

A dark wood desk with a blue pen and a glass of water. The text is centered on the desk.

Business Law

Chapter I – Business Legalese

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1. Legalese

- Legal writing in English has developed over hundreds of years and is characterised by specific features, some of which can make it difficult for the non-lawyer to understand.
- Characteristics of legal writing include:
 - using Latin terms;
 - using technical terms ('subsidiarity');
 - using old-fashioned words not much in general use;
 - using pairs of words with a reciprocal relationship ('lessor'/'lessee');

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- using legal jargon ('without prejudice to') including the use of pairs of words ('terms and conditions'), or triplets ('build, erect or construct');
- having special meanings for words in ordinary use ('the judge determined the facts of the case', where 'determined' means 'decided');
- using vague words ('provide a sufficient service');
- using long sentences with little punctuation; inverting word order ('title absolute');
- using capital letters to signal important or defined terms ('the terms of the Lease ...') avoiding personal pronouns ('you', 'we', 'I');

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- the specific use of the modal verb ‘shall’ to impose an obligation or duty on someone (‘The tenant shall not sub-let the whole or part of the premises’);
- the use of ‘shall’ in a directory sense (‘Notice of an appeal shall be filed within 28 days’).
- There are many Latin terms in written English legal text. Some Latin terms are used so frequently that they are in general English use (e.g., ad hoc, bona fide, pro rata, ...). It is useful to be able to recognise their meaning:

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- ad hoc - for this purpose;
- affidavit - witnessed, signed statement;
- bona fide - in good faith;
- caveat – warning;
- de facto - in fact;
- de jure - by right;
- et cetera (etc.) - and so on;
- exempli gratia (e.g.) - for example;
- ex parte (ex p.) - by a party without notice;
- id est (i.e.) - that is;

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- in camera - hearing a case in private;
- in curia - in open court;
- in situ - in its original situation;
- inter alia - among other things;
- ipso facto - by the fact;
- per pro - on behalf of another;
- per se - by itself;
- prim a facie - at first sight;
- pro rata - in proportion;
- quasi - as if it were;
- sub judice - in the course of trial;

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- ultra vires - beyond the power;
- videlicet (viz) – namely.
- A number of linking terms are used in older written legal texts (case reports, legislation, court documentation, contracts, etc.) to refer to other parts of the same text, to different legal documents, or to related contexts:
 - the aforementioned/the foregoing - set out; above/written above;
 - the undermentioned - set out below/written below;
 - hereafter - after this;

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- hereby - in this way/by this;
- herein - in this (document);
- hereof - of this;
- hereto - to this;
- herewith - with this;
- notwithstanding – despite;
- thereafter - after that;
- thereby - in that way/by that;
- therein - in that (document);
- thereof - of that;

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- thereto - to that;
- therewith - with that.

2. Business organisations

A - Sole trader

- A client wanting to operate a business for profit might select from a number of different trading entities.
- Each has different legal characteristics and is subject to different rules and regulations.
- The simplest and commonest form of business structure is a sole trader.

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- This generally suits a relatively small enterprise, such as an independent software developer, a hairdresser, or a small shop.
- It's headed by a single individual and it differs from a company in that the ownership and management is usually vested in the same person, who is personally responsible for all the debts of the business, and may thus risk becoming bankrupt.

B - Partnerships

- A common form of structure for certain kinds of business, for example accountants, solicitors, and architects, is a partnership.

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- This needs to have at least two members and normally a maximum of twenty. There is an exemption on size for some types of firm, such as solicitors and accountants.
- All the partners may be jointly and severally liable for all the debts of the business.
- The relationship between the partners is usually drafted in the Partnership Agreement.
- This can set out the duration of the partnership, its name and business, how profits, losses, and running costs are to be shared, how much capital each partner is to contribute, what rules will apply to the capital, what grounds will lead to a partner being expelled from the company, what restrictions are imposed on partners, and so on.

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- It's also possible to have a Limited Liability Partnership, or LLP, which has a legal identity separate from its members. In this sense it resembles a limited company.
- It's possible for all the partners except one, known as the general partner, to be a limited partner.
- A sleeping partner may have a share in the business but doesn't work in it.
- An individual is therefore able to invest capital in an LLP without risking any further liability.
- LLPs must be registered with the Registrar of Companies.

