# INTRODUCTION TO LEGAL CONCEPTS

Law is defined as part of everyone’s life, a living part, a determining part, a controlling and giving part. It concerns people; it’s alive.

**Historic Perspective of:**

1. **Common Law**

The term common law is used in two contexts.

* Originally it meant the law that was not confined to one particular area, but was administered in the whole of England. There was a danger that this description may lead the younger reader to believe that the statutory law is also included in the term common law because the statutory law applies to the country as a whole.
* The term now is used to signify the law which originated in the ancient customs and was developed by judges on the principle of stare decisi.We can conclude that common law that is today consists of the whole non-statutory law of England, excluding the law of equity.

**Common Law courts**

* *The Court of Exchequer*: This was the first court to be established in the 12th century to deal with disputes concerning the payment of royal revenues.
* *The Court of Common Pl*eas: This was the 2nd court to be established in the 13th century to deal with all civil cases and matters relating to land.
* *The Court of King’s Bench*: This was the last to be setup in the 13th century. It’s called the King’s Bench because occasionally the king used to preside over this court. It mainly dealt with criminal matters and civil actions.

**2. Equity Law**

Equity was defined byMaine as ‘a fresh body of rules by the side of the original law, founded on distinct principle and claiming to supersede in virtue of superior sanctity inherent in those principles’.

It is also a set of rules formulated and administered by the Court of Chancery before 1873 to supplement the rules of common law.

**Origin of Equity**

Citizens dissatisfied with the decisions of the judges of common Law court often made petitions to the King in Council .for a time these petitions were decided by the King himself or by his Council, and then later he delegated this function to his Lord Chancellor

**Contributions of Equity Law**

Equity moved slowly to supplement the rules of common law; it made its contributions in the following areas;

* It granted injunctions and would order specific performance where common law could award only damages.
* It recognized trust and a beneficiary could compel a trustee to administer the trust property in accordance with terms of the trust.
* It recognized equitable doctrine of part-performance and mortgagor’s right to redemption of mortgaged property

**Principles of equity**

During the early development of equity the early chancellors acted as their own discretion, but eventually they did follow the decisions of earlier Chancellors.Thus,by 8th century, some firm rules of equity were established which guided later Chancellors in deciding disputes. Some of these maxims are;

* He who seeks equity must do equity.
* He who comes to equity must come with clean hands.
* Equity is equal.
* Equity looks to intent rather than form.
* Equity looks on that as done which ought to be done.

**3.Criminal Law**

A crime may be described as an act, default or conduct prejudicial to the community, the commission of which, by law, renders the person responsible liable to be prosecuted and punished accordingly.

Prosecution for crimes is always conducted in the name of the State.

It is the duty of the prosecution to establish the guilt of the accused beyond any reasonable doubt.

Crimes include offences like murder, rape, grievous bodily harm, robbery, theft etc

All these offences are included in the Penal Code of Kenya., the punishment of crime ranges from hanging to a fine

The term **criminal law**, sometimes called **penal law**, refers to any of various bodies of rules in different [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction) whose common characteristic is the potential for unique and often severe impositions as punishment for failure to comply. [Criminal punishment](http://en.wikipedia.org/wiki/Criminal_punishment), depending on the [offense](http://en.wikipedia.org/wiki/Offense_%28law%29) and [jurisdiction](http://en.wikipedia.org/wiki/Jurisdiction), may include [execution](http://en.wikipedia.org/wiki/Execution), loss of [liberty](http://en.wikipedia.org/wiki/Liberty), government supervision ([parole](http://en.wikipedia.org/wiki/Parole) or [probation](http://en.wikipedia.org/wiki/Probation)), or [fines](http://en.wikipedia.org/wiki/Fine). There are some archetypal crimes, like [murder](http://en.wikipedia.org/wiki/Murder), but the acts that are forbidden are not wholly consistent between different criminal codes, and even within a particular code lines may be blurred as civil infractions may give rise also to criminal consequences. Criminal law typically is enforced by the [government](http://en.wikipedia.org/wiki/Government), unlike the [civil law](http://en.wikipedia.org/wiki/Civil_law_%28common_law%29), which may be enforced by private parties.

