

Applicable

Compensate the victim for the injury

The client may sue for damage

Claim

Can bring an action for breach of contract on

Nuisance

Nuisance: substantial and unreasonable interferences with the peaceful enjoyment of property

- Substantial
- Unreasonable (local standard test)

-> the court may order injunction to ask the defendant to stop the interfering activity, and to compensate the plaintiff for the reduction of enjoyment.

Injurious falsehood

Individual's business interests may be defamed:

- Untrue statement
- There must be malice, and may include recklessness as to the truth
- There must be genuine loss resulting from the statement

Vicarious liability

Vicarious liability: strict liability of an employer to compensate for torts committed by an employee during the course of his or her employment

Analysis:

The employee was acting in the course of his employment

- An employer is held liable when it is responsible for a tort committed by an employee.
- The test for this relies mainly on **whether the employee was acting in the course of their employment or not**
- The victim can sue employees and employer

Strict liability torts

- A very few activities are so inherently dangerous that there is really no way to displace liability only through appropriate care
- Automatically liable, no need for standard of care
- E.g. store toxic chemicals, dangerous animal
- Defence: voluntary assumption of risk, but tort can not be avoided

Defamation

Defamation: making an untrue statement that causes injury to the reputation of another person

Requirement:

- the public statement must be made
- must be **untrue**, and

- must cause **harm/damage to someone's reputation**

o **Public** – communicated to someone other than person defamed
 o Harm – average person would see plaintiff's reputation as discredited
 o Reputation – can be **personal, professional or business** reputation (e.g. reputation of your products)

- making an untrue statement that causes injury to the reputation of another person
- Defence: the alleged defamatory **statements are true**;
 - **Qualified privilege**: immunity from liability for defamation provided a statement was made in **good faith** e.g. letter of reference
 - Fair comment: when they have **researched** and offered a **reasonable opinion**, honestly believing it to be true e.g. journalist
 - responsible communication on matters of **public interest**: a statement that is published in the **public interest** and is done responsibly
- # Both of these defences are blocked if the reporting is done with **malice**

product defamation

making false and damaging statements about the products of another person

inducing breach of contract

intentionally causing one party to breach her contract with another

- C must prove that C and B had a contract and A knew it. A's intentional actions caused B to breach the contract, and this caused C damage.
- C can sue A and B
- E.g. old employer -> new employer: confidentiality obligation

unlawful interference with economic relations

attempting by threats or other unlawful means to induce one person to discontinue business relations with another

- Business A commits an unlawful act against B in order to hurt C's business. B would always have the right to sue A for the unlawful act; this tort also gives C the right to sue

Negligence

1. The defendant owed the plaintiff a duty of care.

- Proximity: (the **closeness of the relationship** between the plaintiff and defendant is examined to see if it was reasonably foreseeable that the defendant's conduct would cause harm to the plaintiff.)
- Foreseeability: ("the reasonable man," in the defendant's position would have foreseen the risk of harm to the plaintiff)

"it was reasonably foreseeable that a careless act by ... could result in injury to ..."

2. The defendant breached the required standard of care.

In the same circumstances, a reasonable person would take ...take reasonable care to avoid causing foreseeable injury to other persons. "precaution"

The case fact stated that ... However, the defendant's conduct ...fell below the standard.

A competent professional...

3. The plaintiff suffered injury or damage.

physical injury

mental injury: serious and long lasting

property damage to the land or goods of the plaintiff

economic loss, including loss of value or profit, even worsening losses

4. The defendant's conduct caused the plaintiff's damage.

"but for" the negligent conduct of the defendant, the injury would not have occurred

- connection between the injury and the breach of the standard of care

Remoteness: Unusual or extreme reactions will be considered too remote.

A normal victim in the same situation ...

mental illness was not a reasonably foreseeable **type** of damage in this situation. The average person would not suffer a mental disorder as a result of ...This was an extreme reaction by a plaintiff with particular vulnerabilities. The plaintiff could not recover because the damage was too remote.

thin skull rule: If the type of damage is considered reasonably foreseeable, the court will compensate the victim for all the actual damage

Legal rules:

- 1) Negligence: duty of care, standard of care, damage, causation
- 2) Vicarious liability: strict liability of an employer to compensate for torts committed by an employee during the course of his or her employment
- 3) Contributory negligence: a partial defence to a negligence action when the plaintiff's or another defendant's conduct also contributed to the injury
- 4) Voluntary assumption of risk: a defence to a negligence action when the plaintiff was aware of the risk and continued with the activity anyway
- 5) Mitigate: duty to act reasonably and quickly to minimize the extent of damage suffered
- 6) thin skull rule: If the type of damage is considered reasonably foreseeable, the court will compensate the victim for all the actual damage
- 7) Anns-Cooper test: There is no unlimited liability (Anns-Cooper test)

Analysis:

Duty of care:

Standard of care:

Damage:

- thin skull rule

Causation:

- But for test:
- Remoteness:

Other considerations:

- Vicarious liability
- Contributory negligence
- Multiple defendants:

Conclusion:

> courts may apportion liability between the tortfeasor(s) and the parent based on comparative negligence

Anns-Cooper test

There is no unlimited liability (Anns-Cooper test)

Multiple defendants:

multiple defendants each caused or contributed to damage to the plaintiff, all will be held liable and damages apportioned between them.

“material contribution to risk” test

> courts may apportion liability between the tortfeasor(s) and the parent based on comparative negligence

Contributory negligence

a partial defence to a negligence action when the plaintiff's or another defendant's conduct also contributed to the injury

the plaintiff contributed in any way to her own loss

mitigate

duty to act reasonably and quickly to minimize the extent of damage suffered

Voluntary assumption of risk

a defence to a negligence action when the plaintiff was aware of the risk and continued with the activity anyway

If, after being fully advised of the risk or danger associated with the behaviour, the plaintiff continues the behaviour and is **injured in the predicted way**, the defendant will not be found liable since the plaintiff voluntarily assumed the risk.

-> the plaintiff can sue for negligence, and will receive monetary awarded for their loss. ... will be held liable and the damages are apportioned between them.

Insurance and subrogation

where one person becomes entitled to the rights and cause of action of another

Product liability

Product liability: manufacturers are liable in tort to the consumer for damages caused by their defective products

- Duty of care to ultimate consumer
- Duty to give proper warning of known dangers or dangers they ought to have known
- Duty to warn and make users aware of the risks associated with the use or misuse of the product

Duty of care:

- manufacturer of consumable goods owes a duty of care to the ultimate consumer
- Duty to give proper warning of known dangers or dangers they ought to have known
- Duty to warn and make users aware of the risks associated with the use or misuse of the product

-> had a proper warning been given, she would not have used the product or would not have used it in the way she did—that is, the failure to warn influenced her behaviour, which caused the injury.