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C - Limited Companies

- A Private Limited Company (Ltd) is a separate legal entity which can sue, and be sued, in its own right.
- The Company is identified by its registered number, which will remain the same irrespective of any changes of name.
- A business can start life as a limited company and this may be particularly appropriate where high-risk projects are involved. In some instances, directors will be asked to guarantee the obligations of a company, for example by giving security over personal assets to guarantee company borrowing.

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- This is particularly common in the case of new companies who are not able to demonstrate a history of profitable trading.
- A Public Limited Company, or PLC, is differentiated from a Private Limited Company in that the shares can be sold to the general public via the stock market to raise share capital.
- It's mandatory for a PLC to have at least two shareholders, two directors, and a professionally qualified Company Secretary.
- **3. Formation of a company**

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A – Incorporation

- There are a number of steps to be followed in this procedure:
 - It's necessary to choose a name for the company which is legally acceptable. The name to be registered isn't necessarily the same as the trading name.
 - The application for registration will be rejected if the name can't be distinguished easily from a company which already exists as a registered company.

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- The use of certain words, for example ‘British’, ‘International’ and ‘European’, may require prior approval before they can be used in a company name.
- On completion of registration, the new company will be given a company number, also known as a registered number, which remains constant throughout its life, and Companies House will issue a Certificate of Incorporation.
- It’s possible to begin trading as a company by purchasing a shelf company, which is already registered, and having its shares transferred.

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- A company must have an office in the jurisdiction at which it can be served with any legal process.
- The statutory books, or official company registers, must also be kept there and be available for inspection.

B - Memorandum and Articles of Association

- When a company is incorporated, it must adopt Memorandum and Articles of Association, also known as the 'Mem and Arts'.
- The Memorandum sets out the Company's objects, or purposes, and it's important to ensure that these properly reflect the company's intentions, for example the ability to mortgage company property for the purpose of raising finance.

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- The Articles set out the relationship between the company and its shareholders.
- The requirements for directors' and shareholders' meetings are also set out here, as are restrictions on share transfer and allotment of new shares, and regulations concerning directors' powers and duties.
- Most companies are limited companies with the liability of members limited to the nominal value of the shares they hold or, less commonly, the amount they guarantee to contribute to the company's liability on liquidation - if the company is closed and its assets sold.

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- A company must have a stated number of shares issued to properly identified shareholders.
- Any company will have a maximum amount of share capital which can be issued, known as the authorised share capital.

4. Raising capital by share sale

A - Share capital

- A company limited by shares may raise capital by borrowing money and through the sale of shares.
- A company's balance sheet - a statement of the financial position of a company at a specific time, for example at the end of the financial year - shows how the company is capitalised, or financed, by providing details of debt and share funding.

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- 'Capital' refers to the liability of the company to the people who have provided it with finance on a long-term basis.
- A company is obliged to maintain its share capital in order to protect its creditors, and funds may only be taken from the capital following complex procedural rules.
- The Articles of Association provide the power to issue shares.
- The Memorandum sets out the nominal capital - the total of the face value, printed on each share, of all of the shares which the company is allowed to issue.

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- When new shares are created by the company they are issued, or allotted, to shareholders - that is, they are allocated among applicants who subscribe for shares.
- A shareholder is a member of the company and holds a share certificate.

B - Share value

- All shares have a nominal value, generally of 1 euro, also known as the par value.
- This value is set out in the capital clause of the Memorandum.

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- Shares can be issued at a premium - for a sum greater than their nominal value - but they cannot be issued at a discount - less than nominal value.
- Contracts for the sale of shares may provide for deferred payment, that is, part may be left outstanding until the company makes a call for, or requests, the unpaid amount.
- The market value of a share depends upon the profitability of the company and the sum of its assets.
- The legal nature of a share for the shareholder will depend upon the contractual rights attached to the share, which is a chose in action - a personal right which can be enforced or claimed as if it were property.

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C - Rights attaching to shares

- A company may issue different classes of shares, which have different rights attached to them. The usual rights include:
 - A right to dividend, that is, a share in the profits. A company may only declare a dividend if it has made a profit.
 - A right to vote on resolutions, for example proposals on matters relating to the approval of directors' contracts, at the company's annual general meeting (AGM) - a meeting of all the shareholders with the directors.

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- A right to repayment of the investment in the event that the company is wound up, or closed.

