

BUSINESS LAW

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MGM3352

Wk5 Content

- **Contents of contract**
- **Terms and representation**
- **Standard form contracts**
- **Exemption clauses**

Contents of contract

- Terms and representation
- Standard form contracts
- Exemption clauses
 - Identify how the terms of the parties' agreement are identified;
 - Assess how the courts interpret the meaning of those terms

Pre-contractual Statements

■ 3 types :

Advertising gimmick, i.e. puff

Effect: no legal consequences, unless with evidence to be legally bound

Representations: Statement that merely caused the other party to enter into the contract. Does not form part of the contract.

Effect: a fraudulent misrepresentation/ mere representation but not a breach if defaulted although voidable

Terms: Statements intended to be part of contract.

Effect: if defaulted, a breach of contract

Pre-contractual Terms

- **Tests applied by courts: Mainly on contractual intention** (based on evidence in total) **& the following factors:**
 - (1) Time- is it too long?; (2) Importance of the representation;**
 - (3) Written contract – oral representation not included;**
 - (4) Manner- asking to check further the representation; &**
 - (5) Knowledge & skill of the representor**

LAI MEW SENG v. COSMOPAC SDN BHD [1997]

Issue: Whether the **booking proforma** was a mere agreement to agree, as the defendants contended, **or** a firm contract of sale of the property, as the plaintiff contended.

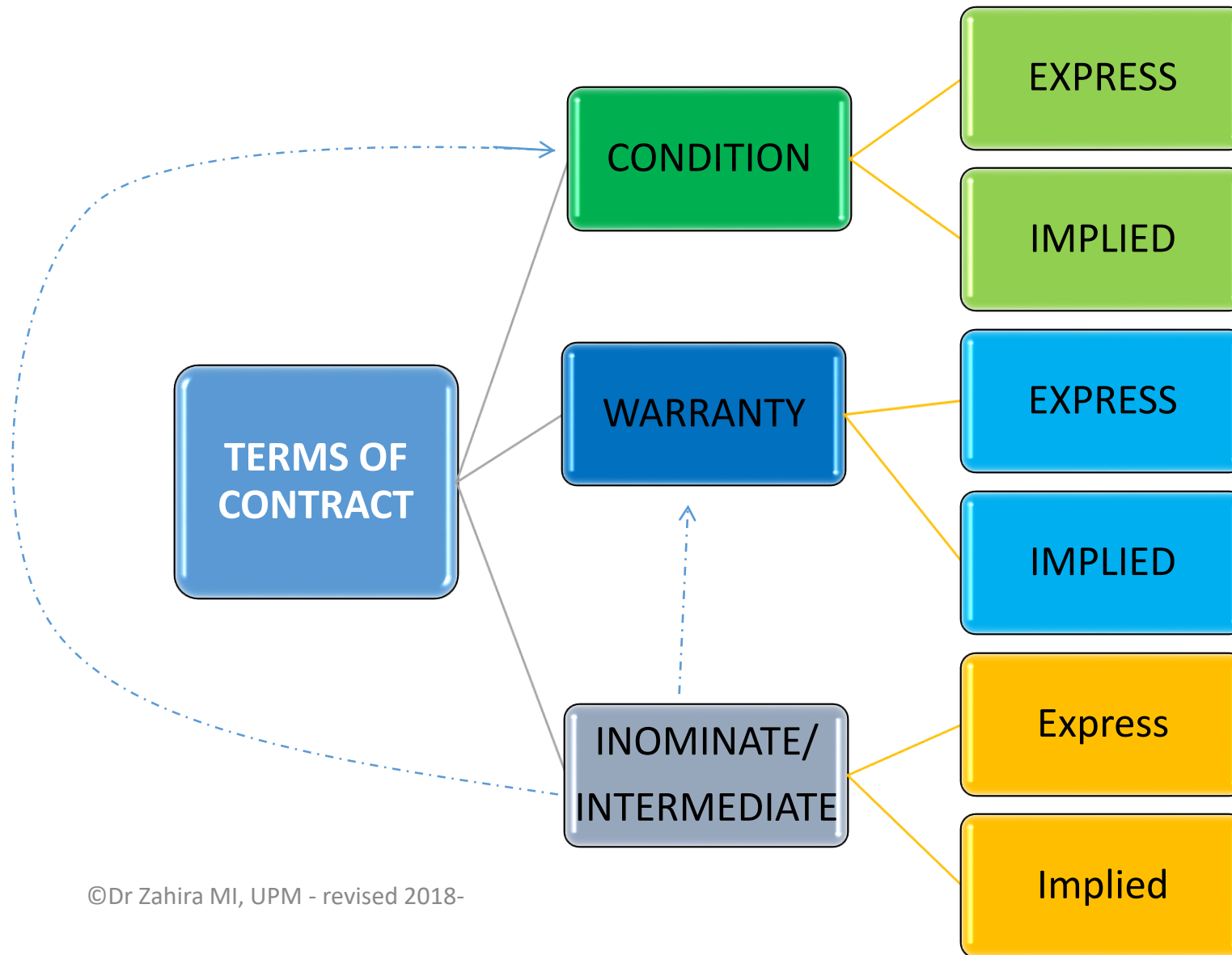
- At sales launch in Singapore, P decided to purchase one unit of shophouses to be built by D at JB . P paid a booking fee of RM1,500.
- D was supposed to invite P by a written letter to sign the S&P agreement and thereafter P to pay the balance of the 9% out of the purchase price of the property in question. D did not do so even though P was able and willing to execute the S&P agreement.
- D yet to build the shophouses. P sought for specific performance.

