

First, watch the news reports:

‘Former Anglia Ruskin student sues uni over her 'Mickey Mouse' degree’

<https://www.independent.co.uk/news/education/education-news/student-anglia-ruskin-university-mickey-mouse-degree-pok-wong-tuition-fees-a8250441.html>

<https://www.dailymail.co.uk/video/news/video-1646036/Video-Anglia-Ruskin-alumna-sued-University-lack-quality.html>

Graduate, 29, Sues University for £60,000 over her 'Mickey Mouse' Degree in International Business Strategy

11/03/2018

- Pok Wong, 29, is suing Anglia Ruskin University for £60,000 over her degree
- Despite getting a first she has launched campaign against teaching quality
- Claims prospectus made fraudulently misleading claims about job prospects

A graduate is suing her university for £60,000 over her 'Mickey Mouse' degree in international business strategy. Pok Wong, 29, claims that Anglia Ruskin University made fraudulently misleading claims in its prospectus about high-quality teaching and career prospects. Her legal action is part of a growing trend by students seeing themselves as 'customers' who demand certain expectations are met, particularly after the rise in tuition fees.



Pok Wong is suing Anglia Ruskin University for £60,000 in damages for a breach of contract and fraudulent misrepresentation. She also claims she was 'forcibly removed' from the stage during her graduation day for protesting about the quality of her course. Ms Wong said in documents lodged before London County Court: 'Since graduating ... it has been proven that the degree ... does not play a role to help secure a rewarding job with prospects'. She added that the prospectus claims about employment prospects and education quality encouraged her to move from Hong Kong to Cambridge to study. The £60,000 she is asking for includes her tuition fees and living costs during the two-year course. Ms Wong told the Sunday Telegraph: 'Although I graduated with a First Class degree in 2013, it is a Mickey Mouse degree. I hope that bringing this case will set a precedent so that students can get value for money, and if they don't, they get compensated. Anglia Ruskin talked big, but then didn't deliver. She claims that the prospectus fraudulently claimed the business school was a 'renowned centre of excellence' and students would be 'well equipped' for jobs - despite it ranking poorly in four university guides between 2010-11.

Lawyers for the university have said the prospectus did not form a 'real' contract with students and so tuition fees should not be refunded. They also added that Ms Wong may have struggled to get work because she spent 'time and energy' on a campaign discrediting the university. A spokesperson for the university said: 'Her complaints have been through the full Office of the Independent Adjudicator [the body that deals with student complaints] process. 'She then made a complaint to the Information Commissioner's Office, which was rejected after a thorough investigation. Subsequently she has launched legal action against us and has been required to pay our costs at an earlier hearing.

Ms Wong may have a point, however. Last year, six universities were told to take down certain marketing claims by the Advertising Standards Authority. One of the universities, the University of Leicester, was told to stop claiming it was a 'top 1% world university'. Although they claimed it was based on its ranking in several different world league tables, the university complied with the decision and removed the claim from its prospectus and website.

THE STUDY OF LAW

Lead-in

It is difficult to imagine going very long before making some kind of agreement enforceable by law. Whenever we buy goods and services, we enter into a contractual relationship.

- 1 What kinds of contract have you entered into recently? Make a list of some of the goods and services you have bought or used over the past 48 hours. Compare your list with a partner. Is it always clear whether the above are goods or services? How would you classify the electricity you consume every day?

Reading 1: Contract law

This text deals with some of the main features of contract law.

- 2 Read the first paragraph. What is necessary for a valid contract to be formed?
- 3 Now read the whole text. Which two remedies following a breach of contract are mentioned? Are any other options available in your own jurisdiction?
- 4 Read the text again and decide whether these statements are true (T) or false (F).
 - 1 In all legal systems, parties must give something of value in order for a contract to be formed.
 - 2 An offer must be met with a counter-offer before a contract is agreed.
 - 3 Oral contracts are not always valid.
 - 4 If in breach, the court will always force the party to perform the contract.
 - 5 Assignment occurs when one party gives its contractual rights to another party.

Contract law deals with promises which create legal rights. In most legal systems, a contract is formed when one **party** makes an offer that is accepted by the other party. Some legal systems require more, for example that the parties give each other, or promise to give each other, something of value. In common-law systems, this promise is known as **consideration**. In those systems, a one-sided promise to do something (e.g. a promise to make a gift) does not lead to the **formation** of an enforceable contract, as it lacks consideration.

When the contract is negotiated, the offer and acceptance must match each other in order for the contract to be binding. This means that one party must accept exactly what the other party has offered. If the offer and acceptance do not match each other, then the law says that the second party has made a **counter-offer** (that is, a new offer to the first party which then may be accepted or rejected).

For there to be a valid contract, the parties must agree on the **essential terms**. These include the price and the subject matter of the contract.

Contracts may be made in writing or by spoken words. If the parties make a contract by spoken words, it is called an **oral contract**. In some jurisdictions, certain special types of contracts must be in writing or they are not valid (e.g. the sale of land).

Contracts give both parties **rights** and **obligations**. Rights are something positive which a party wants to get from a contract (e.g. the right to payment of money). Obligations are something which a party has to do or give up to get those rights (e.g. the obligation to do work).

When a party does not do what it is required to do under a contract, that party is said to have breached the contract. The other party may file a lawsuit against the **breaching party** for **breach of contract**. The **non-breaching party** (sometimes called the **injured party**) may try to get a court to award damages for the breach. **Damages** refers to money which the court orders the breaching party to pay to the non-breaching party in compensation. Other remedies include **specific performance**, where a court orders the breaching party to perform the contract (that is, to do what it promised to do).

A party may want to transfer its rights under a contract to another party. This is called an **assignment**. When a party assigns ('gives') its rights under the contract to another party, the assigning party is called the **assignor** and the party who gets the rights is called the **assignee**.

5 Complete these sentences using the words in the box.

breach counter-offer damages formation obligations oral
contract terms

- 1 Usually, contract occurs when an offer is accepted.
- 2 A new offer made by one party to another party is called a
- 3 The price and the subject matter of a contract are the essential of a contract.
- 4 A contract which is not in written form but has been expressed in spoken words is called an
- 5 Under a contract, a party has (that is, certain things it has to do).
- 6 When a party does not do what it has promised to do under a contract, it can be sued for of contract.
- 7 A court can award to the non-breaching party.

