



Contract Law

CPA Ireland Skillnet

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The CPA Ireland Skillnet provides excellent value CPD (Continuing Professional Development) in accountancy, law, tax and strategic personal development to accountants working both in practice and in industry.

However our attendees are not limited to the accountancy field as we welcome all interested parties to our events.

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Contract Law

- Consideration and the Doctrine of Privity of Contract
- Express Contracts Term – the distinction between Contract Terms and Representations
- Contractual Formalities and Evidentiary Requirements

Consideration and the Doctrine of Privity of Contract



Consideration and the Doctrine of Privity of Contract

- Consideration is a vital component of contract formation – as the vast majority of contracts are not legally enforceable without the element of consideration
- The essence of consideration is based on the notion of reciprocity and the mutuality of obligation that exists between the contracting parties – wherein both parties have obligations to each other – therefore, consideration asks the question: what am I doing for you and what are you doing for me?

Consideration and the Doctrine of Privity of Contract

- In most sale of goods contracts, the consideration is that the seller provides the goods in return for the payment of the price by the purchaser



Consideration and the Doctrine of Privity of Contract

- In an employment contract the consideration is the provision of labour by the employee in return for the payment of a salary by an employer



Consideration and the Doctrine of Privity of Contract

- However, although consideration must have an economic value, it does not need to be money – it can also be moniesworth



Consideration and the Doctrine of Privity of Contract

- One of the key rules of consideration is that the consideration must move from the promisee to the promisor – this is known as the doctrine of privity of contract
- What this means is that unless a person has provided consideration in a contract they are not a party to the contract – and if they are not a party they cannot sue or be sued for a breach of contract – meaning that the contract is not enforceable by them or against them

Consideration and the Doctrine of Privity of Contract

- The Doctrine of Privity of Contract means:
 - A. A person cannot enforce rights under a contract to which he is not a party
 - B. A person who is not party to a contract cannot have contractual liabilities imposed upon him
 - C. Contractual remedies are designed to compensate parties to a contract, not third parties

Consideration and the Doctrine of Privity of Contract

- In *Tweddle v Atkinson* [1861] EWHC J57 (QB) Tweddle's son was planning on marrying Guy's daughter – therefore, Tweddle and Guy agreed that they would pay Tweddle's son £100 and £200 respectively upon that marriage – unfortunately, Guy died before the payment was made, and the executor of Guy's estate (A) refused to make the promised payment – consequently, Tweddle's son (T junior) sued A for breach of contract

Consideration and the Doctrine of Privity of Contract

- *Tweddle v Atkinson* [1861] the action failed as T junior was not a party to the contract – the agreement was made between Tweddle Senior and Guy – the consideration was if Tweddle Senior paid £100 to Tweddle Junior then Guy would also pay Tweddle Junior £200 (with both parties exchanging consideration with each other)

Consideration and the Doctrine of Privity of Contract

- As Tweddle junior had provided no consideration on foot of the contract, he could not sue A for breach of contract – the correct action should have been by Tweddle Senior against A (as he had provided consideration on foot of Guy's promise) and he had the right to sue A, as Guy's legal representative upon death

Consideration and the Doctrine of Privity of Contract

- According to Justice Wightman (at p.765):
 - “... *no stranger to the consideration can take advantage of a contract, although made for his benefit.*”



Consideration and the Doctrine of Privity of Contract

○ Similarly Justice Compton stated (at p.765) :

- *“... the promisee cannot bring an action unless the consideration for the promise moved from him ... It would be a monstrous proposition to say that a person was a party to the contract for the purpose of suing upon it for his own advantage, and not a party to it for the purpose of being sued.”*