Held: the proforma was indeed a contract. It identified the parties, it specified the property to be bought & its price.

Parol Evidence Rule (PER): if the contract is written, that writing is the whole contract & parties cannot adduce extrinsic evidence, especially oral evidence to 'add to, vary or contradict the writing' (Henderson v Arthur [1907])

- Got a written document (i.e first written document)+ some orally agreed term , or a term in some other written document
~ the first written document does not contain the entire contract
- PER applies only to express terms. Does not stop implication of terms into the contract & does not stop proof of extrinsic evidence of defects in contract (like mistake or misrepresentation)

Classification of Terms:



- **CONDITION** : essential term in the contract, breach of which the contract is revocable.

S. 12 of SoGA

- **WARRANTY**: collateral term in the contract, breach of which does not affect the contract but can claim damages

Poussard v Spiers &

Pond (1876): P breached the condition as she only gave her singing performance a week later than the schedule.

Bettini v Gye (1876): P failed to attend 6 days rehearsal. Arrived 2 days prior to performance but her contract was terminated. Held: rehearsal clause was only warranty.

Tham Chew Toh v Assoc

Metal Smelters Ltd: breach of condition was taken as breach of warranty by purchaser.

- **INTERMEDIATE / INNOMINATE**: the effect of the breach was serious?

Kawasaki Kisen Kaisha (1962):
ship was delayed few times due to engine problem & worker's inefficiency.

Implied Terms

- Parties to contract may not foresee all contractual possibilities.
- Not all contracts contain an implied term. The court is careful to imply terms into a contract.
- Cases for courts to imply term are strictly limited. Court will only interpret & enforce the contract, not making the contract.

Reasons for Courts to Imply a Term:

1. **Implied by custom of locality @ trade usage (notorious, certain & reasonable, & not offend against the intention of any legislative enactment)- Anson (1989, p.128).**

Cheng Keng Hong v G.F.M [1966]: Additional payment to building contractor was decided as unnecessary as he did the job based on drawings not in the specification. The payment was an irregular old tradition.

Preston Corp Sdn Bhd v Edward Leong & Ors: It was not a trade usage for printing firm to claim ownership over film positive used to print a certain book.

Hamzah & Yeang Sdn Bhd v Lazar Sdn Bhd: No trade custom exist that a building plan is owned by the architect.

Pembangunan Maha Murni v Jururus Ladang Sdn Bhd:
No trade custom exist that an estate agent is entitled to get commission out of the sale.

2. Implication from what must obviously have been the intention of the parties

i- with the object of giving efficacy to the transaction (business efficacy) : *The Moorcock* (1889)

or,

ii- if it is so obviously a stipulation in the agreement that the parties must have intended it to form part of their contract. The '*officious bystander*' test (*Shirlaw v Southern Foundries Ltd* (1926))

3. Implied by written law.

- Where the contract is of a certain kind/of common relations eg seller-buyer, landlord-tenant, employer-employee, building contract etc.
- Many are incorporated into statutory provisions:

e.g: Industrial relation Act 1967:

Sale of Goods Act 1957:

Hire-Purchase Act 1967:

National Land Code 1965:

Doctrine of Freedom of Contract

- All persons are free to contract with anybody on whatever terms he decided.
- ~ Contractual parties are the best judge to determine the benefit of their contract causing interference from the court becomes unnecessary.

