Principles of English Contract Law

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CHARTERED BUILDING ENGINEER (UK), Adjudicator (Malaysia), Mediator (UK)
EXPERT in FORENSIC PLANNING (Delay/Disruption/Production/Acceleration)
EXPERT in COST ENGINEERING (Quantum of Costs/Loss/Expense/Damages)
EXPERT in PRODUCTIVITY ANALYSIS (Production capacity, Optimum manpower)

Education

• Master of Laws (Commercial & Corporate) LL.M London
• Master of Science (International construction Management) M.Sc. NTU S’pore
• Bachelor of Laws LL.B (Hons) London
• Bachelor of Engineering B.Eng. (Civil) NU S’pore

Working Experience

• 27 years of leadership and management in the construction industry
• 19 years as Construction Contracts Commercial Consultant
• 19 years lecturing in the areas of law, management, business, finance & insurance
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Learning Outcomes

- Understanding the principles of contract law and construction contract law
- Assess importance of procurement strategy to compete in the international market
- Review strengths and weaknesses of international construction companies
- Completion of Module Assignment to reinforce understanding
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Law of Contract

Four Basic Elements of Contract

- Offer
- Acceptance
- Consideration
- Intention to create legal relations

Contents of a Contract

- Terms / Conditions
- Incorporation Of Terms
- Exemption Clauses

Vitiating Factors

- Incapacity
- Mistake
- Misrepresentation
- Illegality
- Duress / Undue Influence

Remedies

- Damages
- Equitable Remedies
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Four Basic Elements of Contract

- Offer
- Acceptance
- Consideration
- Intention to create legal relations

Simple Contracts
- Oral

Special Contracts
- Written
  - Written ("Deed")
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Four Basic Elements of Contract

- **Offer**
  - Offer must be communicated
  - Made to specific offeree
  - Made to a group or the whole world (unilateral contract)
  - Offer terminated
    - Withdrawal
    - Rejection (counter-offer)
    - Lapse of Time
    - Failure of Condition
    - Death

- **Acceptance**

- **Consideration**

- **Intention to create legal relations**
Four Basic Elements of Contract

Offer

- Made to specific offeree
- Made to a group or the whole world (unilateral contract)
- Offer must be communicated
- Offer accepted
- Offer terminated

Acceptance

- General Rule: Acceptance must be communicated
- Exceptions
  - Offeror waives communication of acceptance
  - Parties agree that offeree’s silence is acceptance
  - Acceptance properly made under the postal rule

Consideration

Intention to create legal relations
Four Basic Elements of Contract

Offer
- Parties have existing legal relationship
- Clear & unequivocal promise which affects the legal relationship
- Promisee relied upon promise and altered his position
- Inequitable for the promisor to go back on his promise

Acceptance
- Promissory estoppel

Consideration
- Executory consideration
  - Must move from promisee but need not move to promisor
- Executed consideration
  - Need not be adequate but must be sufficient

Past consideration
- Invalid consideration
  - Pao On’s three requirements:
    - Act done at promisor’s request
    - Parties understood act is to be remunerated
    - Contract must otherwise be enforceable

Intention to create legal relations
- Sufficient
  - Goods, services, money, property
  - Forbearance to sue
  - Performance of existing contractual duty to a third party
- Insufficient
  - Moral obligations & motives
  - Vague & insubstantial consideration
  - Performance of existing public duty
  - Performance of existing contractual duty
Four Basic Elements of Contract

- Offer
- Acceptance
- Consideration
- Intention to create legal relations

Intention to create legal relations:

- Social & Domestic Agreements
  - Presumption of no intention
- Commercial Agreements
  - Presumption of intention
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Pre-Contractual Statements
- Puffs
  - No legal effect
- Representations
  - Not part of contract
- True
  - No issue
- False
  - Misrepresentation

Terms
- Part of contract

Guidelines for distinguishing terms from representation
- Timing
  - Closer to contract, more likely a term
- Emphasis
  - Greater emphasis suggests a term
- Special Knowledge
  - If maker has special knowledge, more likely a term

Verification
- Invitation to verify suggests a representation

Written Form
- If reduced into writing more likely a term

Implied Terms
- Implied by the court
- Implied by statute
  - Custom & usage
  - Business efficacy

Express Terms
- Implied by the court
- Implied by statute
  - Custom & usage
  - Business efficacy

Exemption Clauses
- Incorporation
  - Is e.c incorporated?
- Construction
  - Does e.c cover the loss/damage in question?
- Unusual Factors
  - Any special facts limiting the e.c?
- UCTA
  - Does e.c contravene UCTA?