-> otherwise: voluntarily assumed the risk, the manufacturer will not be liable

Standard of care: the manufacturer fell below the standard of care in its production, inspection, design, or distribution.

- the uncharacteristic malfunction of the product is the most likely cause of his injury and that a substandard manufacturing process is the most likely reason for the malfunction.
- improper assembly by the user or at least that it took all reasonable precautions to prevent defective goods from reaching the distribution system.

Occupier's liability

Who is occupier: Occupiers physically or legally control premises. The statutory definitions of premises include land, structures, and ships.

To whom is the duty owed

Invitee: a person permitted by an occupier to enter premises for business purposes

- The duty owed by an occupier to an invitee is to take care to prevent injuries from hazards or dangers of which the occupier is aware or should have been aware of on his land.

Licensee: a visitor (other than an invitee) who enters premises with the consent of the occupier

- the duty owed to a licensee was simply to remove concealed dangers of which the occupier had actual knowledge.

trespasser

- standard of care: the occupier must not set out deliberately to harm the trespasser or recklessly disregard the possibility that his acts might injure a trespasser. An occupier must not set traps for a trespasser, and **warning signs** are required.

Damages

an award of a sum of money, known as damages, to compensate for physical and economic losses.

Physical losses are the costs of repairing damaged property or treating injured people; economic losses are losses in monetary value such as lost profits or wages.

Professional liability

- The contractual relationship generates a **breach of contract** cause of action.
- The fiduciary relationship generates a **breach of fiduciary duty**.
- The tort of **negligent misrepresentation** is available when a tort duty of care is owed.

Can only sue for one

Negligence: professional service

1. Duty of care: relationship is proximate, the harm is reasonably foreseeable; the professional should have known their work would be relied upon
2. Standard of care: a competent professional would

Contractual: either negligence and breach of contract

Fiduciary duty

- This fiduciary duty can arise even when the professional provides **services free of charge or no contract exists**.

a duty imposed on a person who stands in a special relation of **trust and loyalty** to another

- The fiduciary (often a professional) undertakes to act in the **best interests** of the beneficiary (often the client).
- The beneficiary is **vulnerable to or at the mercy** of the fiduciary's **control or discretion**.
- A legal or practical interest of the beneficiary **could be harmed by the fiduciary's exercise** of discretion or control 受托人的控制或自由裁量权

E.g. lawyer-client, doctor-patient

The professional must:

- act honestly, in **good faith**, and only in the best interests of the client;
- avoid all **conflicts of interest**; ... at the client expense
- account for all property held or administered on behalf of that beneficiary.

-> liable for the beneficiary's loss

third-party liability

liability to some other person who stands outside a contractual relationship

- Own a duty in tort (negligent or inaccurate advice) or occasionally fiduciary duty

duty to account

the duty of a person who commits a breach of trust to hand over any profits derived from the breach

Tort Liability for Inaccurate Statements

Fraudulent misrepresentation

1. a **false representation** is made by the defendant;
2. the defendant has some level of **knowledge of the falseness** (actual or recklessness);
3. the false representation **causes the plaintiff to act**; (material)
4. the plaintiff's actions **result in a loss**.

-> plaintiff can claim the contract void, and recover the loss from the person who made it

The tort of deceit may also be committed when a **person deliberately conceals or withholds** information.

Negligent misrepresentation

an unintentional tort imposing liability when an **incorrect statement** is made **without due care for its accuracy**, and **injury is caused**

- does not require knowledge of the falseness of the information, only **carelessness** in its creation

Analysis:

- 1) Duty of care: special relationship
- 2) Untrue statement:
- 3) Breach of standard of care: a reasonable and competent professional would
- 4) The plaintiff was reasonably relied on defendant's representation: the plaintiff would...if he had not receive that advice
- 5) Damages resulted: due to the reliance of misrepresentation, ...

1. duty of care

- Proximity: based on a "special relationship" between the representor and the representee;
- Foreseeability: injury - Was it a reasonably foreseeable consequence of the plaintiff's reliance on the negligent representation?
- [Residual Policy Considerations](#)

2. the representation must be **untrue, inaccurate, or misleading**;

- At the time the information was given
- the inaccuracy must result from the failure of the professional to meet the required standard of care.

3. the representor has fallen below the standard of care required of a professional making such a representation;

- Professional behaviour should be compared to the reasonable behaviour of other professionals in that same profession when providing the same type of advice.

- not omitting essential or relevant information e.g. warning, risks in a treatment

where the court is satisfied that the patient would still have consented even if the risk had been explained, the physician will not be liable.

- # Experts testified that the heat loss calculations were made the same way other experts in the field would have done at the time. he must go further and establish that the incorrect estimate resulted from a lack of skill, competence, or diligence on the part of the preparer

4. the representee must have reasonably relied on the negligent misrepresentation;

- Would the client have acted in that way if he had not received that advice?
- only reasonable when done in furtherance of the purpose for which the advice was given.

-> if not, not liable for the loss

- Contributory negligence: It could be reasonable to rely on a statement but negligent to rely exclusively upon it

5. the reliance must have been detrimental to the representee, that is, damages resulted.

disclaimer

an express statement to the effect that the person making it takes no responsibility for its accuracy

Residual Policy Considerations

- the law already provides a remedy,
- a duty creates unlimited liability to an unlimited class or for an unlimited time, or
- other broad policy reasons exist.

Indeterminate Liability

- When the number of plaintiffs or magnitude of their losses are undeterminable, public policy concerns will restrict the duty owed.
- inability to determine the size, time, or possible plaintiffs so that the magnitude of liability cannot be reasonably predicted

the purpose of the representation

Contract

Offer

A mere invitation to do business is not an offer

Advertisements to sell goods at a certain price are generally mere invitations to the public to visit the place of business

Offers

- Identifying who is making an offer, at the start, is very important because that must come first, and acceptance follow, to form a contract
- Offer and acceptance may occur in any form

Communication of Offer

- Pretty obvious, but an offer must be communicated to the offeree before it can be accepted
 - Especially significant in a reward scenario

Invitation to Treat

- Offer may not be the first communication in negotiation - it may start with an “invitation to treat”
- Therefore, the store isn't actually making an offer at all – it is soliciting offers which it may accept or not accept

Standard Form Contracts

- For many contracts there is no real negotiation and the contract comes fully formed
- The offer is simply on a take-it-or-leave-it basis
- Consumer protections exist but the primary protection remains the right to refuse the offer
- There are, however, protections against entering into a contract that is not properly understood

Notice of Terms

- Ordinary terms in a contract are considered reasonable by default
- When a term is more onerous or unusual the offering party has more obligation to draw attention to it
- This applies particularly to exclusion clauses
 - Should be clear and unambiguous
 - Must be given reasonable notice

– Clear agreement required

-> this term is likely to be removed (severed) by a Court and treated as not having legal force.