**Criminal law history**

The first civilizations generally did not distinguish between civil and criminal law. The first written codes of law were produced by the [Sumerians](http://en.wikipedia.org/wiki/Sumerians). Around 2100-2050 BC [Ur-Nammu](http://en.wikipedia.org/wiki/Ur-Nammu), the [Neo-Sumerian](http://en.wikipedia.org/wiki/Neo-Sumerian) king of [Ur](http://en.wikipedia.org/wiki/Ur), enacted the oldest written legal code whose text has been discovered: the [Code of Ur-Nammu](http://en.wikipedia.org/wiki/Code_of_Ur-Nammu) although an earlier code of [Urukagina](http://en.wikipedia.org/wiki/Urukagina) of [Lagash](http://en.wikipedia.org/wiki/Lagash) is also known to have existed. Another important early code was the [Code Hammurabi](http://en.wikipedia.org/wiki/Code_Hammurabi), which formed the core of [Babylonian law](http://en.wikipedia.org/wiki/Babylonian_law). These early legal codes did not separate penal and civil laws.

The similarly significant Commentaries of Gaius on the [Twelve Tables](http://en.wikipedia.org/wiki/Twelve_Tables) also conflated the civil and criminal aspects, treating theft or furtum as a [tort](http://en.wikipedia.org/wiki/Tort). Assault and violent [robbery](http://en.wikipedia.org/wiki/Robbery) were analogized to [trespass](http://en.wikipedia.org/wiki/Trespass) as to property. Breach of such laws created an obligation of law or vinculum juris discharged by payment of monetary compensation or [damages](http://en.wikipedia.org/wiki/Damages).

The first signs of the modern distinction between crimes and civil matters emerged during the [Norman Invasion](http://en.wikipedia.org/wiki/William_the_Conqueror) of England. The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scolasticism , when the theological notion of God's penalty (poena aeterna) that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law. The development of the [state](http://en.wikipedia.org/wiki/State) dispensing [justice](http://en.wikipedia.org/wiki/Justice) in a court clearly emerged in the eighteenth century when European countries began maintaining police services. From this point, criminal law had formalized the mechanisms for enforcement, which allowed for its development as a discernible entity

**4.International law**

This term is commonly used for referring to the system of implicit and explicit agreements that bind together nation-states in adherence to recognized values and standards, differing from other legal systems in that it concerns nations rather than private citizens. However, the term "International Law" can refer to three distinct legal disciplines:

* [Public international law](http://en.wikipedia.org/wiki/Public_international_law), which involves for instance the United Nations, maritime law, international criminal law and the Geneva conventions.
* [Private international law](http://en.wikipedia.org/wiki/Private_international_law), or [conflict of laws](http://en.wikipedia.org/wiki/Conflict_of_laws), which addresses the questions of which legal jurisdiction may a case be heard; and also the law concerning which jurisdiction(s) apply to the issues in the case law of supranational organizations, which concerns at present regional agreements where the special distinguishing quality is that laws of nation states are held inapplicable when conflicting with a supranational legal system.

The two traditional branches if of the field are:

* [jus gentium](http://en.wikipedia.org/wiki/Jus_gentium) — law of nations
* [jus inter gentes](http://en.wikipedia.org/wiki/Jus_inter_gentes) — agreements among nations

**5.Public law**

is a theory of law governing the relationship between [individuals](http://en.wikipedia.org/wiki/Individual) ([citizens](http://en.wikipedia.org/wiki/Citizen), [companies](http://en.wikipedia.org/wiki/Company_%28law%29)) and the [state](http://en.wikipedia.org/wiki/State). Under this theory, [Constitutional law](http://en.wikipedia.org/wiki/Constitutional_law), [administrative law](http://en.wikipedia.org/wiki/Administrative_law) and [criminal law](http://en.wikipedia.org/wiki/Criminal_law) are sub-divisions of public law. This theory is at odds with the concept of Constitutional law, which requires all law to be specifically enabled, and thereby sub-divisions, of a Constitution.

Generally speaking, [private law](http://en.wikipedia.org/wiki/Private_law) is the area of law in a society that affects the relationships between individuals or groups without the intervention of the state or government. In many cases the public/private law distinction is confounded by laws that regulate private relations while having been passed by legislative enactment. In some cases these public statutes are known as laws of public order, as private individuals do not have the right to break them and any attempt to circumvent such laws is void as against public policy.

