General Instructions: This assignment begins our studies of contract law. Complete the following three exercises on contract formation and defenses to contracts. We will review them in class before the presentations.

Introduction to contract formation
This text gives an overview of some of the most important concepts and terminology related to what constitutes a legal contract and when it is enforceable.

Read through the text quickly. Then match these questions (a-e) with the paragraphs that answer them (1-5).

a. What form can an enforceable contract take?
b. When do third parties possess enforceable rights in a contract?
c. Upon which grounds related to the formation of a contract may its validity be attacked?
d. What are the elements of an enforceable contract?
e. What are the essential terms of a contract?

As opposed to civil law, where contracts are generally formed simply through offer and acceptance, in the common law a promise becomes an enforceable contract when there is an offer by one party (offeree) that is accepted by the other party (offeree) with the exchange of legally sufficient consideration (a gift or donation does not generally count as consideration): hence the equation learned by law students: offer + acceptance + consideration = contract. The law regards a counter offer as a rejection of the offer. Therefore, a counter offer does not serve to form a contract unless, of course, the counter offer is accepted by the original offeror.

For a promise to become an enforceable contract, the parties must also agree on the essential terms of the contract, such as price and subject matter. Nevertheless, courts will enforce a vague or indefinite contract under certain circumstances, such as when the conduct of the parties, as opposed to the written instrument, manifests sufficient certainty as to the terms of the agreement.

An enforceable agreement may be manifested in either written or oral words (an express contract) or by conduct or some combination of conduct and words (an implied contract). There are exceptions to this general rule. For example, the Statute of Frauds requires that all contracts involving the sale of real property be in writing.

In a contractual dispute, certain defenses to the formation of a contract may permit a party to escape his/her obligations under the contract. For example, Illegality of the subject matter, fraud in the inducement, duress and the lack of legal capacity to contract all enable a party to attack the validity of a contract.

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1 It should be noted that, in the United States, contracts for the sale of goods are governed by the Uniform Commercial Code (UCC) and in the United Kingdom by the Sale of Goods Act and therefore the above common law contractual principles may have been supplemented or replaced by these statutory provisions.
In some cases, individuals/companies who are not a party to a particular contract may nevertheless have enforceable rights under the contract. For example, contracts made for the benefit of a third party (third-party beneficiary contracts) may be enforceable by the third party. An original party to a contract may also subsequently transfer his rights/duties under the contract to a third party by way of an assignment of rights or delegation of duties. This third party is called the assignee in an assignment of rights and the delegate in a delegation of duties. (See Unit 7 for a more detailed look at assignment and third-party rights.)

**Key Terms: Defenses to Contract Formation**

Match these defences (1-4) with their definitions (a-d).

1. illegality of the subject matter
2. fraud in the inducement
3. duress
4. lack of legal capacity

A. when one party does not have the ability to enter into a legal contract. i.e. is not of legal age, is insane or is a convict or enemy alien

B. when one party induces another into entering into a contract by use or threat of force, violence, economic pressure or other similar means

C. when either the subject matter (e.g. the sale of illegal drugs) or the consideration of a contract is illegal

D. when one party is intentionally misled about the terms, quality or other aspect of the contractual relationship that leads the party to enter into the transaction
Text analysis: Understanding contracts

Lawyers are usually involved at the formation stage of a contract, which includes advising, drafting and negotiating. Drafting is commonly carried out with the help of contract templates or forms. Nevertheless, legal counsel must advise on the inclusion or omission of clauses and their wording. To do this, familiarity with common clause types and the language typically used in them is necessary.

Match these types of contract clauses (1-10) with their definitions (a-j).

1. Acceleration
2. Assignment
3. Confidentiality
4. Consideration
5. Force Majeure
6. Liquidated Damages
7. Entire Agreement
8. Severability
9. Termination
10. Payment of Costs

A. Clause stating that the written terms of an agreement may not be varied by prior or oral agreements because all such agreements have been consolidated into the written document

B. Clause designed to protect against failures to perform contractual obligations caused by unavoidable events beyond the party's control, such as natural disasters or wars

C. Clause outlining when and under which circumstances the contract may be terminated

D. Clause concerning the treating of information as private and not for distribution beyond specifically identified individuals or organisations, nor used other than for specifically identified purposes

E. Clause in a contract requiring the obligor to pay all or a part of a payable amount sooner than as agreed upon the occurrence of some event or circumstance stated in the contract, usually failure to make payment

F. Clause setting out which party is responsible for payment of costs related to preparation of the agreement and ancillary documents

G. Clause expressing the cause, motive, price or impelling motive which induces one party to enter into an agreement

H. Clause referring to an amount predetermined by the parties as the total amount of compensation a non-breaching party should receive if the other party breaches a part of the contract

I. Clause prohibiting or permitting assignment under certain conditions

J. Clause providing that, in the event that one or more provisions of the agreement are declared unenforceable, the balance of the agreement remains in force

2 US also Merger (The term Parol Evidence is used in both the UK and the USA)