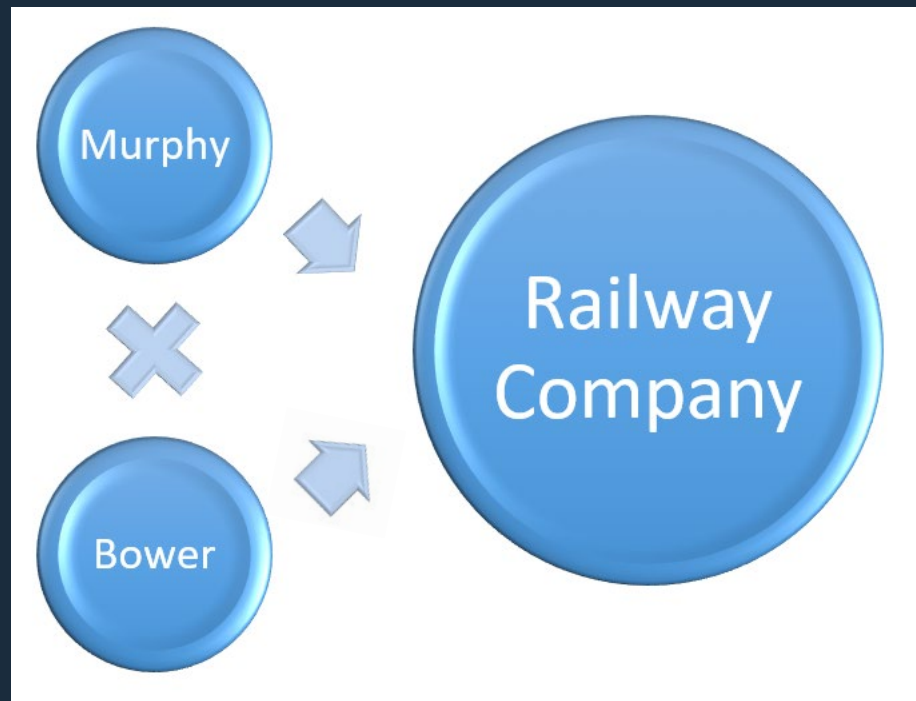
Consideration and the Doctrine of Privity of Contract

- The practical application of this rule can be seen in *Murphy & Thers v Bower* [1866] IR 2 CL 506
- In this case a contractor was hired to undertake work for a railway company – the work was thereafter inspected by an engineer, also hired by the railway company – and when the engineer signed off on the completion, the railway company paid the contractor – when, at one stage, the engineer had not signed off on completion (resulting in the contractor not being paid) the contractor sued the engineer for breach of contract



Consideration and the Doctrine of Privity of Contract

- *Murphy & Thers v Bower* [1866]
- This action failed as there was no consideration between Murphy and Bower



Consideration and the Doctrine of Privity of Contract

○ According to Justice Coppinger:

- *“... as the right of action is based upon contract, no one can maintain an action who is not a party to that contract”.*

Consideration and the Doctrine of Privity of Contract

- However, there are a number of limited common law exceptions to the rule on privity of contract, including the following:
 1. Assignment of contractual rights: Where one party assigns their contractual rights to another, the assignee has the right to sue or be sued in relation to contracts created by the former – in effect, the third party is given rights as though they had been a party to the original contract

Consideration and the Doctrine of Privity of Contract

- Assignment:
- For example, suppose A was the author of the lyrics and music in a song (copyright owner), and gave a licence to B to use those lyrics and music in a film – if A subsequently assigned the copyright to C, and B subsequently breaches the terms of the copyright licence, C can sue B for breach of contract, as on assignment all rights and entitlements of A in relation to the copyright are now vested in C

Consideration and the Doctrine of Privity of Contract

2. Where one party is acting as an agent of another: An agent is a party authorised to create contracts on behalf of a principal with a third party – for example, a travel agent who sells cruise packages on behalf of a cruise company to customers – in this situation, where the agent acts within the scope of their authority, all contracts created by the agent are contractually binding on the principal – so the principal can sue the third party, and the third party can sue the principal – the agent will have no contractual rights or liabilities

Consideration and the Doctrine of Privity of Contract

3. Where one party is acting as a Trustee of another: A trustee is a person given control or powers over the administration of the property/assets of another (such as where the assets of a deceased parent are put into a Trust for the benefit of their minor children until they reach adulthood, and managed by an assigned trustee) – therefore any contracts entered into by the trustee on behalf of the trust are actionable by the beneficiaries of the trust against the relevant third party



Consideration and the Doctrine of Privity of Contract

- Trustees: In *Drimmie v Davies* (1899) 1 IR 176, a father and son agreed in a Deed (formal contract) that upon the father's death the son would take over the running of the father's dental practice and pay certain sums of money to his siblings for a number of years – he agreed to pay a yearly sum of £40 to his sisters until they married or for a period of seven years from his father's death – and to pay to his minor brothers the sum of £15 per year each, till each attained the age of majority (up to a maximum period of seven years)



