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## Law - DEFINITIONS you need to know

### 30 Law DEFINITIONS you need to know

Briefly define and explain: Five examples of equal treatment employment rights to which individuals are entitled under Ontario's Human Rights Code (it is not necessary to define these - just list 5 examples) Previous wording: Briefly define and explain: Five examples of inappropriate conduct in the workplace prohibited by the Ontario Human Rights Code (it is not necessary to define these - just list 5 examples)

The Ontario Human Rights Code defines that Discrimination based on any of the following is inappropriate workplace conduct: . Race, . Ancestry, . Place of origin, . Colour, . Ethnic origin, . Citizenship, . Creed, . Sex, . Sexual orientation, . Age, . Marital status, . Family status, . Record of offenses, or . Handicap. See section 36.3.5

Briefly define and explain: Contract A in tendering

Contract A: the "contract of irrevocability" entered (perhaps implicitly) between bidders and owners regarding the conduct of the tendering process. In Ron Engineering, the Supreme Court of Canada established that there are two separate contracts in the tendering process: . Contract A: the "Contract of Irrevocability"; relates to tendering process. . Contract B: the construction contract; relates to what the tender was for. Since now there is a "Contract A" with each bidder in a tender agreement (laid out by the terms of the owner's request for tenders), the owner has to be careful when negotiating with some bidders in a way that doesn't include all others, lest the owner breach contract A by not treating bidders equally. (16.0) Contract A has implicit terms based on the status quo of the tendering process; for example, it is arguable that the owner has an obligation to accept the lowest bidder. For this reason, owners often include explicit terms in bidder agreements which attempt to override these implicit contract A terms; for example "the owner is under no obligation to accept the lowest or any bidder." (see 16; specifically, North American Construction Ltd. v. City of Fort McMurray) Contract A has implicit terms based on the status quo of the tendering process; for example, it is arguable that the owner has an obligation to accept the lowest bidder. For this reason, owners often include explicit terms in bidder agreements which override these implicit contract A terms; for example "the owner is under no obligation to accept the lowest or any bidder." (see 16; specifically, North American Construction Ltd. v. City of Fort McMurray)

Briefly define and explain: Gratuitous promise

Consideration: "The cause, motive, price, or impelling influence that induces a contracting party to enter into a contract." A gratuitous promise is a promise without consideration. As such, it isn't legally binding. That said, the courts may estopp someone from backing out on a gratuitous promise where such estopping would produce a more equitable result. (10.1)

Briefly define and explain: The discoverability concept as it relates to limitation periods. Previous version: (10) The question of how long an engineer or a contractor can be sued for negligence is one that is of concern to professional engineers and to contractors. Describe the limitation periods during which engineers and contractors can be sued in tort and in Contract.

Concept of Discoverability: the 2-year limitation period, whether in tort or contract, starts when the damage is, or ought reasonably to be, discovered. (See chapter 5 notes) Note - when this question was previously presented on exams the laws have changed several times. The current laws for limitations are . . . The limitation period is the period during which legal action can be taken, be it for breach of contract or for tort damages. As of 2004, the limitation period for either tort or contract is the lesser of 1) two years from the point the damage was, or ought reasonably to have been, discovered OR 2) fifteen years from when the act was performed. This limitation period rule for Ontario was set out by the Limitations Act, 2002, which also states that contract attempts to explicitly change the limitation period rules are void. In 2006, the Access to Justice Act changed this to once again allow contracts to explicitly change the lengths of the 2 & 15 year limitation periods, effective October 16, 2006.

