



CLYDE&Co

CONTRACTS



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DEFINITION

A promissory agreement between two or more parties that creates, modifies or destroys a legal relationship.

FUNDAMENTALS



1. Offer
2. Acceptance (consensus ad idem)
3. Consideration
4. Privity - Only a party to a contract can sue or be sued under it

ISSUES

1. Pre-contractual/contractual - invitation to treat
2. Verbal/written
3. Express/implied



UNENFORCEABLE CONTRACTS



1. Misrepresentation
2. Mistake
3. Duress/undue influence
4. Illegal/immoral
5. Lack of capacity

BREACH OF CONTRACT

1. Damages - The amount required to put the non-breaching party in the position it would have occupied had there been no breach
2. Foreseeability
3. Proximity/remoteness



QUANTUM MERUIT AND PERFORMANCE UNDER PROTEST

Performance under protest

62 (1) In this section:

"electing party" means a party to a contract who, in response to a requirement by a requiring party, makes an election under subsection (2);

"notice of protest" means a notice, given under subsection (3), that performance is under protest;

"requiring party" means a party to a contract who communicates to another party to the contract a requirement respecting that other party's performance of the contract.

(2) If a dispute arises between the parties to a contract respecting the obligations of a party under the contract, the party whose obligations are disputed may elect to perform the contract in accordance with the requirements of the other party, and the electing party is then entitled to compensation from the requiring party for any

- (a) service performed,
- (b) property supplied or transferred,
- (c) liability assumed, and
- (d) money paid

by the electing party in the course of that performance beyond that which the contract required the electing party to do.

(3) An electing party is not entitled to compensation under subsection (2) unless, within a reasonable time after the electing party is informed that the performance is required, the electing party gives notice to the requiring party that the performance is under protest.

(4) A contract may specify, with respect to the giving of a notice of protest, any or all of the following:

- (a) the form of the notice;
- (b) a time within which the notice must be received by the requiring party;
- (c) the persons to whom the notice must be given;
- (d) the manner in which the notice is to be given.

(5) A notice of protest has no effect unless it is communicated in accordance with every specification referred to in subsection (4) that is included in the contract.

(6) A right to compensation under this section is not affected by a decision or determination by a person connected with the administration of the contract unless the person has no interest in the subject matter of the contract and is independent of every person who has an interest in the subject matter of the contract.

(7) Nothing in this section limits the right of a party to recover compensation on any other basis.

1. "What it is worth"
2. Entitlement in the absence of contract - in lieu/ceased to exist
3. Section 62 of the British Columbia Law and Equity Act



440

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QUESTIONS ?

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