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Contract Law Cram Notes

1st Edition



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1. INTRODUCTION

A. HOW TO USE CRAM NOTES

The Contract Law Cram Notes are formatted into a step-by-step guide, which you can use as a checklist in your exams to ensure that every element of the exam question is answered. You may find the Table of Contents to be a quick and useful overview of the law to be applied.

You should also answer the exam question using the ILAC method, which will ensure your answer is comprehensive.

- Issue** State the legal issue relevant to the problem
- Law** Identify the relevant case law and legislation
- Analysis** Analyse and apply the law to the legal issue. This is the most important part, so ensure your legal analysis is very thorough.
- Conclusion** Form a conclusion based on your analysis and application of the law, giving some practical advice to the hypothetical client.

It is very important to spend time perfecting your analysis section, as this is the part that examiners are most interested in. Do not worry if you reach the correct conclusion (there often isn't one clear answer) – examiners will give more weight to your legal analysis, and sometimes may even reward answers that propose an innovative and unconventional answer!

2. WAS THERE AN OFFER?

A. WAS AN OFFER MADE?

Firstly, it must be analysed whether an offer was in fact made. An offer is an indication by a person to another of his or her willingness to enter into a contract with that person on certain



terms. The statement alleged to be an offer must indicate willingness by the offeror to be bound without further negotiation as to the terms of the proposed contract.

Although the making of an offer does not of itself give rise to a contract, an offer does have legal significance in that it creates in the offeree a power subsequently to create a contract by the offeree's unilateral action in accepting the offer.

In determining whether an offer has been made, the crucial issue is whether it would appear to a reasonable person in the position of the offeree that an offer was intended, and that a binding agreement would be made upon acceptance.

Carlill v Carbolic Smoke Ball

- Offer can be made to specified persons, or the whole world – the offeror has the power to say who can accept.
 - o In *Carlill*, the court held that the advertisement for the smoke ball could be offered to the whole world, and could be accepted by any person who performed the conditions on the faith of the advertisement.
- Offer mustn't be a mere "puff";
 - o In *Carlill*, the court held that the advertisement was not a mere puff because the statement relating to the bank deposit made it clear that a promise was intended.
- It must, to a reasonable person in the position of the offeree, seem that an offer was intended (the intention is objectively decided by the court, rather than what the original intention of the party was).

B. WHAT WAS THE NATURE OF THE OFFER?

i. INVITATION TO TREAT

An offer is often distinguished from an invitation to treat, which is an invitation or request for offers or to engage in negotiations with a view to a sale.

Gibson v Manchester City Council

- The Council's appeal was allowed on the grounds that there was not an offer, but merely an invitation to 'make a formal application to buy'. Even if the application form and Mr Gibson's return letters were an offer (and they were not because of lack of certainty due to the omission of the price), they were never accepted by the Council. Therefore, there was no contract.

1) Display of goods for sale

The display of goods for sale is ordinarily treated as an invitation to treat and not an offer. Customers will be regarded as making an offer when they present the items to the cashier for purchase, and no contract has been entered into until the cashier has accepted that offer.

Pharmaceutical Society v Boots Cash Chemists

- An offer is not made by the seller and accepted by the customer when the customers pick the goods from the shelf. The offer is rather made by the customer himself when he approaches the checkout register, where the assistant accepts the customer's offer and completes the contract.
- The display of goods for sale is only to be regarded as an invitation to treat



iii. DO TERMS DEPEND ON SETTLEMENT BY THIRD PARTY?

Parties may make a valid contract that defers agreement on an essential term if they provide an effective mechanism for supplying the term in the event they fail to reach agreement (*Booker Industries Pty Ltd v Wilson Parking*).

Godecke v Kirwan

- If the agreement reached included a term providing for one party's solicitor to provide additional terms "as they may reasonably require", the agreement would not be void for uncertainty
- Such a clause limits the addition of new terms to those "not inconsistent with those contained in the offer" and thus, need to be "reasonable".
- Such an agreement is not an agreement to agree, but rather, an agreement whereby part of the present bargain remains to be settled by a specified method.
 - o This is because settlement by external party does not involve the discretion of either party.
- The settlement of terms, even essential ones, by third party is not void for uncertainty (*May and Butcher Ltd v The King*)

C. IS THE PROMISE ILLUSORY?

A promise will be illusory if the promisor has an unfettered discretion in relation to performance. Wherever words which by themselves constitute a promise are accompanied by words showing that the promisor is to have a discretion or option as to whether he will carry out that which purports to be the promise, the result is that there is no legally enforceable contract (*Placer Development Ltd v Commonwealth*).

