81. If a person has been induced by the fraud, duress, threats, or undue influence of another to form and declare a particular intention, he (or, if he be dead, his representatives) will be entitled, as against the guilty party, and all other persons who, at the time when they acted upon the intention, knew, or ought to have known, of the fraud, duress, threats, or undue influence, and against “volunteers,” to revoke his intention. But he will not be entitled to do so to the detriment of persons who have, in good faith and for valuable consideration, acted upon it; unless the fraud has resulted in a mistake of the kind specified in the first sentence of § 87.?

83. If any person, having a right to avoid a transaction on one of the grounds mentioned in § 81, and, being aware of and reasonably capable of enforcing such right, manifests an intention to confirm the transaction, he cannot afterwards avoid it.?
87. A *bona fide* mistake of fact, made without mistake of negligence, by one party to a transaction, as to the nature of the transaction, or the identity of the other party, or the existence or identity of the subject matter, renders the transaction void. And a *common* mistake as to the extent of the transaction, or the rights of the parties, will enable any one of the parties to avoid the transaction, unless the other will consent to execute it in such a manner as to carry out his real intention.*

[...]

91. Money paid under a mistaken belief, arising from a misapprehension of fact, that it is due, can be recovered; unless it was paid under pressure of legal proceedings, *bona fide* exerted.*

[...]

**Title III. - Conditions**

109. A condition is a term in a contract or conveyance, to the effect that on the occurrence, or non-occurrence of an uncertain event, act, or forbearance, a right shall arise, or cease to exist.*

110. A condition, on the occurrence of which a right is to arise, is called a "condition precedent" (or "suspensive"); a condition, on the occurrence of which a right is to cease to exist, is called a "condition subsequent" (or "resolutive").*

[...]

115. Stipulations as to time are not construed as conditions.*

expect where:

(a) The parties have expressly agreed that time shall be of the essence of the contract;*

(b) There is a presumption, from the nature of the transaction, that such an agreement was intended.*

But an unreasonable delay in the fulfilment of a stipulation as to time will entitle the promisee, even though such stipulation is not of the essence of the contract, to treat the transaction as at an end.*

**Title IV. - Agency and Representation**

121. An "agent" is a person who has authority, express or implied, to act on behalf of another person (the "principal"), and to bind that other person by his acts and defaults.

122. Any person of sound mind, notwithstanding any legal incapacity, may act as an agent; but his own rights and liabilities, in respect of both his principal and third parties, will be determined by his legal capacity.*

123. The legal relations of principal and agent, *inter se*, are governed by the Law of Contract (Book II, Part I) or Quasi-contract (Book II, Part III). The existence and extent of the agency, as regards third parties, are determined by the facts of each case, and the rules of law applicable thereto.*
124. The relationship of principal and agent may be created by any conduct, from which the agreement of both principal and agent to adopt such relationship may be inferred;¹

[...]

125. The principal may agree to the relationship after the agent has commenced to act as such ("Ratification"). But a person who really or ostensibly acts on his own behalf cannot afterwards claim to have ⁵⁴" acted as an agent; nor can the subsequent adoption of his acts place the person professing to adopt them in the position of a principal.²

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145. When, in order to affect a principal, it is necessary to prove the existence of a certain state of mind, it will be sufficient to prove the existence of that state of mind, either in the principal or in the agent.³

[...]

Section V. - Limitation of actions

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158. The right to bring an action, to enforce a civil claim, is barred by the expiration of a period which begins to run from the time at which the right to bring the action accrued.⁴

Book II, Part I (Obligations. Contract (General))

Section I. - Formation of contract

Title I. - Offer and acceptance

[...]

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189. A contract is concluded when one party has communicated to another an offer, and that other has accepted it, or when the parties have united in a concurrent expression of intention, designed to create a legal obligation.⁵

[...]

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191. Subject to special rules of law, an offer may be communicated either by words (spoken or written), or by conduct, or partly by words and partly by conduct.⁶

[...]