**Areas of public law**

* [Constitutional law](http://en.wikipedia.org/wiki/Constitutional_law) deals with the relationship between the state and individual, and the relationships between different branches of the state, such as the executive, the legislative and the judiciary.
* [Administrative law](http://en.wikipedia.org/wiki/Administrative_law) refers to the body of law which regulates bureaucratic managerial procedures and defines the powers of administrative agencies.
* [Criminal law](http://en.wikipedia.org/wiki/Criminal_law) involves the state imposing sanctions for crimes committed by individuals so that society can achieve justice and a peaceable [social order](http://en.wikipedia.org/wiki/Social_order)

**6. Private law**

As most U.S. states share a heritage with English law, the private law of the United States is generally called the common law (as it is in other Anglo-American common law jurisdictions). Some states, such as [New York](http://en.wikipedia.org/wiki/New_York), have strong civil law influences, and have enacted laws relating to obligations such as the General Obligations Law and the General Business Law.

**Public/private law distinction**

The distinction between the public and the private in law is often a hazy one. Many [consumer protection](http://en.wikipedia.org/wiki/Consumer_protection) laws are of a public law nature, which limits the ability of companies dealing with consumers to engage in transactions that fail to respect the rights of consumers. Most laws that impose criminal penalties are considered to be public laws, as these are intended to protect all members of society and not just the areas of interaction covered by [contract](http://en.wikipedia.org/wiki/Contract) and [tort](http://en.wikipedia.org/wiki/Tort).

**JUDICIAL SYSTEM**

### Kenya’s Judiciary is established under chapter IV of the Constitution. The country’s superior courts of record are the Court of Appeal and the High Court. The High Court has unlimited original jurisdiction in all civil and criminal matters as well as appellate jurisdiction over matters emanating from the magistrate’s courts and statutory tribunals. The Court of Appeal, on the other hand, exercises appellate jurisdiction over the decisions of the High Court.

The Judges of the High Court and the Court of Appeal are appointed by the President acting in accordance with the advice of the Judicial Service Commission. The Constitution prescribes a minimum of eleven judges for the High Court and two for the Court of Appeal. Presently, there are 46 Judges of the High Court and eight Judges of Appeal. The Chief Justice is a member of both courts.

In the lower hierarchy of the court system are the Magistrates’ Courts and the Kadhis’ Court. The former are established under an Act of Parliament under a power donated by the Constitution and their jurisdiction has limitations defined both by geography and the nature or value of the subject matter. They deal with both civil and criminal matters and are responsible for the bulk of the litigation carried on in Kenya’s justice system. The jurisdiction of the Kadhis’ Courts is constitutionally limited to the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion.

Kenya’s court hierarchy consists of the Court of Appeal, High Court, resident and district magistrates’ courts, and *kadhis* courts, which adjudicate Muslim personal law concerning personal status, marriage, divorce, and inheritance among Muslims. Kenya’s president appoints judges, including the chief justice, who presides in the Court of Appeal. The High Court is responsible for judicial review. Kenya accepts compulsory International Court of Justice jurisdiction, with reservations. The judiciary is constitutionally independent, and judges have security of tenure. This constitutional status and the theoretical life tenure of judges have not, however, ensured immunity from executive-branch pressure.

**Court of Appeal.**

The Kenya Court of Appeal serves as the Supreme Court of the country. It has final appellate jurisdiction in both criminal and civil cases. Appeals are brought to the Court of Appeal from the Kenya High Court.

The Court of Appeal is made up of the Chief Justice and three other members. The Court of Appeal has the power, authority, and jurisdiction over the court from which the appeal originated.

Appeals from any Kenyan Court to the Privy Council in England are no longer allowed. Kenya Court of Appeal sits mostly in Nairobi, the capital of Kenya but travels on circuit to other principal towns in Kenya to hear appeals.

**High Court.**

The High Court has original jurisdiction for certain serious crimes and hears appeals from the lower courts. It can adjudicate the constitutionality of acts of the National Assembly and enforcement of the Bill of Rights. The High Court is the second highest court and is presided over by judges of the High Court (puisne judges). The high court can attend to any civil case. In criminal matters however, Kenya High Court only hears cases of murder and treason. On all other criminal cases, the High Court only attends to appeals from subordinate courts.

The Chief Justice is also a member of the High Court. The High Court can also act as assize courts, moving from one region to another.

**Resident Magistrate's Courts.**

The Resident Magistrate's Courts are presided over by either a senior resident magistrate or a resident magistrate. There is a Resident Magistrate's Court in each province, each of which can hear both serious and non-serious criminal cases.

Appeals from this court are brought to the High Court. The Resident Magistrate's Court is divided into First, Second, and Third Class, which differ according to the severity of punishment they are empowered to impose.

