

Index

ACCEPTANCE

- Communication of, **2:27 to 2:36**
- Counter-offers, **2:21**
- Defined, **2:19**
- Post-“Acceptance” negotiations, **2:20**
- Standard form document, **2:22 to 2:25**
- Unilateral contacts, performance and motive, **2:26**

ACCEPTANCE, COMMUNICATION OF

- Generally, **2:27**
- Communication at distance, **2:32 to 2:36**
- Silence, **2:28**
- Waiver of notification, **2:29 to 2:31**

AGENCY

- Generally, **7:16**
- Exclusion clauses, **7:17**

AGREEMENT

- Acceptance, **2:19 to 2:36**
- Certainty of terms, **2:37 to 2:43**
- Consensus ad idem, **1:3, 2:1 to 2:4**
- Contract, as, **1:3**
- Invitation to treat, **2:6 to 2:12**
- Offer, **2:5 to 2:18**

ANTICIPATORY BREACH

- Acceptance, **19:6 to 19:8**
- Consequences, **19:7 to 19:8**
- Defined, **19:3 to 19:4**
- Mitigation, and, **22:39**
- Wrongful, must be, **19:5**

ASSIGNMENT

- Generally, **21:1**
- Benefit of contract at common law, **21:2**
- Benefit of contract in equity, **21:3 to 21:5**
- Benefit of contract under statute, **21:6 to 21:9**
- Burdens or liabilities under contract, **21:11 to 21:12**
- Operation of law, by, **21:13**
- What is assignable, **21:10**

BAILMENT

- Generally, **7:15**

BAIN V. FOTHERGILL

- Generally, **22:17**

BILATERAL CONTRACTS

- Acceptance, communication, **2:31**
- Defined, **1:2, 2:3**

BILATERAL MISTAKE

- Fundamental assumptions, **9:8 to 9:13**
- Mistaken assumption about existence of subject-matter, **9:9**
- Mistaken assumption about legal ownership, **9:10**
- Mistaken assumption about quality, **9:11 to 9:13**
- Terms, **9:7**

BREACH

- Anticipatory, **19:3 to 19:8**
- Discharge by, **19:2**
- Repudiation, **19:4, 19:7 to 19:8**
- Varieties of, **19:1**

BROWSE WRAP CONTRACTS

- Generally, **2:35**

BUSINESS CORPORATIONS, CAPACITY TO CONTRACT

- Generally, **6:27 to 6:28**

CAPACITY

- Generally, **6:1 to 6:2**
- Artificial persons, **6:24 to 6:29**
- Business corporations, **6:27 to 6:28**
- Contracts with common party, **6:2**
- Crown, **6:25 to 6:27**
- Elderly and disabled, **6:23**
- Incompetent persons, **6:17 to 6:20**
- Intoxicated persons, **6:21 to 6:22**
- Minors, **6:3 to 6:16**
- Municipal corporations, **6:29**
- Trade unions, **6:31 to 6:32**
- Unincorporated associations, **6:30 to 6:32**

CERTAINTY OF TERMS

- Generally, **2:37**
- Agreement to agree, **2:40**
- Anticipated formalization, **2:41 to 2:43**
- Missing terms, **2:39**
- Vague terms, **2:38**

CLICK WRAP CONTRACTS

- Generally, **2:35**

COLLATERAL CONTRACTS

- Benefits, generally, **16:2**
- Clear and certain terms, **16:10**
- Consideration, **16:11**
- Contractual intention, **16:9**
- Defined, **16:1**
- Illegality, **16:5**
- No contradiction, **16:12 to 16:14**
- Parol evidence rules, **16:7**
- Privity of contract, **16:3**
- Requirements, generally, **16:8**
- Revocation of offers of unilateral contracts, **16:4**
- Statute of Frauds, **16:6**

CONDITIONS

- Generally, **1:5, 14:15, 14:16, 14:18, 19:14**
- Conditions precedent, see **CONDITIONS PRECEDENT**

CONDITIONS PRECEDENT

- Effect, **13:2**
- Obligations under, **13:4**
- Transformation of, **13:1**
- Waiver, **13:3**