Consideration and the Doctrine of Privity of Contract

- *Drimmie v Davies* (1899):
- Upon the father's death an action was brought on behalf of the children in respect of Davies non-payment of the specified amounts – Davies argued that the action was invalid as the children were not party to the Deed and therefore had no right to sue on foot of the contract (as they were not a party to the contract) – the Court disagreed on the basis that a trust had been created for the payment of the sums outlined (known as annuities), and therefore the beneficiaries of the trust were entitled to enforce it

Consideration and the Doctrine of Privity of Contract

- As per Justice Lush in *Lloyd's v Harper* (1880) 16 Ch. D. 290 (at p. 321):
- *"... I consider it to be an established rule of law that where a contract is made with A. for the benefit of B., A. can sue on the contract for the benefit of B., and recover all that B. could have recovered if the contract had been made with B. himself."*

Consideration and the Doctrine of Privity of Contract

4. Where a collateral contract exists: A collateral contract is a secondary contract which induces a person to enter into a main contract, or which depends upon the main contract for its existence – where a collateral contract exists such contracts are enforceable by and against a third party

Consideration and the Doctrine of Privity of Contract

- In *Shanklin Pier Ltd v Detel Products Ltd* [1979] 2 KB 854 the claimant's pier was damaged in WWII and they entered into an agreement with a contractor to repair the pier – following advice from a director of the defendant company (that their brand of paint would last from 7-10 years on the pier), the claimant inserted a clause into the contract with the contractor that a particular brand of paint was to be used (detel paint) – when the paint was subsequently found to be unsuitable after 3 months, SP sued DP for breach of contract – DP argued that the action must fail as there was no contract between SP and DP, the contract was between SP and the contractor, and the contractor and DP

Consideration and the Doctrine of Privity of Contract

- The action succeeded as the claimant had acted to the defendant's benefit by inducing the third-party contractor to purchase the paint from them – therefore there was a collateral contract between SP and DP, so SP could sue them for breach of contract



Consideration and the Doctrine of Privity of Contract

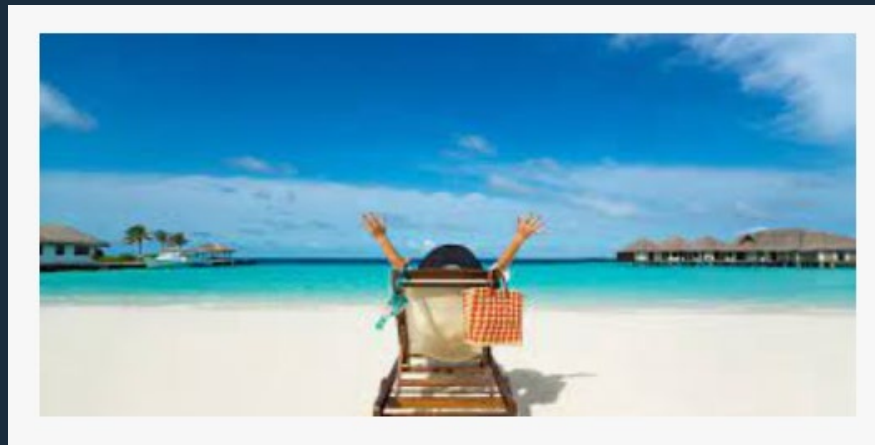
5. Where the damage or the loss is foreseeable: In this situation an action can be brought in tort (not contract) under the law of negligence, thereby bypassing the rule on privity of contract – to succeed in such a case it is imperative to demonstrate that a duty of care exists between the parties by taking into consideration the (1) proximity between the parties, (2) whether the loss/damage is foreseeable, and (3) whether it is just, fair and reasonable to impose a duty in the circumstances

Consideration and the Doctrine of Privity of Contract

- Statutory Exceptions:
- There are also a limited number of statutory exceptions designed to circumvent the rule on privity of contract, including the following:
 1. Married Women's Status Act 1957: This legislation gives the spouse and children of a deceased person the right to sue on foot of a life assurance or endowment policy for the benefit of the deceased (Section 7)

Consideration and the Doctrine of Privity of Contract

1. Married Women's Status Act 1957:
Furthermore, any contract entered into by a deceased person for the benefit of their spouse and/or children is actionable by that spouse and/or children under the law of contract
 - Example: holiday contract



Consideration and the Doctrine of Privity of Contract

2. Section 62, Civil Liability Act 1961: Where a person takes on an insurance policy to indemnify them upon committal of a wrong (such as professional negligence), if that person subsequently dies or becomes bankrupt (or if a company, is placed into liquidation) then monies payable to the insured can be used to discharge the claim

