

**Lecture: Contract Basics** 

Instructor: Rocco Sebastiano, P.Eng.

**Institution:** Toronto Metropolitan University

#### What is a Contract?

- A promise the courts will enforce
- Usually, damages awarded if breach is proven
- Less commonly, courts order specific performance (compelling defendant to perform)

## What Promises Will the Courts Enforce?

- Offer made and accepted
- Mutual intent to enter into contract
- Consideration (something of value exchanged)
- Capacity to contract (legal ability to enter contract)
- Lawful purpose

## 🤝 Offer and Acceptance

- Can be oral or written
- Offer can be withdrawn anytime before acceptance
- Acceptance must be complete and unconditional (partial acceptance = counter-offer)

• Acceptance must be clearly communicated

#### Irrevocable Offers

- Most offers **revocable**, even if stated irrevocable
- To be irrevocable, requires special formalities:
  - Consideration or
  - Seal

#### **◯** Communication of Acceptance

- By mail: contract formed upon mailing acceptance
- Other methods: contract formed upon receipt of acceptance
- Impacts choice of governing law
- Battle of the forms: final offer generally controls

#### Intent

- Both parties must have **mutual intention** to contract
- Determined **objectively** from words and actions
- Lack of intent examples: Duress, Undue Influence

## Letters of Intent (LOI)

- Also called Memorandums of Understanding (MOU)
- Express interest to contract or transact
- May or may not be legally binding
- To be a contract, must state all essential terms

#### **S** Consideration

- Value exchanged between parties
- Can be promises or actual items/services
- Adequacy not essential (even \$1 considered sufficient)
- Alternative to consideration: Seal

## **The Equitable Estoppel**

- Gratuitous promises usually unenforceable
- Estoppel applies if party relied on promise to their detriment
- Prevents unfair reneging on promises

#### Case: Conwest Exploration v. Letain (1963 SCC)

- Letain allowed drilling after deadline → minerals found
- Letain estopped from refusing to sell despite strict contract terms

#### Case: John Burrows v. Subsurface Surveys (1968 SCC)

Plaintiff tolerated late payments but later enforced full rights

No estoppel found — plaintiff could have acted sooner

# Capacity

Minors, intoxicated persons, and lunatics may lack capacity

#### **Minors**

- Contracts unenforceable except for necessaries
- May ratify contract later (except BC)
- Minor may enforce contract

#### **Drunks and Lunatics**

- Contract unenforceable if other party knew condition
- Must repudiate within reasonable time after recovery

#### **Corporations**

- Usually have capacity of natural persons
- Some corporations limited by purpose (e.g., railway company cannot buy aircraft)
- Rely on **indoor management rule** acts by officials bind corporation

# **\( \)** Legality

- Contracts must not be:
  - Contrary to statute (e.g., bid rigging, unlicensed contractors)
  - Contrary to common law (e.g., restraint of trade, immoral contracts)

o Violating Statute of Frauds

#### Statute of Frauds

- Certain contracts must be written:
  - o Interest in land
  - Contracts not performed within 1 year
  - Guarantees
- Even if not required, writing provides certainty

# **X** Misrepresentation

- False statement inducing contract
- Types:
  - Innocent
  - Negligent
  - Fraudulent
- Remedies vary: rescission, compensation, tort claims

# Duress

- No free choice to contract → contract voidable
- Types:
  - o Threatened violence/imprisonment

- Economic duress
- Undue influence

#### Case: Gotaverken Energy Systems v. Cariboo Pulp & Paper

Contractor forced payment change under threat of workforce reduction

## Mistake

- Rectification: correcting writing errors
- Unilateral mistake: usually enforceable unless other party knew
- Tendering mistakes: governed by specific case law

## **Tendering Cases & Principles**

- Belle River Community Arena v. Kaufmann: error in tender → owner cannot accept
- Ron Engineering v. The Queen: Owner forms "Contract A" with bidders, duties on evaluation
- MJB Construction v. Defence Construction: accept only compliant bids
- Wimpey v. Hamilton: duty to evaluate bids in good faith
- Naylor v. Ellis-Don: contractor obligations to subcontractors
- Buttcon v. Toronto Hydro: fairness in Requests for Proposals (RFP)
- Double N Earthmovers v. City of Edmonton: when Contract A ends

## Tender Documents Should Include

- Project description
- Plans and specifications
- Location of information
- Form of contract
- Tender and evaluation procedures

## Contract A

- Terms contained in tender package/instructions
- Binding consequences careful review needed
- Selection criteria may include factors beyond price

# Contract Interpretation

- Liberal approach: seeks parties' intent
- Strict construction: literal word meaning, often for limitations/exclusions
- Depends on clause type