6 Match the verbs in the box with the nouns they go with in the text.

accept award breach enforce file form make negotiate perform
reject

- 1 an offer
- 2 a contract
- 3 damages
- 4 a lawsuit

7 Which other verb-noun collocations are possible with the words in Exercise 6?

Watch the videoclip below:

‘Comparison: Most Expensive Divorces’

<https://www.youtube.com/watch?v=Ere0B5xvmMg>

Now how much did the following husbands have to pay in divorce settlements:

- 1) Mick Jagger
- 2) Donald Trump
- 3) Michael Douglas
- 4) Paul McCartney
- 5) Steven Spielberg
- 6) Tiger Woods
- 7) Harrison Ford
- 8) Michael Jordan
- 9) Mel Gibson
- 10) Jeff Bezos



*Boris Becker and
Barbara Feltus*



*Steven Spielberg
and Amy Irving*

Listening

6

a) Look at the photos. What do you know about these people? What do you think the couples have in common?

b) Check these words with your teacher or in a dictionary.

divide up property legal a guarantee a court

c) **R10.6** Listen to a radio phone-in. Answer these questions.

- 1 What is a prenuptial agreement?
- 2 Does the lawyer think they are a good idea? Why?/Why not?

d) Listen again. Tick the true sentences. Correct the false ones.

- 1 Most couples usually get half of everything they own.
- 2 A prenuptial agreement isn't a legal guarantee in the USA.
- 3 Boris Becker and Barbara Feltus were married for five years.
- 4 Amy Irving got \$10 million when she got divorced.
- 5 You always need a lawyer to deal with a prenuptial agreement.

Reading

Read the text quickly. It is about a couple called Clifford and Annie, who are planning to get married.

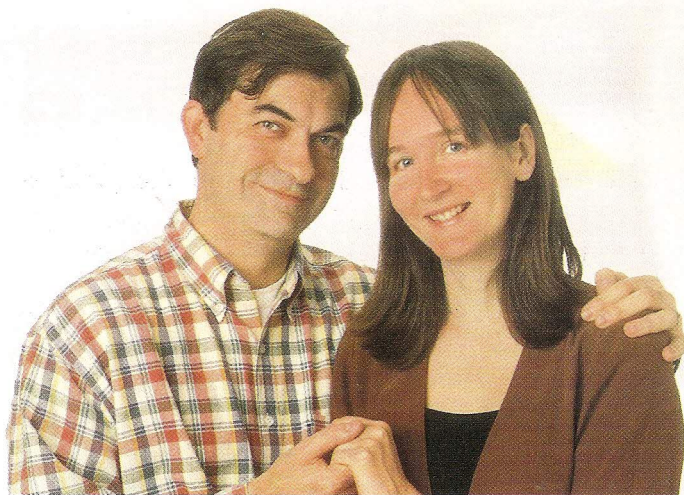
Answer the questions.

- 1 What are your impressions of Clifford and Annie? Which of the following words best describe your opinion of them? Why?

sensible weird ridiculous romantic
spontaneous easy-going warm and loving
cold and calculating unbelievable

- 2 Do you think their marriage will last?
- 3 How many of their rules can you remember?

*"I'll marry you
but only on a few
conditions..."*



*'Nothing for us is spontaneous,' says Clifford.
'Everything we do, we plan.'*

When Clifford met Annie, they found one thing in common. They both love lists. So together they have written the ultimate list, a list of rules for their marriage. This prenuptial agreement itemizes every detail of their lives together, from shopping to sex. Timothy Laurence met them in Florida in the apartment that they share.

The living room is neat and tidy, with a dining table already laid for a meal that has yet to be cooked. All the ingredients for the meal are in the kitchen, prepared, weighed, and waiting in a line. It is his turn to cook. Annie is chatting over a cup of coffee by the pristine kitchen bar when her fiancé pours himself a cup and joins her. He touches her arm. She tenses, looks at him anxiously, and asks, 'Oh, sorry. Did I say something wrong?'

'No, no. I was just showing affection,' Clifford explains ponderously.

'Oh, I see,' says Annie.

His hand returns to her arm, and this time she relaxes. It is a significant moment, because spontaneity is not at the heart of this relationship. Love, for Clifford and Annie, means following a book of rules.

A signed, legal document

They have become curiously famous since details of their prenuptial contract were publicized. They wanted a legal contract, signed and witnessed by lawyers. Their agreement is intended to regulate the chaotic heart, and smooth the path of true love before the journey of marriage has begun. 'We will have healthy sex 3 to 5 times per week', it declares, and continues through every aspect of married life, from the wedding itself, to a trip to the supermarket: 'We will spend \$400 a month', to who is boss when it comes to the big decisions. They are getting married in six months' time. 'The ceremony will last twenty minutes. The reception will be held in a restaurant on Miami beach. We will invite a total of twenty guests each, who will be served two drinks, one of which may be alcoholic.'

List of rules

So what are some of the other rules that will lead to married bliss?

- Once we are married, we will each receive an allowance of \$70 per week to cover haircuts, eating out, gifts for friends, and spending money.
- We won't raise our voices at each other. If we get angry, we will count to 10 and take a deep breath.
- We will not use tobacco products.
- We will go to bed and turn out the lights by 11.30 pm.
- Family leadership and decision-making will be Clifford's responsibility. Annie will make decisions in emergencies and when Clifford is not available.
- We will buy unleaded fuel, and we won't let the fuel gauge get lower than half a tank.

If any of these rules are broken, a fine will have to be paid out of personal savings.

Everyone wants to know whether they are the saviours of modern marriage, or the butchers of romance. 'Did we put anything in the contract about love?' asks Annie, a little uncertainly. 'I think so,' says Clifford. Ah, yes, they did: 'We will provide unconditional love and fulfil each other's basic needs.' Oh, good. So that's all right then.

Their prenuptial contract is a response to uncertainty, and a plan for emotional and financial security for the future. At 39, Clifford has been through two divorces and has two sons. Annie, 31, was married briefly and disastrously in her early twenties. As Clifford likes to point out, the divorce rate for first-time marriages is now 54 per cent. 'Nobody plans to fail,' he says, 'but a lot of people fail to plan. I'm going to write a book about our experience of a fully planned and programmed marriage. I just know that it will be a bestseller.'

With so much romance in the air, their relationship deepened, and as the weeks passed, they began to make lists of increasingly personal concerns. From the start, they agreed that the big marriage breakers were money, behaviour, sex, and children. 'Nothing is going to make this marriage go wrong,' says Clifford. 'Everything has already been planned.'

'In five years, we will have moved from our present address, and we will be living in a beach house overlooking the ocean.'