**District Magistrate's Courts.**

The District Magistrate's Courts are based at every district headquarters. There is a District Magistrate's

Court in every province. The District Magistrate's Courts are also qualified to hear cases involving African customary law. Like the Resident Magistrate's Court, this court is also divided into three classes.

1. Special Courts.

**Traditional Courts.**

A chief or a council of elders at the village level can try minor criminal cases. The case decisions are accepted as final for certain customary issues (Constitution of Kenya, 1963).

**Kadhi's Courts.**

The Kadhi's courts exist at the same hierarchical level as the Resident Magistrate's Court. However, they mainly try criminal cases involving personal Muslim law. Both parties to the case must be of Muslim faith (Nyachae and Kinuthia, 1993). Kadhi's Courts are subordinate courts that determine cases relating to personal status, marriage, divorce and inheritance in proceedings in which all the parties profess the Muslim religion.

**JUDGES**

\* Number of judges.

The High Court has a total of twelve justices including the Chief Justice.

\* Appointment and qualifications.

The Chief Justice, who is appointed by the President of the Republic, is also the President of the Court of Appeal and a member of the High Court. The President of the Republic appoints other judges of the Court of Appeal and appoints the judges of the High Court upon the advice of the Judicial Service Commission.

The Resident Magistrates are appointed by the Judicial Service Commission. The magistrates must be academically and professionally certified lawyers with at least five years on the bench.

The magistrates at the District Magistrate's Courts are not expected to be qualified lawyers.

Rather, they are civil servants who have been trained to hold adjudicatory positions at the District court levels. However, they are appointed by the Judicial Service Commission and are gradually being replaced with certified lawyers.

#### Contracts

Contract is an agreement set out between two or more parties. They set out aim of the parties; they create a legal binding obligation, ways of terminating the contract and consequences of terminating the contract.

Anson defines contract as, an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more, to acts or forbearance on the part of the other.

The law of contract as administered in Kenya, is an adaptation of the rule of English law of contract as modified by section two and three of the law of Kenya Act (cap 23) 1962.section 3(3)

of the Act, expressly exclude s the application of the English statute of frauds Act, while section 4 abolishes the application of the Indian law of contract in Kenya . Contract law help in handling disputes.

*Valid contract* is an agreement that is binding and enforceable it has all the essential elements.

*Voidable contract*, is an agreement that is binding and enforceable, but because of lack of one or more of the essential of valid contract, it may be set aside at the option if the aggrieved party.

*Void contract* is not a contract at all. it means an agreement which is completely destitute of any legal effect.e.g where one of the basic ingredients to create legal relations is missing.

Contracts should be setout in a clear and logical manner and should be complete and consistence. There should not be ambiguity and the parties to the agreement should not be left in no doubting into their rights and duties.

**Essentials of valid contract:**

According to Ashiq Hussein [2003], there are six features that any valid contract should have:

1. There must be offer and acceptance

The most important feature of a contract is that one party makes an offer for an arrangement that another accepts. This can be called a 'concurrence of wills' or 'ad idem' (meeting of the minds) of two or more parties. There must be evidence that the parties had each from an objective perspective engaged in conduct manifesting their assent, and a contract will be formed when the parties have met such a requirement. Offer and acceptance can be oral or written (Lord Steyn, 1997).

1. There must be an intention to create legal relations.

There is a presumption for commercial agreements that parties intend to be legally bound .On the other hand, many kinds of domestic and social agreements are unenforceable on the basis of public policy, for instance between children and parents. Example is found in the case of *Balfour v. Balfour*. (*Balfour v. Balfour*, 1919)Using contract-like terms, Mr. Balfour had agreed to give his wife £30 a month as maintenance while he was living in Sri Lanka. Once he left, they separated and Mr. Balfour stopped payments. Mrs. Balfour brought an action to enforce the payments. At the Court of Appeal, the Court held that there was no enforceable agreement as there was not enough evidence to suggest that they were intending to be legally bound by the promise

1. There must be consideration or the contract must be under deed

Consideration is known as 'the price of a promise' and is a controversial requirement for contracts under common law. Consideration can be defined as some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

The idea is that both parties to a contract must bring something to the bargain, where both parties must confer some benefit or detriment e.g. money. This can be either conferring an advantage on the other party, or incurring some kind of detriment or inconvenience towards oneself. Three rules govern consideration.

 Consideration must be real, but need not be adequate. For instance, agreeing to buy a car for a penny may constitute a binding contract. While consideration need not be adequate, contracts in which the consideration of one party greatly exceeds that of another may nevertheless be held invalid for lack of real consideration.

