

# Glossary

- Agent** A person who has the authority to act on behalf of another (the principal), and will bind the principal in contracts as if the principal had personally made the agreement.
- Breach of contract** When a party fails to complete his/her obligations under the contract, he/she may be in breach, allowing the injured party to seek a remedy.
- Breach of statutory duty** A statute may impose a duty but fail to mention any civil law sanctions. In order to claim under the statute, the claimant must demonstrate that Parliament intended liability in tort to follow from the breach.
- Business efficacy** This expression has been used when describing how the courts may imply terms in order to produce an intended or anticipated result in the contract.
- Common law** Law created through judicial decisions. It is a body of law that was being developed before a united system of government had been formed in England.
- Consensus ad idem** This is the Latin term for an 'agreement as to the same thing' in English law or more commonly referred to as a 'meeting of minds' between the parties.
- Consideration** Simple contracts have to be a bargain rather than a gratuitous promise (that cannot be enforced). Consideration is something of value that makes the agreement a bargain (the price you pay for a promise).
- Constitution** The constitution is a system defining the power of the State/State bodies, and regulating their actions, thereby ensuring accountability.
- Contra proferentem** This is a rule whereby the courts, generally, will interpret an exclusion clause narrowly and against the party that is seeking to rely on it.
- Corporation** A legal entity, such as a company, that possesses its own legal personality separate from the members.
- Debenture** Written evidence of a secured loan given by the lender to the company. It has been described as a document which either creates a debt or acknowledges it.
- Delegated legislation** Laws that enable an individual/body to pass legislation under the authority and control of Parliament. These include Statutory Instruments, Orders in Council, and by-laws.
- Direct effect** Legislation from the EU creates rights for individuals in the Member States. Direct effect of the law requires a domestic court to apply the EU law, even in the absence of national implementing legislation.
- Dividend** The distributable profits of a company to shareholders.
- Duress** Compelling a party to enter a contract on the basis of a threat. If sufficient, it will make the contract voidable.
- Employee** An individual who works under a 'contract of service'.
- Equitable remedy** Discretionary remedies granted by the courts, generally where damages would not provide an adequate remedy. Examples of equitable remedies include injunctions, rescission, and specific performance.
- Expectation damages** Identifies what the injured party would have achieved from the successful completion of the contract, and seeks to place him/her, as far as money can, in that position.
- Fiduciary duty** A fiduciary has authority belonging to another person/body, and he/she is obliged to exercise this for the other party's benefit. An example of a relationship establishing fiduciary duties is between a solicitor and his/her client.
- Force majeure clauses** This is an element of frustration in determining how to deal with events that are beyond the control of the parties (wars, acts of God, and so on).
- Frustration** An event that is neither party's fault, may render the contract impossible to perform, or is radically different from that agreed. This leads to the contract being frustrated (cannot

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continue) and results in the parties being discharged from further responsibilities.

**Independent contractor** An individual who works under a ‘contract for services’. He/she has the ability (and option) to work for several employers, and enjoy better tax benefits, but lacks many elements of employment protection that employees enjoy.

**Injunction** There are two main types of injunction—mandatory injunctions and prohibitory injunctions (although interim injunctions may be granted prior to a full hearing to prevent injury to the claimant). Failing to follow the order of an injunction will result in the transgressor being guilty of contempt of court.

**Intention to create legal relations** A legally enforceable contract must be one where the parties understand and accept that failure to fulfil obligations under the agreement may result in legal consequences.

**Inter alia** The Latin phrase meaning ‘among other things’. This may be used, for example, to denote where other things were said in a ruling by a court, beyond the point being reported.

**Judiciary** The body of the judges that interpret and apply the law. The ‘judiciary’ often refers to the senior judges in the Supreme Court, Court of Appeal, and the judicial wing of the Privy Council.

**Legal personality** The rights attached to a natural person and/or an artificial thing, such as a corporation.

**Legislation** Law created through, or under the authority of, Parliament. It is the highest form of law and is not subject to challenge by the courts.

**Liquidated damages** These are damages that are determined in the contract in advance of a breach. They must be a pre-estimate of loss and not a penalty clause.

**Mitigation** In the event of a breach of contract, the injured party has an obligation to limit his/her losses as far as is reasonably possible/practical.

**Mutuality of obligations** There is an obligation for an employee to offer his/her services

to the employer (attend work) and there is a mutual obligation for the employer to provide work/pay. This is an essential component of ‘employee’ status.

**Nudum pactum** This is a promise made with no consideration to support it.

**Nuisance** This is an unlawful interference that prevents an owner/occupier’s enjoyment of his/her land.

**Obiter dicta** These are statements made by judges that are not part of the *ratio*, and hence are not part of the judgment of the case. They are not binding on lower courts but they are of persuasive authority and may be followed in future cases where the issue is raised.

**Offeree** The party(s) to whom an offer has been made.

**Offeror** The party making an offer and setting out the terms by which he/she is willing to be bound.

**Pari passu** An interpretation from the Latin means ‘with equal step’ and can be considered as meaning shares that rank without preference.

