

MISTAKE

Renders contract void

Mistake about quality of goods does not render contract void.

TYPE OF MISTAKE

Common Mistake: Both parties have same misapprehension
E.g. At time of contracting, subject matter of contract is destroyed

Mutual Mistake: Both parties mistaken about different things. Objective test - if contract would be inferred by words/conduct, it will still be binding
E.g. A offers to sell one thing while B offers to buy another

Unilateral Mistake: One party is mistaken and other party knows/is deemed to know
E.g. D's offer was not an accurate reflection of their true intention
E.g. Mistaken belief as to nature of a document (even where signed)

TYPE OF MISTAKE (cont)

Unilateral Mistake of Identity: Only void in precise circumstances
Seller must establish that identity rather than attributes was of vital importance

Distance selling - presumed that seller intended to deal with persons named in correspondence if they are an identifiable third party
If the attributes of buyer influenced contract, can only be voidable for misrepresentation

PRIVITY

No person can sue or be sued on a contract unless they are party to it

EXCEPTIONS TO PRIVACY - CA 1999

Contract (Rights of Third Parties) Act 1999	Third party to a contract can enforce it in certain circumstances	Contract still be enforced against third party	Contract can exclude this Act
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EXCEPTIONS TO PRIVACY - AGENCY

Where principal is named, agent is authorised and consideration has moved from principal, principal is party to contract, not agent	E.g. Director signs lease on behalf of company, company is party to contract, not director
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EXCEPTIONS TO PRIVACY - ASSIGNMENT

Where A contracts with B and B assigns contract rights to C, C may sue A on their promise to B	Permitted unless non-assignment clause or limitation clause restricts/excludes
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EXCEPTIONS TO PRIVACY - COLLATERAL

E.g. A employs B to paint house. Contract states A will specify paint to be used. C informs A their paint lasts 10 years so A instructs B to buy and use C's paint. Paint lasts only 1 year. A can sue C as A & C have communicated and there was consideration in C's warranty of 10 years to A and A's instruction to B to buy the paint.

EXCEPTIONS TO PRIVACY - TORT

Where there is a duty of care owed to a third party, third party can sue in negligence (Donoghue v Stevenson)



DISCHARGE BY PERFORMANCE

Expiry	Contract will expire when completed on its own terms
Entire Obliga-tions	Contractual obligations discharged by complete perfor-mance of obligations

EXCEPTIONS TO ENTIRE OBLIGATIONS

Partial perfor-mance	Innocent party may accept partial perfor-mance	Performing party entitled to payment on quantum meruit basis
Substa-ntial perfor-mance	If lack of performance doesn't go to root of contract, it will be substa-ntially performed	Performing party entitled to contract price subject to deduction to reflect 'cost' of remedy
Divisible obliga-tions	Where contract is clearly intended to be divided into parts, e.g. salary	Performing party entitled to payment for each part performed

EXCEPTIONS TO ENTIRE OBLIGATIONS (cont)

Wrongful prevention of perfor-mance	One party performs part of agreement but is prevented from completing by some fault of the other party	Performing party entitled to sue for damages for breach OR claim a quantum meruit
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LIQUIDATED DAMAGES CLAUSE

Clause which stipulates certain sum payable on particular breach of contract: EITHER	A primary clause - part of the primary obligations furthering commercial objective of contract; OR A secondary clause - obligation triggered by breach to compensate innocent party BUT does not impose disproportionate detriment to any legitimate interest of the innocent party in performing primary obligations
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Will NOT be a penalty if it protects a legitimate business interest and imposes a detriment which is not disproportionate to protect the legitimate interest

Valid liquidated damages clause will be binding

DISCHARGE BY AGREEMENT

Subsequent binding contract	Agreement that obligation will be released (accord) and consideration for the promise to release a party from obligations (satisfaction) required.	Discharges the former obligations
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Operation of a term in the contract	Condition precedent	Where contract is suspended until a condition is satisfied
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	Condition subsequent	Where contract is terminated and outstanding obligations discharged in the event of a specific occurrence, e.g. by notice
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DISCHARGE BY FRUSTRATION

Events might occur after the formation of the contract which render performance radically different from agreed to at the time of contracting	Relieves parties from further obligations. Contract is brought to an end automatically: the parties have no choice in the matter
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Frustration: Common Purpose is Frustrated

Common purpose for entering contract can no longer occur due to supervening event	E.g. renting out and agreeing to rent room for purpose of viewing a procession. If procession is cancelled, contract may be discharged by frustration
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Frustration: Performance is impossible

Due to partial/total destruction of some object necessary to performance of contract	Due to destruction of asset not part of subject matter, but essential to performance
Due to death/illness of one of the parties	Due to unavailability, e.g. in shipping

Frustration: Performance is illegal

A change in law or state intervention may render performance illegal

LIMITATIONS ON FRUSTRATION

A frustrating event is not merely an increase in expense/onerousness

A frustrating event is not something caused by the default of a party (i.e. self-induced)

A frustrating event is not something which parties could have reasonably contemplated

A frustrating event is not something provided for in the contract

CONSEQUENCES OF FRUSTRATION

All future obligations automatically discharged by common law

Money paid before frustrating event can be recovered

Money that should have been paid no longer needs to be paid

Expenses incurred by payee can be recovered:

- Expenses must be directly related to performance of contract to be recoverable
- Amount recoverable capped and cannot exceed:
 1. Actual expenses incurred; AND
 2. Amount paid/payable prior to frustrating event