 Consideration must not be from the past. For instance, in (*Eastwood v. Kenyon*, 1840) the guardian of a young girl obtained a loan to educate the girl and to improve her marriage prospects. After her marriage, her husband promised to pay off the loan. It was held that the guardian could not enforce the promise because taking out the loan to raise and educate the girl was past consideration--it was completed before the husband promised to repay it.

 Consideration must move from the promisee. For instance, it is good consideration for person A to pay person C in return for services rendered by person B. If there are joint promisees, then consideration need only to move from one of the promisees.

1. There must be contractual capacity

The law presumes every person is competent to enter into contracts, but certain categories of persons due to age, status or mental instability, have disabilities in this connection. Lack of contractual capacity of one or both the parties may render the contract void, voidable or unenforceable. The special rules affecting each class of person’s included: infants or minors, insane or drunken persons, corporations and married women.

1. There must be genuine consent i.e. the consent must not be obtained through mistake, misrepresentation or undue influence

1. The object of the contract must be lawful.

**Terms of a contract**

In an ordinary contractual transaction, the terms are of two kinds

1. *Conditions*: These are terms of major importance and it’s said that they go to the root of the contract. Their breach entitles the innocent party to avoid the contract and claim damages. Under the sale of Goods Act, the innocent party is permitted if he wishes so, to continue with the contract and claim damages for breach of the conditions.
2. *Warranty:* Is a termof lesser importance and as such does not go to the root of the contract. its breach entitles the innocent party to claim damage, but gives no right to the termination of the contract .

Only breach of condition terminates the contract but not of warranty. The court is the one that determines whether a term is a condition or warranty, taking into consideration the circumstance in which such a term was agreed.

**Types on contracts**

1. **Contract of deed**

This includes court judgment and personal recognisances. They are not true contracts since the obligations under them are imposed on the parties by the courts, and do not result through mutual agreement.

1. **Contract under deed or specialty contracts**

Also known as under seal contract and is the only formal contract. It must be (I)in writing (ii)signed, sealed and delivered. Sealing and delivering are usually mere formalities. Delivery can be actual (i.e. hading over the sealed document)or constructive(i.e. party delivering the deed touches the seal with his fingers saying “I deliver to you as my act and deed”).

1. **Simple contracts (parol)**

This is a contract, which does not satisfy the requirement of the contract under deed.

It may be oral, written or partly oral and partly written, or merely implied by conduct

The following contracts must be in writing, otherwise they are void

1. All contracts which require to be stamped e.g. bills of exchange, promissory notes and transfer of shares in limited companies
2. Acknowledgement of statute barred debts. In case of a simple contract, if an action is not maintained to recover the debt within six years, the claim becomes time-barred. but if the debtor acknowledges this statute barred debt in writing the right of action in favor of the creditor is revived for another six years.
3. Transfer of immovable property, the law requires the transfer of immovable property by registered instrument.
4. Representation of character or credit worthiness. Section 3(2) of the law of contract Act provides that any representation made relating to character, credit, and ability of any other person must be in writing and signed by the party to be responsible in case the default is made by a person for whom the representation was made.

The following contracts must be supported by written evidence otherwise they are unenforceable

1. *Contracts for sale of goods of two hundred shillings or more:* by section 6 of the Kenya sale of Goods Act the contracts for the sale of goods for the value of two hundred shillings or over are required to evidence in writing, otherwise he contract is unenforceable.
2. *Every Hire purchase Agreement* must be evidenced in writing and registered within 30 days of its execution
3. *Contracts of Guarantee:*” A special promise to answer for a debt, default of miscarriage of another person” is required to be evidenced in writing by section 3(1) of the law court Act. In the absence of any memorandum or note thereof in writing and signed by the person to be charged, no action can be maintained.
4. *Contracts for the sale of land:* By section 3(3) as amended by the law of Contract Act 1968,all agreements for the sale of land or other disposition of land must be supported by written evidence, signed by the party to be charged or by his agent.
5. *Contracts of employment* for over one month. Section 5 of Kenya Employment act (Cap 226) provides that a contract of service which is not in writing or supported by sufficient memorandum is not enforceable for a longer period than one month from the date of entering it.
6. *Money lending contracts*: Section 11(1) of the Kenya moneylenders Act provides that no action may be brought for payment of the loan unless a note or memorandum in written signed by the borrower can be produced in court

#### Liability

Liability is any legal responsibility, duty or obligation. The state of one who is bound in law and justice to do something which may be enforced by action. This liability may arise from contracts either express or implied or in consequence of torts committed.

in legal terms, the word liability refers to fault. The person who is at fault is liable to another because of his or her actions or failure to act.

**Categories of liability**

Traditionally there are three categories of liability that the courts use to deal with claims that products or services have caused physical or economical injury to consumers e.g.

In so far as computers software is part of a machine and the machine injures someone physically or economically the producer of software and operator can be held liable.

1. **Warranty**

A warranty can be expressly stated by seller of good implied by simply being sold in market place where it’s assumed by court that the merchant is making an impression that products are of good quality and are in good condition.

If software is part of machine it will be treated as a machine and warrant promises are enforceable. If software is a service warrant, the law does not apply unless the software author makes some specific warranties in performance of the software. If software is a book then warranty does not apply.

1. **Negligence**

This occurs when the product cause physical or economic harm to individuals, when the injury could have been prevented and when the producer has a duty to care about the consumer of the product. Negligence require fault.

Producers of software have been found liable in cases where software is part if machine but not as services

1. **Strict liability in tort**

This is a separate class of liability that arises when a defective product causes injury. In this case individuals can bring fret against the manufacturers, independent of question of fault, warranty or care. Meaning a manufacturer of a product that injures people, can be held strictly liable regardless of whether or not he could have prevented the defect.

The software act as part of product rather than a service the strict liability applies.

**Breach of contract**

A contract may be discharged (terminated) by breach; that is, the failure of one of the parties to perform his obligation under the contract.

Breach of contract may occur in any one of the three ways:

1. *Failure to Perform:* where a person fails to perform a contract, when then performance is due, the other party can hold him liable for the breach, provided the time of performance was made as the essence of the contract.
2. *Renunciation:* It may sometimes happen that even before the time of performance arrives, one party to a contract repudiates (rejects) his liabilities. This is known as an anticipatory breach. Here it requires that the aggrieved party sues immediately before the actual time stipulated for performance of the contract if remedy is to be given.
3. *Self-disablement:* this occurs when the defendant disables himself from performing his contractual obligation, or does some act which makes the performance of contract impossible.

**Remedies for breach of contract**

### Refusal of further performance

A party who suffers by a breach of contract is entitled to treat the contract as ended and may refuse any further performance on his own part.

**Damages**

This is the normal remedy for breach of contract. The aim of law is to place the injured party as far as possible in the position he would have been if the contract had been performed.

It is not for every kind of damage that the plaintiff is entitled to recover compensation. In some cases, the law considers that the loss sustained from breach of contract is too remote to merit any compensation.

The condition is that the accused has to have been aware of the loss incurred, in order to claim damages.

### Specific performance

This is an order requiring a person to carry out a contractual obligation.

It is usually granted where a contract is for:

1. The sale of land
2. Taking debentures in a company.
3. Sale of rare goods which are not easily available in the market or the value of such could not be measured in money.

It is not granted where:

1. Damages would provide an adequate remedy
2. Contract is to render personal services.
3. One party to the contract is an infant
4. The contract is to lend money

### Injunction

This is an order of the court restraining the doing, continuance or repetition of a wrongful act. The court will not however, enforce contract by injunction if damages are a more suitable remedy since it can always award damages in lieu of an injunction.

**Property law**

The term property is normally used in two different senses, and it is important to distinguish between them:

1. When the sale of goods act talks of property in goods, it means the ownership of them. In contract for the sale of specific goods, the seller transfers the property (ownership) in goods to the buyer when the contract is made, and it is immaterial whether the line of delivery or of payment or both is postponed.
2. Usually the word property means the things, which are capable of being owned although they need not exist in tangible form. Hence in this sense the term property includes:
   1. *Things in possession* – such as pens, books, desks, chairs, etc.
   2. *Things in action* – these have no physical existence and include things such as debts, patents, copyrights, etc. they are called *choses in action*, which can be enforced only by action and not by taking possession.

**Ownership and possession**

All legal systems distinguish between ownership and possession. It is, therefore, necessary to deal with them briefly. Ownership’s a matter of law and it denotes the relation between a person and any right that is vested in him over property.

A person is an owner of property if he has the ultimate legal right over its use and disposal.