**Parliament** Parliament comprises the House of Commons and the House of Lords at Westminster, and also the monarch. All three institutions are involved in the legislative system, with Parliament scrutinizing the work of the government and holding it to account.

**Penalty clause** A clause which seeks to stop the other party from breaching the contract by imposing the threat of a penalty that is not a genuine pre-estimate of loss, and will be held void.

**Precedent** This is a system where the decisions of higher courts (through case law/common law) bind lower courts due to the hierarchical system of the court structure. Precedent is established from the *ratio decidendi* of the case.

**Principal** The person who instructs the agent to work on his/her behalf.

**Promisee** The party to whom a promise is made.

**Promisor** The party making the promise.

**Promissory estoppel** A doctrine providing an equitable defence preventing a party who

- has made a promise to vary a contract for the other party's benefit from later renegeing on it and attempting to enforce the original contract.
- Proximity** The close relationship between the parties to a negligence action. It is an essential feature to establish a duty of care.
- Pure economic loss** This is where the claimant's losses are not connected with any physical loss or damage. This is typically in the case of negligent advice or information provided to the claimant.
- Quantum meruit** 'As much as he has earned' (an amount paid in relation to the work performed).
- Ratio decidendi** This is the part of the judicial decision that is binding on all lower courts. The judiciary explain the previous case law and establish the legal principle on which the case has been decided. The *ratio* is not identified as such, rather, it has to be 'found' through reading the judgment and identifying the salient factors leading to the decision.
- Rectification** This remedy enables a written document (eg a contract) to be changed (eg including/removing clauses) more accurately to reflect the terms that were identified in the oral agreement subsequently reduced in writing.
- Red-circle** An employer who has conducted a job evaluation study to make pay structures transparent may protect the pay of a group of affected workers where they have been assessed, and they are to be downgraded.
- Reliance damages** Designed to prevent the injured party from suffering financial harm and placing him/her in the position in which he/she was before the contract had been established.
- Representations** Statements in the negotiations of a contract that do not amount to a term, but which may lead to a claim for misrepresentation if breached.
- Repudiation** To end or reject a contract, usually in response to a breach by the other party.
- Rescind (rescission)** Rescission is an equitable remedy and refers to a situation where the contract is set aside.
- Restraint of trade clause** This is a contractual clause that prevents or restricts an employee from competing with the employer for a specific duration and a specific region/area of industry.
- Revocation** An offer may be withdrawn (revoked) by the offeror before being accepted by the offeree.
- Rogue** A scoundrel/person with no ethics. A crook.
- Separation of powers** To ensure too much power is not vested in one body, and that a system of accountability through 'checks and balances' exists, the three elements of the State (the executive, the legislature, and the judiciary) must have clear demarcation between them. This ensures there is sufficient independence in these three branches of government.
- Specific performance** A remedy that is available when monetary damages are insufficient and do not adequately compensate the injured party for his/her loss. This is a court order compelling the party in breach to perform his/her contractual obligations.
- State of prior art** In patent law, an invention may be refused a patent because it is not novel. Therefore, if it can be demonstrated that 'prior art' existed before the patent applied for (through documents and other evidence) then the patent will not be granted.
- Statute** A statute refers to an act of the legislature. It may be referred to as an 'Act of Parliament' or 'legislation'.
- Strict liability** Liability is imposed due to the fact that the product contains a defect. There is no requirement to demonstrate negligence on the part of the defendant.
- Summary dismissal** This is an immediate dismissal (without any notice). Essentially, the employer has sacked the employee 'on the spot'.
- Tortfeasor** The party who has committed the tort.
- Transposition** EU Directives establish laws that the Member State must put into effect in its own legal system. Member States may choose the manner and form which this takes

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but they must have an Act, Regulation, or administrative order in place to which individuals in the Member State will have access. (For example, the EU Working Time Directive was transposed into English law through the Working Time Regulations 1998.)

**Unfair dismissal** A dismissal in breach of statutory requirements—the Employment Rights Act 1996. When considering unfair dismissal, always look at s 98 in relation to the reasonableness of the employer’s decision to dismiss, and the procedural requirements established by ACAS.

**Unliquidated damages** Damages that are incapable of being pre-determined and are calculated by the court.

**Vicarious liability** Holding another party (usually an employer) responsible/liable for the actions of the tortfeasor.

***Volenti non fit injuria*** The Latin phrase relating to a voluntary assumption of risk where a person engages in an event and agrees to and accepts the inherent risks. If injured, he/she is prevented from bringing a claim.

**Winding-up** This is the process of bringing a company to an end. As a corporation possesses its own separate legal personality, it must be formally wound up by a court to ‘die’.

**Written resolution** This is a mechanism for the board of directors to make a decision without having to meet in person. The resolution is valid and effective as if it has been agreed and passed at a meeting, if signed by all the directors entitled to receive notice of it.

**Wrongful dismissal** A dismissal in breach of the contract of employment, most commonly seen when a worker is unjustifiably dismissed contrary to the required notice period.