When Annie met Clifford

Annie sees their arrangements slightly differently. For her, the prenuptial contract was a way of getting to know Clifford – a kind of courtship, 'just probing and asking questions. If we don't like and respect each other, this union won't last.' She liked what she found, including a mutual fondness for lists. 'I'd made a list of what I wanted in a man, what I liked, and what was unacceptable. I had prayed to God to find a man who was my father, only 30 years younger.'

She is very keen to have children, but Clifford admits to 'having problems' with the prospect of more kids, more college fees. Their contract states: 'We will not start a family for the first two years of our marriage.' 'So I'll be pregnant in three years,' Annie says, and then pauses. 'No, sooner than that. I'll be pregnant in 30 months ...'

Such is the wild intensity of passion in the heat of Florida.



When Clifford met Annie

Clifford and Annie met at a dance, and started a cautious romance. He took her out to a movie and dinner, and gave her roses with a card signed *with affection* that she still keeps in her handbag. They started their own small marketing business, and in the running of the business discovered that they were both 'goal setters'. One day, not having anything else to talk about, they decided to create the perfect budget.

'We were really excited that we could agree on something so vital and fundamental to any enterprise, whether it's a business or a marriage,' says Clifford.

Comprehension check

Read the text more carefully and answer the questions.

- 1 Find some things that Annie and Clifford have in common, and some things that they *don't* have in common.
- 2 Annie and Clifford say that marriages fail because of arguments about money, behaviour, sex, and children. Which of their rules refer to these four things?
- 3 Are the following statements true (✓) or false (✗)? Correct the false ones with the right information and discuss your answers.
 - a Clifford does all the cooking.
 - b He prepares everything very carefully.
 - c Their apartment looks messy but comfortable.
 - d Annie misunderstands why Clifford touches her.
 - e They want the contract to ensure an uncomplicated divorce if they split up.
 - f There will be no alcohol at their wedding.
 - g If any of the rules are broken, they will divorce immediately.
 - h Clifford has no doubts that both his book and his marriage will be successful.
 - i On their first date, Clifford took Annie out to a dance.
 - j Annie had no idea what her perfect man would be like until she met Clifford.

Learn more about Prenuptial Agreements

What is a Prenup?

A Prenuptial Agreement, also called a prenup, premarital or antenuptial agreement, is a legal contract made between spouses before the wedding in order to plan for the division of property and finances if the marriage ends in divorce or death. Not just for the wealthy, Prenuptial Agreements aren't only about protecting yourself in the unfortunate event of a legal separation or divorce, they can also help couples decide whether certain debts are personal or shared, and they can even help manage household finances. Without a prenup to provide guidance, the State is left to divide property and finances after a death or divorce, which means you may not like the final decision. This makes the prenup agreement a very important legal document for every couple to have.

Use a Prenuptial Agreement if:

- You are engaged to be married and wish to establish the rights and obligations of each person regarding property and finances.
- You own a business or property that you'd like to make plans for.
- You hold a significant amount of debt.
- You have previously been married or have children from a prior union.

How to Get a Prenup

Talking about money with a future spouse before you marry can be difficult but it can help both of you avoid conflict later on. When you're sitting down to write a Prenuptial Agreement, it's often best to do so with your partner. If necessary, you may also consider asking a third party such as a mediator or religious advisor to facilitate the conversation. You should be sure that both parties engage in full disclosure during the discussion and that both parties sign voluntarily. Prenuptial Agreements may be challenged as invalid if they are signed less than 30 days before the wedding, so be sure that you both have enough time to discuss your financial decisions first.

Here are some scenarios that you may want to review together:

- **Previous marriage and children**

If you or your partner are obligated to pay spousal support or child support, be sure to note that responsibility. If either of you have an inheritance or other savings set aside for your children's college tuition, you may also consider keeping that separate. Finally, if you wish to pass certain property down to your children, you should state that in your prenuptial plan.

- **Income and debts**

Life doesn't begin at marriage. You will be starting your new life together with previously owned assets or existing financial obligations. What you need to decide in your prenuptial contract is whether any of these are shared, or if you'll be keeping them separate. It's up to you, your spouse, and your lawyer. Perhaps you'd prefer to share your income in a joint bank account but keep your credit card debt and student loans separate to protect your spouse from creditors. With a Prenuptial Agreement form, you can define who holds what debt and also lay out a plan for dividing household bills and credit card charges.

- **Property and Inheritance**

If you've already inherited or expect to inherit the family home or a family business, and you want to keep it among biological relatives, you can set that down in the premarital contract. If you own other property that you'd like to keep separate, it is important to include it in the Prenuptial Agreement, along with any plans for its distribution if you pass away or divorce.

- **What Happens If You Divorce**

Obviously, no-one getting married is planning to divorce but a Prenuptial Agreement should protect both parties if it happens. For example, you and your spouse can stipulate the amount of alimony in advance or decide who keeps certain assets.

What Happens If One Spouse Dies

While you should consider creating a last will and testament when you're getting married, you can make certain conditions about assets and offspring in your Prenuptial Agreement. Again, it's likely that you and your partner will be sharing almost everything but there are the occasional properties or assets that you may want to keep in your biological family or give to your kids from a previous marriage as opposed to your spouse upon your death. You can include those in provisions in your prenuptial contract.

Prenup Pros and Cons

If you are undecided about whether or not you should get a prenup, here are a few advantages and disadvantages to consider:

Prenup Benefits

- It encourages open communication between spouses
- It protects pre-marital assets including inheritances and business assets
- It protects the rights of children from a previous marriage
- It maintains separate property
- It helps couples to avoid future conflict
- It establishes a procedure for future decisions

Prenup Drawbacks

- It involves talking about money, a sensitive topic
- It may feel pessimistic to prepare for divorce while planning a wedding
- It may require negotiation or the involvement of lawyers (who are paid by the hour)

Prenuptial Agreements After Marriage

It is simply not true that you can't change your prenuptial agreement after your wedding day. If your financial situation has changed, you can alter or modify any terms as long as both parties agree and the updates are made in writing and signed. It is important to note however that unless the entire contract is revoked in writing, all other provisions will remain intact.