Ownership may be acquired in three ways:

1. Originality: where a person creates something new, or acquires something, which no one claims or has been abandoned by its previous owner.
2. Derivatively: when a person sells his goods to the buyer or he makes a gift to another person, the right of ownership is transferred to the latter.
3. By succession: where a previous owner dies, the property may pass to his heir or to someone else under a will.

While ownership is a matter of law, possession is a matter of fact. Possession is physical detention coupled with the intention to hold the things in detention as one’s own.

Possession can be converted into ownership under the following two circumstances:

1. If wrongful possession of land continues for twelve years, and of goods for six years.
2. The holder of a negotiable instrument, a factor, and a seller in market overt can give a better title than they themselves have, provided the buyer takes what they offer for value and in good faith.

**European law; the influence of European law on English law**

The European Union consists mainly of countries which use civil law and so the civil law system is also in England in this form, and the [European Court of Justice](http://www.answers.com/topic/european-court-of-justice" \t "_top), a predominantly civil law court, can direct English and Welsh courts on the meaning of EU law.

The Law of the European Union is the unique legal system which operates alongside the laws of Member States of the [European Union](http://www.answers.com/topic/european-union) (EU). EU [law](http://www.answers.com/topic/law) has direct effect within the legal systems of its Member States, and overrides national law in many areas, especially in terms of economic and social policy. The EU is not a federal government, nor is it an intergovernmental organization. It constitutes a new legal order in international law for the mutual social and economic benefit of the Member States. It is sometimes classified as [supranational law](http://www.answers.com/topic/supranational-law).

English law, the [legal system](http://www.answers.com/topic/legal-systems-of-the-world) of [England and Wales](http://www.answers.com/topic/england-and-wales), is the basis of [common law](http://www.answers.com/topic/common-law) legal systems throughout the world (as opposed to [civil law](http://www.answers.com/topic/civil-law-legal-system) or [pluralist](http://www.answers.com/topic/legal-pluralism) systems in other countries, such as [Scots law](http://www.answers.com/topic/scots-law)). It was exported to [Commonwealth](http://www.answers.com/topic/commonwealth-of-nations) countries while the [British Empire](http://www.answers.com/topic/british-empire) was established and maintained, and it forms the basis of the [jurisprudence](http://www.answers.com/topic/jurisprudence) of most of those countries. English law prior to the [American revolution](http://www.answers.com/topic/american-revolution) is still part of the [law of the United States](http://www.answers.com/topic/law-of-the-united-states), except in Louisiana, and provides the basis for many American legal traditions and policies, though it has no superseding jurisdiction.

The essence of English common law is that it is made by [judges](http://www.answers.com/topic/judge-2) sitting in [courts](http://www.answers.com/topic/court-1), applying their common sense and knowledge of [legal precedent](http://www.answers.com/topic/precedent) ([stare decisis](http://www.answers.com/topic/stare-decisis)) to the facts before them. A decision of the highest [appeal court](http://www.answers.com/topic/military-court-of-appeals) in England and Wales, the [House of Lords](http://www.answers.com/topic/judicial-functions-of-the-house-of-lords), is binding on every other court in [the hierarchy](http://www.answers.com/topic/courts-of-england-and-wales), and they will follow its directions. For example, there is no [statute](http://www.answers.com/topic/statute-1) making [murder](http://www.answers.com/topic/murder-in-english-law) illegal. It is a common law crime - so although there is no written [Act of Parliament](http://www.answers.com/topic/act-of-parliament) making murder illegal, it is illegal by virtue of the constitutional authority of the courts and their previous decisions. Common law can be amended or repealed by Parliament; murder, by way of example, carries a mandatory life sentence today, but had previously allowed the [death penalty](http://www.answers.com/topic/capital-punishment).

England and Wales are [constituent countries](http://www.answers.com/topic/constituent-country) of the [United Kingdom](http://www.answers.com/topic/united-kingdom), which is a member of the [European Union](http://www.answers.com/topic/european-union) and [EU law](http://www.answers.com/topic/law-of-the-european-union) is effective in the UK. The European Union consists mainly of countries which use civil law and so the civil law system is also in England in this form, and the [European Court of Justice](http://www.answers.com/topic/european-court-of-justice), a predominantly civil law court, can direct English and Welsh courts on the meaning of EU law.