193. An offer lapses when a the person to whom it is made fails to accept it within the time or in the manner prescribed by the offeror, or, if no time or manner is prescribed, within a time or in a manner reasonable under the circumstances, b the offeree communicates his refusal of the offer, or makes a counter-offer, c either party dies.

[...]

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197. An acceptance which does not correspond with the terms of an offer is ineffectual. If the offeree purports to accept subject to conditions, additions, restrictions, or alterations, his purported acceptance counts as a refusal of the original offer and as a new offer. A purported acceptance made after an offer has lapsed or been revoked (probably) counts as a new offer.⁷
Title II. - Form and consideration

201. All contracts are either:

(a.) in writing under seal ("specialties" "contracts under seal"), or

(b.) otherwise expressed ("parol" or "simple" contracts).

Section III. - Performance of contract

Title I. - Duty of performance

232. The parties to a contract must, unless legally excused from performance, perform their respective duties under the contract.

233. The character and extent of the performance due from each party are determined by the words and conduct of the parties as interpreted by reference to usage and law.

246. A debtor cannot, in the absence of agreement, apply a set-off in reduction of his debt, and tender the residue; but he may avail himself of such set-off by way of plea or counter-claim in an action by creditor.

249. Unless a contrary intention appears from the language of the parties, or the nature of the transaction, a debtor may perform his part by a servant or agent. Such a contrary intention is presumed, in the case of any duty involving personal confidence between the parties, or the exercise of the debtor's personal skill.

258. When time is of the essence of the contract (Book I, § 115), an extension of the time of performance by request or agreement only substitutes, in the absence of expression to the contrary, the extended time for the time originally fixed, without further waiving the condition.

265. Unless the law specially provides otherwise, or there is an express or implied agreement for interest in the contract, a debtor is not liable to pay simple or compound interest on his debt. A contract to pay simple or compound interest may lie inferred from the course of dealing between the parties or from the custom or usage of a trade or business.
271. When a party to a contract, from whom performance is due, without lawful excuse fails to perform his promise, the contract is broken.

272. When a party to a contract from whom performance is not yet due, absolutely and unequivocally expresses an intention not to perform, * disables himself from performing, his promise, the other party may at his option treat the contract as broken; and the contract is thereupon determined.

273. Every breach of contract gives rise to an action for damages; but, in the case of a breach of promise to pay a fixed sum of money, no damages are recoverable other than the sum itself, and interest if any.

274. When a contract is broken, the injured party is entitled, subject to the provisions of § 276, to receive such a sum of money by way of damages as will, so far as possible, put him in the same position as if the contract had been performed.

[...]

276. Damages are not recoverable in respect of loss following breach of contract, unless the loss was the natural and direct consequence of the breach, or within the contemplation of both parties at the time of making the contract as the probable result of a breach.

The decision of this question is matter of law.

[...]

Title IV. - Reciprocal Promises

[...]

305. When a contract consists of reciprocal promises, and performance or some performance by one party is a condition precedent of performance by the other, the first named party is not entitled to performance by the other unless he has himself performed or tendered performance in terms of the contract, or unless performance has been prevented or refused by the other party.

The order in which such promises are to be performed is determined by the Court, in view of the language of the parties and the nature of the transaction.

[...]

Section IV. - Assignment of contract
323. Subject to the provisions of §§ 324 and 325, any right arising out of a contract may be assigned.*

324. A mere right to sue for unliquidated damages in respect of a breach of contract already committed is (probably) unassignable, except by operation of law.*

325. The benefit of a contract is not assignable, if the parties intended that the promisee alone should be entitled thereto. Such an intention is presumed, if the nature of the transaction involves personal confidence between the parties, or is otherwise such that personal considerations are of the essence of the contract.*

[...]

329. The debtor may put forward against the assignee any defences which at the date of the notice were available to him against the assignor.*

[...]

**Book II, Part II (Obligations. Contracts (Particular))**

**Section I. - Sale**

**Title I. - Sale of Goods**

[...]

387. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.*

[...]

**Section V. - Employment**

**Titel V. - Principal and agent**

514. An agent having authority to conduct a particular trade or business, or to act generally for his principal in a particular trade, business, or undertaking, has authority to do every lawful thing necessary or usually incidental thereto.*


* Co. Litt. 201 a.