Printing & Numerical Registering Co. v Sampson (1875):

“...men of full age & competent understanding shall have the utmost liberty of contracting.... you are not lightly to interfere with this freedom of contract” (per George Jessel MR)

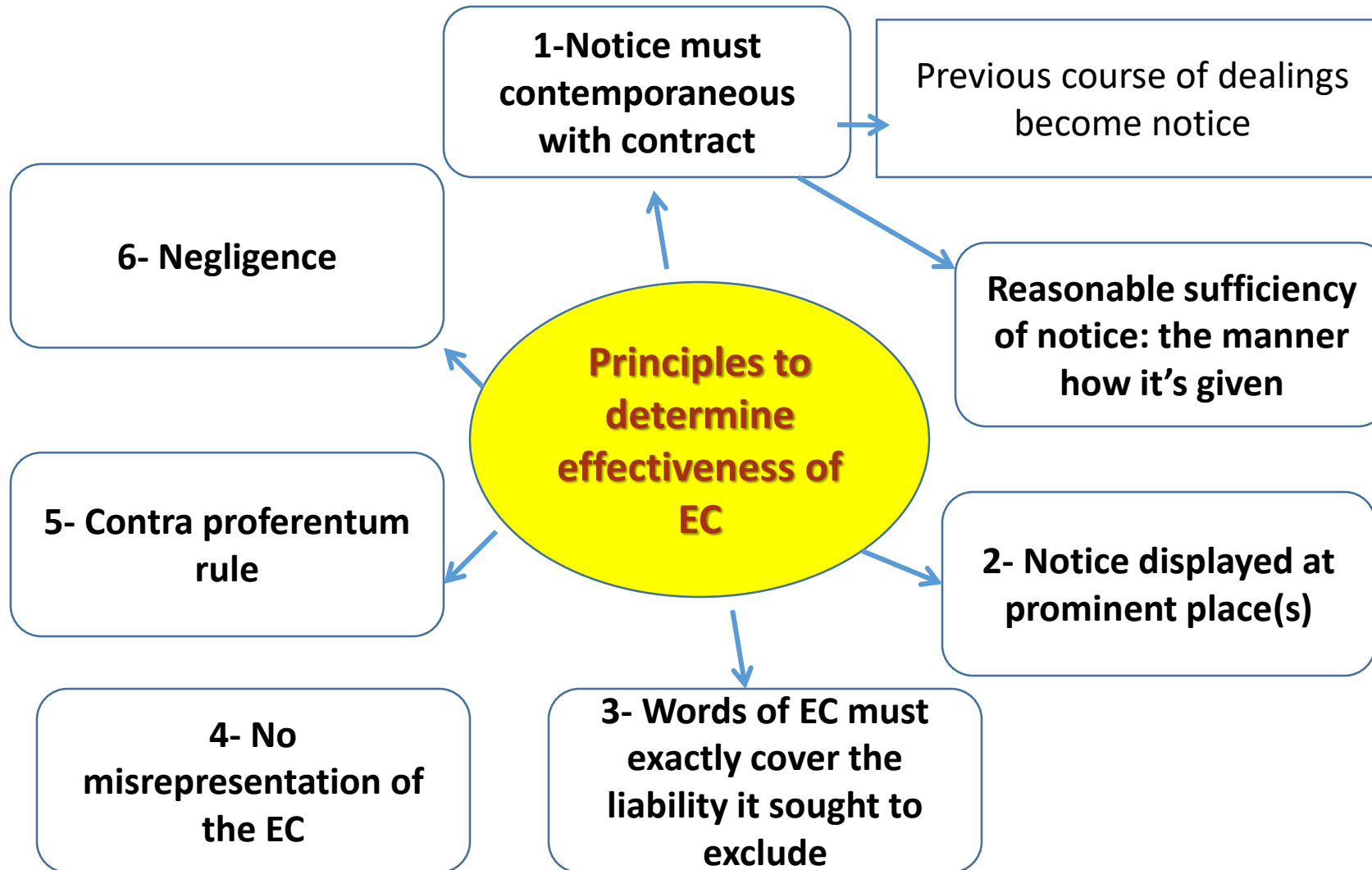
- ~ This doctrine is now illusory.