CONDITION VS. WARRANTY

- Generally, **14:15**
- Conditions, **14:16**
- Innominate or intermediate terms, **14:18**
- Warranties, **14:17**

CONSENSUS AD IDEM

- Generally, **1:3, 2:1**
- Bilateral, **2:2, 2:3**
- Unilateral, **2:2, 2:4**

CONSIDERATION

- Generally, **1:4, 4:1 to 4:4**
- Exceptions, **4:19 to 4:20**
- Mutuality, **4:4 to 4:5**
- Past consideration, **4:14 to 4:16**
- Proof, **4:17 to 4:18**

CONSIDERATION—Cont'd

- Statutory changes, **4:20**
- Sufficiency, **4:6 to 4:13**

CONTRACT UNDER SEAL

- Generally, **1:4, 4:19**
- Business corporations, **6:28**
- Municipal corporations, **6:29**
- Performance obligations, **17:7**
- Privity, **7:12**

CROWN, CAPACITY TO CONTRACT

- Generally, **6:25 to 6:26**

DAMAGES

- Assessment of substantial damages, **22:24 to 22:31**
- Bain v. Fothergill, doctrine of, **22:17**
- Causation in fact, **22:13**
- Common law, **22:1 to 22:8**
- Concurrent and alternative claims, **22:2 to 22:6**
- Disgorgement, **22:23**
- Equity, **22:9 to 22:11**
- Intangible loss, **22:19**
- Leases, **22:18**
- Limitation of actions, **22:8**
- Mitigation, **22:36 to 22:39**
- Pre-assessment, **22:32 to 22:35**
- Punitive, **22:22**
- Quantification, **22:21 to 22:35**
- Recoverability vs quantification, **22:12**
- Remoteness in law, **22:14 to 22:16**
- Substantial and nominal, **22:21**
- Transferred third party losses, **22:20**

DISGORGEMENT DAMAGES

- Generally, **22:23**

DURESS

- Generally, **11:1**
- Economic, **11:4**
- Extension at common law, **11:3**
- Person, to the, **11:2**

ELDERLY AND DISABLED PERSONS, CAPACITY TO CONTRACT

- Generally, **6:23**

ELECTRONIC CONTRACTS

- Acceptance, communication at distance, **2:35 to 2:36**
- Electronic commerce legislation, **2:36**

INDEX

EQUITY

- Contract, and, **1:7**
- Contract under seal, enforcement, **4:19**
- Damages for breach, **22:9 to 22:11**
- Promissory estoppel, see **PROMISSORY ESTOPPEL**
- Statute of Frauds, and, **8:12**

ESTOPPEL BY REPRESENTATION

- Generally, **5:2**

EXCHANGE

- Generally, **1:1, 1:2, 1:4**

EXCLUSION CLAUSES

- Generally, **15:1**
- Notice, **15:2**
- Scope, **15:3**
- Tercon approach, **15:4**

EXECUTED AGREEMENTS

- Generally, **2:43**

EXECUTORY AGREEMENTS

- Generally, **2:42**

EXPRESS TERMS

- Alteration of documents, **14:8**
- Construction of written documents, **14:6**
- Defined, **14:1**
- Interpretation, **14:3, 14:7**
- Parol evidence rule, **14:4 to 14:5**
- Statements that are terms, **14:2**

FRUSTRATION

- Generally, **20:3**
- Effects at common law, **20:12**
- Express terms, effect, **20:8**
- Juridical basis, **20:4 to 20:7**
- Land, **20:11**
- Legislation, effects, **20:13**
- Sale of goods, **20:10**
- Self-induced, **20:9**

GOOD FAITH

- Generally, **18:1 to 18:2**
- Duties arising from specific circumstances, **18:4 to 18:7**
- Duties arising from specific relationships, **18:8 to 18:10**
- Good faith duties after Bhasin, **18:11**
- Good faith duties predating Bhasin, **18:4 to 18:10**
- Organizing principle, **18:3**

HARVELA INVESTMENTS LTD. V. ROYAL TRUST COMPANY OF CANADA (C.I.) LTD.