Briefly define and explain: Statutory holdback under the Construction Lien Act

Statutory holdback (Holdback): To help ensure that subcontractor payment is not affected by a defaulting general contractor when the subcontractor and owner are in line, the owner typically holds-back some of the

pay he owes the general contractor until the deadline for subcontractors to file liens has expired. At this time, if no subcontractors have filed liens [with the government], then the owner pays the general contractor ("releases the holdback"); otherwise, the owner retains the holdback until all liens are resolved. The holdback is "statutory" because it is required by statutes in each province (in Ontario, by the Ontario Construction Lien Act), which also set the holdback amount and lien-filing deadline. (30.1)

Briefly define Secret commission

Secret Commission: A bribe or kickback, secretly defrauding the interests of another. Basically, one is guilty of accepting a bribe when, as an agent, one gets any kind of personal gift in exchange for altering the way one does business for one's principal (usually to the advantage of the one giving the bribe). Accepting or offering a secret commission is an offence under . The Criminal Code of Canada (Section 338) As an P.Eng, accepting or offering a secret commission is also professional misconduct by Regulation 941/90, Section 72.(2)(i). (REF - See Marston Chapter 23)

Briefly define and explain: Rule of contra proferentem

"Where the contract is ambiguous it will be construed or interpreted against the party that drafted the provision." (see section 17.1)

Briefly define Parol evidence rule

Parol evidence rule ("verbal" evidence rule): a verbally agreed upon term that is not included in the written contract is not part of the contract. (section 17.2) The parol evidence rule does not always apply; for instance, when the term states that the entire contract is only affective if the agreed-upon condition occurs. E.g., Pym v. Campbell: contract was for sharing purchase of invention rights, conditional on two engineers approving the invention, but this part wasn't in the contract. Only one engineer approved the invention, and so the defence held that the contract was therefore not formed. The courts agreed. (section 17.2)

Define and explain: Vicarious liability

Vicarious Liability: when employers are liable for damage resulting from the negligent actions of their employees. ("Vicarious" = "Acting for another") (see section 4.6) Understanding vicarious liability: recall that the fundamental purpose of tort law is to compensate victims (and is not to punish those who behave negligently). Employers usually have more resources to use for compensation than their employees do, hence, we have the concept of vicarious liability.

Briefly define and explain: Liquidated damages

Liquidated damages are the monetary amount required by a penalty clause in a contract; say, for failing to finish construction by a given date. For the courts to uphold such provisions, the parties entering the contract must make an effort to estimate the damages that would result from the breach the provision covers. (19.5)

Briefly define and explain: The New York Convention

New York Convention: AKA, the "1958 UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards", was a conference where countries agreed to make arbitration decisions enforceable on contracts which have selected this as the preferred dispute resolution method. Canada is a signatory, as are over 135 other countries. The New York Convention gives legal backing to arbitration as a reliable dispute resolution method.

Briefly define and explain: Fraudulent misrepresentation

Misrepresentation: False statement or assertion of fact. A court will rescind (which voids) a contract if a party who desires it to be rescinded can convince the court that they were misled into entering the contract. Innocent Misrepresentation: party making the statement doesn't realize the statement is false. Fraudulent Misrepresentation (Negligent misrepresentation):(as described by the English Court of Appeal in Derry v. Peak) a misrepresentation made: 1. "Knowingly, or 2. without belief in its truth, or 3. recklessly, careless whether it be true or false." (Section 14.1)

Briefly define and explain: ADR

ADR = Alternative dispute resolution; arbitration is the leading-edge focus of this approach which seeks other ways to resolve disputes than lawsuits.

Briefly define and explain: DRB (Dispute Resolution Board)

DRB: Dispute resolution board (AKA Dispute Review Board). Appointed board of third party experts who are familiar with the particular project given authority to resolve disputes arising in carrying out the contract. A DRB is intended as a way to avoid resorting to slower and more-costly dispute resolution through arbitration (which itself is to avoid resorting to much slower and much more costly dispute resolution through lawsuits).