->As there is an exception clause that's onerous/unusual with no particular attention drawn to it, when this contract is interpreted in any legal dispute, this term is likely to be removed (severed) by a Court and treated as not having legal force.

an offeree is not a business person or does not know that the offer contains a certain term, or the terms are not all included in one document.

If she satisfies the court that she did not know of it and that there was fraud or misrepresentation, then the court will ask what steps the business took to bring the term to the attention of its customers. If the court decides that the steps were insufficient, the ticket holder is not bound by the term; and if she has been wrongfully ejected from the baseball park, *she will have the same remedy as if the term had not been on the ticket.*

Reasonably sufficient notice

The operator of the parking lot, garage, or other place of storage cannot safely assume that he may exempt himself from liability merely by putting up a sign.

-> proving they brought the terms to your attention

- Signed written document
 - if the offeree signs a document, a strong presumption arises that she has accepted all the terms it contains
- Prominent public notice
- the clause was not *unusual, unexpected, or onerous* and therefore did not require special measures.
- Nor was the physical arrangement of the contract *difficult to read, surprising, or tricky*.
- Therefore, the clause applied, and the *renter was held liable for the damages* arising from the theft of the vehicle

Counteroffer

- counteroffer: a counteroffer immediately ends the initial offer
- Unless the original offer is remade, it cannot be accepted after a counteroffer has been made
- *A request for a better offer is not itself necessarily a counteroffer (can accept the original offer within a reasonable period)*

Acceptance

- Acceptance must be **clear, certain, and unconditional**
- May be communicated [**positive act**. E.g. shake hands, signed] in any way that is **mutually acceptable** -> **communication of acceptance**
- If mode of acceptance is specifically defined, then other means of communication will not work, unless they are accepted as such
- For historical reasons, acceptance is generally considered to have occurred, if by mail, **when the mail enters the system**

Silence can be a sufficient mode of acceptance only if the parties have habitually used this method to communicate acceptance **in previous transactions** or have **agreed between themselves in advance** that silence is sufficient, as where books are regularly delivered under a contract for membership in a publisher's book club.

The offeror may, in other words, do away with receiving notice of acceptance and be bound to the terms of the proposal as soon as the **offeree has performed whatever was required of him in the offer**.

Acceptance -> bound by the contract

Unilateral Contracts

- Some contracts are unilateral in the sense that acceptance and performance of the contract are the same act (**accept contract by performing it without prior communication**)
 - May be particularly important for **reward offers**
 - **Start of performance** may be considered **formation of the contract**, **to prevent revocation of offer midway**
 - Courts may find a unilateral contract in what may seem to otherwise be advertising but it's unusual
 - Consider potentially **unlimited acceptances** if the offer was made to the **public** generally
- Note that unilateral contracts are an exception to normal, bilateral contracts and are **not typically used or looked for**

Moment of Formation

- Once offer has been properly made and accepted, a binding contract is formed
- Other issues may affect the enforceability of the contract or consequences from it
- Despite other issues, however, once a contract exists it exists – no “take backs”

Consideration: Tenders

- A call for tenders is an **invitation to submit offers** and not an offer in itself

- Bids are typically requested under seal, and **irrevocable** until **expiration or acceptance**
The tender cannot withdraw without being liable for damages
- Another way to conceive of consideration here, is that the bidders receive consideration in the form of the tendering process
- This leads to a **“two contracts”** analysis

First contract: inviting party - Any refusal to fairly consider the bid would be breach of contract.
obligation of good-faith negotiation exists: bidders must be treated fairly and equally

Holding an Offer Open

- By default, a promise to keep an offer open for some period of time has **no force**
- This is subject to analysis as though there were **two contracts** under discussion
 - One deal is the proposed contract
 - The other deal is the promise to keep the first offer open
- Taken as an independent deal, the offer to hold open **fails for lack of consideration** unless:
 - There is in fact some **payment to hold the offer open**
 - It is made under **seal**

Lapse of an Offer

- Determining when an offer has ended and can no longer be accepted is obviously key. Various ways that can happen include:
 - **Death** of one party
 - Any kind of **counteroffer**
 - Explicit **revocation** (known to the offeree in any way) 明确的撤回
 - **The revocation is valid because it has reached B before he has accepted.**
 - If negotiation is in person, **one party departing** is presumed to end the offer
 - Otherwise, offers are presumed to end after a **“reasonable” period**, which is unavoidably contextual (business practise, norms of industry)
 - Consider an offer for a large amount of currency at set price
 - A shipment of some **perishable fruits** and vegetables
 - A shipment of some **durable good**, such as concrete

lapse

the termination of an offer when the offeree fails to accept it within a specified time, or if no time is specified, then within a reasonable time

1. when the offeree **fails to accept within a time specified** in the offer
2. when the offeree fails to accept **within a reasonable time**, if the offer has not specified any time limit
3. when either of the **parties dies** or becomes **insane prior to acceptance**

Offer ends

Once an offer has been made, it can end in a number of different ways:

- The offer may lapse when the offeree fails to accept within the time stated in the offer, or if no time limit is stated, within a **reasonable time**.
- The offeror **revokes the offer before the offeree has accepted**.
- The offeree **rejects the offer** or makes a **counter-offer** (which is, in effect, a rejection).
- The offeree accepts before any of the three above has occurred (in which case the offer ends and is replaced by a contract between the parties).

Electronic Communication

- The historically important “postal rule” may not apply if faster communication was specified
 - Postal rule: **acceptance by mail** is communicated when sent—that is, when a properly addressed and stamped letter of acceptance is dropped in the mail.
 - Revocation by post is effective only when notice is actually received by the offeree, not when the sender drops it in the mailbox.
- Actual receipt of acceptance is always, of course, valid
- For electronic communication, if the receiving party ordinarily receives documents of that nature in that way, **it is deemed to be received when it enters their local system and is capable of being retrieved**
- If the receiving party does not ordinarily receive documents that way, **it is deemed received when capable of being retrieved and the party is aware of it**
 - Enough to be **aware it is there, even without reading it**

Acceptance / revocation must reach to the offeree/offeror

When instantaneous means of communication such as telephone or text are used, the offeror must **receive the acceptance before he is bound**
 telephone dead -> not bound

Certainty of Terms

- A contract must be sufficiently certain in its terms that parties know what they’re talking about
- Consider:
 - “How’d you like to buy my car?”
 - “I’ll sell you my car for \$3,000.”
 - “I’ll sell you my car for \$3,000 cash, to be delivered to your home next Wednesday.”
- Essential, required details are contextual, and depend **normal practices and assumptions**
 - Price, at least, would normally be a required term

If the parties enter into a loosely worded arrangement, a court may find the agreement too ambiguous and uncertain to be enforced. **A court will not enforce an agreement to agree**; there must be certainty about essential terms

Consideration

- Consideration is one element of a binding contract
- Consideration (some **exchange of value**) must flow to every party in the contract
 - Subject to exceptions
- **Absent consideration**, a **gratuitous promise** may be made but does **not become a legally binding agreement**
- Generally, the court will not inquire into the adequacy of consideration, and it is only necessary that some consideration be present
 - Note the court may look at **duress, fraud, undue influence and mistake** at a later stage
 - In determining if the contract valid, however, it is only necessary to establish there is some consideration

Consideration: What Counts?