- Generally, **2:10**

ILLEGALITY AND PUBLIC POLICY

- Generally, **12:1**
- Common law, **12:9 to 12:14**
- Consequences, **12:15 to 12:20**
- Contracts affecting marriage, **12:13**
- Contracts injurious to State, **12:11**
- Contracts in restraint of trade, **12:14**
- Contracts involving or encouraging immorality, **12:12**
- Contracts that interfere with administration of justice, **12:10**
- Contracts to commit illegal acts, **12:9**
- Doctrine of public policy, **12:8**
- Express and implied prohibitions, **12:3 to 12:6**
- Illegal performance, **12:7**
- Recovery despite illegality, **12:17 to 12:20**
- Severance, doctrine of, **12:16**
- Statutory, **12:2 to 12:7**
- Voidness of transaction, **12:15**

IMPLIED TERMS

- Business efficacy, doctrine of, **14:10**
- Possibility of implication, **14:9**
- Previous dealings, **14:11**
- Statute, under, **14:13**
- Theory, **14:14**
- Usage and custom, **14:12**

IMPOSSIBILITY

- Effects at common law, **20:12**
- Express terms, effect, **20:8**
- Juridical basis, **20:4 to 20:7**
- Land, **20:11**
- Legal, **20:2**
- Legislation, effects, **20:13**
- Physical, **20:1**
- Sale of goods, **20:10**
- Self-induced, **20:9**

INCOMPETENT PERSONS, CAPACITY TO CONTRACT

- Effect of incompetence, **6:17**
- Fairness, **6:19**
- Knowledge of other party, **6:18**
- Liability for necessaries, **6:20**

INJUNCTIONS

- Adequacy of damages, **23:8**
- Availability, **23:6**
- Interlocutory and interim injunctions, **23:10**
- Nature and scope, **23:5**
- Negative obligations, **23:7**
- Permanent injunctions, **23:9**

INNOMINATE OR INTERMEDIATE TERMS

- Generally, **14:18**

INTENTION TO CONTRACT

- Generally, **3:1**
- Commercial agreements, **3:7**
- Dealings with government, **3:4**
- Domestic arrangements, **3:5**
- Informally expressed agreements, **3:3**
- Preliminary agreements, **3:2**
- Religious associations, **3:6**
- Social arrangements, **3:5**
- Voluntary associations, **3:6**

INTOXICATED PERSONS, CAPACITY TO CONTRACT

- Ratification, **6:22**
- Voidability of contracts, **6:21**

INVITATION TO TREAT

- Generally, **2:6**
- Advertisement, catalogues, displays, **2:7**
- Calls for tenders, **2:9 to 2:12**
- Exceptions, **2:8**

LEGAL IDEA OF CONTRACT

- Generally, **1:1**
- Agreement, **1:3**
- Equity, and, **1:7**
- Exchange, **1:4**
- Promise, **1:2**
- Theories, **1:8 to 1:10**
- Tort, and, **1:5**
- Unjust enrichment, and, **1:6**

MINORS, CAPACITY TO CONTRACT

- Generally, **6:3**
- Adult guarantor or surety, liability of, **6:15**
- British Columbia, **6:16**
- Effect of the law, **6:4**
- Enforceable contracts, **6:5 to 6:7**

MINORS, CAPACITY TO CONTRACT

—Cont'd

- Invalid contracts, consequences, **6:11 to 6:13**
- Tort, alternate liability, **6:14**
- Voidable contracts, **6:8 to 6:9, 6:12**
- Void contracts, **6:10, 6:13**

MISREPRESENTATION

- Generally, **10:18**
- Actual reliance, **10:16 to 10:17**
- Elements, **10:4 to 10:17**
- False statement, **10:13**
- Fraudulent, **10:19**
- Material, **10:14 to 10:15**
- Pre-contractual statements, classification, **10:1 to 10:3**
- Statement, **10:5 to 10:7**
- Statement of fact, **10:8 to 10:12**

MISTAKE

- Generally, **9:1**
- Bilateral mistakes, **9:7 to 9:13**
- Unilateral mistake, **9:2 to 9:6**

MITIGATION OF DAMAGES

- Anticipatory breach, and, **22:39**
- Duty, **22:36**
- Forms, **22:37**
- Reasonable, **22:38**