Warranty
- Less important term

Condition
- Essential term

Innominate Term
- Unclassifiable - Treated like a condition or warranty, depending on seriousness of breach & consequences
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Vitiating Factors

**Incapacity**
- Minors
  - Valid Contracts: Binds both minor & other party
  - Ratifiable Contracts: Binds other party & binds minor only if minor ratifies
- Mentally unsound or intoxicated persons

**Illegality**
- Illegal Contracts
  - Gaming & wagering contracts
  - Contracts contrary to public policy
  - Contracts illegal in performance
  - Contracts in restraint of trade

**Misrepresentation**
- False statement of fact
- Induced the representee into contract
- Fraudulent misrepresentation
  - Dishonesty
- Innocent misrepresentation
  - Error without fault

**Mistake**
- Common Mistake
  - Both parties make same mistake
- Mutual Mistake
  - Each party makes different mistake
- Unilateral Mistake
  - One party makes mistake
- Non est factum
  - “It is not my deed.”

Effect of Illegality

- Contract illegal generally:
  - Void
  - Defaulting party cannot enforce contract

- Contract illegal by performance:
  - Innocent party can recover goods or damages

- Severance:
  - Severed part void; remaining parts valid

To be valid
- Must protect proprietary or legitimate interest of covenantee
- Must be reasonable in duration, scope and subject matter
- Must not be contrary to public interest
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Discharge of Contract

Performance
- Exceptions to Precise Performance Rule
  - De minimis rule
  - Divisible contracts
  - Substantial Performance
- Acceptance of partial performance

Breach
- Actual breach
- Anticipatory breach

Agreement
- Existing agreement
- Subsequent agreement

Frustration
- Destruction of subject-matter
- Personal incapacity
- Non-occurrence of event
- Government interference

Repudiatory
- Condition
- Fundamental Term
- Election
- Discharge contract
- Affirm Contract

Non-Repudiatory
- Mutual release
- Unilateral release
- Accord & satisfaction
- Variation
- Waiver
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Remedies for Breach of Contract

**Common Law Remedies**
- Damages
  - Causation
  - Assessment
  - Mitigation

**Anton Piller Order**
- Classification of Loss: expectation loss & reliance loss
  - Difficulty in assessment
  - Liquidated Damages Clause
  - Taxation
  - Interest

**Quantum Meruit (Contract & Quasi-contract)**
- General Principle: To put the injured party in the position he would be in if the contract had been performed properly
  - Hadley v Baxendale
    - First limb (normal loss): Such damage as may fairly or reasonably be considered arising naturally, i.e., according to the usual course of things from the breach itself;
    - Second limb (abnormal loss): Such damage as may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract

**Equitable Remedies**
- Injunction
  - Interlocutory
  - Perpetual
    - Mandatory
    - Prohibitory

- Specific Performance
  - Penalty
    - Generally not enforceable
  - Genuine
    - Pre-estimate of Loss
      - Generally enforceable

**General Principle:** To put the injured party in the position he would be in if the contract had been performed properly.

Classification of Loss:
- Expectation loss & reliance loss

Difficulty in assessment:
- Speculative losses
- Non-pecuniary losses

Liquidated Damages Clause:
- Generally enforceable
- Generally not enforceable

Taxation:
- Higher than actual loss: LDC not enforceable
- Lower than actual loss: Can claim only actual loss as per LDC

Interest:
- Higher than actual loss: LDC not enforceable
- Lower than actual loss: LDC enforceable

Assessment:
- Causation
- Mitigation

First limb (normal loss):
- Such damage as may fairly or reasonably be considered arising naturally, i.e., according to the usual course of things from the breach itself;

Second limb (abnormal loss):
- Such damage as may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract.