

# 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 INVESMENTS 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 necessities, **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**