Markby, Markby & Markby Prenuptial Agreement

_____, hereinafter referred to as Prospective Husband, and _____,
hereinafter referred to as Prospective Wife, hereby agree on this ____ day of _____, in the year _____, as follows:

1. Prospective Husband and Prospective Wife contemplate marriage in the near future and wish to establish their respective rights and responsibilities regarding each other's income and property and the income and property that may be acquired, either separately or together, during the marriage.
2. Prospective Husband and Prospective Wife have made a full and complete disclosure to each other of all of their financial assets and liabilities, as more fully set forth in the accompanying Financial Statements, attached hereto as Exhibits A and B.
3. Except as otherwise provided below, Prospective Husband and Prospective Wife waive the following rights:
 - a. To share equally in each other's estates upon their death.
 - b. To spousal maintenance, both temporary and permanent.
 - c. To share in the increase in value during the marriage of the separate property of the parties.
 - d. To share in the pension, profit sharing, or other retirement accounts of the other.
 - e. To the division of the separate property of the parties, whether currently held or hereafter acquired.
 - f. To any claims based on the period of cohabitation of the parties.
4. The exceptions to Article 3 shall be:
.....
.....
.....
5. If Prospective Husband is unfaithful to Prospective Wife
.....
6. If Prospective Wife is unfaithful to Prospective Husband
.....
7. Custody of the children
8. Custody of the family pet(s)
9. Both Prospective Husband and Prospective Wife are represented by separate and independent legal counsel of their own choosing.
10. Both Prospective Husband and Prospective Wife have separate income and assets to independently provide for their own respective financial needs.
11. This agreement constitutes the entire agreement of the parties and may be modified only in a writing executed by both Prospective Husband and Prospective Wife.
12. In the event it is determined that a provision of this agreement is invalid because it is contrary to applicable law, that provision is deemed separable from the rest of the agreement, such that the remainder of the agreement remains valid and enforceable.
13. This agreement is made in accordance with the laws of the state of _____, and any dispute regarding its enforcement will be resolved by reference to the laws of that state.
14. This agreement will take effect immediately upon the solemnization of the parties' marriage.

I HAVE READ THE ABOVE AGREEMENT, I HAVE TAKEN TIME TO CONSIDER ITS IMPLICATIONS, I FULLY UNDERSTAND ITS CONTENTS, I AGREE TO ITS TERMS, AND I VOLUNTARILY SUBMIT TO ITS EXECUTION.

Prospective Husband

Prospective Wife

- 8 With a partner, take turns to look at each of the verbs in the box in Exercise 6 and discuss whether the following subjects can carry out the action in question:

1 a party 2 the parties 3 the court 4 a lawyer

EXAMPLE: Well, a party accepts an offer, and a lawyer can accept an offer, too. But I don't think you can say that a court accepts an offer.

Reading 2: Remedies for breach of contract

- 9 Read this excerpt from a law textbook. What does the word *remedy* in the text mean?

REMEDIES FOR BREACH OF CONTRACT

If a contract is broken, the injured party might be expected to demand any of the following:

- to have what they gave returned to them ('restitution')
- compensation for their loss ('damages')
- the other party to be forced to perform the contract ('specific performance')

In the common-law tradition, damages is the usual remedy that a court awards for a broken contract. Restitution and specific performance are available only in certain circumstances.

- 10 According to the text, what is the most common remedy for breach of contract in the legal systems of English-speaking countries? What is the most common remedy in your jurisdiction?

Listening 1: Asking for clarification and giving explanations

- 11  2.1 Listen to the first part of a short conversation between two law students, who are discussing the law textbook excerpt in Exercise 9. What is the first student confused about?

- 12  2.1 Listen again and tick (✓) the expressions the student uses to ask for clarification.

- | | |
|--------------------------------------|--------------------------|
| 1 What does that mean? | ☐ |
| 2 Sorry, I don't follow you. | ☐ |
| 3 I don't understand that. | ☐ |
| 4 I don't know what that word means. | ☐ |
| 5 That doesn't make sense to me. | ☐ |
| 6 I don't get it. | ☐ |

- 13 How would you explain to the student what the term *damages* means and how it differs from the word *damage*? Discuss this with a partner.

- 14  2.2 Listen to the second part of the dialogue and compare your answer with what the second student in the dialogue says.

15 **2.2** Listen again and tick (✓) the expressions the second student uses for giving an explanation.

- | | |
|-------------------------------------|--------------------------|
| 1 Well, it's quite straightforward. | ☐ |
| 2 Allow me to clarify. | ☐ |
| 3 Let me explain. | ☐ |
| 4 What this word means is ... | ☐ |
| 5 It's like this. | ☐ |
| 6 In other words, ... | ☐ |

16 Which of the expressions in Exercise 15 is the most formal? When would you use this more formal way of giving an explanation?

Speaking 1: Terminology

17 With a partner, take turns choosing and explaining one of these terms in your own words. Can you guess which word your partner is defining?

- | | | |
|---|--|---|
| ☐ damages | ☐ specific performance | ☐ restitution |
| ☐ assignor | ☐ assignee | ☐ the breaching party |
| ☐ the non-breaching party | ☐ the injured party | ☐ remedy |

Listening 2: Contract law lecture

18 **2.3** Listen to the beginning of a lecture on contract law. What is the general subject of the lecture?

19 **2.4** Listen to the whole lecture and answer these questions.

1 Which of these terms does the speaker mention?

- | | | | |
|---------------|--------------------------|---------------|--------------------------|
| agreement | ☐ | counter-offer | ☐ |
| consideration | ☐ | acceptance | ☐ |
| negotiation | ☐ | remedy | ☐ |
| offer | ☐ | | |

2 What topic will the lecturer talk about next time?

20 **2.4** Listen again and complete this excerpt from a student's lecture notes by writing one word in each space.

Introductory lecture on Contract Formation

• Three requirements for formation:

1)

2)

3) intention to create relations

• Agreement: when 4) become a settled deal

• When an offer is made and 5), there is agreement.

• Questions about offers: e.g. who makes an offer in an auction? Is a 6) list an offer? Is an advertisement an offer? ...

• Questions about acceptance: does acceptance have to be

7) ? Accept by 8) ?

• Consideration basically means the 9) If there is no consideration, the contract is not legally 10)

• Next week's lecture will cover rules of 11)

Speaking 2: Summarising the lecture

21 A fellow student missed the introductory lecture on contract formation and has asked you to explain the most important points to him. Taking turns with a partner, explain in your own words what the lecturer said about the following topics. If you don't understand something, ask for clarification. When your partner has finished explaining, say whether your partner has left something out or whether you understand it differently.

- ☐ agreement: what it is and when it occurs
- ☐ questions about acceptance
- ☐ questions about offers
- ☐ consideration: what it is

LAW IN PRACTICE

Lead-in

Lawyers are often consulted by clients who need advice in contract disputes. What kinds of things could lead to such disputes?

When meeting with a client to discuss a dispute, a lawyer will generally explain how the law relates to the contract in question. This may mean helping the client to understand technical terms and important legal concepts. It will often be necessary to examine a particular **clause**, or section of the contract, carefully.