Consideration and the Doctrine of Privity of Contract

2. Section 62, Civil Liability Act 1961:

However, this provision does not give an injured third party the general right to maintain an action against the insurer – the purpose of this provision is to ring-fence this money for the injured party and not permit it to be utilised to pay the company's debts



Consideration and the Doctrine of Privity of Contract

- In *Michael Murphy v Allianz PLC* [2014] IEHC 692, MM sued A in respect of a personal injury claim he had against a company that had been struck off the Register, and which had been insured by A, although the claim had been repudiated by them – this claim was struck out as (1) the struck off company was not in liquidation, and (2) the quantum of the insured liability had not been assessed

Consideration and the Doctrine of Privity of Contract

- According to Justice Gilligan (at para 44):
- *““There is no privity of contract between the defendant and the plaintiff in these proceedings, and the defendant owes no duty at law under contract, statute or tort to the plaintiff such as might give rise to a claim against it in damages.”*

Allianz 

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Consideration and the Doctrine of Privity of Contract

3. Section 76(1) of the Road Traffic Act 1961 grants a person claiming against an insured motorist certain remedies against the motorist's insurer
4. Where goods are purchased under a credit agreement, the consumer has a right of action against the seller and the credit company for any misrepresentations made to them (S14 SOGA and S80 CCA)

Consideration and the Doctrine of Privity of Contract

5. Section 13(7) of the Sale of Goods and Supply of Services Act 1980 provides a remedy to any person driving a motor vehicle with the consent of the owner, to sue the seller where they are injured because of a defect in the vehicle



Consideration and the Doctrine of Privity of Contract

- This right is based on the implied obligation that a motor vehicle must be free of defects that would render it dangerous to the public, or any persons journeying in it – this right also extends to vehicles purchased under hire purchase or credit sale agreements



Express
Contracts Term –
the distinction
between
Contract Terms
and
Representations



Contractual Terms and Representations

- When a contract is being negotiated the parties will agree certain matters verbally, which may subsequently be deduced into writing
- Arising from these verbal negotiations and statements, the Court is often required to distinguish between these statement and ascertain whether these statements are likely to be classified as contractual terms or representations

Contractual Terms and Representations

- The distinction is important, as a term has contractual effect, whereas a representation does not
- In real terms, what this means is that if a term is breached the injured party has the right to sue for breach of contract, whereas if a representation is breached the injured party cannot sue for breach of contract, although they can sue for misrepresentation
- The differing basis of the actions can result in different remedies being available to the injured party

Contractual Terms and Representations

- Contract Terms:
 - These are generally definitive statements of fact, whose truth is guaranteed by the person making the statement

Contractual Terms and Representations

- Contract Representations:
 - These are generally vague or subjective statements to induce a party to enter into a contract, but whose truth cannot be guaranteed
 - They are often part of the advertising/promotional material for a good or service
 - Some of these statements may be exaggerated promotional material

Contractual Terms and Representations

- For example, what if you were looking to rent a holiday property and it was advertised as having a sea-view or being minutes from the sea – would you consider this statement to be a contract term or representation?



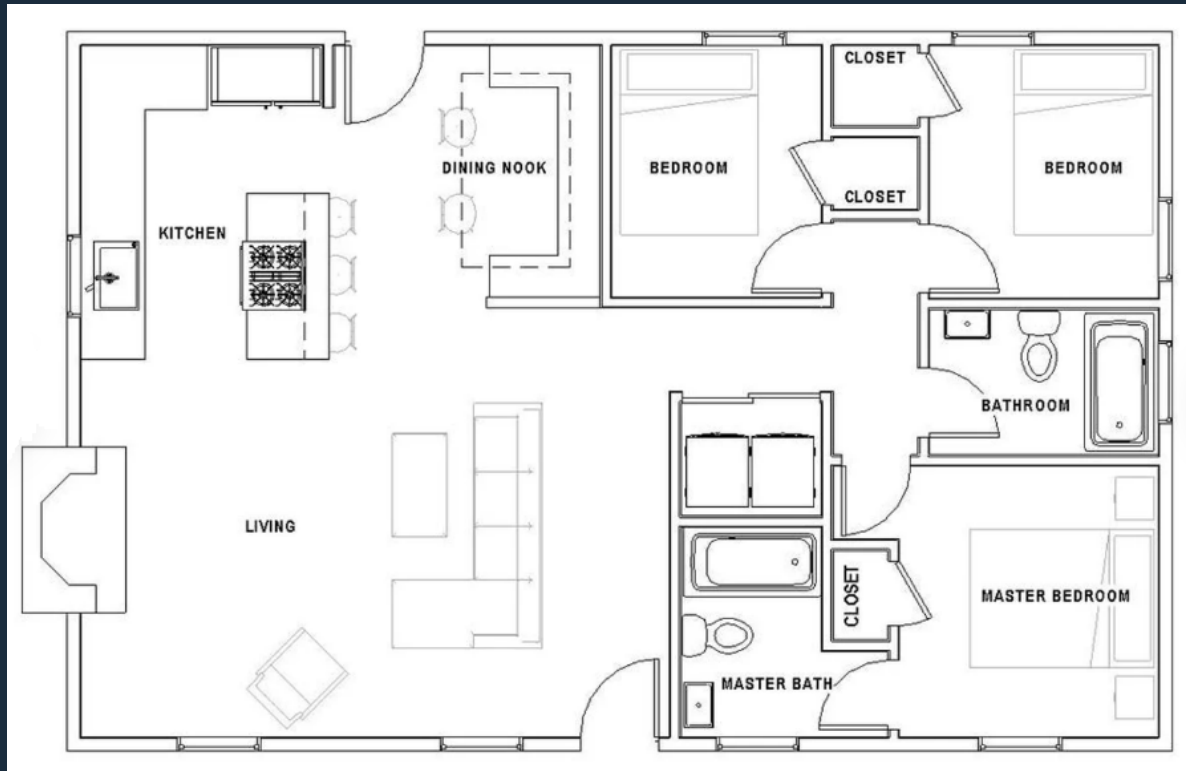
Contractual Terms and Representations

- Would this notice outside a pub be a term or representation?



Contractual Terms and Representations

- Would the architectural drawings of the floor plan of a house that you are purchasing from a developer be a term or representation?



Contractual Terms and Representations

- Would you consider the statement in this advertisement to be a contractual term or representation?



Contractual Terms and Representations

- Distinction: In drawing this distinction the Court looks at FOUR main factors:

1. When the statement was made in relation to the eventual contract?

- The closer the proximity to the event, the more likely the Court will deem it a term – whereas if it was made in an advertisement or in a brochure, the less likely the statement would be viewed as a contract term

Contractual Terms and Representations

2. The importance of the statement in relation to the contract
 - In this situation the Court will review how significant the statement was – did it induce the creation of the contract? Was it something significant? Was it the reason you created the contract?

Contractual Terms and Representations

3. Whether or not the party making the statement had specialist knowledge on which the other party relied
- For example, if a plumber recommended a specific type of boiler to you, based on your water usage – would you consider this to be a term of the contract?

Contractual Terms and Representations

4. Where the contract is consolidated into writing, previous spoken terms, omitted from the consolidation, will probably be relegated to representations – whereas anything included in the written contract will be classified as a term
- The logic of this factor is that the Court takes the view that if the statement was such an important part of the contract negotiations, why was it not included in the subsequent written contract?

Contractual Terms and Representations

- *Hummingbird Motors v Hobbs* [1986] RTR 726 related to the subsequent sale by H to HM of a second hand motor vehicle that H had previously purchased at an auction – H was asked by HM to sign a statement verifying that the odometer reading on the vehicle (34,900 miles) was correct – H signed this statement, but stated that the verification was to the best of his knowledge and belief – when it was subsequently discovered by HM that the odometer had been manually clocked and that the correct reading was 80,000 miles (approx.) HM sued H for breach of contract

Contractual Terms and Representations

- *Hummingbird Motors v Hobbs* [1986]
- One of the key issues reviewed by the Court was whether the statement regarding the odometer reading was a term or representation
- The Court ruled that the statement was a representation and not a term, as a statement by a person who was not an expert to an expert, where the statement was made to the best of his knowledge and belief, could not be classed as a definitive statement of fact whose truth was guaranteed

Contractual Terms and Representations

- According to Lord Justice Kerr reflecting on the fact that the statement made by H was the opinion of a non-expert, as well as the vagueness of the statement made:
- *“It imports an implied assertion that the defendant knew of no facts leading to the conclusion that the odometer reading was or might be incorrect.”*