A contract will not be regarded as illusory if important matters are left to be determined by a third party, or if subsidiary matters are left to be determined by one of the parties (*Godecke v Kirwan*). A discretion conferred by a contract on one of the parties will not render that party's promises illusory if the discretion relates to fulfilment of a condition on which performance of the contract depends, or if the discretion is to be exercised according to objective criteria (*Meehan v Jones*).

D. CAN THE OFFENDING TERM BE SEVERED OR WAIVED?

If the incomplete, uncertain or illusory provision is essential, then the contract will fail (*Whitlock v Brew*).

There are two ways in which an agreement affected by uncertainty may be saved. Firstly, if the relevant provision is not essential, the crucial question is whether the court can infer an intention that the agreement should be valid in the absence of the relevant provision. If such an intention can be inferred, then the offending provision can be severed, leaving the remainder of the agreement enforceable (*Fitzgerald v Masters*).

Secondly, where an uncertain, incomplete or illusory provision has been inserted for the benefit of one of the parties, it may be possible for that party to *waive* compliance with the offending term and enforce the remainder of the contract (*Bradford v Zahra*). However, a party cannot waive an uncertain clause that is essential to the contract because the uncertainty means the parties failed to reach an agreement at all (*Grime v Bartholomew*).



7. WAS THERE PRIVACY OF CONTRACT?

A. IS THE PERSON A PARTY TO THE CONTRACT?

A person who is not a party to a contract can neither enforce the contract nor incur any obligations under it. This is known as the doctrine of privity of contract.

The privity doctrine principally operates to prevent non-parties from enforcing contractual promises that benefit them.

The privity doctrine does not prevent a contract from conferring a benefit on a third party, but simply prevents the third party from enforcing the contract (*Coulls v Bagot's Executor and Trustee Co Ltd*).

B. HAS THE PERSON PROVIDED CONSIDERATION?

Where a person has provided consideration to the contractual promises, they will be able to enforce the contractual terms as a party to the agreement.

Where there are multiple parties to a contract, they are regarded as joint promisees, and consideration may move from any one of them on behalf of all other joint promisees (*Coulls v Bagot's Executor and Trustee*). Each joint promisee will be able to enforce the contractual terms as a party to the agreement.

There is an exception to the normal privity rule that persons cannot enforce a contract to which they are third parties. In *Trident v McNiece*, the High Court held that the privity rule does not apply in the enforcement of insurance policies, because third parties in such circumstances rely heavily on the pre-existing insurance policies without making their own arrangements for insurance.

C. REMEDIES AVAILABLE

i. DAMAGES

If non-performance of the promise causes no particular harm to the promisee, then the promisee will only be entitled to nominal damages (*Trident General Insurance Co Ltd v McNiece Bros Pty Ltd*).

Where the promisee holds the relevant contractual rights on trust for the third party beneficiary, then the promisee can recover all that the third party could have recovered if the contract had been made with the third party (*Trident General Insurance Co Ltd v McNiece Bros Pty Ltd*).

ii. SPECIFIC PERFORMANCE

Specific performance is a particularly useful remedy for the enforcement of a promise made for the benefit of a third party. The remedy can be sought by the promisee and, if granted, will result in the third party obtaining the promised benefit (*Trident General Insurance Co Ltd v McNiece Bros Pty Ltd*).



8. WAS THERE CONDUCT GIVING RISE TO AN ESTOPPEL?

A. FORMS OF ESTOPPEL

An estoppel arises where one person (the representor) induces another person (the relying party) to adopt and act upon an assumption of fact (common law estoppel), or an assumption as to the future conduct of the representor (equitable estoppel).

An estoppel will only arise where the relying party has acted on the assumption in such a way that he or she will suffer detriment if the representor acts inconsistently with the assumption.

At common law, the effect of an estoppel is to prevent the representor from denying the truth of the assumption in litigation between the parties, so the rights of the parties are determined by reference to the assumed state of affairs, rather than the true state of affairs.

In equity, the effect of the estoppel is to prevent the representor from acting inconsistently with the assumption without taking steps to ensure that the departure does not cause harm to the relying party.

In effect, there is practically no difference between the operation of either forms of estoppel.

i. COMMON LAW ESTOPPEL

Common law estoppel describes all estoppels operating at common law.

