002	411
380	The 'six pack' Regulations	412
380	Essential points	415
382	Practice questions	416
382	Task 14	417

<b>15 Regulation of business</b>	
by the criminal law	418
The nature of criminal liability	418
The Consumer Protection from Unfair	
Trading Regulations 2008	418

The structure of the Regulations	419
The prohibitions under the Regulations The offences which the Regulations	419
create	426
Defences	427
Product safety	429
The general safety requirement	429
The Computer Misuse Act 1990	430
The unauthorised access offence	430
Intent to commit a further offence	431
Unauthorised modification of	
computer material	431
Competition law	431
Articles 101–102 of the Treaty on the	
Functioning of the European Union	432
The Competition Act 1998	432
The Enterprise Act 2002	432
The Bribery Act 2010	433
The offences	433
Essential points	435
Practice questions	435
Task 15	436

## **16 Credit transactions** and intellectual property rights

Types of credit transactions	437
Loans	437
Hire-purchase	438
Conditional sales	439
Credit sales	440
Hire and rental agreements	440
Pledge	440
The Consumer Credit Acts 1974	
and 2006	441
The definition of a regulated	
agreement	441
High net worth debtors and business	
exemptions	443
Formalities which must be	
complied with	444

Cancellation rights	444
Creditor regarded as agent of	
the supplier	445
Creditor responsible for dealer's	
misrepresentations and breaches	
of contract	445
Cooling-off period	446
Early settlement	446
Repossession of the goods	446
Unfair relationships	447
Misuse of credit cards	447
Interest on trade debts	447
Business property	447
Legal concepts of property	447
Copyright	448
Patents	451
Trade marks	452
Breach of confidence	454
Suing for breach of privacy	454
Essential points	455
Practice questions	455
Task 16	456

**17 The resolution of business** 

437

457	disputes	
457	Jurisdiction of the County Court	
458	Jurisdiction of the High Court	
460	Civil procedure	
460 461	Making a claim Responses to a claim	
461	Allocation to a track	
464	Tribunals	
464	Alternative dispute resolution	
468	Other types of ADR	
468	Ombudsmen	
469	Essential points	
469	Practice questions	
470	Task 17	
471	Glossary	
486	Index	
	2	