

CAYMAN ISLANDS



CONTRACTS LAW

(1996 Revision)

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CONTRACTS LAW

(1996 Revision)

ENACTED by the Legislature of the Cayman Islands.

PART I - Introductory

Short title

1. This Law may be cited as the *Contracts Law (1996 Revision)*.

Definition

2. In this Law —

“**court**” means, in relation to any matter, the court or arbitrator before whom the matter falls to be determined.

Law of contracts to be subject to this Law

3. The rules of the common law which, subject to any existing laws of the Islands, govern the formation, interpretation and discharge of contracts shall continue to have application subject to this Law.

PART II Frustrated Contracts

Contracts to which this Part applies

4. Where a contract governed by the law of the Islands has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance thereof, this Part shall have effect in relation thereto.

Recovery of sums paid in respect of a frustrated contract

5. All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Part referred to as “the time of discharge”) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just so to do, having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

Accountability for benefits received in respect of a frustrated contract

6. Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than the payment of money to which section 5 applies) before the time of discharge, there shall be recoverable from him by the said other party such sum, if any, not exceeding the value of the said benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case and, in particular —
 - (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract, and retained or recoverable by that party under section 5; and
 - (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.



Computation of expenses

7. In estimating, for the purposes of section 5 or 6, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of those sections, include such sums as appear to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

Exception of insurance receipts in certain cases

8. In considering any sums which ought to be recovered or retained under section 5 or 6 by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by any other enactment.

Obligations incurred for the benefit of another party

9. Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by the other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just so to do, treat for the purposes of section 5 any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

Exception of contracts making provision for frustration

10. Where any contract to which this Part applies contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to the said provision and shall only give effect to this Part to such extent, if any, as appears to the court to be consistent with the said provision.

Court may sever the performed from the unperformed parts of a contract for the purpose of this Part

11. Where it appears to the court that a part of any contract to which this Part applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat this Part as only applicable to the remainder of that contract.

Exception of certain classes of contract**12.** This Part shall not apply to any —

- (a) charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea;
- (b) contract of insurance, save as is provided by section 8; or
- (c) contract to which section 8 of the *Sale of Goods Law, 1979* [Law 12 of 1979] (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

PART III - Misrepresentation**Removal of certain bars to rescission for innocent misrepresentation****13.** Where a party has entered into a contract after a misrepresentation has been made to him, and —

- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to this Part, notwithstanding the matters mentioned in paragraphs (a) and (b).

Damages for misrepresentation

- 14.** (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently unless he proves that he had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.
- (2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable so to do, having regard to the nature of the misrepresentation and the loss that would be



caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

- (3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

Avoidance of certain provisions excluding liability for misrepresentation

- 15.** If any agreement (whether made before or after the 7th May, 1979) contains a provision which would exclude or restrict any —

- (a) liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or
- (b) remedy available to another party to the contract by reason of such misrepresentation,

that provision shall be of no effect except to the extent, if any, that, in any proceedings arising out of the contract, the court may allow reliance on it as being fair and reasonable in the circumstances of the case.

PART IV - Miscellaneous

Saving of certain past transactions

- 16.** Nothing in this Law shall affect any contract which has been discharged or any matter which has been made a subject of proceedings in court before the coming into operation of this Law.

Application to the Crown

- 17.** This Law is binding upon the Crown.

Publication in revised form authorised by the Governor in Council this 13th day of August, 1996.

Meredith Hew
Acting Clerk of Executive Council