Standard Forms Agreement

- **Many commercial transaction are in standard forms**, e.g. purchasing agreement of a car, employment contract, using public transport.
- **No freedom to contract/** unequal bargaining position: *Take it or leave it*
- *a.k.a* Contract of Adhesion: adhere to the terms if you want it.
- Usually, an *exemption clause* is inserted/included in the SFA.

Exemption / Exclusion clauses



EXEMPTION CLAUSE (EC)

❖ *“Park at your own risks”*

❖ ... *“not warranted free from defect”*

❖ *“Goods sold not returnable”*

- Found in signed contract, given via notice or from a series of dealing.
- If signed, party signing it is bound by the contract although he/she did not read/understand the terms.

Principles of EC:

- For unsigned document being merely delivered to a party, a question arises whether the terms of the contract were adequately brought to his notice.

I) Notice must be contemporaneous with the contract

~i.e noticed before / at the time the contract is made

Olley v Marlborough Court Hotel

Thornton v. Shoe Lane Parking, Ltd.

**b) However, were there
previous course of dealing
between the same parties on
similar terms?**

J. Spurling Ltd v Bradshaw

~ EC is effective.

***Hollier v Rambler Motors
(A.M.C) Ltd [1972]: 3 @ 4
dealings in 5 years are not
enough to constitute a course of
dealing.***

***Hardwick Game Farm
[1969]: 3 @ 4 contracts
per month for 3 years
constitutes a course of
dealing.***

c) The meaning of notice

When a person received a ticket, receipt or common form document at the time he entered into a contract. 3 general rules apply(Anson, m/s 140):

- i- didn't see or know there was any writing: not bound
- ii- knew there was writing, & knew /believe it contained conditions: bound
- iii-knew there was writing, but not know / believe it contained conditions: bound if the manner in delivering the ticket caused him to see the writing (Reasonable sufficiency of notice)

Reasonable sufficiency of notice

Parker v South-Eastern Railway Co.: paper ticket with “See back” on its face & on the back with a number of printed conditions.

Held (CoA): as D had done what is reasonably sufficient to give P notice of the condition, the EC effective.

~ illiteracy, non-legal disability (eg can't speak English) or blind is irrelevant if the notice is otherwise sufficient.

Cases for flight ticket:

i) MAS Bhd v Malini Nathan & Anor [1986]: ‘...times shown in timetables or elsewhere are not guaranteed and form no part of this contract...’

2) Non-contractual documents

~ scarcely expect to contain conditions:

Chapelton v Barry U.D.C

Burnett v Westminster Bank [1966]

3) Displayed notice

Watkins v Rymill (1883)

4) Words of EC must exactly cover the liability it sought to exclude

Wallis, Son & Wells v Pratt & Haynes:

A bought it subject to EC that 'the sellers give no warranty express or implied, as to growth, description, or any other matters'.

Held: As A had accepted the goods & could only sue for breach of warranty, there was nevertheless originally a breach of condition & this had not been successfully excluded by R.

5) Contra Proferentum Rule

Def.: 'the words of written documents are construed more forcibly against the party putting forward the document.'

- ~ Only applies in cases of ambiguity, &
- ~ When other rules of construction fail.

Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd [1983] Court held that although a limitation clause had to be clearly and unambiguously expressed in order to be effective and was to be construed **contra proferentem, the relevant words were, if possible, to be given their natural, plain meaning**. Thus, a limitation clause was not to be construed as rigidly and strictly as an exclusion clause since an agreed limitation of liability was more likely to accord with the true intention of the parties.

Sykt Lee Heng Sdn Bhd v Port Swettenham Authority [1971]

A claimed for \$936 being the value of 1 case of lockets lost while in R's custody. r. 91(I) of the Port Swettenham Authority By-laws, 1965, providing that:-

“The Port Authority shall not be liable for any loss, destruction or deterioration arising from delay in delivery or detention or misdelivery of goods or for any other cause unless such loss ... has been caused solely by the misconduct or negligence of the Authority or its officers or servants,”

Held: There was negligence & contra proferentum rule also applied by court as the rule suffers from ambiguity.

Houghton v Trafalgar Insurance [1954]

5 seater car carry 6 person and accident. Exempt insurers from liability for damage caused ‘whilst the car is carrying any load in excess of that which it was constructed’. : Held: Insurers still liable as the clause did not extend to cases where car carry too many passengers.

6) Fraud / misrepresentation of content/ effect of a clause

Curtiss v Chemical Dry Cleaning

7) *Negligence will not displace liability at West M'sia*

*Chin Hooi Nan v Comprehensive Auto Restoration Service
Sdn Bhd & Anor [1995]*

“The law on this is quite settled in that an **exemption clause** however wide and general does not exonerate the respondents from the burden of proving that the damages caused to the car were not due to their **negligence** and misconduct”.

Negligence may displace liability at common law & East M'sia

Rutter v Palmer : ‘customers’ cars are driven by your servants at customers’ sole risk’.

Car was sent for trial run, collided & damaged. Held: clause effectively placed the risk of negligence on the P & so his claim failed.

Premier Hotel Sdn Bhd v Tang Ling Seng [1995]

R's valuables and personal effects lost from the hotel room during his stay in A. He was told by the hotel receptionist that the key to his room had been taken by somebody. The crux of the matter here is whether the **exemption clause** in the hotel regulation would operate to exempt the hotel from liability for valuables or money lost from the hotel room. The said clause reads:

“The Hotel will not assume responsibility for valuables or money lost from the room.”

Held: The EC did not clearly and specifically exempt liability for **negligence**. The appellant, by its servants, was plainly negligent in failing to look after the room key of the respondent and the person in charge of the counter at the material time had negligently parted with the key.

Not easy to prove negligence

Must prove:

- i- Duty of care exists;
- ii- Breach of that duty;
- iii- Damage is foreseeable consequence of the breach

Chong Kok Weng & Anor v Wing Wah Travel Agency Sdn Bhd & Anor [2003]

Held: The case of **negligence** against Wing Wah must in any case fail even though there was breach of duty of care on their part, because the deaths of the deceased couple were not a reasonably foreseeable consequence of the breach.

Recap:

- Not all agreements are contract.
- Representation made during negotiation may/ may not becomes term
 - Condition is the essential term in the contract. Breach: revocable.
 - Warranty is collateral term in the contract. Breach: cannot revoke but can claim damages.
- Doctrine of freedom of contract is less followed in many commercial transactions.
- Standard form agreements containing exemption clauses are valid but there are ways to set it aside according to circumstances of the case.

- Lessons Learnt: Provide 10 points

- To do:

- Individually, then share & discuss in your group
 - Is there any points you missed or lack understanding? Create questions to each other & see if each can answer the other's question. No submission needed for this self-assessment of understanding, but I welcome request for confirmation during the next class hour
 - To repeat this learning method for subsequent topics

Wk6 Content

Discharge of contract

- **Discharge by performance**
- **Discharge by breach**
- **Discharge by agreement**

What is Discharge of Contract?

- When a valid *contract* comes into existence it creates certain obligations on all the parties of the *contract*. The parties become liable to fulfil their respective obligations.
~ (Contractual relationship occurs)
- Discharge: when the rights and obligations of the parties under the contract comes to an end. The ending of this contract entails a termination of a contractual relationship.
~(Contractual relationship ends / termination of contractual relationship)

Ways of discharging contracts

- 1. By performance**
- 2. By impossibility of performance – Doctrine of frustration**
- 3. By consent / agreement**
- 4. By breach of contract**
- 5. By operation of law**

1) Discharge by PERFORMANCE

Statutory Provisions:

- **S.38 (1) CA: *must perform or offer to perform promise***
- **S.40 CA: *obligation to perform in entirety (absolute performance)***
 - ***“No claim can be made in respect of the partial performance of an ‘entire’ contract”***

Can U claim for half the money in these situations?

* U promises:

K.L to carry an ordered goods Penang

but,



* **or** U promises to make a pair of shoes, but make only one shoe.

* **or** U promises to apply 3 coats of paints but at one part only 2 coats are put on.

TWO DOCTRINES ON Partial Performance:

1) Doctrine of Substantial Performance

- “The fact that the work was done badly did not mean that it had not been performed at all”
- “P entitled to recover the price less a reduction for the defective work”

Kunchi Rahman v Goh Brothers Sdn. Bhd. [1978]

2) Doctrine of Quantum Meruit :

- **a reasonable sum in respect of the benefit conferred by the partial performance.**
- **Only if the party not in default has the option whether to accept or to refuse the partial performance.**

***Sumpter v Hedges* : D had no option but to accept the building partly erected on his land.**

Hj. Hasnan v Tan Ah Kian

Time of Performance



- A question of fact : whether time was fixed in the agreement?
- When fixed: to be “of the essence of the contract” : *when time is not fulfilled, the other party might treat the contract as broken and discharged.*
- When unfixed: not “of the essence of the contract” : *contract not voidable, but promisee is entitled to compensation from promisor for any loss due to the failure.*

Ganam d/o Rajamany v Samoo s/o Sinnah

- **3 situations that shows time is of the essence:**
 1. Where the agreement **expressly states** that time is of the essence of the contract
 2. Where time was not originally of the essence of the contract, but has been made so by **one party who has been subject to unreasonable delay giving notice** to the other requiring him to perform the contract within a reasonable time.
 3. Where from **the nature of the contract**, its subject matter or the circumstances of the transaction, time must be taken to be of the essence to the agreement

Acceptance of Delayed performance: s. 56(3)

Yeow Kim Pong v Ng Kim Pong [1962]: since the supplementary agreement for the purchase of land was binding on the parties and time was the essence of the agreement there had been a breach by the respondent and the appellant was entitled to rescind the contract on the appointed date.

Sim Chio Huat v Wong Ted Fui [1983] 1 MLJ 151 it was held by the Federal Court that as time was provided to be of the essence of the agreement, the stipulated periods within which the houses had to be delivered to the respondent became an essential condition of the agreement and that the failure by the appellant to fulfil this condition entitled the respondent to have an option of treating the agreement either as having been repudiated or as still continuing.

Eng Mee Yong & Ors v Letchumanan [1980]

Sy. Eastern Plastic Industry v Sy. Lam Seng Trading

Wong Kup Sing v Jeram Rubber Estate Ltd

Louinder v Leis: contract for the sale of land did not fix a time for completion and did not contain any provision that time was to be of the essence of the contract. It did provide that a transfer was to be submitted within 28 days from delivery of the vendor's statement of title.

In his judgment Mason J said:

- ... In the event the appeal fails. There was no foundation for the vendors giving a notice to complete on 8 February as the contract did not fix a time for completion. The existence of unreasonable delay on the part of the purchaser was an essential qualification for the giving of a notice. The findings of fact made by the primary judge negated the existence of such delay.

TE



TNE : cannot discharge contract

(When breach of time is waived)

“Waiver: unilateral declaration of renunciation”

~ The party not in default allows performance to continue.
: damages upon notification

TNE



TL : can discharge contract

(When there is unreasonable delay of performance, the party not in default gives notice to perform within reasonable time)

- What about inability by one party to perform simultaneously, whereas the contract requires so?

s. 52

Chee Ah Yew v Tuan Man & Ors

Central Malaysia Development Ltd v Chin Pak Chin [1967]

- What about performance done by a third party?

ss. 41 & 42

Chin Swee Onn v Puchong Realty Sdn Bhd [1989] ; debt paid by a third party.

Wk7 Content

- Discharge by frustration

2) Discharge by impossibility of
performance

-via-

DOCTRINE OF FRUSTRATION

Frustration

- ▶ **A departure from absolute performance doctrine**

Paradine v Jane (1647): P sued D for rent due upon lease. D pleaded ‘that a certain German Prince, by name of Prince Rupert, an alien born, enemy to the king and kingdom, had invaded the realm with a hostile army of men; & with the same force did enter upon D’s possession, & him expelled, & held out of possession... whereby he could not take profits.’ Held: this was no excuse.

“When the party by his own contract creates a duty or charge upon himself, he is bound to make it good....”