- Estoppel by representation describes the principle that operates in relation to representations of fact.
- Estoppel by silence is used where an assumption is induced by silence.
- Estoppel by negligence is sometimes used where it is carelessness or imprudence on the part of the representor which has caused the relying party to adopt the relevant assumption.
- Estoppel by convention is a form of estoppel that operates where parties to an agreement have, by convention, adopted a state of affairs as the basis of their agreement or relations.
- Estoppel by deed operates where parties to a deed have set out certain agreed facts as the basis on which they are entering into the deed.

ii. EQUITABLE ESTOPPEL

Equitable estoppel encompasses promissory estoppel and proprietary estoppel.

- Proprietary estoppel operates where the relying party acts to his or her detriment on the faith of an assumption that the relying party has or will be granted an interest in land.
 - o Estoppel by encouragement operates where the owner of land encourages the relying party to build on the land.
 - o Estoppel by acquiescence operates where the owner of land knowingly allows the relying party to build on the land.
- Promissory estoppel is now used to describe any application of equitable estoppel that does not relate to an interest in land.

B. ASSUMPTION AS TO EXISTING FACT OR FUTURE CONDUCT

The nature of the assumption is important in relation to the type of estoppel that arises. If the assumption is one of an existing fact, a case of common law estoppel arises. For example, in *Waltons Stores (Interstate) Ltd v Maher*, the minority found that there was an assumption as to



existing fact, on the basis that the Mahers believed that Waltons had completed the exchange of the lease.

In relation to equitable estoppel, it will arise if the assumption is that the promisor will act in a particular way in the future (*Waltons Stores (Interstate) Ltd v Maher*). To create an assumption that the promisor will act in a particular way in the future, the promisor need only create or encourage an assumption that "a particular legal relationship" or "interest" would arise or be granted' (*Mobil Oil Australia Ltd v Lyndell Nominees Pty Ltd*). It is also enough that the assumption was that a promise would be performed (*Austotel Pty Ltd v Franklins Selfserve*).

C. INDUCEMENT TO ADOPT ASSUMPTION

The assumption adopted by the promisee must have been induced by the conduct of the promisor. In most cases the conduct will be an express representation or promise. In *Legione v Hateley*, it was said that the promise must be clear and unequivocal.

Where an assumption is induced by silence, it may be necessary to show that the representor intended reliance, knew of the acts of reliance or should reasonably have expected reliance (*Waltons Stores (Interstate) Ltd v Maher*).

D. RELIANCE UPON ASSUMPTION

The promisee must act or refrain from acting in reliance on the assumption. Reliance is shown by the fact that they would not have entered into the transaction if the assumption did not exist (*Waltons Stores (Interstate) Ltd v Maher*).

E. REPRESENTOR KNEW OR INTENDED THAT REPRESENTOR ACT IN RELIANCE

The promisor must know or intend that the promisee will act or refrain from acting in reliance on the assumption or expectation. That knowledge can be actual or constructive knowledge. In cases of assumptions based upon a promise or representation, knowledge is 'easily inferred' (*Waltons Stores (Interstate) Ltd v Maher*).

F. WAS THE RELIANCE DETRIMENTAL?

The plaintiff must suffer, or stand to suffer, detriment if the assumption made by the plaintiff is not fulfilled. There must be a link between the detriment and the assumption or expectation.

Thompson v Palmer

- The plaintiff will suffer detriment in the sense that as a result of adopting the assumption or expectation as the basis of action or inaction, the plaintiff will have placed himself in a position of material disadvantage if departure from the assumption is permitted
- That is, the relying party must have acted on the assumption in such a way that he or she will suffer detriment if the representor is allowed to depart from the assumption.

Je Maintiendrai Pty Ltd v Quaglia

- it is necessary that the promise would result in some detriment and therefore some injustice to the plaintiff if the assumption was incorrect

G. REPRESENTOR FAILED TO ACT TO AVOID DETRIMENT

The defendant must have failed to act to avoid the plaintiff suffering detriment. For example, the defendant could have taken action to avoid the detriment by simply fulfilling the



assumption or expectation, or correcting the assumption prior to the plaintiff's detrimental reliance (*Waltons Stores (Interstate) Ltd v Maher*).

H. IS THERE PROPORTIONALITY BETWEEN THE RELIEF GRANTED AND DETRIMENT SUFFERED?

In order for relief to be granted, there must be proportionality between the relief granted and detriment suffered (*Verwayen*). Relief will not go beyond what is required for conscientious conduct, and only to prevent or compensate the detriment suffered (*Giumelli v Giumelli*). Such relief will be the minimum equity required to do justice (*Crabb v Arun*). The relief must place the party claiming estoppel in the same position as they were before, or the position they would have been in had the offending party not resiled from the induced assumption (*Verwayen*).

9. WHAT ARE THE TERMS OF THE CONTRACT?

A. INCORPORATION OF TERMS

i. WRITTEN TERMS AND EFFECT OF SIGNATURE

L'Estrange v F Graucob

- Facts: Plaintiff bought a cigarette vending machine, but it did not work properly. Plaintiff sued for damages (warranty), however the contract signed included a clause that warranty would be excluded. It was alleged the contract was improperly read. As per the contract, the warranty was excluded.
- The general rule is that a party will be bound by the terms contained in a contractual document which they have signed, regardless of whether they have read the document.
- It is "wholly immaterial that he has not read the agreement and does not know its contents" (*Parker v South Eastern Ry Co*).

Curtis v Chemical Cleaning & Dyeing Co

- Facts: Plaintiff had her dress dry cleaned and signed a 'receipt' which stated the cleaners would not be liable for damages. The plaintiff did not read it, because they were misled into thinking the liability only affected damages to sequences and beads. Further, it was not expected that the document would be considered contractual.
- An exemption to *L'Estrange* occurs where:
 - o The party is misled or was misrepresented to, either innocently or fraudulently
 - Any behaviour, by words or conduct, is sufficient to be a misrepresentation if it is such as to mislead the other party about the existence or extent of the exemption
 - A fraudulent misrepresentation is a false impression created knowingly, while an innocent misrepresentation is created unwittingly, but either is sufficient to disentitle the exemption to *L'Estrange*.
 - o The party who signed it was labouring under a mistake
 - o The document cannot be reasonably considered as contractual
- If a person wishes to exempt himself from a liability which the common law imposes on him, he can only do it by an express stipulation brought home to the party affected, and assented to by him as part of the contract (*Olley v Marlborough Court*).

Chapelton v Barry Urban District Council

- Receipts, unless explicitly stated, are not normally considered contracts, or capable of incorporating terms into the contract.



1) Instalment Contracts

Maple Flock Co Ltd v Universal Furniture Products Ltd

- Facts: The plaintiff agreed to buy flock, in 20 instalments, given the defendant complied with a condition that no more than 30 parts of chlorine per 100 000 parts of flock were found. The plaintiff found 250 parts of chlorine on the 16th delivery, and repudiated the contract. The courts held that, given the small magnitude of the breach and low probability of reoccurrence, the repudiation was unlawful
- If a contract requires delivery in instalments (such as sale of goods) and it is found that one or more instalments are defective, determining whether repudiation is lawful is dependent upon:
 1. The magnitude that the particular breach of instalment bears to the whole contract; and
 2. The degree of probability that the breach would be repeated in future instalments.

2) Misinterpretation of Contract/Mistake

DTR Nominees Pty Ltd v Mona Homes Pty Ltd

- Facts: The defendant sold construction contracts, and as per the contract, was supposed to lodge the plan with the council, and then could seek a deposit. However, the defendant only lodged plans for part of the property, and the plaintiff paid a deposit without knowing that the plans were only lodged for part of the land. The plaintiff rescinded the contract, so the defendant kept the deposit and terminated the agreement. The courts held that the termination was unlawful because the plaintiff did not 'evince an intention not to proceed,' but because the defendant incorrectly interpreted the contract.
- Repudiation will not occur where one party evinces an intention not to proceed on the basis that the interpretation of the contract is incorrect, i.e. a difference of construction will not repudiate a contract.
- In order to be entitled to rescind for anticipatory breach, an innocent party must, at the time of rescission, be ready, willing and able to perform the contract on its *true* interpretation.

Woodar Investment Development v Wimpey Construction

- If a party mistakenly interprets the contract and believes that they have a right to rescind or refuse to perform their obligations under their mistaken view of the contract, this will be considered to be repudiation.

E. RIGHT TO TERMINATE FOR DELAY

A contract will normally specify a time by which obligations are to be performed. If the time specified is stated to be of the essence, the time is stipulated as being essential and it will be construed as a condition, breach of which gives rise to a right to terminate. If the time for performance is not stipulated, a reasonable time is implied.

Furthermore, a right to terminate will be available should the delay continue in such circumstances as to amount to repudiation (*Laurinda Pty Ltd Capalaba Park Shopping Centre Pty Ltd*).

In addition, a right to terminate may arise through the issue of a notice to complete, specifying time to be of the essence. The subsequent failure to perform the obligation within a reasonable time or on the stipulated essential date would allow for termination due to delay (*Louinder v Leis*).



i. IS TIME OF THE ESSENCE?

Carr v J A Berriman Pty Ltd

- If time is of the essence, failure to perform by the due date can allow the contract to be rescinded.
- If time is not of the essence, the aggrieved party is not entitled to rescind on the date specified for performance. A reasonable time for performance must be allowed.

Taylor v Brown

- The aggrieved party may rescind the contract if time is not of the essence, after giving notice within a reasonable time, and after non-compliance with such a notice.

ii. TERMINATION FOR DELAY

Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd

- Facts: The plaintiff leased a shop, and paid registration fees. 10 months later, the defendant had still failed to produce the lease documents, as required under the contract, and the plaintiff gave notice that the documents should be produced in 14 days. The defendant's failure to do so caused the plaintiff to terminate the lease, as well as seek the recovery of registration fees.
- Delay can evince the party's intention not to be bound, if the party has not acted within a reasonable time in performing their obligations.
- However, delay by itself is not always sufficient to allow termination, but deliberate acts to prevent obligations accompanied with delay can allow for termination.
- If the inference to be drawn from the circumstances is that the defaulting party intends to perform an essential promise after some minor delay, repudiation cannot be inferred
- However, if the inference is that the defaulting party intends so to delay performance that the promisee will be substantially deprived of the benefit of the promise, repudiation can be inferred.
- Although the court held the notice was unlawful (having not given a reasonable time with an express stipulation for termination), the delay was such as to amount to repudiation.

iii. NOTICE TO COMPLETE

Louinder v Leis

- Facts: The plaintiff bought property which was supposed to be settled within 3 months. Suddenly, the defendant wanted settlement within 7 days, and after 7 days (where no settlement occurred), sent a notice requiring full settlement in 21 days. When this was not complied with, the defendant terminated the contract. The court held that the termination was unlawful because settlement was in 3 months time, and the defendant had no right to stipulate settlement before that.
- If time is not of the essence, termination for delay may be brought about through the issue of a notice, and failure to perform the obligation within a reasonable time of the issue would allow for lawful termination
 - o The result of non-compliance with the notice is that the party in default is guilty of unreasonable delay in complying with a non-essential time stipulation. The unreasonable delay amounts to a repudiation and this justifies rescission
- The notice must satisfy the following three criteria:
 1. It specifies the time for performance;
 2. Allows a reasonable time for performance; and
 3. Clearly conveys that the party giving the notice is entitled to terminate should the notice not be complied with.



Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd

- It is sufficient if the notice indicates that the party giving it may choose to rely on his rights in the event that the notice is not complied with – the notice need not say that the party will exercise their rights to rescind
- However, the notice must convey a definite and specific intent to require strict compliance with the notice’s contents (i.e. the party giving the notice is relying strictly on their rights)
- In this case, the notice issued merely specified that the party “reserves their rights”. This was insufficient to convey to the other party that failure to comply with the notice would give rise to a right to terminate.

Note that using a notice as a means of termination is only allowed where the offending party is already guilty of unreasonably delaying the performance of their obligations, or breaching a time stipulation (even if it is non-essential). It cannot be used to make time a condition, where it was not one previously. Furthermore, the party issuing the notice must itself be free from default or breach by way of a delay.

11. RESTRICTIONS ON THE RIGHT TO TERMINATE

A. ELECTION (AFFIRMATION)

Following the breach of a condition, or essential innominate term, the innocent party has the right to elect to terminate the contract. The party may choose either to:

- Terminate the contract (by expressly communicating to the offending party)
- Affirm their position (usually implied by conduct), that is, continue with the contract for the benefit of both parties

Once the election is made the choice is final and cannot be retracted.

Bowes v Chaleyer

- Facts: The plaintiff sold goods at a certain prices to the defendant. The defendant sought to terminate the contract due to concerns over the price, but the plaintiff continued to import goods ready to sell to the defendant. The defendant asserted that the contract was terminated. The plaintiff sought damages for costs. The court held that although the contract was repudiated by the defendant but affirmed by the plaintiff, because the plaintiff had breached a condition of the contract, no damages could be awarded.
- Affirmation keeps the contract alive for the benefit of both parties. However, damages are still awarded for the party that breached the contract.
- A party who has breached or repudiated the contract will be able to rely, to their advantage, on subsequent events, including subsequent breaches by the aggrieved party, where the innocent party elected for the contract to remain on foot.