- Just about anything that is of value, flowing from one party to the other, is good consideration
- Hamer v. Sidway (N.Y. C.A., 1891)
 - An uncle promises his nephew \$5,000 if he should refrain from drinking, using tobacco, swearing, and playing cards until age 21
 - Def. argues no consideration, as he derived no benefit from the agreement
 - Court found that the plaintiff had restricted his lawful activities at the request of the defendant, and the question of how (or whether) this was of value to the defendant is outside the facts of the case

Past Consideration

Past consideration -> not consideration

- Consideration that was already exchanged prior to a contract is not consideration for the purposes of that contract
 - **A service that was already performed gratuitously**
If one person promises to reward another who has previously done an act gratuitously or given something of value, the promise is not binding
 - **Something the party was already bound to do**
[contract obligation] e.g. to finish construction on time
 - One-sided renegotiation of terms
- Think about the policy rationale behind this one
 - On the one hand, courts do not want to allow parties to hold each other hostage
 - **On the other hand, some sorts of renegotiation are beneficial for all concerned, and there is good motive to make these deals binding**

if the second agreement **resolves some uncertainty or dispute** over the entitlements arising from the pre-existing contract, Canadian courts will find the subsequent contract has consideration

Equitable Estoppel 公平不容反悔

the promisee has quite reasonably relied on the promise and has incurred expenses he would otherwise not have made.

The gratuitous promise remains gratuitous, the promise cannot be enforced, and the promisee suffers the burden of his expenses.

B would fail because A can prove in her defence that B said that the furniture was A's, and the court would estop B from asserting the true state of the facts.

Promissory Estoppel:

only apply to promise to alter existing contract between the parties. B can sue A to enforce promise if 4 requirements are met:

1. **Existing contract** between A and B
2. A give a **Gratuitous promise** (express or implied) to alter contract for benefit of B (or release other party from a term of contract)
3. A can expect B to **rely** on that promise (intent other party to rely on promise)
4. B relies on that promise and **change conducts** as a result
5. B would suffer **real hardship** if A didn't perform as promise

Canadian courts accept the doctrine of promissory (equitable) estoppel as a **"shield"** (that is, a **defence**) but not a "sword" (that is, a cause of action 提起诉讼)

Injurious reliance

loss or harm suffered by a promisee who, to his detriment, **relied** reasonably on a **gratuitous** promise

1. **Gratuitous promise** to give something
2. Intend other party to rely on promise and as a result change conduct
3. Other party does **rely on promise** and **change conduct** as a result
4. Injustice if promise not binding

Quantum Meruit

- Where a service was performed by request with expectation of payment, but payment was not explicitly discussed, two outcomes are possible
 - The court will **enforce a promise to pay**, if made subsequently, as consideration in exchange for the original service
- Lampligh v. Brathwait (U.K., 1615)
 - The court may also award payment on a quantum meruit basis, which simply means the **fair market value of the service**
- In this sense, the award is a quasi-contractual remedy, and one of the few occasions where the court will step in to effectively draft part of a contract

Consideration: Seal

- As a classic form, a contract under seal was considered a sign that the parties intended to be legally bound

- The formality associated with the seal, and affixing it, was considered a control
- Today, the seal is used as a route around the problem of consideration, and a contract under seal is free from this stage in analysis
 - A contract is still a contract, no matter a lack of consideration, but all other requirements remain
- Considering how informal the seal has become, is it still adequate notice of a special agreement?

Intention

- In order for the court to enforce a contract, it is considered necessary that the two parties intended to form such a binding relationship
 - The assumption, however, is that people do intend to form binding relationships
 - Is there a value judgment here?
 - Is it accurate to state that people always intend to be bound by their promises, or is it simply convenient?
 - Exceptions to assumed intention include
 - Promises within a family relationship
 - Advertisements
- Court - not intend to form a binding relationship

E.g. signed agreement
what a reasonable person would believe

Intention

- Note that these assumptions may be displaced in every instance
- Merritt v. Merritt (U.K. C.A., 1970)
 - A couple separate and form an agreement (in writing) regarding the family home and support for the woman and their children
 - She is to have a regular sum for support, and out of it to pay the mortgage, once it is paid off it will be in her name
 - When it is paid the man refuses to transfer
 - Contract found enforceable, with reference to its formality and also the position of the parties who are separated and motivated to “bargain keenly.”

In this case: Written agreement & serious intention -> binding contract

Intention

- Carlill v. Carbolic Smoke Ball (U.K., 1893)
 - Company advertises a product intended to prevent influenza

- Their ads include the promise that if the product is properly used the user will not get influenza
- They offer a significant cash reward to anyone who does contract influenza
- They offer, as proof of their sincerity, the suggestion that cash is on deposit with a bank for this purpose
- A woman does use the product, does become ill, and sues
- Company claims the ad was “mere puffery,” court disagrees and enforces the agreement

In this case, they make the ad seems seriously -> enforceable promise

Intention

- Rose and Frank Company v. J.R. Crompton & Brothers, Ltd (U.K., 1923)
 - Two companies, after a long course of dealing, enter into an agreement that explicitly states it is not intended to be enforced by any court
 - It is, rather, merely a definite expression of their intentions, to be carried out with “mutual loyalty and friendly co-operation”
 - This didn’t quite work, obviously, because they ended up in court
 - Court declined to enforce the “contract”
- Note the relatively equal bargaining power between the two Parties

Capacity

if the defendant shows that she did not have the capacity to enter into the contract or that the contract was not legal, she will be released from her contractual obligations.

- Capacity is an issue when one party (or theoretically both) entering into a contract does not have the requisite capacity at law to do so
- If it is possible for this person to gain full capacity at a future point, the contract is considered voidable at that party’s discretion
- The window to escape the contract this way closes after the party regains full capacity and chooses not to do so
- People who are simply not going to regain capacity may not enter into binding agreements

E.g. drunk, mental disability

Capacity: Minors

The general rule is that a contract made by a minor is not binding on her but binding on the other side, whether or not the other person is aware that he is dealing with a minor.

1) Minor: contracts are voidable, at the minor's discretion (time's up at age of majority)

- Exception: minors can validly contract for the necessities of life.
- Exception: employment contract for the benefit of the minor & know it is binding

• Minors can **validly contract for the necessities of life**, including food, shelter, and education, transportation, legal advice

Reasonable price

- Student loan regime
- Apprenticeships

• Other contracts are **voidable**, at the **minor's discretion** (time's up at age of majority)

- Repudiation / Ratification 否认/批准
- A contract that is **fully performed on both sides can no longer be repudiated**

• What is the public policy rationale at work here?

Exception: employment contract for the benefit of the minor & know it is binding

beneficial contracts of service

contracts of employment or apprenticeship found to be for a minor's benefit **"whole"**

A minor's freedom from liability is limited to contract; she remains liable for torts such as negligence, assault, defamation, or deceit.

If she wants to be released from these obligations, she must repudiate or back out of such a contract promptly upon reaching the age of majority,

Capacity: Other Issues

• If someone lacks capacity due to another temporary condition (intoxicated, ill, etc.) their **contracts are voidable when they regain capacity, enforceable against the other party**

- **The window to act on this will not be long**

Repudiation - Act promptly upon emerging from his state of incapacity

• Contracts that have been **fully performed still cannot be repudiated**

• If someone will never gain or regain capacity, they cannot form a contract in the first place

- This applies to certain corporate entities also

Reasonable price for necessities

Drunk: need prove he was incapable of rational decision & the other party was aware of his condition

Legality and Public Policy

A contract will be considered **illegal** if its purpose is contrary to public policy or violates a statute. illegal contracts are considered completely unenforceable

-
- whether the purpose of a particular contract offends the public good based on a general sense of what is good or bad for society as a whole
- illegal contracts are considered completely unenforceable
- the illegal portion could be severed from the contract and the agreement could be allowed to proceed in its severed form.
- no cause of action can arise out of a wrongdoing

E.g. bet in game, environmental, waste, deal, rob, bribe

Ague: whether against public policy

Illegality

- Where a contract is **unlawful by statute** it may be treated as **immediately void** but still **acknowledged**
- Where a contract is flagrantly **illegal**, the courts will simply **not acknowledge its existence**
 - May be direct, such as a contract for crime
 - May be more sophisticated, such as **anti-competition**
- What other activities may be legal (or not illegal) in a technical sense, but have no access to the protection of the court?
 - General **exclusion for “dishonesty” and “immorality”**

E.g. marriage, orphan donation -> value judgement, outside what court enforceable

Restraint of Trade

non-competition clauses

Issue: non competition clause

Legal rules:

Presumption: any term in restraint of trade is against public policy and is void and unenforceable

Exception for employment:

- Unambiguous
- be reasonable as to restricted activity, geographic area, and time period.
- No contradict to public policy
-
- agreements that restrict a person's right to carry on a business that competes with that of the other party or to work for a business that competes

non-solicitation agreements

- agreements that prevent a person from contacting the other party's customers, employees, or suppliers with a view to moving their business or employment
- Presumption: any term in restraint of trade is against public policy and is void and unenforceable
- Exception:
 - Sale of business and employment & partnership:
 - Unambiguous
 - be reasonable as to restricted activity, geographic area, and time period.
 - Employment:
 - proprietary interest worthy of protection
e.g. confidential info, customer relationships, other employees
 - Severance is not available to cure an employment contract.

Argue whether there is ambiguity

Severance: offending provisions may be removed without preventing enforcement of the balance of the contract

- The court may sever the unreasonable restriction from one.
- Employment:
 - The law recognizes a full-time employee's primary duty of loyalty to the employer, and an absolute promise not to engage in any other business during the term of the employment is valid, whether that business competes with the employer or not.
 - Similar agreements between partners that are operative during the life of the partnership are also binding.

Mistakes

Contracts states

- Contracts with issues of this nature may exist in several different states
 - **Void**: Not a valid contract, but the court will assist in undoing it -> restore the party to their pre-contract positions
 - **Voidable**: Currently valid, but potentially void at the discretion of one or both parties
 - **Illegal**: The courts will not assist in any way

Mistakes

- Refers to essential misunderstandings about the nature of the contract, or about the law, or to obvious errors in drafting

Mistake about the terms:

Mistakes about errors/typos

Remedies to mistake

Rectification is available when the written contract does not reflect the true and actual agreement of the parties

- There must be an agreement
- The agreement must not be uncertain or ambiguous
- The agreement must not be conditional
- There must have been no further negotiations to amend 修正
- The changes most easily explained as an error in recording

Mistakes in drafting

- Any way the contract was expressed, whether spoken, written formally or informally
- If the terms of the contract may be interpreted as reasonable, then the court will enforce them
- If the terms are obviously unreasonable, the court may use its discretion to correct the error or hold the contract as void

Unilateral mistake

- One party is mistaken, and the other party is aware of this
- The court will not enforce a contract under these conditions
- **Rectification**: correction of a written document to reflect accurately the contract made by the parties
 1. The court is satisfied there was a complete oral agreement between the parties, free from ambiguity and not conditional on further adjustments.
 2. The parties did not engage in further negotiations to amend the contract.
 3. The mistake in the written document may have, but does not have to have, occurred as a result of fraud.
 4. When the written document was signed, the defendant knew or should have known of the mistake and the plaintiff did not.
 5. Any subsequent attempt to enforce the inaccurate written document would be equivalent to fraud.
- Analysis similar to misrepresentation

Mutual mistake

- Mutual mistake: both parties are mistaken
- Mutual mistake: one party is mistaken and the other is unaware of this mistake
- Mutual mistakes that go to the heart of the contract will result in an unenforceable contract
- The court may apply a reasonable interpretation, it may be enforced
- Where there is some obvious error in terms of drafting, the court may choose to rectify the contract

Mistakes about the meaning of the words

- A court will decide which meaning is the more reasonable in light of the circumstances, including those things each party ought to have known about the subject matter of the contract and about the intentions of the other party.
- If both reasonable -> mutual mistake -> contract is void

A reasonable person would have been unable to decide ...

Mistake about subject

- If the **subject** of the contract has simply perished, the contract is void
- If the value of the subject has simply perished, then reasonable intention will be used to settle the question
- If the mistake as to quantity is so substantial that in essence it changes the quality of the subject-matter, then a proper case for **rescission** (return parties to original position) may exist
- # delay will close the door

Mistake about identity

- Intend to sell to? -> contract void -> ownership remain with plaintiff
- -> required to return .. or pay damages
- the general principle that between two innocent parties, both victims of a fraud, the loss should be borne by the more careless of the two.

Mistake and the third parties

- A fraudulent contract is voidable
- When the third party discovers the fraud, the contract may be rendered void at that time
- If the goods have been transferred before parties discover the fraud, the innocent third party will retain the goods

Non est factum

- Non est factum: a defence for those who have been **material** misled regarding the nature of the document they are signing
 - Requirements:
 - some infirmity that makes understanding impossible;

- reasonable actions in terms of trying to get independent advice and to understand the contract
- Necessary reliance on the party presenting the contract

-> contract would be declared void

Not careless: no one should expect to escape liability under a contract simply because of failure to take the necessary time to familiarize oneself with its contents.

Misrepresentation

not terms of contract (breach of contract), It is a statement or impression usually made or formed during the pre-contract bargaining that is not included in the subsequent offer.

Most statements of opinion do not amount to misrepresentations unless they are **expert opinions**—these are considered equivalent to statements of fact.

- Innocent - party making the statement believes it is true
 - Becomes fraudulent negligent if the error is discovered and not corrected
- Negligent misrepresentation - party making the statement is careless in making the statement
- Fraudulent - party making the statement knows it is untrue and is trying to deceive

• **Misrepresentation by omission**

Misrepresentation by omission: where there are fiduciary duty or disclosure obligations. Failure to properly disclose will render the resulting contract voidable.

- material
 - Where there are fiduciary duty or disclosure obligations
 - Silence
- > Failure to properly disclose will render the resulting contract voidable.
 - Quality of goods: rescind the contract

If material: could reasonably be expected to influence or induce the decision of a party to enter into a contract

-> when misrepresentation is discovered, the wronged party must **seek rescission** (parties back to original position) promptly

-> negligent & fraudulent: plaintiff can claim the contract is void, and **sue for damage** [everything cost you by relying on contract]

- Otherwise, they may seem to have accepted the contract under new conditions

Undue influence

- 1) Undue influence: the domination of one party over the mind of another to such a degree as to deprive the weaker party of the will to make an independent decision. The contract formed as a result of undue influence is voidable at the option of the victim.

the domination of one party over the mind of another to such a degree as to deprive the weaker party of the will to make an independent decision

Test: Whether one party has such control over the will of the other they
[special relations, desperate financial state]

Presumption of undue influence

Negate: instruct the other party to seek **independent advice** -> the party is entering the agreement voluntarily, without any pressure or influence.

-> A contract formed as a result of undue influence is voidable at the option of the victim. The victim may avoid the contract only if he acts **promptly** after he is freed from the domination.

Duress

- Duress: actual or threatened violence or imprisonment as a means of coercing a party to enter into a contract

-> The contract is voidable at the option of the victim

interpretation

Statute of frauds

Requires some contracts to be written to be enforceable

1. A promise by an **executor or administrator** to pay estate debts out of his own money,
2. A promise to answer for the debt, default, or miscarriage of another (**guarantee**),
3. An agreement made in **consideration of marriage**,
4. A contract dealing with **interests in land**,
5. **An agreement not performed within one year of its making**, and
6. **Ratification of debts incurred while a minor**.

Guarantee: a conditional promise to pay only if the debtor defaults

Indemnity: a promise by a third party to be primarily liable to pay the debt

Miscarriage: to pay damages for loss caused by the tort of another person

Contractual terms

- **Parol evidence rule** dictates that a written contract generally wins in any dispute of terms
Exception:
 - May help to rectify a contract with errors
 - May prove the contract was never really formed
 - May resolve ambiguities
 - May demonstrate the agreement is incomplete
- Terms in a contract are interpreted on a reasonable (business) person standard
 - Words and phrasing are allowed their ordinary meaning
- Terms may be implied in a contract by a court through interpretation, by statute, or by custom
 - The court will only interpret terms into a contract if they are required to make sense of the contract or to give it an ordinary meaning
 - Terms required in a contract by statute are simply held to be there, as the law requires as much
 - The expectations of business people will reflect on the contract as will

Legal rules:

- 1) Terms in a contract are **interpreted** on a reasonable (business) person standard
- 2) The legal approach to interpretation combines the strict grammatical or plain-meaning of the words used with the surrounding contextual circumstances in which the contract was formed.
- 3) The surrounding contextual circumstances require
 - the purposes of the parties
 - their relationship
 - What did they intend?
 - the circumstances surrounding the contract,
 - the negotiations leading up to it,
 - the knowledge of the parties,
 - the nature of the industry,
 - other relevant facts.

Privity 契约关系

- the relationship that exists between parties to a contract
- The party has enforceable rights or obligations

-> To win a contract lawsuit, the plaintiff must prove **privity of contract** with the defendant—that is, he must show they are both parties to the same contract.

Otherwise, -> use tort

Vicarious performance

a third party to perform someone else's contractual obligations

- the original promisor face contractual liability and tort liability
- Third-party does not face contractual liability, he may face tort liability.
- Vicarious performance is acceptable provided the contract does not specify **personal performance or excluded expressly**

Third party liabilities

Third party might acquire liability under a contract they are not privy to:

- Accepting benefits that come with liabilities attached
- Prior interests in land: [the tenant must perform the promises for the new owner.]
 - Note the interests are generally registered
- Assignment of debt
 - The relevant contract is between two parties not including the debtor

Third party beneficiaries

- The ability of third parties to enforce benefits owed under some contracts is very important
 - Insurance
 - Some charitable arrangements
 - Provision for dependents
- Enforcement here relies on the doctrine of **constructive trusts**
- The concept of third party beneficiaries may also be important for limitation of liability scenarios

Constructive trust

a trust relationship imposed by the court to prevent a party from being unjustly enriched by keeping property that should benefit another

Sometimes the contract containing the promise is not expressly described as a trust, and the promise may be only one part of a larger deal. In some circumstances, equity recognizes that a person holding property is really a trustee, and others are entitled to a share of the property

-> When a court accepts this argument, the restrictions of the privity of contract rule do not apply

exemption clause- employee

a clause in a contract that exempts or limits the liability of a party or third parties

- Constructive trust

exemption clause protects the business from liability for its own breach of contract or negligence, plus any vicarious liability for the torts of employees or other third parties.

1. Did the parties to the contract intend to extend the protection to the third party claiming it?
2. Are the activities of the third party within the scope of the contract generally and the exemption clause in particular?

Assignment 转让

- Assignment can be used to simply reassign debt to a new party
 - Effective at time of notice
 - Cannot be used to avoid debt set-off
 - the right of a promisor to deduct an existing debt owed to him by the promisee
 - Invite some problems of risk assessment
 - Must be absolute
- Assignment may also occur by law
 - Bankruptcy
 - only if he qualifies for a certificate stating that the bankruptcy was caused by misfortune and without any misconduct on his part
 - He is discharged only from the debts disclosed to the trustee. The trustee distributes the any assets of the debtor among the relevant creditors. No further collection efforts may be taken against the debtor
 - Estate trustee

Discharge

Contracts can end or be discharged in different ways

By performance

Contract ends when all parties have performed all obligations

tender of performance

when one party tries to fulfill obligations but is refused, creates a very specific situation

- The obligation to perform remains, but the onus is on the other party now
- Tender must be according to the terms of the contract, or refusal is legitimate

- Credit instruments are not legal tender for this purpose unless expressly allowed for
The debtor must seek out her creditor.
The onus is on the debtor to find and pay her creditor.