# **☼** General Principles

- Use ordinary meaning
- Strict for limitations/exclusions
- Liberal when appropriate (e.g., unsophisticated parties)

## Specific Issues

- Contra Proferentum: ambiguous clause against drafter
- Parole Evidence Rule: no extraneous evidence to interpret clear terms
- Implied Terms: added by court for business efficacy or default standards (e.g., fitness for purpose)

#### The Moorcock Case

- Implied term: dock safe at low tide
- Ship damaged → owner sued

## 🔚 Discharge of Contracts

- Completion
- Agreement
- Pursuant to contract terms
- Frustration: unforeseen event makes performance impossible or fundamentally different
- Force Majeure: extraordinary events excuse or delay performance

## Trustration Cases

- Metropolitan Water Board v. Dick, Kerr and Co.: WWI suspended contract → frustrated
- Davis Contractors Ltd. v. Fareham UDC: labor shortage delayed contract → not frustrated

## Force Majeure

- Events beyond control: natural disasters, war, strikes, court orders
- Consequences: delay excused, time extended, usually no monetary compensation

## Breach of Contract Remedies

- Damages (most common)
- Termination (specific circumstances)
- Specific performance (court orders completion)
- Injunction (court orders to refrain from acts)

# **Y** Termination

- For breach of condition or fundamental term
- Right to terminate must be explicit in contract

# Repudiation

- Party declares no intention to perform
- Innocent party may accept and claim damages or continue contract

## Damages - General Principles

Aim to place innocent party as if contract performed

• Includes damages naturally arising or in contemplation

## Hadley v. Baxendale

• Carrier not liable for special damages unknown to it

## **Yes of Damages**

- **Direct damages**: costs to remedy breach
- Consequential damages: lost profits, fines, loss of use

## 💰 Penalty Clauses & Liquidated Damages

- Penalties unenforceable
- Liquidated damages enforceable if genuine pre-estimate
- Cap damages and avoid proof difficulties

#### Quantum Meruit

- "As much as deserved" when no price agreed
- Applied if contract price terms not applicable

# M Substantial Compliance

Minor defects don't justify drastic remedies

Payment reduced by cost of remedying defects

## Specific Performance & Injunction

- Court orders performance instead of damages
- Used when damages inadequate
- Common in land sale cases
- Injunction: court forbids an act

### **M** Fundamental Breach and Limitation Clauses

- Clauses limiting/excluding damages
- Often on "contracts of adhesion" (tickets, standard forms)
- Can be overridden by doctrine of fundamental breach

## **M** Key Cases

- Harbutt's Plasticine v. Wayne Tank and Pump: fundamental breach overrides exclusion
- Hunter v. Syncrude: implied warranty of fitness applies
- *Tercon Contractors v. BC*: limitation clauses carefully interpreted, fundamental breach doctrine eliminated

## Limitations in Commercial Context

Strict construction

- Contra proferentum if ambiguous
- Clear clauses enforced
- Unconscionability exception (rarely applied)

## 👷 Agreements between Client and Engineer

#### Standard of Care

• Often implied, minimum standard in tort law applies

#### **Agency Relationship**

- Engineer may act as client's agent
- Bound by scope of authority
- Avoid exceeding actual authority

#### **Fees and Estimates**

- Must be agreed before work
- Estimates require due care

#### **Standard Forms and Liability Limits**

- Useful for clarity
- Understand scope and limits
- Avoid very low liability caps
- Insurance limits often used

#### **Concurrent Liability**

- Engineer liable in contract and tort
- Duties may differ per contract
- Limit obligations to contract if appropriate

## **TODA CONTRACTS**

- Engineer typically not party to contract
- Often administers contract
- May be consultant or employee

# **☼** Engineer as Administrator

- Makes decisions affecting owner and contractor rights
- Decisions may be appealable or final
- Duty of care applies

# Inspection Services

- Engineer must exercise duty of care
- Issues when contractors cover defects

#### Case: Dabous v. Zuliani

• Improper installation concealed, architect held responsible

## Advising Contractor

- Methods usually contractor's responsibility
- Advising may risk claims of interference or tort liability

## Contract Administration

- Follow contract terms strictly
- Problems arise with unauthorized work or missing notices
- Keep detailed notes and meeting minutes

#### Notice Provisions

- Required notices must be given to claim extras
- Notice can be constructive
- Waiver and estoppel arguments possible

## T Drawings and Specifications

- Ensure completeness
- Courts favor contractors relying on specs
- Contractors not expected to review design

## Prime and Subcontracts

- Plans/specs govern prime contract only
- Prime contractor should incorporate into subcontracts

# **9.** Engineer as Expert Witness

- Expert opinion permitted when court lacks expertise
- Engineers must prepare thoroughly
- Subject to cross-examination