5. Company directors

- There are no mandatory qualifications to become a director of a private or public limited company (plc), although the following persons are disqualified and are not allowed to hold the position:
 - an undischarged bankrupt, who has not been released by the court from his debts, unless leave, or permission, is obtained from the court;

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- a person disqualified by a court from acting as a company director. If leave is given by a court, it must be for the person to be appointed as a director for a specific company;
- a person under the age of 16;
- The directors must ensure that:
 - accounts for limited companies are delivered to the Registrar of Companies within the requisite period, although the requisite period may be amended by legislation. The defaulting company may be charged a late filing penalty in addition to any other fine imposed by a court;

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- annual returns are submitted as specified by the Act. In the event that these are not submitted, and the Registrar believes that the company is no longer operating, he may strike it off the register and dissolve it.
- notice of change of directors or their details is provided to the Registrar;
- notice of any change to the registered office is provided to the Registrar. If this is not done, statutory notices may be validly served on the registered office.

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6. Insolvency and winding up

- Insolvency describes the financial state of a company when its debts or liabilities exceed its assets and available cash.
- As soon as a company is insolvent, it must take action to resolve the situation.
- This may include renegotiating debt, realising assets to discharge debt, or even borrowing more money and increasing the liabilities.

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- There's a wealth of legislation that imposes obligations on company officers in relation to the interests of creditors.
- There are secured creditors, whose lending is protected by security over the company's assets, for example banks, and there are unsecured creditors, often suppliers, who may initiate action to achieve repayment.
- There are also preferential creditors, such as the company's own employees, for example in cases where wages haven't been paid, and occupational pension schemes.

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- The options available to an insolvent company will be affected by the position taken by its creditors, and the various parties may seek legal advice.

7. Mergers and acquisitions

- A merger or takeover occurs when one company has acquired the majority, or even the entirety, of the shares of the target company.
- In the conventional non-statutory situation, the acquiring company, or offeror, usually makes an offer to acquire the shares of the target company, the offeree, and gives the shareholders a fixed time within which to accept the offer.

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- The offer is made subject to the condition that it will be only be effective in the event that a specified percentage of the shareholders accept the offer.
- The price offered for the shares is usually more than would ordinarily be obtained at that point in time for those shares on the stock market.
- This constitutes the takeover bid. Of course, if the board of directors doesn't recommend the offer to its shareholders, it's regarded as a hostile takeover.

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- The freedom of companies to merge in this way is controlled by various statutes, European Community (EC) competition authorities (known as antitrust regulators in the US), and the courts, which regulate anti-competitive concentrations of market power. If a merger is permitted, clearance is given by the regulatory authorities.

8. Anti-competitive behaviour

- Competition law regulates anti-competitive conduct that harms the market, such as excluding new competitors and putting up, or erecting, barriers to competition. It also covers abuse of a dominant position, for example by distorting competition or by predatory pricing - when goods are sold at less than their cost price to cut out rival businesses.

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9. Forming a contract

- The basic principles of contract law arise from established custom and rules and are fundamental to all areas of law in practice.
- Reference is made to these principles in drafting and interpreting the provisions of any legal agreement, such as a lease, a loan agreement, a sales agreement, a consultancy agreement, a hire purchase agreement, a hire contract, or a service contract, etc.

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- The principles of contract law will determine whether and at what point a binding agreement has been made between the parties concerned.
- The words contract and agreement are interchangeable in the examples above. For example, a loan agreement/loan contract.
- Formation of a contract requires the presence of four essential elements:
 - Offer:
 - ✓ The contract must contain the basic terms of the agreement and be capable of acceptance without further negotiation.

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- ✓ This does not mean that the initial communication between parties will in itself constitute an offer.
- ✓ For example, in an auction situation, the seller, known as the vendor, may make an invitation to treat - invite an offer - by setting out the conditions of sale (for example when payment will be made) with the exception of the price.
- ✓ The offer is submitted by the purchaser, who offers to purchase at a specified price and will usually incorporate the terms of the invitation to treat into his/her offer.

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- Acceptance
 - ✓ There must be an unqualified agreement to proceed on the basis set out in the offer and it must be communicated to the offeror - the person making the offer - in order to be effective. If the offeree - the person receiving the offer - states that he or she accepts the offer subject to contract, that is, some variation of the terms, then no contract is formed.
 - ✓ This would be a qualified acceptance, which constitutes a counter offer.
 - ✓ Issues may arise as to whether the acceptance has been communicated. Two rules determine this:

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- a) The reception rule applies to instantaneous forms of communication, for example telephone calls. The contract is said to be formed when the acceptance is received by the offeror.
- b) The postal acceptance rule, where there is a delay between the communication being sent and received, for example by post. The contract is formed when the acceptance is sent by the offeree.
- ✓ To avoid uncertainty, the offeror may specify the method and timing of acceptance. Agreement on essential terms, for example price and delivery, must be certain and not vague.

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- Consideration
 - ✓ For a contract to be enforceable something of value must be given, for example a price, even if it is of nominal value, say 1 euro.
- Intention
 - ✓ It is assumed that contracting parties intend to create legal relations, particularly in commercial circumstances.
 - ✓ This is, however, a rebuttal presumption - an assumption that can be contradicted - if there is contrary evidence.

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- A binding contract must be:
 - in the form required by the law;
 - between parties with the capacity to contract - that is, legally capable to contract - or made by agents or representatives of the contracting parties with the authority to act.
- A binding contract should be:
 - enforceable in the event that one of the contracting parties fails to perform the contract. It may be: made in writing; made orally; implied from conduct, that is, by the behaviour of the contracting parties.

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- However, the law does require that some agreements are made in writing.
- This is usually because registration is required for the agreement to be effective and the relevant registry requires a written agreement. Examples of agreements to be made in writing include: contracts for the sale of land; contracts of guarantee; contracts for transfer of shares; contracts which must be made by deed, for example a lease for more than three years.

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- A simple contract requires consideration - the price in exchange for a promise to do something - and becomes effective on execution, generally when it is signed. In contrast, a contract by deed does not require consideration.
- A deed has different formal execution requirements depending on the contracting parties. For example, a deed may need to be affixed with a seal - a printed company stamp - if one party is a limited company.
- Sometimes a contract may be defective and may consequently be void or voidable or unenforceable.

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- A contract may be void - that is, no contract exists - if one, or both, of the parties is not recognised in law as having legal capacity to consent to a contract, for example minors - young people under 18 - or persons with certified mental incapacity.
- A contract is voidable, that is, it may be avoided, or cancelled, by one of the parties if there is some defect in its formation. For example, if the contract for the sale of land is not in writing, the parties can either ignore the defect and treat the contract as fully binding, or one of the parties can use the defect as a means for setting the contract aside.

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- Some contracts may be neither void nor voidable but cannot be enforced in a court of law, for example payment of a gambling debt.
- Lapse of time may render a contract unenforceable.
- The limitation period for a legal action brought under a deed is usually 12 years from the date of occurrence of the cause of action.
- An action on a simple contract is barred from being raised after six years.

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10. Structure of a commercial contract

- Most written contracts have a similar structure consisting of certain essential clauses, irrespective of the subject matter of the contract. The general pattern of paragraphs can be:
 - **Heading** - For example, 'Distribution Agreement'.
 - **Commencement and Date** - Usually a commercial contract contains a brief introduction which describes the nature of the agreement, for example 'This Agreement for the sale of ...' or 'This Share Agreement ...'. The commencement clause will state the date on which the provisions, or conditions of the contract, are to come into effect. The date is usually inserted in the relevant space at completion - the last stage in the formation of a contract.

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- **Parties** - The full details of parties are set out. In the case of a company, the registered number is included. This remains unchanged during the life of the company despite any changes of name or registered office.
- **Recitals** - Also known as Background or Preamble. These paragraphs are traditionally introduced by the word WHEREAS (conventionally, key words are in capital letters or have an initial capital). The recitals consist of a statement of background facts and the reasons why parties are to enter into the contract. Related or preceding transactions may be referred to. If a later dispute arises concerning the operative part, the recitals may be used to determine construction, that is, interpret intentions.

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- **Operative provisions** - Often introduced by the expression ‘The Parties Hereby Agree as follows ...’ or similar words, for example ‘Whereby it is Agreed as follows These words signal the start of the operative part of the contract, containing various clauses which create rights and obligations, or create and transfer interests in property. Operative provisions in more complex agreements may refer to more detailed Schedules.

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- **Definitions** - This section states the meaning to be attributed to terms essential to the contract - the defined terms. Most defined terms are conventionally given capital initial letters, for example Security Documents or Completion Date. In the absence of a definition, words within the contract will be given their ordinary and natural meaning.
- **Interpretation** - The aim of this section is to assist in the interpretation and construction of the whole contract by referring to specific uses. There are a number of provisions included in most contracts, for example 'Words denoting the singular include the plural meaning and vice versa'.

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- **Conditions precedent** - These pre-conditions must be satisfied in order for the agreement, or the relevant parts of it, to come into effect, for example the grant of planning permission. The conditions precedent clause stipulates, or imposes, obligations on the relevant party to procure the satisfaction of the condition and provide a date by which time the condition precedent must be satisfied. It is usual for an agreement to terminate automatically if this is not achieved by the specified date.
- **Consideration** - This sets out the consideration provided by the parties.

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- **Other operative clauses** - Including, for example, warranties, limitation and exclusion clauses, and other standard clauses such as governing law.
- **Schedules** - Sections at the end of the contract containing specific provisions and documents, for example the Transfer Deed in a contract for the sale of land.

11. Exclusion, limitation and standard clauses

A - Exclusion and limitation clauses

- Commercial contracts may seek to exclude liability for specific categories of damage and to limit liability for breach of contract. For example:

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- The Company will be under no liability for any defect arising or introduced by a Buyer in the course of storage or handling of the products where that Buyer acts as agent or distributor of the Company's products.
- The Company shall not be liable whatsoever for any consequential or indirect loss suffered by the Buyer whether this loss arises from breach of duty in contract or tort or in any other way (including loss arising from the Company's negligence). Non-exhaustive illustrations of consequential or indirect loss would be: loss of profits; loss of contracts; loss of goodwill; damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence).

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- Parties assume that the terms of an exclusion clause will be binding if they are contained within a signed written contract. However, legislation imposes limits on the use of unfair contract terms.
- One of the two parties may have greater bargaining power than the other or may try to bring conditions into the contract whose significance is not realised by the other party.
- Disputes arise around clauses which purport to, that is, intend to, limit or exclude obligations attaching to parties to the contract.
- Courts are generally called upon to construe, or interpret, the meaning of such clauses.

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B - Standard clauses

- Standard clauses, also known as boiler-plate clauses, are generally towards the end of most agreements and frequently include the following:
 - A force majeure clause, which aims to release parties from liability for named risks outside their reasonable control. Non-exhaustive examples are: acts of God, fire, flood, earthquake, war, riot, explosion, breakdown of machinery, strikes, and lockouts.
 - A time of the essence clause, which makes it clear whether or not the time limits contained in a contract are essential conditions.

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- An assignment clause, which sets out the parties' rights to transfer or assign contractual rights to third parties and any need for prior written consent.
- A severance clause, which provides that the other parts of an agreement continue to be in force in the event that some of the provisions are held illegal or unenforceable.
- A choice of governing law and jurisdiction clause, which specifies the jurisdiction and law which will govern and construe the contract in the event of a dispute.

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- A language clause, which specifies the language which will prevail if the contract is translated.

C - Privity of contract

- The principle of privity of contract means that a third party can't be bound a term of a contract, even though the contract was intended to confer a benefit on them. However, such a party may be able to enforce contractual rights depending on the circumstances. If appropriate, it is now usual for contracts to include a clause which provides that such rights are not to apply.

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- There are other ways in which a third party can be affected by the terms of a contract:
 - A contract may be made by an agent on behalf of his principal. Such a contract may be enforced by and against the principal.
 - It is usual for a contract to contain an express provision relating to assignment. The obligations under contract cannot be assigned, that is, transferred, without the consent of a party entitled to the benefit of such obligations.

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➤ In novation of contract, a subsequent agreement between the original parties and a third party may have the effect of entirely replacing the original contract.

D - Discharge of contract

- Parties may be released from their contractual obligations, that is, may be discharged, by performance, by breach, by agreement, or by frustration.
- If a contract is substantially performed, the terms are entirely carried out and there is no right to repudiate the contract, that is, to reject it. If a contract is partly performed, a breach of condition is committed.

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- However, if the innocent party accepts the partial performance, a claim to remuneration may be raised in a court.
- If there is defective performance, for example a condition is breached, the innocent party may have the right to repudiate the contract and treat it as terminated once he or she has communicated acceptance of the breach of contract.
- A contract may be discharged by agreement between the parties in a process known as accord and satisfaction.

