

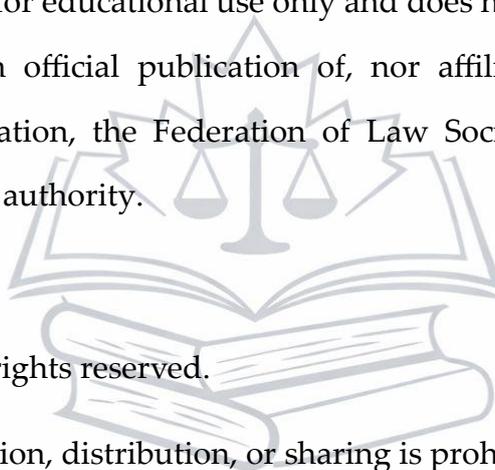
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CHAPTER 1: INTRODUCTION TO CONTRACT LAW

Contract law governs agreements that create enforceable legal obligations. It plays a crucial role in ensuring that promises made between parties are reliable and binding. Without contract law, agreements would lack the certainty and trust necessary for personal, commercial, and public interactions.

Definition and Purpose

Contract law has been described as “an affirmation of the human will to affect the future” through the “extraordinarily powerful mechanism [of] protecting exchange into the future” (Macneil, *The New Social Contract*, 1980). It provides a framework that allows parties to form, execute, and remedy breaches of agreements.

Importance of Contract Law

- **Practical Utility:** Contract law governs everyday activities like buying goods, signing a lease, or agreeing to services.
- **Broader Applications:** Contract principles are foundational in other legal fields like business law (mergers and partnerships), real estate law (leases and mortgages), and employment law (agreements on duties and rights).

Overlap Between Private and Public Law

Although contracts are often seen as private agreements, they have significant implications for public governance and societal values.

Private Transactions and Public Governance

Michael Trebilcock’s “*The Limits of Freedom of Contract* (1993)” warns of the risks of unchecked private agreements:

“[I]f political, bureaucratic, regulatory, judicial, or law enforcement offices were auctioned off to the highest bidder... a system of private property and private exchange would be massively destabilized.”

Key Point: While private transactions are the focus of contract law, they must not undermine public policies like anti-corruption measures or environmental protections.

For example:

- Bribery in public institutions, if allowed through contracts, would create unfair advantages and erode societal trust.
- Contract law helps ensure that agreements respect broader societal principles.

Public Values Shaping Contracts

Contract law reflects societal values such as fairness, safety, and equality. These values influence how contracts are interpreted and enforced, often aligning with democratic decisions.

Examples of Public Influence:

- **Labor Laws:** Employment contracts must comply with minimum wage requirements.
- **Environmental Regulations:** Contracts cannot permit actions that harm public resources like rivers or forests.
- **Housing Standards:** Lease agreements must align with laws protecting tenant rights.

Freedom of Contract

The traditional view of contract law centered on the principle of *freedom of contract*. This principle allowed parties to make any agreement they wished, with courts strictly enforcing their terms. However, this strict approach has evolved.

Modern Shift Toward Fairness

Courts now recognize the importance of balancing freedom with fairness. This shift addresses inequalities in bargaining power and prevents exploitative agreements.

Judicial Intervention:

Courts may intervene in the following cases:

- **Unfair Terms:** Hidden fees or one-sided clauses designed to benefit only one party.
- **Exploitative Agreements:** When one party pressures or manipulates another into signing.

Example of Judicial Protection:

A small supplier agrees to a harsh "take-it-or-leave-it" contract with a large corporation. If the terms heavily favour the corporation, the court might adjust the terms or render them unenforceable.

Ideal vs. Reality

In an ideal world, contracts would reflect equal power and fairness. However, imbalances often occur, and judicial oversight ensures that vulnerable parties are not exploited.

Indigenous and Aboriginal Laws in Contracts

Contracts involving Indigenous peoples are unique because of the historical, cultural, and legal contexts in which they arise. Courts approach these agreements with special care, balancing traditional legal principles with respect for Indigenous traditions.

Key Principles of Interpretation

- 1) **Contextual Approach:** Courts interpret agreements involving Indigenous peoples by considering their historical and cultural context. In *Sattova Capital Corp v. Creston Moly Corp* (2014 SCC 53), the Supreme Court of Canada emphasized that contractual interpretation involves questions of both fact and law.
- 2) **Modern Treaties:** Treaties negotiated between governments and Indigenous groups are treated as comprehensive contracts. These agreements are meticulously negotiated and require respect for their terms.
 - *Quebec (Attorney General) v. Moses* (2010 SCC 17): This case involved a land-use dispute under the James Bay and Northern Quebec Agreement. The Supreme Court held that modern treaties are binding contracts, requiring courts to give full effect to their negotiated terms.
- 3) **Band Council Authority:** A formal band council resolution is not always necessary to bind a First Nation to a contract. *Kehewin Cree Nation v. Kehew Construction Ltd* (Alberta Court of Appeal): The court ruled that a contract could be enforceable against a First Nation without a band council resolution, provided the council's authority was exercised in other ways.

Indian Residential Schools Settlement Agreement (IRSSA)

In *Fontaine v. Canada (Attorney General)* (2016 ONCA 241), the Ontario Court of Appeal considered the IRSSA, a landmark settlement addressing historical injustices against Indigenous peoples. The court clarified that while the IRSSA had profound societal implications, it remained a contract governed by the objective intentions of the parties.

Enforceable Promises and Remedies for Breach

Not all promises are legally enforceable. Contract law focuses on identifying enforceable promises and determining appropriate remedies for breaches.