Reading 3: Contract clause

22 Read the clause from a contract and answer these questions.

- 1 Which word means *ship* or *boat*?
 - 2 What does the clause deal with?
 - 3 What words are used to refer to each party to the contract?
 - 4 What do you think *probable readiness* means?
 - 5 What does the word *shall* mean in the context of this clause?
- 2 a The buyer shall nominate the date of shipment. The buyer shall give the seller at least two weeks' notice of probable readiness of vessel(s) and of the approximate quantity to be loaded.
 - b Upon notification of probable readiness of vessel(s), the seller shall nominate a port for the loading of goods.
 - c Shipment is required no later than 22 May 2008.

23 Complete these lists of obligations using your own words. How are the obligations expressed in the actual contract clause?

Buyer must:

- 1
- 2
- 3

Seller must:

- 4

24 Discuss with a partner what can go wrong in connection with a clause like the one in Exercise 22. What might the consequences be?

Listening 3: Conditions and warranties

25 ▶ 2.5 You are going to hear a conversation between a lawyer (Mr Dawe) and his client (Mr McKendrick, Director of Export Threads, the seller referred to in the contract extract in Exercise 22). Listen to them discussing the case and answer these questions.

- 1 What is the name of the buyer in this dispute?
- 2 Why does Export Threads want to terminate the contract?
- 3 Does a breach of contract automatically allow one party to terminate the agreement?
- 4 Does the lawyer think that Export Threads has a strong case?
- 5 What *legal* grounds might Export Threads have for terminating the contract?

26 Read the audio transcript of the dialogue on pages 125–126. Underline the phrases which mean *I don't understand* and those used for giving an explanation.

27 a In the dialogue, the lawyer says that his client *relied* on the seller to notify him of the date of shipment. The term **reliance** refers to depending on someone's promises. Read these definitions of reliance (1–3) and match each with its source (a–c).

1

reliance

- 1 The act of relying on someone or something; trust.
- 2 The condition of being reliant or dependent.
- 3 A person or thing which relies on another.

2

reliance *n.* the act of relying; taking action as a result of another person's promises or assurances. Compensation may be available for losses incurred by a claimant resulting from such reliance (*reliance damages*).

3

reliance /rɪ'laɪəns/ noun [U]
when you depend on or trust in something or someone:
*The region's **reliance** on tourism is unwise.*
*You place too much **reliance** on her ideas and expertise.*

- a *The Cambridge Advanced Learner's Dictionary*
- b an online legal dictionary
- c *The Wiktionary* (an online dictionary created by its users)

- b Which of the dictionaries did you find most useful? Why?
- c What role do you think reliance plays in this contract?

Language use: *can / could / may / might*

In his conversation with his client, Mr Dawe talks about a number of possibilities, for example the possibility that Drexler might sue him for breach of contract.

There are several ways to talk about possibilities in English:

- *can / could* (but not *may / might*) are used to say something is generally possible:

*I really don't see how they **can / could** sue us.* (= I don't see how it is / would be possible for them to sue us.)

~~*I really don't see how they **may / might** sue us.*~~

- *may / might / could* (but not *can*) are used to talk about the chance that something will happen or is happening:

*They **may / might / could** sue you.* (= It is possible they will sue you.)

~~*They **can** sue you.*~~

- *may not / might not* (but not *could not*) are used to talk about a negative possibility in the future:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **might not** take any action against us?*
(= It is possible they won't take action.)

- In the above example, using *could not* would change the meaning from possibility to ability:

*Drexler are saying that we are unreasonably refusing delivery, but I guess if we make our side clear, then they **couldn't** take any action against us?* (= They would not be able to take action.)

28 Rewrite these sentences using a suitable form of *can, could, may or might*.

- 1 I don't see how it is possible for them to sue us.

*I don't see how they **can / could** sue us.*

- 2 If we offer a generous out-of-court settlement, it is possible that they will not sue us.

If

- 3 You shouldn't breach the contract. It is possible they will sue you.

They

- 4 If you can assure us that such a breach will not happen again, then it is possible that we won't take any further action.

If

- 5 I think it is possible for us to work together again in the future.

I

- 6 If you raised your prices, it would not be possible for us to work together.

If

Text analysis: Email of advice

29 This email summarises the discussion between the lawyer, Mr Dawe, and his client. It contains four errors of fact. Find and correct the errors.

Subject: The termination of your contract with Drexler Inc.

Dear Mr McKendrick

1 Thank you for coming to see me on 30 May when we discussed the termination of your contract with Drexler Inc. I am writing to summarise our discussion and to confirm your instructions.

2 You told me that Drexler Inc. agreed to purchase a large quantity of goods (exact amount unspecified) from your firm, Export Threads. Under clause 2a of the contract, Drexler were to give you two days' notice of the date of shipment so that you could arrange a lorry for the transportation of the goods. You were unable to arrange this because Drexler failed to let you know by the agreed date. You now wish to terminate the contract.

3 The legal issue here is whether or not Drexler's breach is enough to allow Export Threads to terminate the contract without being liable for damages. If the contract term in question can be shown to be a condition, you will be able to terminate the contract without fear of damages being awarded against you. If the term is simply a warranty, you will be able to claim damages to cover any costs you have incurred as a result of this breach, but may not actually terminate the contract.

4 Recent case law suggests that if you do choose to terminate the contract, and if Drexler subsequently decide to sue you, the courts would rule against you. Your contract involves a chain of sales, and in such cases, the need for certainty is very important. You were unable to arrange the loading of the goods as a direct consequence of Drexler's breach of clause 2a, and this term would be interpreted as a condition.

5 I will write a letter to Drexler Inc. outlining the above and notifying them of your intention to renegotiate the contract. I will request confirmation from Drexler that they accept our interpretation both of the events and of the relevant law, and that your termination of the contract will not lead to any unnecessary legal action on their part. I will be in touch again shortly. Please do not hesitate to contact me if you have any questions.

With kind regards

Charles Dawe

30 The email in Exercise 29 follows a standard pattern for an email of advice from a lawyer to a client. Match each paragraph (1–5) with its correct label (a–e).

- a** Opening paragraph
- b** The lawyer's proposed action
- c** The lawyer's advice
- d** Summary of the facts
- e** The legal issue(s)

- 31** During this course, you will be asked to write several letters and emails of advice. Read through the email in Exercise 29 and highlight any phrases that would be useful in your own legal correspondence.

EXAMPLES: Thank you for coming to see me on 30 May when we discussed ...

Writing: Email of advice

- 32** Use these notes of an interview with a client to write an email of advice. Use the email in Exercise 29 as a model.