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- If it becomes impossible to perform, for example due to the non-occurrence of a particular event which forms the basis of the contract, or the death of a party, the contract is discharged by frustration.

E - Remedies for breach of contract

- An award for damages - money claimed as compensation for loss - is the primary remedy for a party who suffers a breach of contract.
- In some circumstances, the courts may use their discretion to compel a defaulting party to perform his contractual obligations. This is known as a decree of specific performance.

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- It may not be appropriate if the obligation is not sufficiently clearly defined, or if enforcement would require the continual supervision of the court over a long period of time.
- In other circumstances, the court may grant an injunction to restrain a party from breaking the contract.
- In certain circumstances, for example misrepresentation, parties may rescind, that is, cancel, a contract and by rescission be restored to the same position they were in before the contract was made.

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12. Employment law

- Employment law usually involves a mixture of contractual provisions and legislation regulating the relationship between employer and employee, and governing labour relations between employers and trade unions, for example with regard to collective agreements and collective bargaining about conditions of work.
- Developments in case law and changes to legislation, for example from the implementation of European Community directives, affect employers and employees alike.

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- The practice of living and working in different jurisdictions means that lawyers also have to refer to international conventions to establish legal requirements.
- The main statutory rights of employees include entitlement to:
 - a national minimum wage;
 - equal pay for like work, that is, broadly similar work;
 - a written statement of employment particulars;
 - an itemised pay statement;

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- time off and holidays;
- statutory sick pay;
- a healthy and safe working environment;
- family and parental leave;
- protected rights on transfer of business to another employer;
- notice of termination of employment;
- not to have unlawful deductions from wages;
- not to be discriminated against on grounds of sex, race, sexual orientation, disability, religion, age, part-time or fixed term;
- employment, or trade union membership.

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- It is usual practice for employers and employees to enter into a written agreement which sets out their respective obligations and rights, and which constitutes a contract of employment, either at the commencement of employment or shortly before.
- Clauses in the contract generally deal with:
 - pay,
 - deductions,
 - hours of work,
 - time off and leave,
 - place of work,

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- absence,
- confidentiality,
- restrictions on the actions of an employee once employment is ended (known as a restrictive covenant),
- giving notice,
- the grievance procedures in the event of job loss,
- and variation of contract (meaning parties may agree to vary terms of the contract but terms cannot be unilaterally varied, that is, by one party without agreement).

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- Employers are bound by the employment contract and statutory regulation as to how they may deal with employees, particularly in relation to the termination of employment.
- Failure to observe such obligations and regulations may give rise to a claim for:
 - wrongful dismissal (where the employer is in breach of contract);
 - unfair dismissal (where the employer has not followed a fair dismissal and disciplinary procedure before terminating the contract);

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- or constructive dismissal (where an employee resigns because of the conduct of his employer).
- Gross misconduct by the employee, for example theft from the employer, may result in summary, that is, immediate, dismissal. In other circumstances, the employee may be made redundant, for example if the employer has ceased to carry on business.

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- ABREU, Jorge Manuel Coutinho de [2007]. *Curso de Direito Comercial*, Vol. II, 2.^a ed., Almedina: Coimbra;
- ALMEIDA, António Pereira de [2006]. *Sociedades Comerciais*, 4.^a ed., Coimbra Editora: Coimbra;
- BUSTO, Maria Manuel/VIEIRA, Iva Carla [2005]. *Manual Jurídico da Empresa*, 4.^a ed., Almedina: Coimbra;
- CORDEIRO, António Menezes [2007]. *Manual de Direito das Sociedades*, 2.^a ed., Almedina: Coimbra;
- CORREIA, Miguel J. A. Pupo [2005]. *Direito Comercial – Direito da Empresa*, 9.^a ed., Ediforum: Lisboa;
- CUNHA, Paulo Olavo [2006]. *Direito das Sociedades Comerciais*, 2.^a ed., Almedina: Coimbra;
- DUARTE, Rui Pinto [2007]. “Company Law”, in *Portuguese Law – an overview*. Almedina: Coimbra;
- PITA, Manuel António [2004]. *Curso Elementar de Direito Comercial*, Áreas Editora: Lisboa;
- ROQUE, Ana [2004]. *Direito Comercial – Noções Essenciais*. Quid Juris: Lisboa.