* Richards v. Hayward (1841) 2 Man. & G. 574.

* Seton v. Slade (1802) 7 Ves. 265; Judicature Act, 1873, S. 25 (7).

* Seton v. Slade (1802) 7 Ves. 265; Judicature Act, 1873, S. 25 (7).

* Hipwell v. Knight (1835) 1 Y. & C. (Eq. Ex.) 415; Oakden v. Pike (1865) 34 L. J. Ch. 620. (Such a stipulation may, however, be waived by mere acquiescence.)


* In order to entitle the party seeking to rescind the transaction to take advantage of this rule, he must have given to the party in default a notice requiring him to fulfill his obligation within a reasonable time, which notice has not been complied with (Hatten v. Russell [1888] 38 Ch. D. at p. 347; Compton v. Bagley [1892] 1 Ch. 313).


* It seems to be generally admitted, that the creation of the relationship of principal and agent must now always, by English Law, be referred to an agreement between the parties. But it may well be (a) that this agreement is not legally enforceable, and (b) that third parties are not bound by the terms of it.

* There must be consent of both parties. A person cannot be compelled to appoint an agent (The Halley (1868) L. R. 2 P. C. at p. 201).

* Probably, the legal analysis of the position is: that the agent offers to act as such, and, assuming his offer to be accepted, proceeds to act as agent. The intended principal may decline or omit to accept the offer; but, if he accepts it, his acceptance relates back to the date of the offer.] Wilson v. Turnman (1843) 6 M. & G. 242; Keighly & Co. v. Durant [1903] A. C. 240.


* Limitation Act, 1623, S. 3; Civil Procedure Act, 1833, S. 3; Real Property Limitation Act, 1833, ss. 2, 40; 1874, ss. 2, 8. (In the case of claims to recover land, rent, or money charged on land, distress and entry are barred when the action is barred. Real Property Limitation Acts, 1833 and 1874, passim.)

* Our older law-writers pay little attention to offer and acceptance as constituent elements of contract. (See, for instance, Blackstone, Comm. II, pp. 442 ft.) It appears that in English law there may be contracts which do not arise from the acceptance of a preceding offer. Thus, a lease is at once a conveyance and a contract. So far as it is a contract, we must look for the terms of the contract within the instrument itself; for rules of evidence preclude us in general from supplementing or varying the written contract by reference to the negotiations which preceded it. The deed is not merely evidence of the contract, but is the contract. Antecedent discussion therefore, even though it may have resulted in a contract, viz. in an agreement for a lease, is inadmissible, as regards the lease itself, to point to one party more than to the other as offeror or acceptor. In such a case, the union of minds takes the form, not of the acceptance of an offer, but of a concurrent expression of intention. (See Pollock, Principles of Contract, 7th ed. pp. 6-7.)


a Bailly's Case (1868) L. R. 5 Eq. 428. Ramsgate Hotel Co. v. Montefiore (1866) L. R. 1 Ex. 109.

b Hyde v. Wrench (1840) 3 Beav. 334.

c Dickinson v. Dodds (1876) 2 Ch. D. at p. 475 (death of offeror) Duff's Exors' Case (1886) 32 Ch. D. 301 (death of offeree).


* Rann v. Hughes (1778) 7 T. R. 350 n. [The text-books speak also of "contracts of record." But these, in so far as they are contracts at all, have ceased to be of practical importance.]


* British Waggon Co. v. Lea 5 Q. B. D. 149.

* Barclay v. Messenger (1874) 43 L. J. Ch. 449.


c Moore v. Voughton (1816) 1 Stark. 487. Fergussson v. Fyffe (1841) 8 Cl & F., at p. 140. [See Addendum at the end of this Title.]


* But (semble) if a party temporarily disables himself from performing an act due at fixed future date, there is no breach.
(Loveland v. Franklyn, ubi sup., per Lord Denman, C. J., at p. 378.)