One party attempt to perform, the other refuse -> sue for breach of contract

By agreement

- If both parties have unperformed obligations under a contract, then an agreement to end the contract is supported by mutual consideration
- If one party has fully performed, this agreement would need to be made **under seal** or supported by some other consideration [new consideration -> binding]

-> A party who fails to perform without securing a waiver by the other commits a breach of the contract

- **Minor alteration** of terms are simply amendments by agreement
- Changes to **major terms** amount to a **new contract and require novation**
 - The object is a new agreement
 - New parties involved definitely require novation
 - **Novation: the parties to a contract agree to terminate it and substitute a new contract**
 - a **material change** in terms
 - a change in **parties**
 - There must be evidence of intention and agreement to abandon the original ..
 - -> the new agreement discharge the order, and the penalty disappear with it
 - -> the liability of the former owner may be discharged and replaced by the liability of the purchaser
- Accord and satisfaction can allow for substitute or partial performance to discharge the contract
 - The object isn't a new contract, it is to end the current one
 - **accord and satisfaction** : a compromise between contracting parties to substitute a new contractual obligation and release a party from the existing one [settle lawsuit]

condition precedent

an event that must occur before the contract has any force

- May be oral understanding or a term
- If the condition becomes impossible to fulfill, the parties need not perform

condition subsequent

a future event that brings a promisor's liability to an end if it happens

- Often an act of God, destruction of goods, or similar event
- An option to terminate (requiring it to be exercised) is also sometimes present
 - The choice to bring the contract to an end before its performance has been completed, usually by giving notice.
 - The party decides whether to trigger the discharge of the contract.

By frustration

Frustration may occur where performance of a contract has become impossible

Requirements:

Intervening event:

- After formation of contract
- Beyond control of parties
- Not self-induced
- Unforfeitable
- Not addressed in the contract

Impossible performance:

- Physical impossible
- Ridiculously difficult
- Permanent, not temporary
- Affects nature, meaning or purpose - material change of performance
- More than inconvenience, hardship or expense

[e.g. physical destruction, ill]

-> contract discharged by frustration

-> Frustration ended all obligations to perform, restore parties to original position

- If money has been paid or as owing to one party and that party has incurred expenses, the payment may be retained to cover expenses
 - Only to extent required to cover costs

-> when the contract has a term anticipating the foreseeable circumstance, the doctrine of frustration does not apply.

Sales of goods act

- If the specific goods are identified: "they must be identified and agreed upon at the time the sale is made.
- perish without fault
- the buyer has not yet taken possession of the goods (the risk hasn't passed to buyer)

-> both parties discharged from contract by frustration. Seller cannot sue for the price, buyer cannot sue for failure to deliver. Buyer can recover any deposit that has made.

Otherwise, frustrated contracts act applies

- Any deposits are returned, **less expenses**
- Amount owing can only be sued for if they apply against actual expenses
- If no deposits or sum is owed, the seller can only **recover for the value of goods actually shipped**

If the **source of goods is specified** in a contract and is destroyed, the contract is frustrated [specific banana plantation]

Otherwise, the contract is valid and performance can be expected from an alternative source

If the subject matter has ceased to exist at the time of the agreement, the agreement is void for **mistake**

self-induced frustration

a party willfully disables itself from performing a contract in order to claim that the contract has been frustrated

By operation of law

Limitations act

In Ontario, no action for breach or damages can be brought after two years (from you aware) have passed

- The time period begins to run at the point when the cause of action arises or is discoverable by a reasonably diligent plaintiff

After this period, the contract remains in effect, but **cannot be enforced**

- If one party renounces or acknowledges their obligations under contract, it may revive

Other operations of law may relate to illegality, fraud, duress...

Breach of contract

Occurs when

- a party repudiates its obligations by word or deed
- A party does not carry out one or more terms of the agreement
 - Not performing what is required
 - Performing below what is required

Major breaches or breaches of condition

a breach of the whole contract or of an essential term so that the purpose of the contract is defeated

- Contract may be treated as ended, and damaged party stop performing and sue for damage
- Damaged party may also treat the contract as still in form, continue performing, and then sue for damages

condition

a major or essential term of the contract, the breach of which may relieve the injured party from further performance

Minor breaches or breaches of warranty

a breach of a non-essential term of a contract or of an essential term in a minor respect

- Contract continues in force and damaged parties must continue performing their obligations
- Sue for damages

warranty

a lesser or non-essential term that, when breached, does not relieve the injured party from performance

Ongoing failure

- In an installment contract, 分期履行 where some failure has occurred, the purchaser may seek goods elsewhere and treat the contract at an end if
 - There is good reason to believe that future performance will also be equally defective
 - The actual, or expected, deficiency is **significant** relative to the required performance

• The doctrine of substantial performance

- The X has performed a **substantial** portion of the contract, and failed in only a **minor** way, X can continue and still **enforce the contract**
- Y's only remedy is in the form of damages

- Where a party accepts certain failures to perform, either explicitly or implicitly, the right to treat the contract as repudiated may be lost
 - X fails to fully perform but Y accepts the partial performance
 - X performs in some substandard way, but Y accepts the performance and receives benefit from the contract, only learning of the breach later

Express repudiation

- happens when one of the contracting parties communicates to the other that it does not intend to perform as it promised.

- Repudiation can be by words or by conduct that shows an intention not to be bound by the contract. they do not intend to perform
- > If the repudiation is of the whole contract or of a substantial part of it, the promisee is entitled to treat the contract as being immediately at an end,
- > the promisee must **inform** the repudiating party that it is treating the contract as immediately terminated -> find another party to perform, and to sue for whatever damages it sustains.

Anticipatory Breach

an express repudiation that occurs before the time agreed for performance

- Y can still wait and hope that X will still perform, as discussed
- Y can also sue immediately, and treat the contract as ended, no matter that the time for performance hasn't yet occurred

Exemption Clauses

- Exemption clauses excuse one party from its failure to perform or limit its liability
 - Requirements:
 - **Adequate notice**, and attention to the clause
 - Strict construction will apply, and the clauses will be limited to their **direct wording**
 - There is no undue influence, misrepresentation, duress, etc.
- > no remedy

unconscionable terms 不合情理的条款

terms agreed to by parties of **unequal bargaining power** that give an **unfair advantage** to the powerful party over the weaker party

-> court may refuse to protect a defendant

violation of public policy and public interest

-> The court may refuse to enforce the exemption clause that would protect the offender.

