

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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