Briefly define and explain: The five essential elements of an enforceable contract (list only)

The legal essentials of an enforceable (binding) contract are: 1. ability of the parties to perform their agreed-to

<p>parts of the contract. 2. an offer willingly made and accepted. 3. a mutual intent to complete the contract. 4. an agreement for an exchange of value, usually money. 5. conformance with existing legislation, where affected. If one or more of the above essentials is not present then a contract has not been formed and the agreement is unenforceable.</p>
<p>Briefly define and explain: Duress (in contracting)</p> <p>Duress: Intimidation causing one to enter a contract; "Threatened or actual violence or imprisonment used as a means of persuading a party to enter into a contract." E.g.: Mutual Finance Co. Ltd. v. John Wetton &amp; Sons Ltd.: Contract ruled unenforceable due to duress, because one party intimidated another into a second guarantee by threatening to disclose that threatened party had forged a first guarantee. The threatened party established that news of such a disclosure may have killed an ill family member, hence, the threat was effectively a violent one, and therefore constituted duress.</p>
<p>Why arbitration is often chosen as a method of resolving disputes between contracting parties from different countries.</p> <p>Arbitration is often chosen as a method of resolving disputes because it's usually much less costly and time consuming than a lawsuit. This is particularly true for international contracts, because it can save one of the parties from the cost (and potential unfairness) of operating in an unfamiliar legal jurisdiction. Further, as long as both countries are signing countries to the New York Convention, then arbitration decisions are just as legally binding as court decisions.</p>
<p>Briefly define Equitable estoppel</p> <p>Equitable estoppel: where, to provide an equitable result, the court makes a gratuitous promise legally binding (equitably estops the party making the gratuitous promise from backing down from it). Often happens when a gratuitous promise is made to allow flexibility in previously agreed upon legal technicalities, which the promisee then acts on, and the promisor subsequently revokes. (See 10.2)</p>
<p>Briefly define and explain: Exemption clause</p> <p>Exemption clause: provision in which contracting parties limit their liability in the event of breach of contract. Exemption clauses are not always enforceable, particularly in the event of a fundamental breach of contract on the part of the party whose liability the clause limits. Cases have established considerable precedent on the subject (see 20), and at the time of writing it is the practice of Canadian courts, even in the event of a fundamental contract breach, to "resolve matters according to the true intentions of the parties at the time the contract was negotiated" based on the precise wording of the contract.</p>
<p>Briefly define and explain: Director's standard of care or, as recently appearing "A director's fiduciary duty"</p> <p>Section 134(1) of the Business Corporations Act of Ontario states: "Every director and officer of a corporation in exercising his/her powers and discharging his/her duties shall: a) act honestly and in good faith with a view to the best interests of the corporation; and b) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances." (see section 2.15)</p>
<p>Briefly define and explain: Bid shopping</p> <p>Soliciting a bid from a contractor, with whom one has no intention of dealing, and then disclosing or using that in an attempt to drive prices down amongst contractors with whom one does intend to deal.</p>
<p>Briefly define and explain: Unilateral mistake</p> <p>Mistake made by only one party to a contract.</p>
<p>Briefly define and explain: Frustration of contract (also Discharge by Frustration)</p> <p>Contracts become frustrated when "changing circumstances radically change the obligations of the parties." The courts will only allow discharge by frustration if "exceptional circumstances, which were not contemplated by the parties, have arisen, and only where discharge by frustration is the only practical and reasonable solution." (see section 18.4) Frustration is an extreme case. Courts have traditionally granted it for things like war-time state-possession of contracted companies (E.g., 1917 decision by English House of Lords: Metropolitan Water Board v. Dick, Kerr and Company, Limited.), but not for things like labour shortages (1956 decision by English House of Lords: Davis Contractors Ltd. v. Fareham Urban District Council) or being forced to construct in winter rather than summer due to a site not being available yet (Swanson Construction Company Ltd. v. Government of Manitoba; Dominion Structural Steel Ltd., Third Party).</p>
<p>Briefly define and explain: Consequential damages</p> <p>Consequential Damages: General class of damages which are consequences of an action; includes both direct and indirect consequences. For example, in the 1982 decision of the English House of Lords in Junior Books Ltd. v. Veitchi Co. Ltd, the subcontractor who negligently installed a floor was found liable for the direct damages of having the floor replaced as well as the indirect ones such as "storage of books during the carrying out of remedial work, and removal of machinery to enable remedial work to be carried out; lost profits</p>