SAMPLE
ANSWER
>> p. 142

7 November

Client – Berlingua Language School (Joanna Staines)

Other party – Simon Burnett, Burnett TV Supplies

Facts

Ms Staines (Director of Studies, Berlingua) bought a new satellite system (including built-in hard drive) at 50% of the normal price from Burnett TV Supplies for educational use. She mainly wanted to use it to record foreign-language TV programmes for use during lessons.

When she first set it up and tried to record, she realised that the timer function was broken. This means someone has to physically press 'record' and 'stop' whenever they want to record something.

Ms Staines has asked for a replacement, but was told that she couldn't expect it to work perfectly at such a cheap price. They have refused to replace it, but have offered to repair it at a cost of £130.

Legal issues

Defect not pointed out at time of purchase; if reduction due to imperfections, seller MUST inform client (Sale of Goods Act).

Advice/Action

Ms Staines is entitled to either a full refund or a replacement system (her choice). I outlined the options, Ms Staines is considering which to go for. I'm pretty sure that it will only take one letter from us before Burnett backs down – he'd have no chance in the small claims court!

Photocopiable worksheet 2.2

Change the form of the words (1–15) below so that they make sense in this email of advice.

Subject: The termination of your contract with Drexler Inc.

Dear Mr McKendrick

Thank you for coming to see me on 30 May when we discussed the **1)** of your contract with Drexler Inc. I am writing to **2)** our **3)** and to confirm your **4)**

You told me that Drexler Inc. agreed to purchase a large quantity of goods (exact amount **5)**) from your firm, Export Threads. Under clause 2a of the contract, Drexler were to give you two weeks' notice of the date of **6)** so that you could arrange a port for the loading of goods. You were unable to arrange this because Drexler failed to let you know by the **7)** date. You now wish to terminate the contract.

The legal issue here is whether or not Drexler's breach is enough to allow Export Threads to terminate the contract without **8)** liable for damages. If the contract term in question can be shown to be a condition, you will be able to terminate the contract without fear of damages being awarded against you. If the term is simply a warranty, you will be able to claim damages to cover any costs you have incurred as a result of this breach, but may not actually terminate the contract.

Recent case law suggests that if you do choose to terminate the contract, and if Drexler **9)** decide to sue you, the courts would rule in your favour. Your contract involves a chain of sales, and in such cases, the need for **10)** is very important. You were unable to arrange the loading of the goods as a direct consequence of Drexler's breach of clause 2a, and this term would be interpreted as a condition.

I will write a letter to Drexler Inc. outlining the above and notifying them of your **11)** to terminate the contract. I will request **12)** from Drexler that they accept our interpretation both of the events and of the relevant law, and that your termination of the contract will not lead to any **13)** legal **14)** on their part. I will be in touch again **15)** Please do not hesitate to contact me if you have any questions.

With kind regards

Charles Dawe

- | | | | | |
|--------------------|-------------------|---------------------|---------------------|-------------------|
| 1 terminate | 2 summary | 3 discuss | 4 instruct | 5 specify |
| 6 ship | 7 agree | 8 be | 9 subsequent | 10 certain |
| 11 intend | 12 confirm | 13 necessary | 14 act | 15 short |

Case Study 1:

Contract law

The facts of the case

Your law firm has asked you to review the following case in preparation for a meeting with a client.

Read this description of the facts of the case. What is the legal issue here?

Deep Blue Pools Ltd began as a small business in 1997, manufacturing and installing high-quality swimming pools for private residences. It has since developed a reputation for excellence and has received a number of lucrative contracts, generating substantial income for the company.

Last year, Gainsborough Construction Ltd contracted with Deep Blue Pools to build one swimming pool for each of the ten luxury properties it is currently building in south-east England. Deep Blue Pools was paid a total of £265,600 for the work.

Sometime after their installation, it became clear that each pool was shallower than the depth of 2.4m specified in the contract (by 25 to 50cm at different points). Deep Blue Pools claimed that each pool was still safe for diving and there would be no loss of enjoyment.

Gainsborough Construction is claiming £312,680 to demolish and rebuild the pools to the proper depth (cost of cure¹), arguing that it is entitled to its exact preference concerning the pools' depth. Gainsborough Construction also claims that Deep Blue Pools deliberately misled them as to the size of the pools provided in order to reduce costs.

Deep Blue Pools says that the amount claimed is wholly disproportionate to the disadvantage suffered by Gainsborough Construction, and that the houses are no less valuable. Deep Blue Pools also claims that Gainsborough Construction has no real intention of effecting a cure, and that any damages awarded would be an unfair 'windfall'².

Task 1: Speaking

Divide into two groups, with one group representing Gainsborough Construction and one group representing Deep Blue Pools.

1 Prepare for negotiations with the other party. You should:

- ☐ identify the legal issues of the case and determine arguments for your side;
- ☐ list the strengths and weaknesses of your side of the case;
- ☐ list the strengths and weaknesses of the other side of the case;
- ☐ decide which parts of the relevant legal documents most strongly support your case and can be used to argue against the other party's case;
- ☐ make notes for the negotiation: What are your goals? What are you willing to give? What are you not willing to give?

2 Pair up with a representative of the other party and attempt to negotiate a settlement.

3 Report the results of your negotiations to the class.

Task 2: Writing

Write a letter of advice to one of the parties (your choice), in which you outline the legal issues raised by the case, refer to relevant statutes or related cases and provide your opinion as to the likely outcome of the case.

¹ See Text 2 on the opposite page.

² an unexpected profit or gain

Relevant legal documents

Text 1: Sale of Goods Act 1979, Section 53 (1–3)

- (1) Where there is a breach of warranty¹ by the seller, or where the buyer elects (or is compelled) to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may—
 - (a) set up against the seller the breach of warranty in diminution² or extinction of the price, or
 - (b) maintain an action against the seller for damages for the breach of warranty.
- (2) The measure of damages for breach of warranty is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.
- (3) In the case of breach of warranty of quality such loss is *prima facie*³ the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had fulfilled the warranty.

¹ In some jurisdictions, contract terms are classed as either warranties or conditions. The breach of a warranty can give rise to a claim for damages, but not to a right to treat the contract as terminated. The breach of a condition can give rise to a claim for damages and also gives the right to treat the contract as terminated.

² the act of decreasing or lessening something; reduction ³ at first sight; accepted as correct until disproved

Text 2: excerpt from a textbook on contract law

Diminution of *value*, cost of *cure* or loss of *amenity*

The claimant's loss of the expected performance¹ can be measured by:

- 'diminution of value' (the *market value* of the performance the defendant *undertook* minus that *actually given*), or
- 'cost of cure' (the cost of buying *substitute* exact performance from another).