* Robinson v. Harman (1848) 1 Ex. 855. Lock v. Furze (1866) L. R. 1 C. P., at p. 451. [Contracts for the sale and purchase of real estate which go off because the vendor fails to make a title, are an exception. The purchaser may, in the absence of agreement to the contrary, recover the amount of the deposit he has paid, together with interest, and the expenses of investigating the title, if any; he cannot obtain compensation in damages for the loss of his bargain. Flureau v. Thornhill (1776) 2 W. Bl. 1078. Lock v. Furze, ubi sup. Ramsden v. Dyson (1866) L. R. 1 H. L. 129. Bain v. Fothergill (1874) L. R. 7 H. L. 158. But the exception does not apply to any other breaches (Keek v. Faber (1916) 60 Sol. Jo. 253), nor where the vendor ought to have foreseen the defect in his title (Re Daniel [1917] 2 Ch. 405).]


* Hobbs v. L. & S. W. Ry. Co. (1875) L. R. 10 Q. B., at p. 122. [Where the bailee of an article deals with it in a manner inconsistent with the terms of the bailment, and damage follows, such damage is deemed to be the natural and direct consequence of the breach of contract, unless the damage would have inevitably happened in any event (Lilley v. Doubleday (1881) 7 Q. B. D. 510).]


* Tolhurst v. Associated Cement Manufacturers [1903] A. C., at p. 420. [Even a contractual right to an indemnity may be assigned. (British Union v. Rawson [1916] 2 Ch. 476).]


* Hole v. Bradbury (1879) 12 Ch. D 886. Griffith v. Tower Printing Co. [1897] 1 Ch. 21. Tolhurst v. Associated Cement Manufacturers [1902] 2 K. B. 660; [1903] A. C. 414. [But, though a right to the performance of personal services is not assignable, the right to money due under a contract for personal services is (Crouch v. Martin (1707) 2 Vern. 595; Russell v. Austin Fryers (1907) XXV T. L. R. 414).]

* Mangles v. Dixon (1852) 3 H. L. C. 735. Graham v. Johnson (1869) L. R. 8 Eq. 36. Crouch v. Credit Foncier (1873) L. R. 8 Q. B. 380. Roxburge v. Cox (1881) 17 Ch. D. 520. [Such defences may include claims against the assignor which, though not actually enforceable at the date of the notice, arise out of transactions entered into between the assignor and the debtor before that date. But, to render these claims available as defences, there must either have been an agreement between the assignor and the debtor that mutual credit should be given in respect of such transactions, or the claims must have arisen out of the contract the benefit of which is assigned. (Watson v. Mid-Wales Ry. Co. (1867) L. R. 2 C. P. 593; Christie v. Taunton [1893] 2 Ch. 175; Govt. of Newfoundland v. Newfoundland Ry. Co. (1888) L. R. 13 App. Ca. 199.)]

* Sale of Goods Act. 1893, s. 28.


Referring Principles:

- **II.1 - Prerequisites and effects of agency**
- **II.3 - Agent acting without or outside his authority**
- **II.5 - Attribution of knowledge to principal**
- **II.6 - Performance by agent**
- **II.7 - General agent**
- **III.1 - Set-off**
- **III.2 - Assignment of claim**
- **IV.1.2 - Sanctity of contracts**
- **IV.2.1 - Contractual consent**
IV.2.4 - Lapse of an offer
IV.4.1 - Freedom of form
IV.5.1 - Intentions of the parties
IV.6.6 - Time is of the essence
IV.6.10 - Conditions
IV.7.1 - Invalidity of contract that violates good morals ("boni mores")
IV.7.3 - Right to avoid the contract for mistake in fact or law
IV.9.1 - Limitation periods
V.1.4 - Principle of simultaneous performance; right to withhold performance
VI.1 - Termination of contract in case of fundamental non-performance
VI.5 - Anticipatory breach
VII.1 - Damages in case of non-performance
VII.2 - Principle of foreseeability of loss
VII.4 - Duty to mitigate
VII.6 - Duty to pay interest
VII.7 - Right to charge compound interest
IX.1 - Basic rule