PARTICULAR TYPES OF LOSS

Mental distress	Damages not awarded in relation to distress, anguish or annoyance caused by breach	Damages awarded where major/whole object of contract was to provide pleasure, relaxation and peace of mind
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Loss of reputation	Damages not awarded	Limited exception where contract adversely affects future prospects if contract contained implied/express term not to (very rare)
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PARTICULAR TYPES OF LOSS (cont)

Loss of chance	Damages not awarded if too speculative (instead, expectation interest)	Recoverable if lost chance is quantifiable in monetary terms and there was a real and substantial chance
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Damages on behalf of another	Damages not awarded on behalf of another/for losses suffered by another	Exceptions relating to privity
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PENALTY CLAUSE

A liquidated damages clause which requires party to pay excessive sum such that it becomes penalty

A secondary clause - imposes a disproportionate detriment to any legitimate interest of innocent party in performance of the primary obligation

CAUSATION

C must establish that:	(1) Breach by D objectively caused their loss(es)
	(2) D should be held responsible for loss(es) which have objectively been caused by D's breach



MITIGATION

Injured party should take objectively reasonable steps to minimise the effect of breach

No obligation to mitigate but losses attributable to failure to mitigate are not recoverable

No duty to mitigation a claim for payment of debt/liquidated damages (amount is payable as contractual right, not as damages)

GUARANTEE

A promise by X to ensure that Y carries out its obligations, or a promise to fulfil those obligations itself if Y does not

X's obligation is effectively defined by Y's obligation: so X cannot face any obligation that is greater than Y's obligation

INDEMNITY

A promise by X to reimburse Z in the event that they suffer a stated loss

Primary obligation: X's obligation is legally independent of Y's obligation, although what X has to pay will be affected by what Y pays

E.g. Party X agrees to indemnify Party Z from any losses which arise from the failure to recover the sum loaned to Party Y

REMEDIES FOR BREACH

Compensate C for damage, loss or injury suffered as a result of D's breach	Specific performance, injunction, damages
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Breach Damages: Expectation Interest

Cost of cure (most frequent):	Cost of substitute/remedial work required to put C in position they would have been in had contract been properly performed C must act reasonably
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Diminution in value:	Calculated by reference to difference in value between performance received and performance promised
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Loss of amenity:	Non-economic loss of pleasure
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Breach Damages: Reliance Interest

Puts C back in position they would have been in if not for the contract

Recover expenses which have been incurred in preparing for, or in part performance of, contract, which have been rendered pointless by breach

Can only recover wasted expenditure, not all expenditure

Limited to reliance if expectation damages are highly speculative

Breach Damages: Restitution Interest

The interest C has in the restoration of benefits which D has acquired at C's expense

Awarded in exceptional circumstances where other remedies are inadequate

Breach Remedy: Specific Performance

Requires D to carry out its obligations under a positive term of the contract

For this remedy, subject matter of contract must be unique/irreplaceable

Will not be awarded if damages are an appropriate and adequate remedy

Will not be awarded where it would cause undue hardship on D

Will not be awarded for breach of contracts of employment

Will not be awarded for breach of an obligation to perform a series of acts requiring constant supervision of court

Will not be awarded for breach of a contract which is not binding on both parties

Breach Remedy: Prohibitory Injunction

Restrains a party from breaching a negative term

Will not be granted if damages are an appropriate and adequate remedy

May be limited to what is considered reasonable in all circumstances of the case

Only granted where 'just and convenient'

REMEDIES UNDER CRA 2015

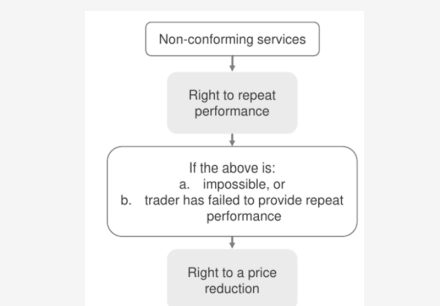
Remedies for consumer when implied terms of contracts between businesses and consumers are breached



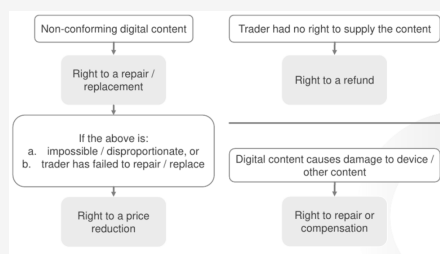
CRA Remedies: Contracts for Goods



CRA Remedies: Contracts for Services



CRA Remedies: Contracts for Digital Content



RE MOTENESS

Loss must be of a type ordinarily and naturally arising from breach to be recoverable

If loss is too unusual and far-reaching to satisfy the above, C must establish that D had sufficient actual knowledge of the particular and special circumstances to be aware of the risk to those losses

RE MOTENESS (cont)

(Losses must be a type arising naturally within the reasonable contemplation of both parties to be recoverable)

DISCHARGE BY BREACH

Anticipatory Breach: Party indicates it will not perform its contractual duties - it renounces the contract. Innocent party has immediate right to 'accept' renunciation and treat contract as terminated.

Repudiatory Breach: Breach of warranty (or innominate term treated as such). Damages only.

Breach of condition (or innominate term treated as such): Damages plus right of election. Elect to terminate. Notification required; must mitigate loss.

DISCHARGE BY BREACH (cont)

Elect to affirm: Contract remains; unequivocal commitment to continue; not (often) required to mitigate losses; need legitimate interest; C must not require D's cooperation