Enforceable Promises

- 1) **Consideration:** A promise must generally involve an exchange of value to be enforceable. This ensures fairness by requiring both parties to contribute something of value.

Example: A homeowner agrees to pay \$100 to a gardener for mowing the lawn. The money is the consideration for the service.

- 2) **Intent to Create Legal Relations:** Parties must intend for their agreement to be legally binding.

Example: A business contract typically has legal force.

Non-Example: A casual promise between friends to meet for coffee lacks this intention.

Remedies for Breach

When a party breaches a contract, courts determine the appropriate remedy based on the nature of the breach and the harm caused.

- 1) **Damages:**

The most common remedy. The breaching party compensates the other for financial losses resulting from the breach.

Example: A seller fails to deliver goods, causing the buyer to incur extra costs finding replacements. Damages would cover these additional expenses.

2) Specific Performance:

A remedy where the court orders the breaching party to fulfil their contractual obligations. This is typically used for unique items or properties.

Example: A buyer of a rare painting may seek specific performance to receive the artwork.

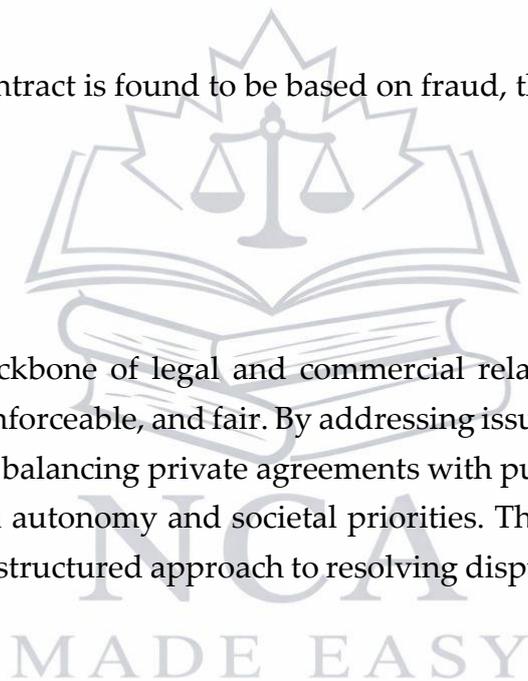
3) Rescission:

This remedy cancels the contract and returns both parties to their original positions.

Example: If a contract is found to be based on fraud, the court may rescind it.

Conclusion

Contract law is the backbone of legal and commercial relationships, ensuring that promises are reliable, enforceable, and fair. By addressing issues of fairness, protecting vulnerable parties, and balancing private agreements with public values, contract law reflects both individual autonomy and societal priorities. Through its principles and remedies, it provides a structured approach to resolving disputes and upholding trust in legal agreements.



PRACTICE QUESTIONS

(Please note that these answers are not the final version how you should present in the exam, these are merely hints, refer the next set of answers – provided chapter wise for accurate representation of the answer structure.)

Question One (25 marks, 30 minutes)

In April 2023, Leo, a construction contractor, signed a contract with Jenna, a homeowner, to build a deck for \$20,000, payable in instalments. The contract contained a term stating, "Time is of the essence." Leo began construction in May 2023 but delayed completion due to a shortage of materials, finishing three weeks past the agreed deadline. Jenna paid 80% of the amount but withheld the final instalment, claiming damages for the delay. Leo insists that the delay was minor and not grounds for withholding payment.

You are Leo's legal advisor.

Advise Leo on whether Jenna is entitled to withhold payment and whether Leo can recover the remaining balance, taking into account the principle of *time is of the essence* and remedies for breach of contract.

Sample Answer:

Issue:

1. Is Jenna entitled to withhold payment of the final instalment based on the delay in completing the deck?
2. Can Leo recover the remaining balance despite the delay?

Rule:

1. The principle of "time is of the essence" makes timely performance an essential term of the contract. A failure to meet deadlines constitutes a breach of contract, allowing the non-breaching party to claim damages or rescind the agreement (Hochster v. De la Tour).
2. Minor breaches may not justify withholding payment unless the delay causes significant harm or loss (Jacob & Youngs v. Kent).

3. Remedies include damages for losses directly caused by the breach but withholding payment for completed work must be proportionate and justified.

Analysis:

The primary issue in this case is whether Jenna is entitled to withhold payment due to Leo's delay in completing the deck and whether Leo can recover the remaining balance despite the delay. The contract explicitly stated that "time is of the essence," making timely performance an essential term. A breach of this term may entitle Jenna to remedies such as damages or the right to withhold payment. However, courts often distinguish between material and minor breaches. While Leo breached the contract by finishing three weeks late, the impact of this delay must be assessed. If the delay caused minimal harm, it may be considered a minor breach, which does not justify withholding payment entirely.

Jenna has already benefited from the completed deck, and withholding the final instalment could result in unjust enrichment unless she can prove specific losses caused by the delay. Courts generally encourage proportionate remedies, and Jenna would need to establish the exact damages she suffered due to the delay, such as additional costs or

inconvenience. These damages, if proven, should be deducted from the outstanding balance rather than withholding payment in full. On the other hand, Leo can argue that he substantially performed his obligations under the contract and that the delay was beyond his control due to material shortages. Substantial performance would entitle Leo to recover the remaining balance, less any proven damages incurred by Jenna.

In **conclusion**, Jenna may claim damages for the delay, but withholding the final payment entirely is disproportionate unless significant harm is proven. Leo is likely entitled to recover the remaining balance, subject to any deductions for reasonable damages.