- ▶ **Doctrine of Frustration: both parties are discharged from their obligation**

Statutory Definition of frustration

- S.57(2) : A contract to do an act which, **after** the contract is made, becomes **impossible**, or by reason of some **event** which the **promisor could not prevent**, **unlawful**, becomes void when the act becomes impossible or unlawful

There is Frustration if:

- ***The essence of frustration is that the extraneous event is outside the control of the parties, not caused by one of them (Maritime National Fish Ltd v. Ocean Trawlers Ltd [1935] AC 524 PC).***
~ ***Ramli b Zakaria & Ors v GOM [1982] :***

Ramli Zakaria v Government of Malaysia [1982] 2 MLJ 257 at p 2620:

“In short it would appear that where after a contract has been entered into there is a change of circumstances but the changed circumstances do not render a fundamental or radical change in the obligation originally undertaken to make the performance of the contract something radically different from that originally undertaken, the contract does not become impossible and it is not discharged by frustration.” per Abdul Hamid FJ (as he then was)

. When the subject matter destroyed
~***The contract is said to be impossible to be carried forth simply because of the occurrence of an unexpected event which significantly destroys the substratum of the contract.***

Taylor v. Caldwell [1863] 3 B&S 826, 122 ER 309: a music hall in which one of the contracting parties had agreed to give concerts on certain specified days was accidentally burnt by fire. It was held that such a contract must be regarded 'as subject to an implied condition that the parties shall be excused, in case, before breach performance becomes impossible from perishing of the thing without default of the contractor'.

❖ Specific Relief Act 1950 , s. 12: total destruction

► **Object of contract destroyed/ non-occurrence of a particular event**

Krell v Henry: D agreed to hire a flat from P for June 26 & 27, 1902, the contract contained no reference to the coronation processions, but they were to take place on those days and to pass the flat. The processions were cancelled. 2/3 of the rent had not been paid and the COA held that the P cannot recover it.

► **Death or incapacitating illness: contract for personal services.**

Robinson v Davison (1971): there was a contract between the plaintiff and the defendant's wife (the defendant was agent of his wife) that the wife would play the piano at a concert to be given by the plaintiff on a certified day. On the day in question she was unable to perform through illness. The concert did not contain any term as to what was to be done in case of her being too ill to perform. In an action against the defendant for breach of contract, it was held that the wife's illness and the consequent incapacity excused her and that the contract was in its nature not absolute but conditional upon her being well enough to perform.

- **Supervening illegality**

~ due to change of laws

Lee Kin v Chan Suan Eng [1933]: the parties contracted to renew the land lease every 5 years. There was a change of law via a new enactment later requiring annual renewal. Held: frustration occurs.

~ due to injunction granted that prohibit the contract from being performed:

Codelfa Construction Pty Ltd v State Rail Authority of New South Wales (1982) 41 ALR 367

Re HEH The Nizam's Jewellery Trust AIR 1980 SC 17

Standard Chartered Bank v KL Landmark Sdn Bhd [1990]

*refer to <http://www.ipsofactoj.com/archive/1990/Part09/arc1990%289%29-01.htm>

- **War**

Berney v Tronoh Mines : the contract of service of the plaintiff was discharged by frustration due to Japanese invasion in Malaya and the court ruled that there was no breach of contract by the defendants.

Is Frustration and Force Majeure clause the same? Not exactly.

Contractual clause: "Force majeure": exceptional matters or events beyond the control of either party

Lebeaupin v. Crispin (1920): "...Thus war, inundations and epidemics are cases of force majeure; it has even been decided that a strike of workmen constitutes a case of force majeure".

- “The Force Majeure clause should be construed with a close attention to words which precede or follow it, and with regard to the nature and the general terms of the contract. Therefore, the words “any other happening” in such a clause **must be given ejusdem generis construction** so as to engulf within its folds only such happenings and eventualities which are of the nature and type illustrated in the same clause....”

*refer to: <http://www.legalserviceindia.com/article/I289-Doctrine-of-Frustration-&-Force-Majeure-Clause.html>

- A contract’s *force majeure* provisions **may offer an exit route, particularly in circumstances where it is too difficult to establish a frustration.** *Force majeure* is a contractual term, and what qualifies as a *force majeure* event depends on the contract.

*refer to: <http://metcalfes.wordpress.com/2012/04/22/contract-get-outs-frustration-vs-force-majeure/>

Note: Try to find the common events listed in contracts as force majeure events.