The two measures may produce the *same* amount. For example, where a seller fails to deliver goods (worth £5,000) before the buyer has paid the contract price (£4,000), the buyer can, in accordance with section 51(3) Sale of Goods Act 1979, claim the difference between the contract price and the market price of the goods (£1,000). However, in certain cases, the two measures may produce wildly *different* results. In *Tito v. Waddell (No 2)* (1977) a company was granted a licence to mine phosphate on Ocean Island, a small Pacific island, and promised to restore the island

afterwards by replanting 'coconuts and other food-bearing trees'. The company failed to do this, and the islanders claimed the cost of cure calculated at \$73,140 per acre. The court denied this because, by the time of the action, all the islanders had resettled some 1,500 miles away after their island was devastated by events of World War II. They were only entitled to the diminution of value, which was assessed at \$75 per acre.

[The assessment of damages] is subject to the requirement of reasonableness which necessitates an assessment of:

- (a) the claimant's purpose(s) in contracting;
- (b) whether the claimant has cured or intends to cure; and
- (c) the proportionality between the cost of cure, the contract price, the benefit already received by the claimant, and the benefit which cure would add to that benefit.

¹ the fulfilment of one's obligations required by contract

Text 3: excerpt from the judgment in *Ruxley Electronics and Construction Ltd v. Forsyth* [1996] AC 344

It is a common feature of small building works performed on residential property ... that comparatively minor deviations from specification or sound workmanship may have no direct financial effect at all. Yet the householder must surely be entitled to say that he chose to obtain from the builder a promise to produce a particular result because he wanted to make his house more comfortable, more convenient and more conformable to his own particular tastes; not because he had in mind that the work might increase the amount which he would receive if, contrary to expectation, he thought it expedient in the future to exchange his home for cash. To say that in order to escape unscathed, the builder has only to show that to the mind of the average onlooker, or the average potential buyer, the results which he has produced seem just as good as those which he had promised would make a part of the promise illusory, and unbalance the bargain.

FORMAL LETTERS

PRESENTATION

In the word of work, if you want your message to be taken seriously, you have to present it professionally. Format is important: a business letter must look like a business letter; an e-mail has to look like an e-mail.

1a) In English, a typical business letter looks like this:

<i>EUROPOL Bank</i> 1 Bridge Street, Cambridge, CB2 1LR. Tel.: (41) 1223 56789 Fax.: (41) 1223 56788 E-mail: klein_a @ EUROPOL.co.uk 1 March 2018 Harold Harrison 17 Green Lane Cambridge CB2 9PL Dear Mr Harrison <u>Confirmation of your overdraft</u> Following our meeting last week, I am writing to confirm that Europol Bank has authorised you to overdraw your euro account, no. 0436598172, by up to €500. As I explained, our current accounts allow customers an interest-free overdraft of up to €100 but we will have to charge you 1.45% interest per month on the outstanding €400, plus a €10 fee. The interest will be charged at the beginning of next month when your salary comes through. In the meantime, you can withdraw an extra €500 if necessary. If, however, you discover that you do not need to borrow more than €100 after all, you will not be charged for this service. If you have any questions about this or need any further information, please do not hesitate to contact me at the above address and telephone number. Yours sincerely <i>Andrea Klein</i> Andrea Klein (Personal Banker)
--

1b) Study the conventional format of a formal letter. Business correspondence should look like this:

NAME, ADDRESS, PHONE, FAX, E-MAIL OF THE SENDER'S ORGANISATION



EUROPOL Bank

1 Bridge Street, Cambridge, CB2 1LR.

Tel.: (41) 1223 56789

Fax.: (41) 1223 56788

E-mail: klein_a @ EFTAM.co.uk

1 March 2018 ← *DATE*

Harold Harrison ← *NAME & ADDRESS OF THE RECIPIENT*

17 Green Lane

Cambridge CB2 9PL

Dear Mr Harrison ← *SALUTATION*

Confirmation of your overdraft ← *THE SUBJECT OF THE LETTER*

Following our meeting last week, I am writing to confirm that Europol Bank has authorised you to overdraw your euro account, no. 0436598172, by up to €500.



↙ *THE MESSAGE* ↘

As I explained, our current accounts allow customers an interest-free overdraft of up to €100 but we will have to charge you 1.45% interest per month on the outstanding €400, plus a €10 fee. The interest will be charged at the beginning of next month when your salary comes through. In the meantime, you can withdraw an extra €500 if necessary. If, however, you discover that you do not need to borrow more than €100 after all, you will not be charged for this service.

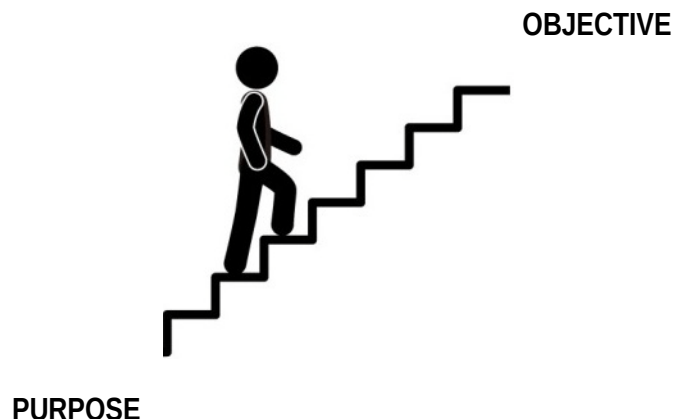
If you have any questions about this or need any further information, please do not hesitate to contact me at the above address and telephone number.

Yours sincerely ← *CONVENTIONAL ENDING*

Andrea Klein ← *SIGNATURE OF THE SENDER*

Andrea Klein (Personal Banker) ← *NAME AND JOB TITLE OF THE SENDER*

2) BUSINESS LETTERS: The Conventional Order of Steps (Harper 2006)



Step 1: SALUTATION:

If you know the name of the recipient: *Dear Mr Smith* (for a man) / *Dear Ms Jones* (for a woman)

If you do not know the name of the recipient: *Dear Sir* (for a man) / *Dear Madam* (for a woman)

If you do not know the name or the sex of the recipient: *Dear Sir or Madam*

For a company: *Dear Sirs*

Step 2: TITLE: The subject of the letter (printed on a line). For example,

Reply to e-mail / phone-call / fax / letter (date)...

Request for...

Re: _____ (This means 'with reference to...' / 'this is about...')

Step 3: EXPOSITION: Explain the situation. State the main facts and all relevant information.

Step 4: REQUIREMENTS: Explain what you want the addressee to do.