MUNICIPAL CORPORATIONS, CAPACITY TO CONTRACT

- Generally, **6:29**

MUTUALITY

- Generally, **4:4 to 4:5**

NON EST FACTUM

- Generally, **6:23, 9:6, 9:13**

NUDUM PACTUM

- Generally, **1:4, 2:14**

OFFER

- Communication of, **2:13**
- Death, **2:18**
- Defined, **2:5**
- Invitation to treat, **2:6 to 2:12**
- Lapse of offer, **2:17 to 2:18**
- Revocation, **2:14 to 2:16**

PAROL EVIDENCE RULE

- Collateral contracts, **16:7**
- Express terms, **14:4 to 14:5**

INDEX

PAST CONSIDERATION

Generally, **4:14**
Legality, **4:15**
Source, **4:16**

PERFORMANCE

Accord and satisfaction, **17:14**
Alternatives, **17:9 to 17:15**
Dependent obligations, **17:5 to 17:6**
Independent obligations, **17:7**
Merger, **17:15**
Novation, **17:13**
Strict performance, **17:1 to 17:4**
Substantial performance, **17:8**
Tender, **17:10**
Variation, **17:12**
Waiver, **17:11**

POSTAL ACCEPTANCE RULE

Generally, **2:14, 2:34, 2:35**

PRIVITY

Agency, **7:16 to 7:17**
Bailment, **7:15**
Case against privity, **7:3 to 7:9**
Chattels, restrictions on, **7:26**
Consideration, and, **7:10**
Contracts under seal, **7:12**
Defined, **7:1**
Development of doctrine, **7:2**
Irrevocable letters of credit, **7:24**
Joint and several parties, **7:11**
Modifications to doctrine, generally, **7:13**
Negotiable instruments, **7:24**
Principled exception, **7:18 to 7:23**
Statute, **7:25**
Third party standing, **7:27**
Trust, **7:14**

PROMISSORY ESTOPPEL

Generally, **5:1**
Cause of action, as, **5:10 to 5:13**
Clear promise or assurance, **5:5**
Defence, **5:9**
Detriment, **5:8**
Existing legal relationship, **5:4**
Intention to be bound, **5:6**
Other doctrines, distinction from, **5:2**
Reliance, **5:7**
Requirements, **5:3**

PROOF OF CONSIDERATION

Express, **4:17**
Implied, **4:18**

PROPRIETARY ESTOPPEL

Generally, **5:2**

PUNITIVE DAMAGES

Generally, **22:22**

QUANTUM MERUIT

Generally, **2:13, 2:39, 6:29, 8:12, 19:7, 22:5, 22:10**

QUANTUM VALEBAT

Generally, **2:39, 22:5**

QUASI-CONTRACT

Generally, **1:6, 22:6**

QUID PRO QUO

Generally, **1:4, 4:1, 4:3, 4:6, 4:16, 4:17**

RECTIFICATION

Bars, **23:23**
Common intention, **23:21**
Essential elements, **23:19 to 23:22**
Evidence, **23:22**
Mistake, **23:20**
Nature and problems, **23:18**

RESCISSION

Barriers, **23:16**
Common law, **23:11**
Equitable, **23:12 to 23:15**
Fraud, **23:13**
Importance of restitutio, **23:17**
Inequitable bargains, **23:15**
Innocent misrepresentation, **23:14**

RESTITUTIO IN INTEGRUM

Generally, **6:12, 23:11, 23:12, 23:15, 23:17**

R. V. RON ENGINEERING & CONSTRUCTION (EASTERN) LTD.

Generally, **2:11, 2:12, 9:4**

SALE OF GOODS ACT, WRITING REQUIREMENTS

Acceptance, **8:16**
Earnest or part payment, **8:17**
Note or memorandum, **8:18**
Provisions, **8:13 to 8:14**
Requirements, generally, **8:15**