Not frustration if:



- **Void from the very beginning**

Goh Yew Chew v Soh Kian Tee

- **Can be expected to happen / Forseeable**

Khoo Than Sui v Chan Chiau Hee

- **Collateral object achievable**

Herne Bay Steamboat Co v Hutton: Hutton agreed to hire a boat from the Herne Bay Steam Boat Co for £250. Hutton paid £50 deposit and agreed to pay the balance before he took possession of the ship. The agreement provided that the boat would be at Hutton's disposal on June 28 and 29 to take passengers from Herne Bay "for the purpose of viewing the naval review and for a day's cruise round the fleet". On June 25 the review was officially cancelled although the fleet remained anchored at Spithead and was still at anchor on June 28 and 29. On hearing of the cancellation the Herne Bay Steam Boat Co wired to Hutton and requested payment of the remaining £200. Hutton did not reply. On June 28 and 29 the Herne Bay Steam Boat Co used their ship themselves. On June 29 Hutton informed the Herne Bay Steam Boat Co that since the review had been cancelled, he did not require the use of the ship, and that therefore he was not going to pay the balance of £200 nor was he going to have anything more to do with the agreement.

- **Becomes more onerous or costly**

Davis Contractor v Fareham UDC: P entered into a contract with D to build 78 houses in eight months for a fixed sum of £85,836. Because of a shortage of skilled labour and of certain materials the contract took 22 months to complete and cost P £115,000. P contended that the contract had been frustrated and that they were entitled to claim on a quantum meruit for the cost actually incurred.

Khau Daw Yau v Kim Nam Realty: Development Sdn Bhd [1983]: no doubt that a heavy financial burden on the appellant to build the houses contracted for and to complete the contracts with its purchasers because costs have since spiralled. But this point is not a relevant factor for calling the doctrine of frustration into play.

Effect

Frustration discharges the contractual performance from the date of frustration so that the parties are excused from future performance.

► **s.66 CA: Restitution:**
Illustration (d)
Chandler v Webster
Fibrosa Case

► **Civil Law Act 1950:**
s.15(2): \$ due unpaid before
frustration: **X**
: \$ paid before frustration:
restore
: court's discretion: **order**
payment ≤ expense incurred.

s.15(3): valuable benefit obtained by 1 party before frustration, the one who done that **may recover such sum as the court consider just.** s.16(4): severable contracts as separate contracts. Payment on items not frustrated.

***s.15 can be contract out.**

3) By Consent or Agreement

- Both parties agree to terminate their contract, express / implied.
- Types:
 - a) Novation: new contract substituted for an existing one (mutual consent) / new contract being entered into on same terms b'w one of the parties & a third party (mutual / tripartite consent – eg creditor agrees at debtor's request to take another person as his debtor in the place of original debtor)
 - ~ must occur before expiry of time of performance; if not it becomes breach of contract.
 - ~ if new contract cannot be enforced, fall back to old contract.

- b) Alteration: one/> terms of contract altered. Parties remain the same.
- c) Rescission: decide to forget the contract and not to bring a new contract into existence to replace it. (takes place before contract is breached or after its breach). Abandonment of performance of a contract for a long time is an implied rescission. Rescinding a voidable contract: refer to s.19 and 20.
- d) Remission: acceptance of lesser fulfillment of promise made (eg acceptance of lesser sum of debt than what contracted for, in discharge of the whole debt). At common law, this type is void because no consideration is given.

4) By Breach of Contract

- One party breaks the obligation which the contract imposes.
- Without lawful excuse does not fulfil his contractual obligation
- Or, by his own act, he makes performance becomes impossible.
- **Types:**
 - a) **Actual breach:** when performance is due, one party fails/refuses to perform his obligation.
 - ~via: express repudiation (by word/act)/ implied repudiation (impossibility created by the act of a party to the contract)
 - b) **Anticipatory breach of contract:** before the performance is due, the party declares his intention of not performing.
 - ~via: expressly renouncing / doing an act that cause impossible performance.
 - ~Party not in default can treat the contract as discharged; can immediately take legal action / wait till the time the act was to be done.

5) By Operation of Law

- Discharged independently of the parties' wishes.

Includes:

- a) By death (in the case of contracts for personal service);
- b) By bankruptcy / insolvency: bars subsequent enforcement against the debtor of any contracts that pre-date the discharge.
- c) By unauthorised alteration of material terms of a written agreement; and
- d) By rights & liabilities becoming vested in the same person / Merger: inferior rights accruing to a party under a contract merger into a superior right accruing to the same party under the same / other contract.
- e) Statute of Limitations: does not technically discharge the parties, but it prevents the wronged party from seeking judicial remedies.

- Lessons Learnt: Provide 10 points

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Q & A