Remedies

- When a breach has occurred, and the court awards damages, it may come in several forms
 - Expectation damages
 - Equitable remedies
 - Restitution (Rescission)

Expectation damages

the value of the expected benefit of performance

- Damages are then awarded to put the party who has suffered from a breach in the same position as if the contract had been performed

consequential damages

secondary losses incurred by the non-breaching party that were **foreseeable** at the time of contracting

[is it reasonably foreseeable? (notice?)]

Mitigation

- Where breach has occurred, parties are expected to act reasonably to limit their losses
- an injured party can only recover for the losses resulting from the breach that could not be reasonably avoided

[should make reasonable effort to ..]

Foreseeability

- Damages for breach will only be awarded for what is reasonably foreseeable
- If some special risk is associated with a failure to perform the contract, and notice of this risk is given to the breaching party, then it may fall within what is reasonable foreseeable

[had not told -> unusual, unexpected consequence -> the court will refuse to award damages
The defendant should have foreseen the risk? -> due for damage, including the loss of profit, expense]

liquidated damages 违约金

an amount agreed on to be paid in damages by a party to a contract if it should commit a breach

- The court will not generally award punitive damages, and therefore agreements on liquidated damages including forfeited deposits must reflect the **true cost of breach**
- X penalty clause

-> If court find that it is intended merely to frighten a party into performance. Accordingly, the court will hold that it is a penalty clause and will disregard it and award damages based on an assessment of the actual loss suffered.

reliance damages

costs of expenditures and wasted effort reasonably made in preparation for performance

-> putting the injured party back in their pre-contract position.

Sale of Goods Act

- Note that the “sale” of goods may be immediate or it may pertain to a [future transfer](#) – an “agreement to sell”
- The goods in question must be [tangible goods](#), or “chattels,” rather than services
- The consideration must be [monetary](#)

The Sale of Goods Act applies to

- sales (and agreements to sell: [future transfer](#))
- goods (not services, unless other legislation extends the protection)
- all parties to the sale contract, including businesses, consumers, individuals, and corporations

The Sale of Goods Act does not apply to

- exchanges of goods (barter)
- bailments or leases (see [Chapter 15](#))
- consignments (see below)
- non-contractual transfers of property or goods
- sales of land or intangible property
- supply of services (see consumer protection exception)

Terms in a Contract for Sale

- This establishes the default rule, that when a buyer has the opportunity to inspect goods for purchase they are responsible to determine their condition
 - This does not excuse any misrepresentations from the seller
 - Also does not negate the following implied terms

Implied Terms

- seller actually has title – that is, owns the goods in question
- goods will match any description offered
 - This in relation to their tangible qualities such as material, size, etc.
 - Not in relation to more abstract claims
- An implied condition that the seller has a [right to sell](#) the goods;
 - in the case of an agreement to sell the seller will have a right to sell the goods at the time when the property is to pass;
- An implied warranty that the buyer will enjoy [quiet \(undisturbed\) possession](#) of the goods;

- An implied warranty that the goods will be free from any lien, charge or encumbrance unknown to the buyer before or at the time when the contract is made.任何留置权、费用或产权负担

-> sue for breach of contract, receive damage reward

- an implied condition that the goods will correspond with the description under which they are sold
 - Characteristics not praise
- An implied condition that the actual goods supplied will correspond to that sample in type and quality
 - that the bulk will correspond with the sample in quality;
 - the buyer will have a reasonable opportunity of comparing the bulk with the sample
 - the goods will be free from any defect rendering them unmerchantable that would not be apparent on reasonable examination of the sample
- it is implied that the goods are of a type that is suitable for the purpose for which they are bought
 - This applies automatically to the obvious and natural use the goods
 - The buyer should declare this purpose specifically if it is not one of the general uses for such goods
- an implied condition that the goods will be reasonably fit for the purpose for which they are required if that purpose was made known to the seller

[argue: rely on seller's skill and judgement?]

- When specialized goods are bought under their trade name the buyer assumes responsibility for their use as intended
- it is implied that the goods are in reasonable condition (merchantable quality) and free from defects that would make them unsuitable for use
 - [the buyer could not have discovered the defects, defects at the time of sale, not later!]
 - someone would reasonably pay full price for them, with full knowledge about them

Fitness and Quality

- goods sold are fit for use
- This applies automatically to the obvious and natural use the goods
 - Food is assumed fit for human consumption
 - Though animal feed would need to be fit only for consumption by animals
- If a less obvious use is specified by the buyer, however, there is also an implied term that the goods are fit for that use also
- When specialized goods are bought under their trade name the buyer assumes responsibility for their use as intended
 - Someone buying medical isotopes, for example, has to know what they are and are not good for
- Goods are also implied to be in “merchantable quality” unless specified otherwise
 - That is, someone would reasonably pay full price for them, with full knowledge about them
- When a sample is provided, there is an implied term that the whole will be of similar quality

Payment

- Unless otherwise specified, it is assumed as a term in the [contract that payment and delivery occur concurrently](#)
 - That is, money is due on delivery
- Quantity, time and location of delivery are normally [express terms](#) in the contract, and are considered [conditions if breached](#) (i.e. major breach)
- Terms may also be made clear in the conduct of the transaction
 - The courts interpret the [time set for payment as a warranty](#)
 - a seller is not entitled to rescind the contract of sale and have the goods back simply because payment is not made on time.
 - A term specifying the [quantity of goods to be delivered is a condition](#). If the term is broken—that is, if the seller delivers a substantially different quantity—the buyer is free to reject the goods
 - [The time specified for delivery is also usually a condition](#), so that if the goods are not delivered on time, the buyer may rescind the contract.
- Risk, by assumption, passes from seller to buyer along with the goods themselves
 - The party that has title ordinarily suffers the loss.
 - For this reason, we must identify the moment in time when ownership passes from seller to buyer—when does title pass?

Title transfer

title to goods passes from the seller to the buyer as follows.

specific goods: goods in existence, identified and agreed upon as the subject matter of the sale

Rule 1: where there is an unconditional contract for the sale of specific goods in a deliverable state, when the contract is made

Rule 2: where there is a contract for the sale of specific goods and the seller is bound to do something to the goods to put them into a deliverable state, when the buyer has received notice that it has been done

Rule 3: where there is a contract for the sale of specific goods in a deliverable state but the seller is bound to do something to ascertain their price, when the buyer has received notice that it has been done

Rule 4: where goods are delivered to the buyer on approval or on "sale or return," when the buyer signifies his approval, or does some other act adopting the transaction, or when the buyer retains the goods beyond a reasonable time

Rule 5: where there is a contract for the sale of unascertained goods or future goods by description, when goods of that description and in a deliverable state are appropriated to the contract by one party with the assent of the other