EU law covers a broad range which is comparable to that of the legal systems of the Member States themselves. Both the provisions of the Treaties, and EU regulations are said to have "[direct effect](http://en.wikipedia.org/wiki/Direct_effect)" horizontally. This means private citizens can rely on the rights granted to them (and the duties created for them) against one another. For instance, an air hostess could sue her airline employer for sexual discrimination. The other main legal instrument of the EU, "directives", have direct effect, but only "vertically". Private citizens may not sue one another on the basis of an EU directive, since these are addressed to the Member States. Directives allow some choice for Member States in the way they translate (or 'transpose') a directive into national law - usually this is done by passing one or more legislative acts, such as an [Act of Parliament](http://en.wikipedia.org/wiki/Act_of_Parliament) or [statutory instrument](http://en.wikipedia.org/wiki/Statutory_instrument) in the [UK](http://en.wikipedia.org/wiki/United_Kingdom). Once this has happened citizens may rely on the law that has been implemented. They may only sue the government "vertically" for failing to implement a directive correctly. An example of a directive is the [Product liability](http://en.wikipedia.org/wiki/Product_liability) Directive, which makes companies liable for dangerous and defective products that harm consumers.

England and Wales are [constituent countries](http://en.wikipedia.org/wiki/Constituent_countries) of the [United Kingdom](http://en.wikipedia.org/wiki/United_Kingdom), which is a member of the [European Union](http://en.wikipedia.org/wiki/European_Union) and [EU law](http://en.wikipedia.org/wiki/European_Union_law) is effective in the UK. The European Union consists mainly of countries which use civil law and so the civil law system is also in England in this form, and the [European Court of Justice](http://en.wikipedia.org/wiki/European_Court_of_Justice), a predominantly civil law court, can direct English and Welsh courts on the meaning of EU law.

### Overseas influences

The influences are two-way.

The United Kingdom exported its legal system to the [Commonwealth](http://en.wikipedia.org/wiki/Commonwealth_of_Nations) countries during the [British Empire](http://en.wikipedia.org/wiki/British_Empire), and many aspects of that system have persisted after the British withdrew or granted independence to former dominions. English law prior to the Wars of Independence is still an influence on [United States law](http://en.wikipedia.org/wiki/United_States_law), and provides the basis for many [American](http://en.wikipedia.org/wiki/United_States) legal traditions and policies. Many states that were formerly subject to English law (such as [Australia](http://en.wikipedia.org/wiki/Australia)) continue to recognise a link to English law - subject, of course, to statutory modification and judicial revision to match the law to local conditions - and decisions from the English law reports continue to be cited from time to time as persuasive authority in present day judicial opinions. For a few states, the [Judicial Committee of the Privy Council](http://en.wikipedia.org/wiki/Judicial_Committee_of_the_Privy_Council) remains the ultimate court of appeal. Many [jurisdictions](http://en.wikipedia.org/wiki/Jurisdiction) which were formerly subject to English law (such as [Hong Kong](http://en.wikipedia.org/wiki/Law_of_Hong_Kong)) continue to recognise the common law of England as their own - subject, of course, to statutory modification and judicial revision - and decisions from the [English Reports](http://en.wikipedia.org/wiki/English_Reports) continue to be cited from time to time as persuasive authority in present day judicial opinions.

The UK is a [dualist](http://en.wikipedia.org/wiki/Dualism_(law)) in its relationship with international law, i.e. international obligations have to be formally incorporated into English law before the courts are obliged to apply [supranational](http://en.wikipedia.org/wiki/Supranationalism) laws. For example, the [European Convention on Human Rights and Fundamental Freedoms](http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights) was signed in 1950 and the UK allowed individuals to directly petition the [European Commission on Human Rights](http://en.wikipedia.org/wiki/European_Commission_on_Human_Rights) from 1966. Now s6(1) [Human Rights Act 1998](http://en.wikipedia.org/wiki/Human_Rights_Act_1998) (HRA) makes it unlawful "... for a public authority to act in a way which is incompatible with a convention right", where a "public authority" is any person or body which exercises a public function, expressly including the courts but expressly excluding Parliament. Although the European Convention has begun to be applied to the acts of non-state agents, the HRA does not make the Convention specifically applicable between private parties. Courts have taken the Convention into account in interpreting the common law. They also must take the Convention into account in interpreting Acts of Parliament, but must ultimately follow the terms of the Act even if inconsistent with the Convention (s3 HRA).

Similarly, because the UK remains a strong international trading nation, international consistency of decision making is of vital importance, so the Admiralty is strongly influenced by [Public International Law](http://en.wikipedia.org/wiki/International_law" \o "International law) and the modern commercial [treaties](http://en.wikipedia.org/wiki/Treaty) and conventions regulating shipping.

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