

# CONTRACT LAW

## TERMINOLOGY AND DEFINITIONS

### **ab initio**

From the beginning. A contract terminated ab initio returns the parties to pre-contractual position

### **accord and satisfaction**

the accord is the agreement to discharge a contract, and the satisfaction is the consideration needed

### **affirm**

if a contract has been affirmed, in other words, accepted by a party once he knows of a defect, the rights the contract is lost

### **agreements to agree**

not binding but simply an expression of the intentions of the party. Include letter of intent, memorandum of understanding, or heads of agreement

### **anticipatory breach**

where a party makes it clear before the performance date is due that he will not perform his obligations under contract

### **bars to rescission**

the right is lost where there has been an affirmation, restitutio in integrum is impossible or third party right have intervened

### **bilateral discharge**

where both parties have not performed under the contract, discharge by agreement takes place by an exchange of promises not to enforce the original contract

### **breach of contract**

the refusal or failure by a party to a contract to perform an obligation imposed on him under the contract. Damages are available for any breach, but if the defaulting party has committed a very serious breach, the innocent party has the right to choose whether to end the contract as well as the right to claim damages

### **business efficacy rule**

a court may be prepared to imply in a term if the agreement was clearly intended to create a legal relationship and, unless a term is implied in, the contract cannot function

### **capacity**

the ability of a natural or legal person to enter into a contract

### **caveat emptor 'let the buyer beware'**

### **collateral contract**

one party enters into the main contract on the basis of a promise made by the other party

### **collective agreements**

agreements between trade unions and an employer

### **common mistake**

both parties mistakenly believe the same thing, and the mistaken assumption was based on reasonable ground

### **condition**

a fundamental term of the contract. If breached, the innocent party may claim damages AND also opt to treat the contract as ended

### **condition precedent**

a condition stating that a right will not be granted until some future event

### **condition subsequent**

condition stating that the contract can be modified or set aside if some event occurs later

### **consensus as idem**

latin term referring to the need for a meeting of minds in order for there to be contractual agreement between the parties

### **consequential loss**

unusual or special loss that would not necessarily be caused by the breach

### **consideration**

the bargain, each party gives value to the other either by exchanging promises or by a promise given in exchange for an act

### **construction**

where the court interprets the meaning of words

### **contracts in restraint of trade**

contracts preventing the free exercise of trade or business, they are prima facie void unless it can be shown that the provision is reasonable as between the parties and not against the public interest

### **contra proferentem rule**

an exclusion clause is interpreted strictly, so if there is any ambiguity in the wording of an exclusion clause, the clause will be construed as narrowly as possible against the one relying on the clause

### **discharge**

release from the obligations under a contract. discharge may be by performance, agreement, breach or frustration

### **discharge by agreement**

both parties agree to end the contract

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