I was wondering if you could tell me... Would it be possible to...? Could you possibly...?

If possible, I'd like... I would like... Would you... Could I/you/it... Can I/you/it...

Step 5: INVITATION TO FURTHER COMMUNICATION: Invite the recipient to contact you.

In the meantime, I am available at the above address and telephone number.

I look forward to hearing from you.

Step 6: CONVENTIONAL ENDING:

Yours sincerely if you know the name and if you started the letter with *Dear Mr / Ms...*

Yours faithfully if you do not know the name and if you started the letter with *Dear Sir / Madam*

Step 7: IDENTIFICATION: Signature, then full name and job title, printed clearly.

NB. **Steps 1, 2, 3, 5, 6 & 7** are always necessary. **Step 4** is optional if, for example, your letter is simply providing the recipient with information.

WRITING: Imagine that Prospective Husband and Prospective Wife signed the prenuptial agreement and then got married. On the honeymoon, however, one of them fell in love with someone else and they have now separated. With reference to the prenuptial contract, write a letter from the lawyer representing the injured party to the breaching party demanding damages and/or specific performance and/or restitution.

PUNCTUATION

What are these punctuation marks called in English ?

. , ; : / ? ! - — (...) '...' "..."

How are they used ? Here are some examples:

- i) Come in. Follow me. Sit down. Wait here. Mr Smith will see you in a minute.
- ii) Personally, I always found her polite, kind and helpful but slow, if you know what I mean.
- iii) I came; I saw; I conquered.
- iv) You can take three things into the exam: a pencil, a pen and a rubber.
- v) He/she should bring his/her passport and/or identity card with him/her.
- vi) Are you ready ? Are you sure ?
- vii) Oh my God ! This hotel is terrible ! Let's get out of here !
- viii) Anna-Maria Rodriguez-Mendoza is a twenty-three-year-old South-American volleyball-player.
- ix) They think it's all over — it is now !
- x) The Dow Jones Average (devised by Charles Dow and Edward Jones) was created in 1896.
- xi) I usually buy 'The Economist' and 'The Financial Times'.
- xii) "Hello. Can I speak to the Manager, please ?" – "I'm afraid he isn't in at the moment."

Apostrophes are used,

1) TO INDICATE POSSESSION

e.g.	Peter's friends	Mr Andrews' daughter
	The children's bedroom	The boys' toilets
	A day's work	Two weeks' holiday

2) TO INDICATE MISSING LETTERS OR NUMBERS

e.g.	There's	I'd	I've
	They're	it's	o'clock
	'68	'99	

3) WITH PLURALS COMPOSED OF LETTERS OR NUMBERS

e.g.	CD's	PC's	CD ROM's
	VIP's	the 90's	the 70's

CAPITAL LETTERS

In English, you should always use a capital letter:

i) to begin the first word of each new sentence.

ii) in salutations,

Dear Sir / Dear Madam / Dear Sir or Madam / Dear Sirs / Dear Mr Dee / Dear Ms Ash,

and to begin the first word which follows them,

Dear Mrs Smith, Thank you so much for your letter of....

iii) for the pronoun *I*.

iv) at the beginning of proper nouns.

- First names and surnames: *Nelson Mandela, Hillary Clinton.*
- Titles: *President Obama, Dr House, Captain Kirk, General Lee, Professor Moriarty.*
- Nations and races: *The UK, Britain, India, Anglo-Saxon, Arab, Rom, Tamil.*
- Nationalities and languages: *English, Dutch, Hebrew, Sanskrit, Serbo-Croatian, Swahili.*
- States, continents, islands: *Texas, North America, Hawaii, Italy, Europe, Sicily.*
- Regions: *Tuscany, Lombardy, the Marche.*
- Villages, towns, cities: *Gradara, Florence, Venice, Genoa, Milan, Turin, Naples, Rome.*
- Streets, roads etc.: *Oxford Street, Tottenham Court Road, Park Avenue, Times Square.*
- Names of houses: *The White House, Buckingham Palace.*
- Mountains, gorges and canyons: *Mount Fuji, K2, the Andes, the Grand Canyon, Cheddar Gorge.*
- Rivers, lakes, seas, oceans: *the Nile, Lake Victoria, the Red Sea, the Atlantic Ocean.*
- Days of the week: *Monday, Tuesday...*
- Months of the year: *January February...*
- Festivals: *Christmas, Christmas Eve, Easter, New Year's Day, New Year's Eve.*
- Historical periods: *the Middle Ages, the Renaissance, the Dark Ages, World War I.*
- Political parties: *Labour, Conservative, Republican, Democrat.*
- Organizations: *the United Nations, the International Monetary Fund.*
- Companies: *Apple, Microsoft, Google, General Motors.*

v) to refer to a deity etc. *God, Christ, the Holy Spirit, the Virgin Mary, Buddha, Vishnu, Allah*
And to their followers, *Christians, Muslims, Hindus, Buddhists, Jews.*

vi) to begin the first word and the main words (but not articles, conjunctions or prepositions) of the title of a book, film, newspaper etc. *'Alice in Wonderland', 'War and Peace', 'The Man in the Iron Mask', 'The Guinness Book of Records', 'The European', 'The News of the World'.*

Capitalization and Punctuation Exercise

uk videots ltd
11 vine street
cambridge, cb5 2ko
tel.: (41) 1223 67895
e-mail: black-j @ icon.co.uk

joan catchpole
the magical menagerie
23 diagon alley
lincoln
lincolnshire
lgb t20

1 april 2020

dear ms catchpole

christmas discounts on barry trotter videogames

thank you for your phone call on monday 10 september enquiring about our products

as you know theres a wide range of videogames to choose from at uk videots ltd theyre all based on characters from major hollywood movies and this year the new film adaptation of j k dowlings barry trotter series means that kids all over the world will want to play with barry and his friends on their pcs at home

we are currently offering a 10% discount on barry trotter and the loch ness monster barry trotter climbs mount everest barry trotter meets dr death barry trotter in bangkok barry trotter for president and barry trotters unspeakable revenge all our products are designed and manufactured in britain and the audio soundtrack is available in english spanish and french

if you place your order now itll be at your toyshop by the end of november just in time for the christmas rush and well also give you a quantity discount on your next order do let us know if youd like some free samples and dont forget that our complete range of associated cdroms and dvds can be viewed on our website at www.ukvideots.co.uk

if you have any queries i suggest you contact mrs jo fielding at our customer services department in vine street and if youd like to try out any of our products yourself just drop into our showroom which is behind cambridge market square between jesus green and the river cam

yours sincerely

jack black