Contractual Terms and Representations

- In *Dick Bentley Productions Ltd and Another v Harold Smith (Motors) Ltd* [1965] 1 W.L.R. 623
- DBP asked HSM to find him a well vetted car – HSM told him that they had found him such a car and that it could be inspected by him – HSM told DBP that the car had only done 20,000 miles since being fitted with a new engine and gearbox – following numerous problems with the car DBP sued for breach of contract

Contractual Terms and Representations

- Upon discovery that the statements made by HSM were untrue (the odometer reading should have been approximately 100,000 miles), the Court held that as the representation was made for the purposes of inducing the sale, this was grounds for inferring that the representation was intended as a contractual term



Contractual Terms and Representations

- According to Lord Justice Denning:
 - *“... if a representation is made in the course of dealings for a contract for the very purpose of inducing the other party to act upon it, and actually inducing him to act upon it, by entering into the contract, that is prima facie ground for inferring that it was intended as a [term] ...”*

Contractual Formalities and Evidentiary Requirements



Contractual Evidentiary Requirements

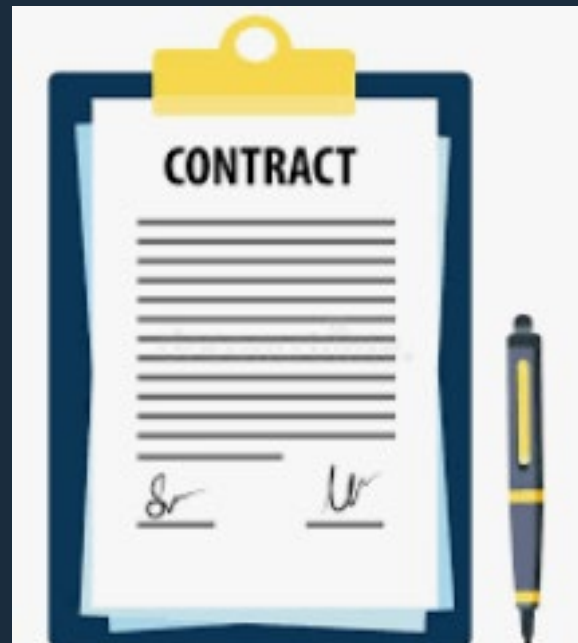
- Contractly are generally enforceable, where they are legitimately formed
- An offer is made and accepted, that offer and acceptance is supported by valid consideration, and the parties have both contractual intention and capacity
- However, in limited prescribed situations certain contracts must comply with stipulated contractual formalities in order to be fully enforceable

Contractual Evidentiary Requirements

- For example – some contracts are only enforceable where:
 1. They are evidenced in writing
 2. They are in the form of a Deed
 3. They contain certain prescribed terms or comply with certain formalities

Contractual Evidentiary Requirements

1. Evidenced in Writing: Pursuant to the terms of the Statute of Frauds Act 1695 (as amended) certain contracts are only legally enforceable, where they are evidenced in writing and signed by the relevant parties



Contractual Evidentiary Requirements

○ These include:

- A. Contracts for the sale of land
- B. Contracts in consideration of marriage
- C. Contracts for the sale of goods exceeding IR£10 (€12.70) – unless there is acceptance of the goods and/or consideration
- D. Contracts not to be performed within one year
- E. Contracts of Guarantee

Contractual Evidentiary Requirements

- The rationale behind these requirements include:
 - A. Preventing perjury/fabricated evidence as to the existence of a contract
 - B. Promoting certainty/avoiding litigation
 - C. Protecting consumers/vulnerable parties by reducing the possibility of unconscionable bargains
 - D. Protecting vested property rights

Contractual Evidentiary Requirements

- According to Chief Justice Finlay in *Boyle v Lee* [1992] I.L.R.M. 65. (at p.77):

“In modern times, probably the most important legal transaction a great number of people make in their lifetimes is the purchase or sale of their home. The avoidance of doubt and, therefore, the avoidance of litigation concerning such a transaction must be a well worthwhile social objective.”

Contractual Evidentiary Requirements

- In *Tierney v Marshall* (1857) 7 ICLR 308 – an agreement to offset wages due against rent payable was unenforceable – as it would take 12 years to repay the arrears, and there was no evidence in writing of the agreement – according to Justice Crampton (at p.314):

“It appears to me ... that this contract was of such a nature as that it could not have been performed within the year. The arrears of salary ...[made it] wholly impossible that the contract could have been completed within the year.”