SEVERANCE, DOCTRINE

Generally, 12:16

SHRINK WRAP CONTRACTS

Generally, 2:35

SPECIFIC PERFORMANCE

Nature and purpose, 23:1

Obligations of plaintiff, 23:4

When obtainable, 23:2

When unobtainable, 23:3

STATUTE OF FRAUDS

Generally, 8:1 to 8:2

Collateral contracts, 16:6

Contracts for sale of land or interest in land, 8:4

Contracts not to be performed within year, 8:5

Contracts of guarantee, 8:3

Non-compliance, effect of, 8:11 to 8:12

Other contracts, 8:6

Sale of Goods Act, and, 8:13 to 8:14

Writing requirements, 8:7 to 8:10

SUBSTANTIAL AND NOMINAL

DAMAGES

Generally, 22:21

SUBSTANTIAL DAMAGES,

ASSESSMENT

Alternative measures of damages, 22:26

Contributory fault, 22:27

Date of assessment, 22:25

Deductions, 22:28

Duty to assess, 22:24

Foreign currency, contracts involving, 22:29 to 22:31

SUFFICIENCY OF CONSIDERATION

Adequacy, contrasted with, 4:6

Existing obligation, 4:8 to 4:13

Forbearance to sue, 4:7

TENDERS, CALLS FOR

Generally, 2:9

Harvela Investments Ltd., 2:10

Ron Engineering & Construction (Eastern) Ltd., 2:11 to 2:12

TERCON CONTRACTORS LTD. V. BRITISH COLUMBIA (MINISTER OF TRANSPORTATION & HIGHWAYS)

Generally, 11:9, 12:11, 15:4, 23:15

TERMS

Condition-warranty dichotomy, 14:15 to 14:18

Express, 14:1 to 14:8

Implied, 14:9 to 14:14

THEORIES OF CONTRACT LAW

Generally, 1:8

External justifications, 1:10

Unitary theories, 1:9

TORT

Contract, and, 1:5

Contracts to commit illegal acts, 12:9

Damages, concurrent and alternative claims, 22:3

Damages, remoteness, 22:14

Inducing breach of contract, 7:26

Liability of minors, 6:14

Misrepresentation, generally, 10:18

UNCONSCIONABILITY

Canadian approach, 11:8

Inequality in bargaining power, 11:7

Legislation, 11:11 to 11:13

Relief, scope of, 11:9

Traditional view, 11:6

Transactions to lend money, 11:12

Unfair business practices, 11:12

Utility and disutility of doctrine, 11:10

UNDUE INFLUENCE

Generally, 11:5

UNIFORM COMMERCIAL CODE

(U.S.)

Generally, 2:25

UNILATERAL CONTRACTS

Acceptance, communication, 2:30

Defined, 2:4

Performance and motive, 2:26

Revocation of offer, 2:15 to 2:16, 16:4

UNILATERAL MISTAKE

Generally, 9:2

Mistake in motive, 9:3

Mistake in terms, 9:4

Mistake of identity, 9:5

Non est factum, 9:6

UNINCORPORATED ASSOCIATIONS, CAPACITY TO CONTRACT

Generally, 6:30

INDEX

**UNINCORPORATED ASSOCIATIONS,
CAPACITY TO CONTRACT**

—Cont'd

Trade unions, **6:21 to 6:32**

UNJUST ENRICHMENT

Generally, **1:6, 2:43, 7:13, 22:6**

VOIDABLE CONTRACTS

Generally, **6:4, 6:8, 6:9, 6:12**

VOID CONTRACTS

Generally, **6:10, 6:13**

WAIVER

Alternative to performance, **17:5, 17:11**

Class action, **11:8**

Communication of acceptance, **2:29 to
2:31**

WAIVER—Cont'd

Conditions precedent, and, **13:3**

Doctrine of, **4:12**

Promissory estoppel, distinguished from,
5:2, 5:7

Repudiation, distinguished from, **19:6**

Subrogation, **7:18 to 7:19, 7:22**

WARRANTY

Generally, **1:5, 4:14, 10:1, 14:15, 14:17,
14:18, 17:15, 19:2, 19:4**

WRITING REQUIREMENTS

Other statutes, **8:19**

Sale of Goods Act, see **SALE OF
GOODS ACT, WRITING
REQUIREMENTS**

Statute of Frauds, see **STATUTE OF
FRAUDS**