Tropical Traders Ltd v Goonan

- Facts: The plaintiff collected instalment payments from the defendant for the sale of a property, in which many instalments were late. The defendant had difficulty paying an instalment so the plaintiff extended the payment period but stated clearly that failure to pay by the new date would allow for rescission. The defendant failed to pay this instalment and the plaintiff terminated.
- There are two requirements that must be satisfied before it can be held that a party has affirmed the contract:
 - o Knowledge of at least the facts giving rise to the aggrieved party a right to terminate; and,



- Unequivocal conduct of the aggrieved party consistent only with a choice to continue with the contract, i.e. there is no doubt that they want to continue.
- In this case, the plaintiff's termination was lawful. Although the defendant claimed the plaintiff had earlier affirmed their position by accepting the late payment, the court held that this was not the case as it was clear that the plaintiff did not want to continue with the contract if time was breached in the final instalment due.

B. READY, WILLING AND ABLE

To be entitled to terminate for breach or repudiation, the innocent party must him/herself show readiness and willingness to perform the contract.

Foran v Wight

- Facts: The plaintiff purchased a property, of which a 10% deposit was due. Settlement was to occur by a certain date, but the defendant claimed they were unable to produce the necessary documents by that time, so the plaintiff rescinded (repudiation). The defendant fought the validity of the termination on the basis that the plaintiff would not have been able to produce the deposit in time anyway. The court held that the plaintiff was ready and willing, and thus could recover the deposit.
- To be entitled to terminate a contract for breach or repudiation, an aggrieved party must show that they are ready and willing to perform their obligations of the contract if they haven't already done so.
 - Readiness and willingness is shown as long as the party is not presently incapacitated from future performance and is not indisposed to do, when the time comes, what the contract requires.
 - There must be no "substantial incapacity" or "definitive resolve or decision" against performance
- If the contract remains on foot and the repudiation of one party makes it *futile or pointless* for the other party to continue with their obligations, the law does not require him to do so.
 - To be ready and willing to perform a contract, a party does not need to prove it is in the process of completing their obligations, but show that they are ready and willing, and have the capacity to fulfill their obligations (*Psaltis v Schultz*).

C. EFFECT ON ACCRUED RIGHTS

McDonald v Dennys Lascelles

- Facts: The plaintiff sold some land to a grazing company. The company couldn't repay its instalment, and got McDonald (defendant) to act as a guarantor while they delayed payment. When it appeared that the company couldn't pay, the plaintiff repudiated the contract and sued the defendant for recovery.
- If payment is called for on a specific fixed date, then that money (debt) is immediately recoverable on and after that date, regardless of whether the contract is subsequently completed or repudiated.

D. RELIEF AGAINST FORFEITURE (PROPERTY)

Termination brings an end to the right of each party to expect further performance of the contract, and thus, could affect a forfeiture of a right under the contract. Courts may sometimes grant relief against forfeiture and/or an order specific performance of the contract where the forfeiture is unjust.



Legione v Hately

- Facts: The plaintiff bought land from the defendant and built a house, and asked whether they could settle payment in 7 days. The defendant's solicitor said that it could be okay but they would need instructions. When the plaintiff didn't pay within 7 days, the defendant terminated the contract. The plaintiff sued for recovery and the court held that it should be granted since the breach was 'inadvertent and not willful.'
- To decide whether or not to grant relief against forfeiture, the following questions are raised:
 - o Did the conduct of the aggrieved party contribute to the party's breach?
 - o Was the breach (a) trivial or slight, and (b) inadvertent and not willful?
 - o What damages or other adverse consequences did the aggrieved party suffer by reason of the party's breach?
 - o What is the magnitude of the party's loss and the aggrieved party's gain if the forfeiture is to stand?

Stern v McArthur

- Facts: The plaintiff bought land and paid it in instalments. When the plaintiff was late on payments, the defendant terminated the contract and also benefited from an increase in the value of the land. The court held that the plaintiff should be granted relief against the interest in the land.
- Relief against forfeiture will only be granted in exceptional circumstances because the court must not be too ready to deprive the aggrieved party of their right to terminate the contract.
- Courts have generally required something in the region of 'fraud, accident, mistake or surprise' to warrant relief against forfeiture – but is not limited to these factors.



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