Contractual Evidentiary Requirements

- Evidenced in writing does not necessitate the existence of a formal written contract, but does require that there is a written evidence (one or more documents) that:
 - A. Identifies the parties or describes them in a manner that identifies them
 - B. Is signed by the contracting parties (this provision is liberally interpreted)
 - C. States the consideration (good/service and the price)

Contractual Evidentiary Requirements

- In *O'Connor v P. Elliott and Company Ltd* [2010] 3 JIC 0402, a verbal agreement and written correspondence between the parties, on a without prejudice basis, in respect of the sale of a premises, its basement and subsoil, demonstrated compliance with the requirements of the Statute of Frauds Act, and therefore the contract was enforceable



Contractual Evidentiary Requirements

- Breach of the Statute of Frauds does not automatically invalidate a contract, but such contracts may be *voidable* by either of the contracting parties, in the event that such party does not wish to comply with the terms of the agreement



Contractual Evidentiary Requirements

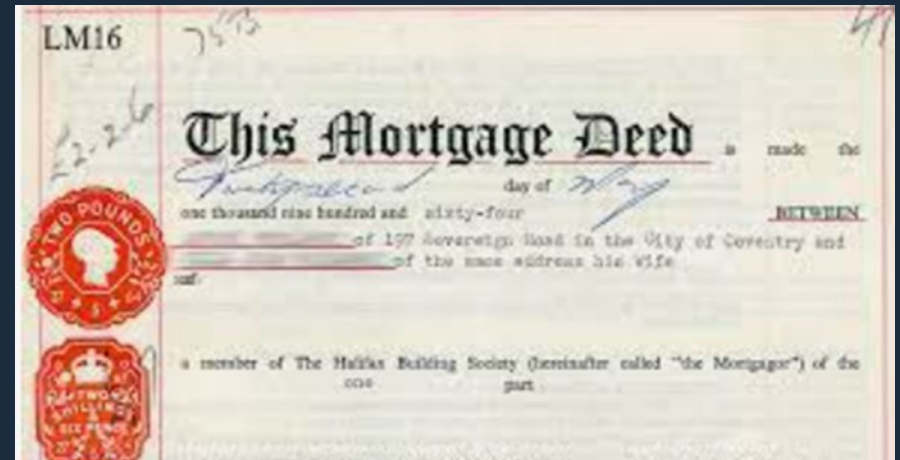
- Excluding the Statute of Frauds, other examples of contracts that must be evidenced in writing to be enforceable include:
 - A. Consumer Credit and Hire Purchase Agreements
 - B. Assignment of Copyright, Trademarks and Patents
 - C. Arbitration Clauses
 - D. Commercial Agency Agreements
 - E. Distance Selling Contracts

Contractual Evidentiary Requirements

2. Deeds: Any contract not supported by consideration is only enforceable in Ireland where it is in the form of a Deed
 - This is a written document under which an interest, right or property passes or is confirmed, or an obligation binding on some person is created or confirmed

Contractual Evidentiary Requirements

- Examples include:
- A Deed of Conveyance or a Deed of Mortgage



Contractual Evidentiary Requirements

- In order to be classified as a Deed, the following requirements must be met:
 - A. The document must state that it is a Deed
 - B. The document must indicate that the Deed conveys some privilege or thing to someone (including its description)
 - C. The grantor must have the legal ability to grant the thing or privilege

Contractual Evidentiary Requirements

- D. The grantee must have the legal capacity to receive it
- E. It must be delivered to and accepted by the grantee
- F. The document must be executed by the grantor in presence of the prescribed number of witnesses (including their description and address)
- G. It should be properly acknowledged before a competent officer (for example, a Solicitor or a Commissioner for Oaths)

Contractual Evidentiary Requirements


3. Prescribed Terms/Formalities: Certain contracts are only enforceable where they contains certain prescribed terms and conditions or comply with certain formalities

- Examples include:
 - A. Consumer credit contracts
 - B. Package holidays



Contractual Evidentiary Requirements

- C. Contracts for the transfers of shares
- D. Contracts negotiated away from business premises/distance selling contracts
- E. Negotiable instruments



Negotiable Instrument
[ni-'gō-sh(ē)-bal 'in(t)-strə-mənt]

A signed document that guarantees the payment of a specific sum to a specified person either on demand or at a set time.

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